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A Complete Collection Of State-Trials And Proceedings For High-Treason And Other Crimes and Misdemeanours

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A

Complete Collection
OF
STATE-TRIALS,
AND
PROCEEDINGS
FOR
HIGH-TREASON,
AND OTHER
CRIMES and MISDEMEANOURS;

THE FOURTH EDITION;

COMMENCING WITH
The Eleventh Year of the Reign of KING RICHARD II.
AND ENDING WITH
The Sixteenth Year of the Reign of KING GEORGE III.

WITH
TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,
A NEW PREFACE,
By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE FIFTH.

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A Complete

A COMPLETE COLLECTION OF TRIALS, &c.

CLXI.

The Trial of JOSEPH DAWSON, EDWARD FORSEITH, WILLIAM MAY, WILLIAM BISHOP, JAMES LEWIS, *and* JOHN SPARKES, *at the* Old-Bailey, *for* Felony *and* Piracy, Oċtob. 19. 1696. 8 WILL. III.

Admir. Angl. ſſ.

The Seſſions of Oyer *and* Terminer, *and Gaol-Delivery, held for our Sovereign Lord the King, for the Juriſdiction of the Admiralty of* England, *at Juſtice-Hall in the* Old-Bailey, *in the Suburbs of the City of* London, *on* Monday *the* 19*th Day of* October, *in the Eighth Year of the Reign of our ſaid Sovereign Lord King* William *the Third, over* England, *&c. before the Right Honourable* Edward Ruſſel, *Eſq*; Henry Prieſtman, *Eſq*; *Sir* Robert Rich, *Knight and Baronet*; *Sir* George Rooke, *Knight*; *Sir* John Houblon, *Knight*; *and* James Kendal, *Eſq*; *Commiſſioners for Executing and Exerciſing the Office and Place of Lord High Admiral of* England, *reſpectively aſſigned and deputed*; *the Right Worſhipful Sir* Charles Hedges, *Kt. Doctor of Law, Lieutenant in the High Court of Admiralty of* England, *Commiſſary-General of our Sovereign Lord the King, and Preſident and Judge of the ſaid Court*; *the Right Honourable Sir* John Holt, *Kt. Lord Chief Juſtice of the* King's-Bench; *Sir* George Treby, *Kt. Lord Chief Juſtice of the* Common Pleas; *Sir* Edward Ward, *Kt. Lord Chief Baron of the* Exchequer; *Sir* Tho. Rokeby, *Kt. and one of the Juſtices of the* King's-Bench; *Sir* Samuel Eyre, *Kt. another of the Juſtices of the* King's-Bench; *Sir* John Turton, *Kt. another of the Juſtices of the* King's-Bench; *Sir* John Powell, *Kt. one of the Juſtices of the* Common-Pleas; *Sir* Littleton Powis, *Kt. one of the Barons of the* Exchequer; William Bridgeman *and* Joſias Burchet, *Eſqrs*; *Secretaries of the Admiralty of* England; Thomas Lane, William King, *and* John Cooke, *reſpectively Doctors of Laws*; *and others his Majeſty's Juſtices named in the ſaid Commiſſion.*

HIS Majeſty's Commiſſioners being then and there met, the Commiſſion was read, and Proclamation made for Attendance: After which, the Gentlemen of the Grand Jury were called and ſworn, and received their Charge from Sir *Charles Hedges*, Kt. Judge of the High Court of Admiralty, who ſet forth unto them the Nature of the Commiſſion, the Extent of the Juriſdiction of the Court, and the Subject Matter of their Enquiries.

Then the Witneſſes for the King being ſworn, the Grand Jury withdrew, and after a little Time returned, finding *Billa vera* againſt *Henry Every*, not yet taken, *Joſeph Dawſon*, *Edward Forſeith*, *William May*, *William Biſhop*, *James Lewis*, and *John Sparkes*, Priſoners, for feloniouſly and piratically taking and carrying away, from Perſons unknown, a certain Ship called the *Gunſway*, with her Tackle, Apparel, and Furniture, to the Value of 1000 *l.* and Goods to the Value of 110 *l.* together with 100000 Pieces of Eight, and 100000 Chequins, upon the High Seas, ten Leagues from the Cape *St. John*'s, near *Surat* in the *Eaſt-Indies*. Then *Dawſon*, *Forſeith*, *May*, *Biſhop*, *Lewis*, and *Sparkes*, were brought to the Bar, and their Indictment was read.

Joſeph Dawſon confeſſed that he was Guilty; but the reſt pleaded Not Guilty, and put themſelves upon their Trials; and thereupon the Petty Jury was called, and the Perſons whoſe Names follow were ſworn.

William Walker,
John Child,
Edward Leeds,
Thomas Clarke,
Nathan Green,
Henry Sherbrooke,
Benjamin Dry,
John Sherbrooke,
Samuel Jackſon,
Thomas Emms,
Henry Hunter,
John Hall.

Then the King's Learned Counſel opened the Indictment, *&c.* and Dr. *Newton* made a Speech, which is as follows:

My Lord, and Gentlemen of the Jury,

'THE Priſoners are indicted for Piracy, in Robbing and Plundering the Ship *Gunſway*, belonging to the *Great Mogul* and his Subjects, in the *Indian* Seas, to a very great Value.

'And the End was ſuitable to their Beginning; they firſt practiſed theſe Crimes upon their own Countrymen, the *Engliſh*, and then continued them on to Strangers and Foreigners: For the Ship in which this Piracy was committed, was an *Engliſh* Veſſel, called the *Charles the Second*, belonging to ſeveral Merchants of this City, deſigned for others Ends, and a far different Voyage, which by theſe Criminals, with the Aſſiſtance of one *Every*, their Captain in all theſe Villainies, was ſeized near the *Groyne* in *Spain*, in *May* 1694. from which Place, having firſt, by Force, ſet Captain *Gibſon* the Commander on Shore, they carried off the Ship, and with it committed many and great Piracies for ſeveral Years (as will appear in the Courſe of the Evidence) in moſt of the Parts of the known World, without Diſtinction, upon all Nations, and Perſons of all Religions.

'Their laſt Piracy was this in the *Indies*, the greateſt in itſelf, and like to be the moſt pernicious in its Conſequences, eſpecially as to Trade, conſidering the Power of the *Great Mogul*, and the natural Inclination of the *Indians* to Revenge: But they are now brought hither on their Trial, and, if the Matters they are charged with ſhall be proved, to receive that Judgment from you their Crime deſerves; and that is Piracy, which by ſo much exceeds Theft or Robbery at Land, as the Intereſt and Concerns of Kingdoms and Nations are above thoſe of private Families, or particular Perſons: For ſuffer Pirates, and the Commerce of the World muſt ceaſe, which this Nation has deſervedly ſo great a Share in, and reaps ſuch mighty Advantage by: And if they ſhall go away unpuniſhed, when it is known whoſe Subjects they are, the Conſequence may be, to involve the Nations concerned in War and Blood, to the Deſtruction of the innocent *Engliſh* in thoſe Countries, the total Loſs of the *Indian* Trade, and thereby the Impoveriſhment of this Kingdom.'

The Witneſſes for the King, *viz. John Dan* and *Philip Middleton*, were then called and ſworn, and in the Opinion of the Court gave a full Evidence againſt the Priſoners, which was very clearly ſumm'd up by the Lord Chief Juſtice *Holt*; the Tenour whereof is particularly ſet forth in the following Trials: But the Jury, contrary to the Expectation of the Court, brought in all the Priſoners *Not Guilty*; whereupon the Seſſions was adjourned to *Saturday* the 31ſt of *October* following, and the Priſoners were committed upon a new Warrant for ſeveral other Piracies.

Die Sabbati, Triceſimo-primo Octobris, Annoq; Regni Regis Willielmi *Tertii Octavo, Annoq; Domini* 1696.

THE Court being ſat (at which were preſent Sir *Charles Hedges*, Judge of the High Court of Admiralty, the Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, the Lord Chief Baron *Ward*, Mr. Juſtice *Rokeby*, Mr. Juſtice *Turton*, Mr. Juſtice *Eyre*, Mr. Baron *Powis*, Dr. *Lane*, Dr. *King*, and Dr. *Cook*), the Court proceeded in this Manner.

Cl. of Ar. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes. All manner of Perſons that have any thing more to do at this Seſſions, draw near and give your Attendance: And you Sheriffs of the City of *London*, return the ſeveral Precepts directed to you, and returnable here this Day, upon Pain and Peril that ſhall follow thereon.

[*Then the Grand Jury were called over, and the Appearances marked.*]

Cl. of Ar. Make Proclamation.

Cryer. O yes, *&c.* The Lords the King's Juſtices charge and command all Perſons to keep Silence while the Charge is giving.

The Judge of the Admiralty's Charge to the Grand Jury upon this Occaſion.

Sir *Charles Hedges.* Gentlemen of the Grand Jury,

THE Opinion which this Court had of the good Intentions, Abilities, and Integrity of the laſt Grand Jury was ſo fully anſwered at our late Meeting in this Place, that I am confident all good *Engliſhmen*, who were Witneſſes of their Proceedings, will concur in giving them publick Thanks for the good Services which they then performed: I wiſh that all others, who were concerned in the Diſpatch of that Day's Buſineſs, had the like Pretence to have the ſame; the publick Juſtice of the Nation would not then have lain under any Manner of Reproach, neither would you have had this farther Trouble. But ſeeing that it hath ſo happen'd, it is become abſolutely neceſſary that a farther and a ſtrict Enquiry ſhould be made after thoſe Crimes which threaten, and tend to the Deſtruction of our Navigation and Trade; and therefore I am aſſured of your Patience, whilſt I ſhew you briefly,

1. What the Crimes are, which you are to enquire after.
2. How far the Juriſdiction and your Power in making theſe Enquiries doth extend.
3. What is the Duty incumbent on you in this behalf.

1. As to the Crimes, I ſhall not repeat what was mention'd touching all the Particulars thereof, at the Opening of this Seſſions; but confine

my Diſcourſe to thoſe, which I find by the Calendar will, at this Time, neceſſarily fall under your Examination; and thoſe are Piracies.

Now Piracy is only a Sea-Term for Robbery, Piracy being a Robbery committed within the Juriſdiction of the Admiralty. If any Man be aſſaulted within that Juriſdiction, and his Ship or Goods violently taken away without legal Authority, this is Robbery and Piracy. If the Mariners of any Ship ſhall violently diſpoſſeſs the Maſter, and afterwards carry away the Ship itſelf, or any of the Goods, or Tackle, Apparel or Furniture, with a felonious Intention, in any Place where the Lord Admiral hath, or pretends to have Juriſdiction, this is alſo Robbery and Piracy. The Intention will, in theſe Caſes, appear by conſidering the End for which the Fact was committed; and the End will be known, if the Evidence ſhall ſhew you what hath been done.

2. Now the Juriſdiction of the Admiralty is declared, and deſcribed in the Statute and Commiſſion, by Virtue of which we here meet, and is extended throughout all Seas, and the Ports, Havens, Creeks, and Rivers beneath the firſt Bridges next the Sea, even unto the higher Water-mark.

The King of *England* hath not only an Empire and Sovereignty over the *Britiſh* Seas, but alſo an undoubted Juriſdiction and Power, in Concurrency with other Princes and States, for the Puniſhment of all Piracies and Robberies at Sea, in the moſt remote Parts of the World; ſo that if any Perſon whatſoever, Native or Foreigner, Chriſtian or Infidel, Turk or Pagan, with whoſe Country we have no War, with whom we hold Trade and Correſpondence, and are in Amity, ſhall be robb'd or ſpoil'd in the Narrow Seas, the Mediterranean, Atlantick, Southern, or any other Seas, or the Branches thereof, either on this or the other Side of the Line, it is Piracy within the Limits of your Enquiry, and the Cognizance of this Court.

3. Concerning the Duty incumbent upon you in making your Enquiries and Preſentments, you may conſider that there is a great Truſt and Authority committed to you; and therefore it will be expected that a ſuitable Care ſhould be had, and your Power executed according to a well-regulated Diſcretion: As you are, on the one hand, to take Care that the Court be not troubled, nor any Man put in Hazard of his Life, through any frivolous, or malicious Proſecution; ſo, on the other Side, and more eſpecially in the Caſes of great and publick Offences, you are to uſe your utmoſt Endeavours, that Juſtice, the Support of Government, be not obſtructed by any Partial Proceedings.

You are not obliged in all Caſes to require a clear and full Evidence, but only to examine till you find, and are ſatisfied in your Conſciences, that there is ſufficient and juſt Cauſe to put the Party accuſed upon his Trial. You cannot convict, but may in Effect acquit the greateſt Criminals; and therefore, if you do but find Proofs enough to create a Preſumption againſt the Party accuſed, when the Caſe ſeems odious, and is of great Conſequence and Importance, your ſafeſt Way is to put it in a proper Method for the Petty Jury, who are to receive full Satisfaction from the Evidence that ſhall be given in the Preſence of the Party; and according to that Evidence, have Power to determine whether guilty, or not guilty, condemn, as well as acquit.

And upon this Occaſion, ſeeing many who are upon that Service are preſent, it ſeems fit that they ſhould alſo know that they have no Power to do more or leſs than what is agreeable to the Evidence: They are not to interpoſe in Points of Law, or to be ſwayed by any Conſideration whatſoever, but what ſhall ariſe from the Proofs judicially made; they are indeed Judges of the Fact, but they are not arbitrary; they are as much reſtrained by the Dictates of Conſcience, informed and convinced by reaſonable Proofs, as the Judges on the Bench are by the Rules of Law.

No Man can believe juſt as he liſts; and therefore a Determination, or Judgment at Will and Pleaſure, will never be thought to deſerve the Name of a Verdict: For whatever may be pretended, the World will not be perſuaded that a Jury hath purſued the Dictates of Conſcience, unleſs ſome reaſonable Grounds for its Proceedings ſhall appear; and therefore, whenever it ſhall happen that notorious Malefactors eſcape unpuniſhed, notwithſtanding that in the Opinion of moſt good Men there was a full and ſufficient Evidence for their Conviction, it is to be wiſhed, and indeed it ſeems to me to be neceſſary, in Caſes that relate to the Laws of Nations, that the Reaſons which induced ſuch a Determination, ſhould be given for the publick Satisfaction; otherwiſe, ſince Foreigners look upon the Decrees of our Courts of Juſtice as the Senſe and Judgment of the whole Nation, our Enemies will be glad to find an Occaſion to ſay, that ſuch Miſcreants as are out of the Protection of all Laws, and Civil Government, are abetted by thoſe who contend for the Sovereignty of the Seas. The barbarous Nations will reproach us as being a Harbour, Receptacle, and a Neſt of Pirates; and our Friends will wonder to hear that the Enemies of Merchants and of Mankind, ſhould find a Sanctuary in this ancient Place of Trade. Nay, we ourſelves cannot but confeſs, that all Kingdoms and Countries who have ſuffered by *Engliſh* Pirates, may, for Want of Redreſs in the ordinary Courſe, have the Pretence of Juſtice, and the Colour of the Laws of Nations to juſtify their making Reprizals upon our Merchants, whereſoever they ſhall meet them upon the Seas. If a Jury happens in theſe Caſes to be too ſevere, there is Room for Mercy, and I am confident, that, upon a juſt Repreſentation, the Innocent never failed of obtaining it: but for a Fault, Neglect, or Error on the other hand, there is no Relief for injured Foreigners, but by their carving out, as we may be ſure they will, for themſelves, ſuch a Satisfaction, upon our Merchants, as they ſhall think fit, whenever they ſhall have an Opportunity; and ſo our whole Nation muſt unavoidably ſuffer both in Reputation and Intereſt, and all as it were through our own Default.

I hope what hath been ſaid upon this unexpected Occaſion, will not be looked upon as intended to influence any Jury; I am ſure it is far from being ſo deſigned: Religion, Conſcience, Honour, Common Honeſty, Humanity, and all Laws, forbid ſuch Methods: There is no Doubt but the Judge, as well as the Juryman, then beſt diſcharges his Duty, when he proceeds without Favour or Affection, Hatred or Ill-will, or any partial Reſpect whatſoever.

Every Man ought to be extremely tender of ſuch a Perſon as he has Reaſon to believe is innocent; but it ſhould be conſidered likewiſe, on the other Side, that he who brings a notorious Pirate, or common Malefactor to Juſtice, contributes to the Safety and Preſervation of the Lives of many, both bad and good; of the Good, by Means of the Aſſurance of Protection, and of the Bad too, by the Terror of Juſtice. It was upon this Conſideration that the *Roman* Emperors in their Edicts made this Piece of Service for the Publick Good, as meritorious as any Act of Piety, or religious Worſhip.

Our own Laws demonſtrate how much our Legiſlators, and particularly how highly that great Prince King *Henry* the Fifth, and his Parliament, thought this Nation concerned in providing for the Security of Traders, and ſcouring the Seas of Rovers and Free-booters. Certainly there never was any Age wherein our Anceſtors were not extraordinary zealous in that Affair, looking upon it, as it is, and ever will be, the chief Support of the Navigation, Trade, Wealth, Strength, Reputation, and Glory of this Nation.

Gentlemen, our Concern, as our Trade is, ought in Reaſon to be rather greater than that of our Fore-fathers; we want no manner of Inducements, no Motives to ſtir us up, whether we conſider our Intereſt or Honour; we have not only the ſacred Word, but alſo the glorious Acts of the beſt of Kings, which ſufficiently manifeſt to us, that the Good and Safety of this Nation is the greateſt Care of his Life. Let every Man, therefore, who pretends to any thing of a true *Engliſh* Spirit, readily, chearfully, follow ſo good, ſo great, ſo excellent an Example, by aſſiſting and contributing, to the utmoſt of his Power and Capacity, at all Times towards the carrying on his noble and generous Deſigns for the Common Good, and particularly at this Time, by doing all that he can, to the End that by the Adminiſtration of equal Juſtice, the Diſcipline of the Seas, on which the Good and Safety of this Nation entirely depends, may be ſupported and maintained.

[*Then the Witneſſes being ſworn in Court, the Grand Jury withdrew to hear their Evidence; and in the mean Time* T. Vaughan, J. Murphey, *and* Tim. Brenain, *were arraigned, whom the Keeper of* Newgate, *by Order, brought to the Bar.*]

Cl. of Arr. *T. Vaughan*, Hold up thy Hand. (*Which he did.*) Thou ſtandeſt indicted, *&c.*

Art thou Guilty of this High Treaſon whereof thou ſtandeſt indicted, or Not Guilty?——*T. Vaughan.* Not Guilty.

Cl. of Arr. *Culprit*, How wilt thou be tried?

T. Vaughan. By God and this Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cl. of Arr. *J. Murphey*, Hold up thy Hand. (*Which he did.*) Thou ſtandeſt indicted, *&c.*

How ſayeſt thou, *J. Murphey*, Art thou Guilty of the High-Treaſon whereof thou ſtandeſt indicted, or Not Guilty?---*J. Murphey.* Not Guilty.

Cl. of Arr. How wilt thou be tried?

J. Murphey. By God and the King.

Officer. You muſt ſay, By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cl. of Arr. Bring *Tim. Brenain* to the Bar. (*Who was brought accordingly.*)

Cl. of Arr. *Tim. Brenain*, Have you any Copy of your Indictment?

Tim. Brenain. Yes.

Cl. of Arr. When had you it?

Tim. Brenain. This Day Se'nnight.

Cl. of Arr. *Tim. Brenain*, Hold up thy Hand. (*Which he did.*) Thou ſtandeſt indicted, *&c.*

How ſayeſt thou, Art thou Guilty of the High Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?——*Tim. Brenain.* Not Guilty.

Cl. of Arr. How wilt thou be tried?

Tim. Brenain. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Mr. *Mompeſſon.* Will your Lordſhips pleaſe that he may be tried now?

L. C. J. Treby. Does he deſire to be tried now?

Mr. *Mompeſſon.* Yes, my Lord; there is no Evidence againſt him, and he is ſick.

Mr. Sol. Gen. We are not now prepared for the Trial.

L. C. J. Treby. If the King's Counſel and the Priſoner be agreed, with all my Heart.

L. C. J. Holt. He may be tried with the reſt.

Then T. Vaughan, J. Murphey, *and* T. Brenain *had Notice to prepare for their Trials on* Friday *next, at Two of the Clock in the Afternoon.*

Then the Grand Jury came into Court.

Cl. of Arr. Gentlemen of the Grand Jury, are you agreed in your Bills?

Grand Jury. Yes.

Cl. of Arr. *Billa vera* againſt *Joſeph Dawſon*, *Ed. Forſeith*, *W. May*, *W. Biſhop*, *J. Lewis*, and *J. Sparkes*, for Piracy and Robbery.

Cl. of Arr. Keeper of *Newgate*, ſet *Joſeph Dawſon*, *Ed. Forſeith*, *Will. May*, *Will. Biſhop*, *Will. Lewis*, and *J. Sparkes*, to the Bar.

(*Which was done accordingly.*)

Cl. of Arr. *Joſeph Dawſon*, Hold up thy Hand. (*Which he did.*)
Ed. Forſeith, Hold up thy Hand. (*Which he did.*)
W. May, Hold up thy Hand. (*Which he did.*)
W. Biſhop, Hold up thy Hand. (*Which he did.*)
James Lewis, Hold up thy Hand. (*Which he did.*)
Jo. Sparkes, Hold up thy Hand. (*Which he did.*)

Then the Indictment was read, and ſet forth,

That Henry Every, *alias* Bridgman, Joſeph Dawſon, Edward Forſeith, William May, William Biſhop, James Lewis, *and* John Sparkes, *late of* London, *Mariners, on the 30th of* May, *in the 6th Year of the Reign of our Sovereign Lord King* William, *and the late Queen, did, againſt the Peace of God, and our ſaid Sovereign Lord the King that now is, and the late Queen, by Force of Arms, upon the high and open Seas, in a certain Place, about three Leagues from the* Groyne, *and within the Juriſdiction of the Admiralty of* England, *piratically and feloniouſly ſet upon one* Charles Gibſon, *a Subject of our ſaid Sovereign Lord the King that now is, and of the late Queen, being then and there Commander of a certain Merchant-Ship, called the* Charles the Second, *carrying* 40 *Pieces of Ordnance, belonging*

longing to certain Subjects of the ſaid King, and the late Queen (to the Jurors as yet unknown); and then and there put the ſaid Charles Gibſon *in bodily Fear of his Life; and then and there, within the Juriſdiction aforeſaid, feloniouſly and piratically did ſteal, take and carry away from the ſaid* Charles Gibſon *the ſaid Ship, called the* Charles the Second, *her Tackle, Apparel, and Furniture, of the Value of One Thouſand Pounds; Forty Pieces of Ordnance, of the Value of Five Hundred Pounds; One Hundred Fuſees, of the Value of One Hundred Pounds; Fifteen Ton of Bread, of the Value of One Hundred and Fifty Pounds; and Two Hundred Pair of Woollen Stockings, of the Value of Ten Pounds, in the Poſſeſſion of the ſaid* Charles Gibſon *then being; the Ship, Goods, and Chattels of the Subjects of our ſaid Sovereign Lord the King, and the late Queen, (to the Jurors unknown) againſt the Peace of our ſaid Sovereign Lord the King, and the late Queen, their Crown, and Dignities,* &c.

How ſay'ſt thou, *Joſeph Dawſon*, Art thou Guilty of this Piracy and Robbery, or Not Guilty?

Joſ. Dawſon. I am ignorant of the Proceedings.

Officer. He pleads Ignorance.

Cl. of Arr. You muſt plead Guilty, or Not guilty.

Joſ. Dawſon. Guilty.

Cl. of Arr. How ſay'ſt thou, *Ed. Forſeith*, art thou Guilty, or Not guilty?---*Ed. Forſeith.* Not guilty.

Cl. of Arr. How wilt thou be try'd?

Ed. Forſeith. By God and my Country.

Cl. of Arr. How ſay'ſt thou, *Will. May*, art thou Guilty, or Not guilty?---*W. May.* Not guilty.

Cl. of Arr. How ſay'ſt thou, *W. Biſhop*, art thou Guilty, or Not guilty?

W. Biſhop. I deſire to hear the whole Indictment read again.

L. C. J. Holt. You have heard it juſt now, and may hear it again if you deſire it.

W. Biſhop. The former Indictment.

L. C. J. Holt. No, there is no Occaſion for that; this is an Indictment for a Fact diſtinct from that.

Cl. of Arr. This is a new Indictment, not the old one. Art thou Guilty of this Piracy and Robbery, or Not guilty?---*W. Biſhop.* Not guilty.

Cl. of Arr. How ſay'ſt thou, *James Lewis*, art thou Guilty, or Not guilty?---*J. Lewis.* Not guilty.

Cl. of. Arr. How ſay'ſt thou, *J. Sparkes*, art thou Guilty, or Not guilty?---*J. Sparkes.* Not guilty.

Cl. of Arr. How wilt thou be try'd? (*As of the reſt.*)

J. Sparkes. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cryer. O Yes, *&c.* You good Men of the City of *London* ſummoned to appear here this Day, to try between our Sovereign Lord the King and Priſoners at the Bar, anſwer to your Names as you are called, and ſave your Iſſues.

Cl. of Arr. *Jo. Degrave*, *Benjamin Hatley*, *Jo. Ayres*, &c.

L. C. J. Holt. Have you any of the former Jury in this Pannel?

Cl. of Arr. Yes, my Lord.

Counſellor *Conyers.* We ſhall except againſt them for the King.

L. C. J. Holt. If you have returned any of the former Jury, you have not done well; for that Verdict was a Diſhonour to the Juſtice of the Nation.

Cl. of Arr. You, the Priſoners at the Bar, theſe Men you hear called, are to paſs between our Sovereign Lord the King, and you; if therefore you will challenge any of them, you are to challenge them as they come to the Book to be ſworn, and before they are ſworn.

[*Then they were called over, and ſome being challenged for the King, and ſome by the Priſoners, the Perſons ſworn in this Jury were theſe:*]

J. Degrave,
J. Ayres,
G. Broom,
T. Hicks,
R. Meakins,
J. Shelſwell,
Alex. Pollinton,
J. Glover,
Nath. Carpenter,
Jo. Bickley,
Nath. Troughton,
Hum. South.

Cl. of Arr. Make Proclamation.

Cryer. O yes, If any one can inform my Lords, the King's Juſtices, the King's Serjeant, the King's Attorney General, or his Majeſty's Advocate in his High Court of Admiralty, before this Inqueſt be taken, of the Piracy and Robbery whereof the Priſoners at the Bar ſtand indicted, let them come forth and they ſhall be heard, for the Priſoners ſtand at the Bar upon their Deliverance; and all others may depart.

Then the Grand Jury came into Court again, having found two other Bills againſt the Priſoners at the Bar, one for piratically taking away a *Mooriſh* Ship, and another for committing Piracy on two Ships belonging to *Denmark*.

And then the Grand Jury was adjourned to *Friday* next, at two a-Clock in the Afternoon.

Cl. of Arr. *Ed. Forſeith*, Hold up thy Hand. (*And ſo of the reſt.*) You that are ſworn, look upon the Priſoners, and hearken to their Cauſe; they ſtand indicted, *&c.*

Mr. *Whitaker.* May it pleaſe your Lordſhips, and you Gentlemen of the Jury, the Priſoners at the Bar ſtand indicted for Felony and Piracy, for that they, about the 30th of *May*, in the 6th Year of the Reign of his preſent Majeſty King *William*, did make an Aſſault on Captain *Gibſon*, Commander of the Ship *Charles the Second*, and put him in Fear of his Life, and piratically ſtole away the Ship and all the Furniture; and this is laid to be againſt their Duty and Allegiance, and againſt the Peace of our Sovereign Lord the King, his Crown and Dignity; to which Indictment they have pleaded Not guilty. We ſhall go on to call our Witneſſes, and prove the Charge againſt the Priſoners at the Bar, and doubt not but you will do your Duty.

Then Dr. *Littleton*, Advocate-General to his Majeſty, in his High Court of Admiralty, ſpake as follows:

‘ Gentlemen of the Jury,

‘ YOU have heard the Indictment opened, and we ſhall now call our Witneſſes, who will relate to you what enormous and horrid Crimes the Priſoners at the Bar have committed in the Proſecution of the Fact laid in the Indictment: Crimes, that the bare Intention, had they not taken Effect, would have merited the higheſt Puniſhment: But this is not their Caſe, for they were not diſappointed of their wicked Luſts and Deſires; for as their Crimes are great, ſo have they been conſummate as well as voluntary and malicious. I may well ſay, that their Wickedneſs has been as boundleſs and as mercileſs as the Element upon which their Crimes have been committed; nor is there any Part of the World that hath not been ſenſible of their Rage and Barbarity.

‘ Therefore, Gentlemen, as you are Lovers of Chriſtianity, as you are Lovers of Honeſty; nay, as you are Lovers of yourſelves, who bear the Character of Honeſt Men, if we prove this Charge againſt the Priſoners, you muſt and ought to find them Guilty, remembring that the doing Juſtice upon wicked and profligate Men, is the greateſt Mercy and Protection to the Good and Honeſt. We ſhall therefore proceed to call our Witneſſes, not doubting but that you will act like honeſt Men, for the Honour and Welfare of your Country, without having any Reſpect to the diſhonourable Proceedings of the former Jury.’

Mr. *Whitaker.* Call *Jo. Gravet.* (*He appeared, and was ſworn.*) Let him ſtand up.

* *Mr. Sol. Gen.* Mr. *Gravet*, pray, will you give my Lords and the Jury an Account of what you know of the Priſoners running away with the Ship *Charles the Second.*

* *Sir* John Hawles.

J. Gravet. I was Second Mate in the Ship at that Time. There was violent Hands laid on me; I was ſeized, and a Piſtol clapp'd to my Breaſt, and carry'd away.

Mr. Sol. Gen. Who did it? Begin before.

J. Gravet. I was ſeiz'd by the Carpenter of the Ship; he took me by the Throat, and clapp'd a Piſtol to my Breaſt.

L. C. J. Treby. Begin where the Ship was lying.

L. C. J. Holt. You was a Mate in this Ship: Now pray give an Account of the whole Matter.

J. Gravet. I was upon my Watch upon the Deck.

Priſoners. Pray ſpeak up.

J. Gravet. And there was a Boat came from the *James Galley*, with People in her: And as ſoon as the Boat came, the Carpenter ſeiz'd me, and took me by the Throat, clapp'd a Piſtol to me, and ſaid, if I reſiſted I was a dead Man. They took me, one by one Arm, and another by the other, and led me to my Cabbin, and one with a Piſtol ſtood at my Cabbin-door, till they were got two Leagues without the *Groyne*. Then *Every* came to ſpeak to Captain *Gibſon*, who was then ſick, and was guarded on both Sides; and when he had done ſpeaking with him, and was return'd from Capt. *Gibſon*, he came to me again, and ſaid, I ſuppoſe you do not intend to go with us: I ſaid, I would not. Then I, and the reſt that would not go with them, had Liberty to go aſhore; and I would have gone to my Coffer, and taken my Clothes, but they would not let me; and told me I ſhould carry no more than the Clothes on my Back.

Mr. Sol. Gen. Did any of the Priſoners at the Bar ſay ſo?

J. Gravet. That I cannot tell.

Mr. *Conyers.* Then go on.

J. Gravet. Then I went to *Every*, and I had ſome of my Clothes; he was ſo kind to give me them; he gave me a Coat and Waiſtcoat, and his Commiſſion that he left behind him; and *W. May* took me by the Hand, and wiſhed me well home, and bid me remember him to his Wife.

Mr. *Conyers.* Was there Liberty for any of them that would, to go aſhore?

J. Gravet. Captain *Gibſon* told me ſo, and there were about ſeventeen went off.

Mr. *Conyers.* No Matter what Captain *Gibſon* told you; you ſay you and went off: Might any one that would, go?

J. Gravet. That I cannot tell.

Mr. *Conyers.* You ſay there was about ſeventeen went off: Would the Boat hold more?---*J. Gravet.* Yes, Sir.

Mr. *Cowper.* Did you ſee any hindered that would have gone off? Were any of the Priſoners at the Bar there?---*J. Gravet.* No.

Mr. Sol. Gen. Do you know *E. Forſeith*, &c.?

J. Gravet. I know ſome of them.

Mr. *Conyers.* Name the Men that you ſay you know.

J. Gravet. *Joſeph Dawſon*, *W. May*, *J. Sparkes.*

Mr. Sol. Gen. They belonged to what Ship?

J. Gravet. To the *Charles.*

Mr. *Conyers.* Was there not a Boat came from the Ship *James*, before you went away? Was there any of the Priſoners at the Bar that came in that Boat?

J. Gravet. There were about Twenty-ſix that we had Account of.

Mr. *Conyers.* From what Ship did they come?

J. Gravet. From the *James.*

Mr. *Conyers.* Were any of the Priſoners at the Bar any of them?

J. Gravet. Indeed, Sir, I cannot tell.

Cl. of Arr. Call *T. Druit.* (*Who appeared, and was ſworn.*)

Mr. Sol. Gen. Mr. *Druit*, was you aboard the Ship (called the *Charles the Second*) when ſhe was carried away?---*T. Druit.* No, Sir.

Mr. Sol. Gen. Do you know any thing of the carrying of that Ship away?

T. Druit. I was not in that Ship; I was Mate of the *James*; and about Nine came one from aboard the *Charles* the *Second*, and aſk'd me for the drunken Boatſwain? And I reply'd ſhort; and he went away again, and ſaid the Ship was going to be run away withal. Whereupon I went with ten Men to recover the Ship; and after I had adviſed with the Commander, I ordered the Pinnace to be mann'd; and when I came, the laſt that went into the Boat was one *Pike*; and I bid them put back, and they would not, but went away to the Ship *Charles.*

Mr. *Conyers.* How many were there that went away in that Boat?

T. Druit. About Five-and-Twenty.

Mr. *Conyers.* Did you know all the Men? Were any of the Priſoners at the Bar there? Look on them.

T. Druit. Yes, my Lord, there was *Ed. Forſeith*, *W. Biſhop*, and *Ja. Lewis.*

L. C. J. Holt. What Boat did they go away with? the *James* Boat?

T. Druit. Yes, my Lord.

L. C. J. Holt. Then they came from the *James* to the *Charles the Second*? Name their Names again.

T. Druit. *Ed. Forſeith*, *Ja. Lewis*, and *W. Biſhop.*

Mr. Sol. Gen. You ſaw them go off, did you not?

T. Druit. It was ſo dark that we could not ſee them.

Mr. *Cowper.* Were theſe three Men ſent?

T. Druit. They were ſent.

Mr. *Cowper.* Or did they go of their own Head?

T. Druit. No, I do not ſay ſo; but I went to command them back again, and they refus'd.

Mr. *Cowper.* Did they make any Anſwer?

T. Druit. No; they only went away damning and ſinking.

Mr. *Conyers.* Were there any Guns ſent after them?

T. Druit. Yes.

Mr. *Conyers.* What was it for?

T. Druit. It was to bring them back again.

Mr. *Cowper.* And they would not come back?

T. Druit. They did not come.

Mr. *Cowper.* Then they would not come?

Cl. of Ar. Call *David Creagh.* *(Who was ſworn.)*

Priſoner. This Man is a Priſoner for Piracy, my Lord.

L. C. J. Holt. What if he be?

Priſoner. I do not underſtand Law; I hope your Lordſhip will adviſe us.

L. C. J. Holt. I will do you all Right. If he be ſo, that is no Objection againſt him; he may be a good Witneſs for all that.

Cl. of Ar. He is not a Priſoner for Piracy, but for Treaſon.

L. C. J. Holt. Though he be a Priſoner for Treaſon, he is not attainted. What is his Name?

Cl. of Ar. *David Creagh.*

Mr. Sol. Gen. What do you know about the Priſoners running away with the Ship *Charles?*

D. Creagh. Upon the 7th of *May*, 1694. I came to the *Groyne*, in Company with the Boatſwain and ſeveral others, on board the *Charles*; and when I was going in to the Captain of the *Charles*, Captain *Gibſon*, I found Mr. *Every*, the Carpenter, and ſome others, drinking a Bowl of Punch: And after I was come from the Captain, I came and ſate down with them, and Mr. *May* drank a Health to the Captain, and Proſperity to their Voyage: And we not knowing their Deſign then, thought it was to our lawful Captain, and Proſperity to the Voyage he was deſign'd for.

L. C. J. Holt. What was your Voyage?

D. Creagh. It was to the *Spaniſh Indies.* And afterwards the Company broke up, and retired, and went to their Cabins. And when we were in our Cabins, we heard a great Noiſe above Deck; and Captain *Humphreys*, that commanded the Galley, called to us, to tell us his Men were run away with the Boat, and were gone to Captain *Gibſon.* To which *Every* anſwered, that he knew that well enough: So the Men came aboard; and as I was coming out of my Cabin to ſee what the Matter was, I was met by *Every*, the Carpenter, and two *Dutchmen*; and they obliged me to retire again to my Cabin. And Captain *Humphreys* fired two Guns at us. But we preſently got out of Reach of the Guns, and proceeded on the Deſign. And I came out of my Cabin, and went on the Quarter-deck, where I met *Every* and the Carpenter together; *Every* was conning the Ship.

L. C. J. Holt. What is the Meaning of that?

D. Creagh. That is, to direct in the ſteering of her. So *Every* took me by the Hand, and aſk'd me if I would go with him? And I anſwer'd, I did not know his Deſign. He ſaid, there were but few that knew it. Says I, Tell me who do know it, that if you will not tell me yourſelf, I may aſk them that can tell me. But he ſaid, we ſhould all know by To-morrow Morning Eight a-Clock. I told him, that would be too late to repent of the Deſign. The Carpenter ſtood by him, and ſaid, Do you not ſee this Cock? Yes, ſays I, I do. Says he, This Man, and old *May*, and *Knight*, I can truſt with any thing; they are true Cocks of the Game, and old Sportſmen. Then, ſaid I, I ſuppoſe they know your Deſign. Yes, ſays he, they do; and if it were a Thing of ten times the Conſequence, they ſhould know it. Upon this, the Carpenter came to me, and ſaid, If you do not go down, I will knock you on the Head. And as I was going down, I met with *W. May*, the Priſoner at the Bar. What do you do here? ſays he. I made him no Anſwer, but went down to my Cabin; and he ſaid, God damn you, you deſerve to be ſhot through the Head; and he then held a Piſtol to my Head. Then I went to my Cabin, and preſently came Orders from *Every*, that thoſe that would go aſhore, ſhould prepare to be gone. And when the Captain was got out of Bed, who was then very ill of a Fever, *Every* came and ſaid, I am a Man of Fortune, and muſt ſeek my Fortune. Says Captain *Gibſon*, I am ſorry this happens at this Time. Says he, If you will go in the Ship, you ſhall ſtill command her. No, ſays Captain *Gibſon*, I never thought you would have ſerved me ſo, who have been kind to all of you; and to go on a Deſign againſt my Owners Orders, I will not do it. Then, ſays *Every*, prepare to go aſhore. Upon which the Captain, and ſeveral others of us, went into the Boat. When we were by the Ship's Side, I heard them order the Doctor to be ſecured; but if there was any more would go into the Boat, they might: And we came into the Boat, to the Number of Sixteen; and they gave us four Oars in the Pinnace, and ſet us adrift.

L. C. J. Holt. Where did he ſet you?

D. Creagh. He ſet us aboard the *James*, my Lord.

L. C. J. Holt. That is, you were turned off from this Expedition.

D. Creagh. Yes, my Lord.

Mr. *Conyers.* Was there any Room for more in the Boat?

D. Creagh. Yes, there was.

L. C. J. Holt. Was there Liberty for any more to go?

D. Creagh Yes, my Lord.

Mr. Sol. Gen. What do you know of the Priſoners at the Bar?

D. Creagh. I know only *W. May.*

Mr. *Cowper.* What time paſt from the coming of the Boat, to the Time of your going off?------*D. Creagh.* About two Hours, Sir.

Mr. *Cowper.* Was there any Guns fired in that Time?

D. Creagh. Yes, Sir, one or two from the *James*, by Capt. *Humphreys.*

Mr. *Cowper.* Was this done in the Ship with Silence? Or was there any Uproar, or Oppoſition?

D. Creagh. No: There could be no Oppoſition; for the Men came from the whole Squadron, and came upon us, and ſurprized us, being aſſiſted by thoſe that belonged to the *Charles.*

Mr. *Cowper.* But did Nobody make Oppoſition to their going? Did not Captain *Gibſon?*

D. Creagh. No, Captain *Gibſon* could not, being ſick.

L. C. J. Holt. But he went aſhore?

D. Creagh. Yes, my Lord.

L. C. J. Holt. Was any Body ſtopp'd that would go?

D. Creagh. No, my Lord, none but the Doctor.

Mr. Sol. Gen. Now call *Jo. Dan.* *(Who appeared, and was ſworn.)*

Mr. *Conyers.* What ſhip were you aboard of at the *Groyne?*

J. Dan. The *Charles the Second.*

Mr. *Conyers.* Now, pray, give my Lord and the Jury an Account what you know of the taking away of the Ship *Charles the Second*, and what paſs'd there?

J. Dan. Yes, Sir: We came to the *Groyne*, and had been there about three or four Months, and we had been about eight Months out of *England*, and we lay for our Wages, and there was no Wages to be got. But inaſmuch as we wanted Wages, *Every*, and ſeveral others, contriv'd to carry this Ship away. So that Night, which was *Sunday*, they went aſhore; and when they came aboard again, made ſome Men Privy to it, whom I know not. And the *Monday* following, I think, the Packet went out in the Morning, and the Night being fair, was ordered to give Notice; and they came to the *Dove*, and about Nine or Ten her Boat broke off, and ſhe haled us; for they told Captain *Humphreys* they were coming to run away with our Ship. So he hales the *James*; and preſently ſome of the Officers came and order'd their Pinnace to be mann'd; and it was ſo. And when they gave this Order, there was *Every* and twenty-five or twenty-ſix Men. And as they came aboard, our Cables were cut, and ready to go. And coming under the Caſtle, we cut all the Boats but two, and ſtood out to Sea about two or three Leagues; and there *Every* went to Captain *Gibſon*, and, as they ſaid, to aſk him if he would go with them, or not. He ſaid, No. Then he ſaid, He muſt prepare to go aſhore; and he did ſo, and ſeveral others with him. And the Word was given about, that they that would go aſhore might go; but whether theſe Men heard it or no, I cannot tell; and no Man's Name was mention'd to be ſtopp'd, but the Doctor. And when they went away, they cry'd, There was Water in the Boat, and they deſired a Bucket of us, to heave it over, and we gave them one; and away they went, I think, about fifteen of them, and no more did offer to go as I ſaw, nor did I ſee any hinder any that would go: And afterwards, they that went off went about their Buſineſs, and we about our Buſineſs. And we came to the *Iſle of May*, and victual'd ourſelves there; and there we met with three *Engliſh* Ships, out of which we took ſome Neceſſaries for ourſelves, and among the reſt ſeveral Men; nine Men we took out of them.

Mr. Sol. Gen. Were the Priſoners at the Bar in the Ship, when they went away?

J. Dan. Yes.

Mr. Sol. Gen. Name them.

J. Dan. *Ed. Forſeith*, *W. May*, *J. Lewis*, *Jo. Sparkes*, *W. Biſhop.*

Mr. *Conyers.* Which of them was aboard the *Charles*, that belong'd to her?

J. Dan. *W. May*, and *J. Sparkes*; and *Ed. Forſeith*, *Ja. Lewis*, and *W. Biſhop*, came from the *James.*

Mr. *Cowper.* Was it not generally underſtood, that they were going to run away with the Ship, when they came to Captain *Gibſon?*

J. Dan. Yes, Sir, they knew, to be ſure.

Mr. Sol. Gen. Did you know that they aſſented to it?

J. Dan. No, Sir, I did not hear them ſay ſo.

Mr. J. *Eyre.* Did they deſire to go aſhore with the reſt?

J. Dan. I ſaw none hindered.

L. C. J. Holt. Was *Ed. Forſeith* in the Ship then?

J. Dan. *Ed. Forſeith* was in the Ship then.

L. C. J. Holt. Was he at the *Iſle of May*, taking in Neceſſaries with you?

J. Dan. Yes, Sir.

L. C. J. Holt. What did he do in the Company?

J. Dan. He was in the Ship, and came from the *James.*

L. C. J. Holt. And ſo did *Biſhop*, and ſo did *Lewis?*

J. Dan. Yes, my Lord, theſe three; and the other two belong'd to the *Charles.*

Mr. *Whitaker.* Did any of the Ship's Crew go aſhore at the *Iſle of May?*

J. Dan. Yes, Sir, I think ſo.

Mr. Sol. Gen. But I think, you ſay, that the Word was given about, that any might go that would.

Mr. *Conyers.* Go on with the Proceedings after you were at the *Iſle of May.*

J. Dan. After we had victual'd, we took in ſome Men.

Priſoners. We have been try'd for that already, my Lord.

L. C. J. Holt. Go on.

J. Dan. After we had been there, and took in what we had Occaſion for, our Quarter-maſter ſaid, he would give them Bills for what he took of them. Then we went to the Coaſt of *Guinea*, and took ſeveral Negroes, and carried them away with us. And afterward we went to the *Iſland of Princes*, where lay two *Danes*, and we fought them, and took them; and after we had taken them, ſome of the Men went aſhore at the *Iſland of Princes*, and others went along with us; and we brought the Ships to *Vandepo*, and burnt one, and carried one with us. Then we came to Cape *Lopes.*

L. C. J. Holt. Where is that?

J. Dan. Under the Equinoctial-Line; and there we fired a Shot thro' the little one to ſink her, for the Men could not agree, and ſo we could not carry her with us. We went about the Cape, and touch'd at *Madagaſcar.*

Dr. *Littleton.* Had not theſe Men their Part and Share of the Plunder?

L. C. J. Holt. You go too faſt, Sir.

Mr. *Conyers.* What was the next Ship you met with, after you had rounded the Cape?

J. Dan. The next was a ſmall Veſſel, about 30 or 40 Ton, and we put her aſhore, and took a ſmall Matter out of her, and let her lie; and there we put this Gentleman, Mr. *May*, aſhore. And we ſeeing three *Engliſh* Ships a-coming, we left him there, and went to the Equinoctial Line; And afterwards, for want of Bread and Water, we came again, and took another ſmall Veſſel, and ſome Rice and Pody out of her, and ſunk her, and then went to the Cape again, and took in *W. May* again, and met another Veſſel, and took Rice and Meal out of her, and ſunk her too. And then we went to the *Red Sea* to a Town called *Meat*; and the People would not trade with us, and we burnt it. And thence we went up to the *Red Sea*, as far as we could: And going up to the Cape *Adin*, we met with two *Engliſh* Privateers more, and they came and joined with us.

L. C. J. Holt. You call them Privateers; but were they ſuch Privateers as you were?

J. Dan. Yes, my Lord. I ſuppoſe they had Commiſſions at firſt; but I ſuppoſe they did not run ſo far as that.

Mr. *Conyers.* Did you go all on the ſame Deſign?

J. Dan. Yes, they ſailed on with us, and we made the beſt of our Way, and came up into the *Red Sea* in a little Time, and came to an Anchor at *Bobs Key*, and had lain there but a Night and a Day, and there came up three *Engliſhmen* more from *America*; and they likewiſe conſorted with us; and we lay there about five Weeks; and in that Time we expected the Fleet to come down.

Mr. *Conyers.* What Fleet?

J. Dan. The *Mooriſh* Fleet, that came from *Mocha*. They paſs'd us on *Saturday* Night unſeen, and we took a Veſſel, which gave us an Account that they were gone. And then we followed them; and about three Days after we made Land, we came up with one of them of about 2 or 300 Tons, and we fired a Broadſide at her, and Small Shot, and took her, which, after we had taken her, we plundered, and took out ſome Gold and Silver.

Mr. *Conyers.* And what did you do with it?

J. Dan. We brought it aboard our Ship.

Mr. *Conyers.* Did you ſhare it?

J. Dan. Not then, but after we took the other Ship.

Mr. *Conyers.* What was that other Ship?

J. Dan. After we had taken her, we put ſome Men aboard to keep her with us; and about two Days after we were lying at Anchor at *St. John*'s, and there was a great Ship called the *Gunſway*; and we weigh'd Anchor, and fought her about two Hours, and took her, and put ſome Men aboard her, and plunder'd her. And after we had done as much as we thought convenient, we ſent her to *Surat* with the People in her. And then we ſtood farther to the *Indian* Coaſt, and ſhared our Money about a Week after.

L. C. J. Holt. That was a brave Prize, was it not, the beſt you had all the Voyage?——*J. Dan.* Yes, my Lord.

L. C. J. Holt. Did you all ſhare?

J. Dan. Yes, all that were in the Ship.

L. C. J. Holt. You have given a good Account of this Matter. Was *Ed. Forſeith* there?——*J. Dan.* Yes, my Lord.

L. C. J. Holt. What did he do? Was he active?

J. Dan. I did not ſee him act.

L. C. J. Holt. Had he a Share?----*J. Dan.* Yes, my Lord, he had.

L. C. J. Holt. Was *W. May* there?---*J. Dan.* Yes, my Lord.

L. C. J. Holt. What did he do there?

J. Dan. He could do but little then; he had his Share.

L. C. J. Holt. And when you took him in again, what did he do? Did he do his Buſineſs as a Seaman?

J. Dan. Yes, my Lord, till he was ſick.

L. C. J. Holt. Was *W. Biſhop* there?

J. Dan. Yes, my Lord, he was among the reſt.

L. C. J. Holt. What did he do? Did he conſent and agree to what was done?

J. Dan. He had Share of the Money.

L. C. J. Holt. Did *J. Lewis* ſhare too?

J. Dan. He had a Share, as far as was allowed by the Company.

L. C. J. Holt. Did *J. Sparkes* ſhare with you too?

J. Dan. Yes, my Lord, as far as the Company thought fit to give him.

Mr. *Cowper.* When you ſay *as the Company thought fit*, what do you mean? How did they ſhare it?

J. Dan. Some had 1000*l.* ſome 500, others 300.

Mr. *Cowper.* Had all the Priſoners ſome Share?

J. Dan. Yes, Sir, all had ſome Share.

Mr. *Whitaker.* What did you do with the *Charles the Second*, after the Voyage?----*J. Dan.* We left her at *Providence.*

L. C. J. Holt. If any of you Priſoners at the Bar will aſk him any Queſtions, you may.

Mr. Juſt. *Turton.* What Proviſions were aboard the *Charles* when ſhe was taken away?-----*J. Dan.* I cannot tell.

Mr. Juſt. *Turton.* What Quantity of Bread was there?

J. Dan. A pretty deal, I cannot tell the Quantity.

Mr. Juſt. *Turton.* And were there any Guns aboard her and ſmall Arms?

J. Dan. Yes, my Lord, there were.

W. May. My Lord, may I ſpeak for myſelf?

L. C. J. Holt. If you will aſk him any Queſtions, you may; you ſhall be heard again to ſpeak for yourſelf by and bye.

W. May. I deſire he may be aſk'd where I was taken ſick?

L. C. J. Holt. He aſks you, where he was taken ſick?

J. Dan. I cannot juſtly tell that, I think it was at *Allibore*, at the Coaſt of *Guinea*.

W. May. I did not lie down with it.

J. Dan. No, you did not; but your firſt being taken ſick was at *Allibore*.

W. May. My Lord, I deſire you will aſk him, whether he thinks I had any Knowledge of the going away of the Ship?

L. C. J. Holt. You hear what he ſays; what do you ſay?

J. Dan. I know nothing of that.

L. C. J. Holt. You were there, and you had a Share of the Prize; you drank an Health to the Succeſs of your Voyage.

W. May. I hope, my Lord, you will not be angry for aſking Queſtions.

L. C. J. Holt. No, nobody is angry, you may aſk what Queſtions you will.

[*Then* Philip Middleton *was called and ſworn.*]

Mr. *Conyers.* Pray tell what you know of taking away the Ship *Charles the Second?*

P. Middleton. I cannot ſay any thing of running away with the Ship, for I was aſleep then; but afterwards, in the Morning, they called up all Hands; and the Captain ſaid, Every Man ſhould ſhare alike, only he would have two Shares.

L. C. J. Holt. Who ſaid ſo?

P. Middleton. Capt. *Every.* From thence they went to *Bonyvis*, and took in ſome Salt; and from *Bonyvis* they went to the *Iſle of May*, and there they took three *Engliſh* Ships, and plundered them; and they took the Governor aboard their own Ship till they had done, (for then they could demand what Victuals they had a mind to) and then they ſent him away again: And from the *Iſle of May* they went to the Coaſt of *Guinea*, where they put out *Engliſh* Colours, to make the Natives come aboard to trade; and when they came aboard, they ſurprized them, and took their Gold from them, and tied them with Chains, and put them into the Hold; and when they came to a Place called the *Iſland of Princes*, they gave ſeven of them away for Slaves: And then they went to *Vandepoe*, where they clean'd their Ship; and from *Vandepoe* they went to Cape *Lopes*, and from Cape *Lopes* to *Annibo*, and from *Annibo* about the Cape; and at *Madagaſcar* they watered their Ship, and got Proviſions, and Cows to ſalt up; and from thence they went to *Joanna*, and from *Joanna* they went to take a Junk, and took Rice out of her, and ſunk her; and from thence they went to the *Equinoctial Line*, and becauſe they were ſhort of Water and Rice, they went back again to *Joanna*; and the Wind being contrary, they went to *Commeroe*; and there they met a ſmall *French* Veſſel, and they took her, and ſunk her; and then went to *Joanna* again, and there took in Mr. *May* again: And then went to *Meat*; and becauſe the Natives would not trade with them, they burnt their Town: And then they went to *Bobs Key*, by the Mouth of the *Red Sea:* But before that, they met with an *Engliſh* Veſſel, that was on the ſame Account that we were; and we rode there a Night or two; and they ſaw there another Sail a-coming, which proved to be another *Engliſh* Veſſel: And in the Morning they ſaw two more; *May*, *Farrel*, and *Wake*, were the Captains: And on *Saturday* Night all the *Mocha* Fleet paſſed by: And on *Sunday* Morning they took another Veſſel, that told them the ſaid Fleet was gone by; and ſo they conſulted whether they ſhould follow them, or ſtay there. And then they went after them and overtook them, and took one that was about three or four hundred Ton, and took Gold and Silver out of her; and ſent Men aboard her to plunder and keep her. And next Day they ſpied another Sail, and got up their Anchor, and ſtood to her, and took her; ſhe was called the *Gunſway:* they killed ſeveral Men aboard, and when they had taken and plundered the Ship, they left the Men aboard to go to *Surat* again. And then they went to *Rachipool* in the *Eaſt-Indies*, and got Water and Neceſſaries; and from thence to *Degorees*, and watered again; and then to *Daſcaran*, where they ſet about twenty-five *Frenchmen* aſhore, and fourteen *Danes*, and ſome *Engliſh*; for they were afraid, if they came to *England*, and were caught, they ſhould be hang'd; and they thought themſelves there ſecure. From that Place they went to *Aſcenſion*, and then to the Iſland *Providence* in the *Weſt-Indies:* And then they wrote a Letter to the Governor, to know if he would let them come in, and ſaid they would preſent the Governor with twenty Pieces of Eight, and two Pieces of Gold, if he would let them come in; and the Captain, becauſe he had a double Share, he offered forty Pieces of Eight, and four of Gold; and with that they ſent ſome Men down, *Adams* and others, with the Letter: And they came again, with a Letter, from the Iſland, that they ſhould be welcome, and come and go again when they pleaſed.

Mr. *Conyers.* Look on the Priſoners at the Bar, Were they all there?

L. C. J. Holt. Do you know *Ed. Forſeith?* Was he there? Did he belong to the *Charles the Second?*

P. Middleton. He came from the *James.*

L. C. J. Holt. Was *W. May* there?

P. Middleton. He was aboard the *Charles.*

L. C. J. Holt. Was *W. Biſhop* there?

P. Middleton. *W. Biſhop* came from the *James.*

L. C. J. Holt. Was *J. Lewis* there?

P. Middleton. Yes, he came from the *James.*

L. C. J. Holt. Was *J. Sparkes* there?

P. Middleton. Yes, he was aboard the *Charles.*

L. C. J. Holt. Had all the Men their Shares?

P. Middleton. Yes, ſuch as the Company thought fit to allow them, all of them.

L. C. J. Holt. Had theſe Men their Shares of the ſeveral Prizes they took?-----*P. Middleton.* Yes, they had.

L. C. J. Holt. Were they active in the taking of the Prize?

P. Middleton. They were, as far as I ſaw.

L. C. J. Holt. Were not divers others ſet aſhore beſides Capt. *Gibſon?*

P. Middleton. I never heard any repine, or wiſh they had been aſhore, or that they had never come along with the Ship.

L. C. J. Holt. But do you know of any others that were ſet aſhore?

P. Middleton. Yes, a great many, Mr. *Gravet* and ſeveral others.

Mr. *Cowper.* I think, you ſaid, ſome *French* and *Engliſh* were ſet aſhore in the *Indies?*----*P. Middleton.* Yes, Sir.

Mr. *Cowper.* Were they ſet aſhore willingly?

P. Middleton. They deſired to be ſet aſhore.

Juryman. He ſays, in the Morning Capt. *Every* called them above Deck, and gave Leave to any to go aſhore that were not willing to go with them; we deſire to know whether any of the Priſoners were there at that Time?

P. Middleton. I know not that; all Hands were called up.

Mr. Juſt. *Turton.* What Number of Perſons were aboard when the Dividend was made?

P. Middleton. About a hundred and ſixty.

Mr. Juſt. *Turton.* What might the Shares be?

P. Middleton. Some a thouſand Pounds, ſome ſix hundred, and ſome five hundred, and ſome leſs, according as the Company thought they deſerved.

Mr. Juſt. *Turton.* Had not you a Share?

P. Middleton. Yes, what the Company thought fit, and they told me that would ſerve to put me out an Apprentice, and that I ſhould never go near my Friends.

Mr. Juſt. *Turton.* How much was that you had?

Ph. Middleton. Above an Hundred Pound.

Mr. *Conyers.* What became of it?

Ph. Middleton. Jo. Sparkes robb'd me of it.

L. C. J. Holt. The King's Counſel have done with the Evidence, and therefore now is your Time for to ſpeak, if you have any thing to ſay for yourſelves. *Ed. Forſeith*, what have you to ſay?

Ed. Forſeith. My Lord, I deſire you would call Mr. *Druit*, and ask him whether I was one of the Pinnace's Crew?

L. C. J. Holt. You hear what he ſays.

T. Druit. Yes, you were, and I commanded you to come back, and you refuſed.

Ed. Forſeith. Did not you command me to go?

T. Druit. Yes, and I afterwards commanded you to come back, and you refuſed.

Ed. Forſeith. You did not command me back.

T. Druit. Yes, I did, and fired at you, and ſhot through the Boat.

Ed. Forſeith. I held Water with my Oar, that was all I could do.

L. C. J. Holt. What did you command him to do?

T. Druit. To reſcue the Ship.

L. C. J. Holt. Inſtead of reſcuing the Ship, you run away with her. He commanded you back, and you refuſed to come back.

Ed. Forſeith. I could not bring her back myſelf, nor come back, unleſs I ſhould leap over-board.

L. C. J. Holt. Have you any more to ſay?

Ed. Forſeith. My Lord, when I was in the Boat, I knew not who was in it, nor how many. When I came aboard the *Charles*, the Sails were looſe, and I was in a very ſorry Condition; they cut the Boat off, and put her adrift; I could not get into her, ſhe was gone in a Minute's Time, I did not know which Way, or what Men there were in her, nor heard nothing 'till Two o'Clock the next Day. And I hope, my Lord, as we are but poor Sea-faring Men, and do not underſtand the Law, you will take it into Conſideration.

L. C. J. Holt. But all you Seamen underſtand that Law, that it is not lawful to commit Piracy; and he that doth, deſerves to be hang'd.

Ed. Forſeith. My Lord, I never did.

L. C. J. Holt. Did you think it no Piracy to rob?

Ed. Forſeith. I was forc'd to do what I did.

Mr. J. *Eyre.* You all compell'd one another.

Ed. Forſeith. My Lord, I was ſent of an Errand. I hope as we are poor Men in this Condition, you will take into Conſideration.

L. C. J. Holt. We ſhall. Have you any more to ſay?

Ed. Forſeith. No, my Lord.

L. C. J. Holt. W. May, what do you ſay?

W. May. Here is one of the King's Evidence, that teſtifies that I knew nothing of the Ship's going away; and I believe very few knew it, I believe not above Nine or Ten.

L. C. J. Holt. None of them ſay you were at the Conſult; but one ſays that you ſaid, *God damn you, you deſerve to be ſhot through the Head*; and held a Piſtol to him.

W. May. I never was any higher than the Under-deck; I was coming up the Hatch-way, and Captain *Every* was ſtanding, and commanding the Ship.

L. C. J. Holt. Every was no Officer, he had nothing to do to command; he was under Captain *Gibſon*, and took the Ship from *Gibſon*.

W. May. My Lord, I know nothing of the Ship's going away.

L. C. J. Holt. You ſhould have ſtuck to Captain *Gibſon*, and endeavoured to ſuppreſs the Inſolence of *Every*. Captain *Gibſon* was the Commander, you ought to have obeyed him; and if any had reſiſted him, or gone to put a Force upon him, you ſhould have ſtood by him.

W. May. I was ſurprized.

L. C. J. Holt. How?

W. May. By Captain *Every*, and knew nothing of it.

L. C. J. Holt. You were zealous from the Beginning, and ſaid to one, *Damn you, you deſerve to be ſhot through the Head.*

Mr. J. *Turton.* And one ſays, you drank a Health to your good Voyage.

W. May. Preſently after I heard this Rumour, I came up the Hatchway, and Capt. *Every* ſays, *You*, May, *I believe you do not love this Way, pray get down to your Cabbin.* So I went to my Cabbin, which one that is now at *Virginia* could teſtify; which I hope will be conſidered, that I cannot have my Witneſſes for me.

L. C. J. Holt. What have you more to ſay? Have you any Witneſſes to call?

W. May. I ſtay'd in the Cabbin a conſiderable Time. I was thinking I muſt leave my old Captain without ſeeing him; and I begg'd them to give me Leave to come to him; and there was two Men ſtood with naked Cutlaces, and would not let me come to him. We had ſome Confabulation together, and I begg'd the Favour to come in, and at laſt they permitted me; and the Doctor was anointing the Commander's Temples. And as I was coming along, I had my Hand cut; and I went to the Doctor, to deſire him to bind up my Hand. When I came out again, they began to hurry the Men away. Here was Mr. *Gravet*, the ſecond Mate, who is now one of the King's Evidence; and I told him he ſhould remember me to my Wife, I am not like to ſee her; for none could go, but who they pleaſed: For when thoſe Men were in the Boat, they cry'd to have a Bucket, or elſe they ſhould ſink, they having three Leagues to go: And I do not know how they could go ſo far with more, when their Boat was like to ſink with thoſe that were in her, as ſome of the King's Evidence have teſtified.

L. C. J. Holt. Who will you call?

W. May. Mr. *Dan.* (*Who appeared.*)

L. C. J. Holt. Mr. *Dan*, anſwer the Queſtion, Whether there was calling for a Bucket ſeveral Times by the Men that were in the Boat?

J. Dan. They did call, and a Bucket was given them to pump with.

L. C. J. Holt. You were willing to be rid of them.

W. May. I have more to ſay. Afterwards, if I ſhould have denied to go with them, I might have been kill'd by them; and I knew not whether it be better to be acceſſary to my own Death, or to ſuffer by the Law of the Nation.

Sir *Ch. Hedges.* You ſeem to ſay that you were under a Conſtraint and Terror. Did you make any Complaint or Diſcovery ſo ſoon as you had Liberty, or at your firſt coming into the King's Dominions?

W. May. Yes, at *Virginia.*

Sir *Ch. Hedges.* Where did you firſt arrive in *England?*

W. May. At *Briſtol.*

Sir *Ch. Hedges.* When you came to *Briſtol*, did you diſcover it to any Magiſtrate?

W. May. When I came to *Briſtol*, I had a Deſign to diſcover it to the Lords of the Admiralty.

L. C. J. Holt. Did you go to a Magiſtrate?

W. May. I was ſeveral Days in the King's Collector's Houſe, and did diſcover the whole to him; and at *Providence.*

L. C. J. Holt. You ſpeak now of *Providence*; but in *England* who did you diſcover it to?

W. May. I was taken ſick, and could not go abroad.

L. C. J. Holt. You might have ſent to the Mayor of *Briſtol.*

W. May. I knew nothing of it, I intended to declare it to none but the Lords of the Admiralty. I knew no Man there, but two Men that were Fellow-Tradeſmen in *Virginia.* I came from *Virginia* by the firſt Ship; and if that Ship had come away before the Fleet, I had been at home long before. I lay ſick at *Briſtol* four or five Days, and the fifth Day I got Paſſage for *London* in the Coach; and was taken three Miles off *Bath* by the King's Meſſenger, by one who betrayed me, and I was carried back to *Bath* again. And there was the Duke of *Devonſhire*; and there they examined the whole Matter, in every Particular, as I have now declared to the Court. And my Lord deſired the Meſſenger ſhould take me away again, and ſee me ſafe to *London*; which was all he ſaid to me. I have more to ſay, as to my being put aſhore at *Joanna.* I had no Place to go to, but lay in a lamentable Condition; I could not put Water to my Mouth without Help, and remained uſeleſs of Hands or Feet, deſpairing of my Life. I deſired to go aſhore, to ſee if the Air would do me any good; and I went aſhore at *Joanna*, with another Man, *Gunning*, and others, for Refreſhment. So the ſecond Day we went in, there appears three Ships, which were *Eaſt-India* Men. Captain *Every* being ſurpriz'd by theſe Ships, haſtened his Men and Water aboard to get out to Sea, that he might not be ſurprized in the Road without his Men on Board, who were come aſhore for the Sick. And I told them, I will not go with you, I will rather truſt to the Mercy of my Countrymen, or the Mercy of the Negroes: I ſhould endanger my Life, if I go aboard; if I ſtay, no queſtion my Countrymen will have Compaſſion on me; and if I have committed any thing worthy of Death, they have Authority to put me to Death according to the Law of the Nation. And I applied myſelf to Mr. *Edgcomb*, when he came aſhore, and he gave me ſcurrilous Language. But I replied, I am a weak Man, for me to ſtay behind is Death; I had rather ſuffer Death by the Laws of my Country, than to be left to the Mercy of theſe Negroes. Mr. *Edgcomb* ſays, I will take you down with me, and will hang you there too.

L. C. J. Holt. Where?

W. May. At *Bombay*, where he ſaid I ſhould be tried. His Mate, and ſeveral other *Engliſhmen*, came to ſee me, and brought me one thing or other to refreſh me. And at laſt, at Night, he ſent his Doctor and Purſer to me, who ſaid, The Captain is juſt now ſending his Boat for you. I replied, I am ready, here is all I have in the World; and he goes away about Two a-Clock in the Morning. And I remained ſeven or eight Weeks at the Mercy of thoſe Negroes, and had periſhed, but that a Negroe hearing an *Engliſhman* was there, came to me; he lived at *Bednal-Green*, and ſpoke *Engliſh* very well. He went from *England* in the Ship *Rocheſter*, taken at *Guinea* ſome Time before. The Captain commanded this Negroe to go for the Long-boat, and turn her adrift; which he does, but goes away with her himſelf; and in the Fight, ſays, the Ship blew up by an accidental Fire, and ſeveral were loſt. This Negroe I got to look after me, and he did really feed me, and got me all Neceſſaries belonging to me: And by that Means I ſaved my Life. Now when Captain *Every* came in again, I could not go nor ſtir.

L. C. J. Holt. Do not call him Captain; he was a Pirate.

W. May. He commanded me, I was forced to obey him.

L. C. J. Holt. For that Matter call *Gravet* again, becauſe you and he were very kind together; you ſhook Hands with him, and bid him farewel, and remember you to your Wife. Mr. *Gravet*, do you remember, when you went into the Boat, did *W. May* take his leave of you, or was he unwilling to be left behind?

J. Gravet. When we had Liberty to go out of this Ship, this Man, *W. May*, took me by the Hand, and wiſhed me well home, and bid me remember him to his Wife; and was very merry and jocund, and knew whither they were going.

Mr. J. *Turton.* Did he expreſs any Inclination to go with you?

J. Gravet. No, my Lord, not at all.

L. C. J. Holt. Have you any more to ſay?

W. May. Yes, my Lord, I remained in this Condition till I came to *Providence*; and the King's Evidence can teſtify what I ſay. I only beg Mercy of this honourable Bench, to conſider my weak State and Condition that I have been in.

L. C. J. Holt. Have you done?

W. May. Yes, my Lord.

L. C. J. Holt. Then the next. *W. Biſhop*, what have you to ſay?

W. Biſhop. I belonged to the Ship *James*; and at the *Groyne* the Men began to complain about Wages, and that was the firſt Beginning of the Diſturbance about this Plotting. We were ſhipp'd out of *England* in Sir *James Houblon*'s Service, to the *Spaniſh Weſt-Indies.* Upon this Mutiny among the Men for their Wages, ſeveral Men went aboard the King's Ships, and deſired to be entertained on Board any of them to go for *England*; and we all went away again to the Ship, becauſe we could not be entertained. But this Deſign of *Every*'s I did not know of. On the 17th Day Captain *Humphreys* calls, and ſays, My Men are gone aboard the *Charles*, I think. And he calls out, ſays he, Mr. *Druit*, man the Pinnace. I being then on the Deck, at Night, the Men all quiet, as I thought, I went into the Pinnace, and I was no ſooner in, but in comes fifteen or ſixteen more that knew of the Deſign; but I was then ſent, and knew it not. And they put off the Boat, and overpower'd us; and ſeveral of us would have gone aboard again, and they would not ſuffer us. And when we came aboard the Ship *Charles*, they had cut the Cables, and the Sails were looſe, and ſeveral Men went from the *Charles* to the *James* in a Boat; and they commanded the Innocent to do what they pleaſed, with Piſtols and Cutlaces; and they commanded me to go into the Hold to do what they pleaſed. And I not knowing of this Matter, the Men that were in the Boat called, Hand the Buckets, or we ſhall ſink. And I heard afterwards, that none went aſhore, but whom they pleaſed, that is, *Every* and his Crew. And I not knowing of it, could not go; and if I had known it, I had not been admitted to go. Then we were carried two Leagues without the *Groyne*.

L. C. J. Holt. Have you any Witneſſes to call?

W. Biſhop. The King's Evidence is my Witneſs; he commanded me to go into the Boat.

L. C. J. Holt. Will you aſk him any Queſtions?

W. Biſhop. No, my Lord.

L. C. J. Holt. *James Lewis*, what have you to ſay?

J. Lewis. I had been in *France*, a little before the Ship came to the *Groyne*, a Priſoner there; but I knew nothing of *Every*'s Deſign. By the Command of our Officer I went aboard the Boat, and as ſoon as we were in her, we were over-power'd, and carried away; they took the Oars out of our Hands, and carried us to the Ship *Charles*. And when we came aboard, they put the Boat a-drift, and then they commanded me into the Forecaſtle; they had Arms, but we had none, and ſo were forced to obey them. When the Boat was going off, I heard a Noiſe of crying out for a Bucket. And when we were gone from the *Groyne*, we were forced to do what they would have us; it was againſt my Conſent, and againſt my Will.

L. C. J. Holt. *J. Sparkes*, what ſay you?

J. Sparkes. When Captain *Humphreys* called to them that were gone into the Boat, I was aſleep; but with the Noiſe of *Gravet*'s crying out, He is coming, I awaked; and all put the Candles out, for fear I ſhould ſee them. And when the Men were come aboard, I went on the Deck, and they trow'd the Hammocks, and knock'd me down.

L. C. J. Holt. Who did it?

J. Sparkes. The Hammocks they brought from the other Ships. I durſt not do any otherwiſe than they bid me; I was innocent of the Thing. I aſk'd what they were going to do, and they ſaid they were going for *England*.

L. C. J. Holt. Who told you ſo?

J. Sparkes. *John Dan.*

L. C. J. Holt. *J. Dan*, did you tell *J. Sparkes* the Ship was going for *England*?

J. Dan. I do not remember I ſaw him all the Night.

L. C. J. Holt. I would aſk you, if you had no Share of the Plunder?

J. Sparkes. I was forced to take it.

L. C. J. Holt. *Phil. Middleton*, you had ſome Share, had you not?

Phil. Middleton. Yes, my Lord.

L. C. J. Holt. What became of it?

Phil. Middleton. They took it away from me.

L. C. J. Holt. Who took it from you?

Phil. Middleton. *J. Sparkes* robb'd me of it by Night.

L. C. J. Holt. Did he take all away?

Phil. Middleton. Yes, all that I had there. Two hundred ſeventy odd Pieces of Gold; it was in a Belt.

J. Sparkes. He took out his Money and ſhewed it to the Troopers, and they made him drunk, and got it from him; and the next Morning he ſaid they took it from him.

Phil. Middleton. I was forc'd to ſay ſo, becauſe if I had ſaid he had it, he would have made no more but to cut my Throat.

L. J. C. Holt. Have you any more to ſay?

J. Sparkes. No, my Lord.

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this Caſe for the King againſt the Priſoners at the Bar. They are arraign'd for a very high Crime, a Robbery upon the Seas. It was not a leſs Crime becauſe committed on the Sea, but rather the more. Theſe Men had a Truſt repoſed in them to aſſiſt their Captain in his Voyage; but inſtead of that, they reſiſt their Captain, turn him out, and run away with the Ship. They could not find Shelter in any other Part of the World, and I hope you will make it appear ſuch Crimes ſhall not find Shelter here, more than in other Parts of the World. Theſe are Crimes againſt the Laws of Nations, and worſe than Robbery on the Land: For in Caſe of a Robbery on the Land, we know who is to pay it; but in a Robbery by Sea, it often happens that innocent Perſons bear the Loſs of what theſe Men do. It has been very plainly proved againſt the Priſoners, That the Ship *Charles* was run away with from the *Groyne*. And it is as plain by two Witneſſes, That all the Priſoners at the Bar were in this Ship; by three, that *W. May* in particular was one of them; and by one, That *W. May* was ſo far concerned, that becauſe *J. Gravet* ſeem'd to diſlike it, he ſaid he deſerved to be ſhot through the Head: So that he that would make himſelf the moſt innocent of the five, is moſt guilty.

Now they have only this to ſay for themſelves, That they were forced to do what they did. But it has been proved to you that they were not forced; it was ſaid, All might go that would. And it is not proved on their Side, that any one of the Priſoners did ſeem to diſſent from their going away. It is proved, that they all made uſe of this Ship to very bad Purpoſes; that they took and plundered ſeveral Ships, and ſhared the Booty. We do not produce this to prove them guilty, but to ſhew that they made uſe of this Ship to this very Purpoſe. Now if you allow what they ſay, that they were forced to go away; then you muſt never convict, at any time, one or two Highwaymen that rob in the Company of four or five; for they may ſay too, that they were overpower'd, and forced by their Company. It is ſo, not only in Caſe of Robbery, but in all other Crimes alſo. They have ſaid a great deal indeed, but without any manner of Probability of Truth. They have produced no Witneſſes for themſelves, to prove any thing they have ſaid. And the Witneſſes for the King have given Teſtimony without any Exception. And, I hope, you will vindicate the Credit of the Nation, and find them Guilty, as the Evidence has proved them.

L. C. J. Holt. Gentlemen of the Jury, Theſe Five Priſoners, *E. Forſeith*, *W. May*, *W. Biſhop*, *Ja. Lewis*, and *J. Sparkes*, are indicted for a Piracy and Robbery committed on the High Seas, ſome Diſtance from the *Groyne*, in taking and carrying away a Ship, and ſeveral Goods therein contained. She was called the *Charles the Second*. This was done in *May* laſt was two Years, 1694. You have heard what Evidence has been given on this Indictment againſt the Priſoners.

It has appear'd that this Ship was bound in a Voyage to the *Weſt-Indies*. Two of the Priſoners, *W. May* and *J. Sparkes*, were Seamen then on board this Ship, and engaged in the Voyage; the other three were not Mariners in that, but in another Ship, called the *James*, that lay, at that Time, near the *Groyne*; but they came aboard the Ship *Charles* before, and continued on board her when ſhe was carried away.

That there was a Piracy committed on the Ship *Charles*, is moſt apparent by the Evidence that hath been given; that is, a Force was put on the Maſter, and ſome others of the Seamen on board her, who, becauſe they would not agree to go on a piratical Expedition, had Liberty to depart, and be ſet aſhore. But the Ship was taken from the Captain, who was poſſeſſed of her for the Uſe of the Owners, and was carried away by *Every*, and others of his Crew that remained on board her; and others came from the *James*: Which Taking was a Piracy that is manifeſted by the Uſe they did put her to; for they did afterwards commit ſeveral other Piracies with her, and took ſeveral *Engliſh* and *Daniſh* Ships, and then went to ſeveral Iſlands, Countries and Places, as to the Iſles of *May* and *Princes*, to *Madagaſcar*, and then to *Joanna*, and afterwards to *Meat*, and then to the *Red Sea*; and at the Entrance of the *Red Sea* committed more Piracies, in the manner as you have heard, and has been very particularly deſcribed to you. So that I muſt tell you, beyond all Contradiction, the Force put on the Captain, and taking away this Ship, called the *Charles the Second*, was a Piracy; and for that particular Fact theſe Priſoners are now charged.

The Matter you are now to enquire after, is, Whether all the Priſoners were guilty of this Piracy, or which of them.

As for *Ed. Forſeith*, *Biſhop*, and *Lewis*, it hath appeared to you, that they, with others, were aboard the Ship *James*; and that there was a Report ſpread about of a Plot againſt the Captain of the *Charles the Second*, and a Deſign to carry that Ship away. To prevent which, there were ſome of theſe Men ſent out in a Boat, by the Captain of the *James*, to this Ship, to aſſiſt Captain *Gibſon*; but inſtead of preventing this Piracy, they ſtayed behind, and went along with theſe Men that carried away the Ship.

As to *W. May* and *J. Sparkes*, that were of this Ship's Crew, they continued on Board, and were Parties in all thoſe Piracies.

There was a Conſult, it ſeems, by ſome particular Perſons, of which *Every* was the Ring-leader, how to effect this Deſign; Capt. *Every*, as they call him, though he was no Captain, but was under the Command of Capt. *Gibſon*, that had the Conduct of this Ship.

It's true, it is not proved to you that theſe Men were at that Conſult; for, it ſeems, they were too many, for they were about 160 that remained on board when the Ship was carried off.

Now for *W. May*, *Jo. Gravet*, Second Mate, that was aboard, though he had a Piſtol clapp'd to him to prevent any Reſiſtance, yet had Liberty to depart; and upon his going off, diſcourſed with *May*, who ſhook Hands with him, and bid him farewel, and remember him to his Wife. And therefore it is evident that *W. May* was under no Force to ſtay; he ſtay'd with his good Will, and did conſent to the Piracy. And then another Witneſs is *D. Creagh*, who ſays, that *May* was ſo zealous in the Matter, that he ſaid to him, *God damn him, he deſerves to be ſhot through the Head.*

Sparkes was on Board the Ship, and had a deſign'd End, and no Compulſion was uſed towards him, ſince he had Liberty to depart; but the ſtaying behind by the reſt, is a great Evidence to induce you to believe they were Parties in the Deſign; for why elſe ſhould not they go aſhore as well as others, ſince there doth not appear any Reſtraint upon them to ſtay, eſpecially when a general Word was given, that thoſe who would go on Shore ſhould go on the Deck, and a Boat was ready to carry them off?

They ſay, they wanted a Bucket in the Boat, and they gave them one to lave out the Water; that is a plain Evidence they were willing to be rid of thoſe that were not willing to engage with them; and if they had not approved of the Deſign, they were not hindered from going in the Boat. As for thoſe that came from the *James*, there was no manner of Force on them, but they were ſent from the Captain to aſſiſt the Captain of the *Charles*; for thoſe two Ships having lain near together at the *Groyne*, there was ſome Intelligence of ſuch a Deſign in Agitation, and theſe three forſook their own Ship; *Every* declared his Deſign to ſome: And he told them what ſhares they ſhould have; and becauſe he was their Captain and Commander, he thought himſelf entitled to a double Share.

And then you have heard what was done in the whole Progreſs of this wicked Deſign; every one of theſe Men had their Share; even this *W. May*, though he was ſick for ſome Time, and was ſet aſhore at *Joanna*, and at the Ship's Return taken in again, yet he had his Share of all the Prizes. *W. Biſhop* had his Share, *James Lewis* had his Share, and *John Sparkes* had his Share; and, ſays this young Man, *Philip Middleton*, I had my Share, which was above an hundred Pound, which was thought by them to be a good Share for a Boy; and *Sparkes* took him at a Diſadvantage, and having an Opportunity, took it from him.

Now if there be a Piracy committed, though contrived but by one Man, yet if others do concur in it, they are equally guilty.

Now, though theſe Priſoners tell you, there was a Force upon them, it is a mere Suggeſtion, without any manner of Evidence; but there is Evidence of their conſenting and confederating in this wicked Enterprize.

Indeed there hath been a Trial before, which you have all heard of; for the City and Nation have diſcourſed of it; conſider therefore the Evidence. You have a great Truſt repoſed in you, for you are not to act arbitrarily, but you are accountable to God Almighty, to whom you are ſworn, and to the Government for the Verdict you give. If you are not ſatisfied in your Conſciences that the Evidence is ſufficient to find theſe Men guilty, in God's Name acquit them.

But if you are ſatisfied in the Sufficiency of the Evidence to convict them, you muſt find them guilty.

Cl. of Ar. Cryer, ſwear an Officer to keep the Jury; which was done, and the Jury went out to conſider of their Verdict. And, in the mean time, the ſix Priſoners were again arraigned upon two ſeveral Indictments; the one for piratically taking away a *Mooriſh* Ship, and the other for committing Piracy upon two *Daniſh* Ships. To both which Indictments *Joſeph Dawſon* pleaded Guilty; the other five pleaded Not Guilty, and put them upon their Trials.

Then the Jury having been withdrawn a little while, returned into Court.

Foreman. If there be any Evidence to prove that *John Sparkes* conſented to the running away of the Ship, we deſire it may be heard again.

L. C. J. Holt. He was with them at the carrying off the Ship, and at the taking of the ſeveral Prizes, and had his Share afterwards. What is Conſent? Can Men otherwiſe demonſtrate their Conſent, than by their Actions?

Juryman. But we underſtand, my Lord, that he was tried upon his conſenting to carry away the Ship.

L. C. J. Holt. What do you mean by conſenting? If a Ship be carried away with Force from the Captain, divers Piracies are committed with her, one continues aboard and receives a Share of the Profit of the ſeveral Piracies; is not that an Evidence of Conſent to the piratical Deſign? Was it not proved that many went out of the Ship that were not willing to go on that Deſign? And that was with the Leave of the reſt that remain'd.

Mr. Juſt. *Eyre.* And one ſtood on the Deck, and ſaid with a loud Voice, that they that will not go, may have Liberty to go aſhore.

Mr. *Conyers.* No Man was hindred but the Doctor, being a uſeful Man.

L. C. J. Holt. When a Ship is run away with, and People are aboard that Ship ſo run away with, that proves their Conſent, unleſs they can produce Evidence to the contrary.

Mr. Juſt. *Turton.* The Captain was in his Bed ſick of a Fever at that Time, and was not willing to go with them, and they ſent him away from them.

Mr. Juſt. *Eyre.* And every Man had his Share.

[*Then the Jury conſulting together a very little Time, agreed on their Verdict.*]

Cl. of Ar. Gentlemen of the Jury, anſwer to your Names. *Jo. Degrave.*

J. Degrave. Here. (*And ſo of the reſt.*)

Cl. of Ar. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?—*Jury.* Our Foreman.

Cl. of Ar. Set *Ed. Forſeith* to the Bar. *Ed. Forſeith*, hold up thy Hand. (*Which he did.*) Look upon the Priſoner; Is *Edward Forſeith* Guilty of the Piracy and Robbery whereof he ſtands indicted, or Not guilty?

Foreman. Guilty.

Cl. of Ar. Look to him, Keeper. What Goods and Chattels, *&c.*

Foreman. None that we know of.

Cl. of Ar. *W. May*, hold up thy Hand. (*Which he did.*) Is *W. May* Guilty, *&c.* or Not guilty?—*Foreman.* Guilty.

Cl. of Ar. Look to him, Keeper, *&c.* *W. Biſhop*, hold up thy Hand. (*Which he did.*) Is *W. Biſhop* Guilty, *&c.* or Not guilty?

Foreman. Guilty.

Cl. of Ar. Look to him Keeper, *&c.* *J. Lewis*, hold up thy Hand. (*Which he did.*) Is *J. Lewis* Guilty, *&c.* or Not guilty?

Foreman. Guilty.

Cl. of Ar. Look to him, Keeper, *&c.* *Jo. Sparkes*, hold up thy Hand. (*Which he did.*) Is *Jo. Sparkes* Guilty, *&c.* or Not guilty?

Foreman. Guilty.

Cl. of Ar. Look to him, Keeper, *&c.*

L. C. J. Holt. Gentlemen, you have done extremely well, and you have done very much to regain the Honour of the Nation, and the City.

[*Then the Court adjourned to* Friday *next the 6th of* November, *Two of the Clock in the Afternoon, on which Day* Ed. Forſeith, *&c. were tried upon two other Indictments for ſeveral Piracies.*]

An Abſtract of the Trial of Edward Forſeith, James Lewis, William May, William Biſhop, John Sparkes, (Joſeph Dawſon *having pleaded Guilty upon his Arraignment) at the* Seſſions Houſe *in the* Old Bailey, Friday, November *the 6th*, 1696. *where were preſent Sir* Charles Hedges, *Judge of the High Court of Admiralty, the Lord Chief Juſtice* Holt, *the Lord Chief Juſtice* Treby, *with ſeveral others of his Majeſty's Judges and Commiſſioners.*

After ſeveral Challenges made by the Priſoners, of the Perſons returned upon the Jury, theſe Twelve Gentlemen were ſworn, viz.

Roger Mott,
John James,
Richard Rider,
William Hunt,
John Hammond,
Abraham Hickman,
John Watſon,
Benjamin Hooper,
John Hibbert,
Richard Chiſwell,
Daniel Ray,
William Hatch.

THEN the Clerk read the two Indictments upon which they were tried, *viz.* one for ſeiſing, robbing, and carrying away two Ships belonging to *Denmark*, on the 30th of *Auguſt*, 1694. The other for that they, on the 28th of *September*, 1695. in a Place 40 Leagues diſtant from *Surat*, did forcibly and piratically ſet upon a *Mooriſh* Ship, and take away her Tackle and Goods, to a great Value.

Then Dr. Newton, *one of his Majeſty's Advocates, ſpoke to the Jury as followeth.*

My Lord, and Gentlemen of the Jury,

The Crime the Priſoners at the Bar ſtand charged with, and which has been opened to you upon the Indictments, is Piracy; which is the worſt Sort of Robbery, both in its Nature and its Effects, ſince it diſturbs the Commerce and Friendſhip betwixt different Nations; and if left unpuniſhed, involves them in War and Blood: For ſovereign Powers and Nations have no Courts of Juſtice afterwards to reſort to, as the Subjects of Princes have, in their own Countries, for Redreſs or Puniſhment; but they can only have recourſe to Arms and War, which how expenſive, and how dangerous they are, and what Calamities and Ruin they carry along with them, no Perſon can be a Stranger to. So that thoſe who bring not ſuch Criminals to Judgment, when it lies in their Power, and is their Duty to do ſo, are anſwerable, in a great Meaſure, before God and Man, for all the fatal Conſequences of ſuch Acquittals, which bring a Scandal on the publick Juſtice, and are often attended with publick Calamities.

It is not therefore, Gentlemen, to be ſuppoſed, that wiſe or honeſt Men, (and there are none who would be thought to be otherwiſe) who love their Country, and wiſh its Peace and Proſperity, would be guilty in that kind.

Gentlemen, This Piracy was begun in *Europe*, carried on through *Africa*, and ended in the remoteſt *Indies*; ſo that, in a manner, all the World is concerned in this Trial, and expects and demands Juſtice of them, if they are guilty, at your Hands.

Then the Witneſſes were produced to prove the Facts charged upon the Priſoners, *viz.* *Jo. Dean*, *David Creagh*, *Phil. Middleton*, and others; who fully proved againſt them, That the Priſoners, with ſeveral other wicked Perſons not yet taken, did forcibly take away the Ship *Charles the Second* from the lawful Commander, Captain *Gibſon*, with a piratical Deſign; and in the ſaid Ship did afterwards commit ſeveral Piracies. At the *Iſle of May* they took three *Engliſh* Ships. From thence they went to the Coaſt of *Guinea*; and when ſome of the Natives came on board with their Gold, to trade with them, they took away their Gold, and carried them away for Slaves. And then went to the *Iſle of Princes* and took two *Daniſh* Ships, and took out what was in them, *viz.* 40 Pound Weight of Gold Duſt, and other Merchandize; and they offered to reſtore one of the Ships to the Maſter after they had robbed her, but the Maſter ſaid ſhe was inſured, and he would not take her again. And afterwards they burnt one of the Ships, and carried away the other. Then they went to *Bobs Key*, at the Mouth of the *Red Sea*, waiting for the *Mocha* Fleet, which one Night paſs'd by them unſeen; but were informed the next Day that they were gone. And then calling a Council, they agreed to follow them; and accordingly went after them, and came up with one of them which was about 250 Ton, and with ſmall Reſiſtance took her, and put ſome Men on board her, and took Gold and Silver out of her to the Value of 30 or 40,000 *l.* with other Merchandize: And afterwards met with the Ship called the *Gunſway*, and robbed her likewiſe of all her Furniture, to a very great Value. And about a Week after, they ſhared all the Prizes they had taken; and ſome had a thouſand Pound, ſome had eight hundred, ſome ſeven hundred, ſome five hundred, every Man in the Ship his Share, as they thought they deſerved. And it was particularly proved by the Evidence againſt the Priſoners, that they had their Shares. [*The more particular Relation of which is already printed at large in the foregoing Trial.*]

When the King's Evidence had done, the Priſoners were permitted to ſay what they could in their Defence; but the ſame appearing to be very weak, the Lord Chief Juſtice *Holt* ſumm'd up the Evidence; and the Jury going out to conſider their Verdict, after a ſhort Stay, brought them in all Guilty.

[*Then the Court adjourn'd to the 10th of* November *following.*]

After the Trial of John Murphey *was over, the Pirates were brought to the Bar.*

Cl. of Ar. *Joſeph Dawſon*, you by your own Confeſſion are convicted of Piracy and Robbery: What have you to ſay why Sentence of Death ſhall not be paſſed upon you according to Law?

Joſ. Dawſon. I ſubmit myſelf to the King and the honourable Bench.

Cl. of Ar. *Edward Forſeith*, what have you to ſay, *&c.*

Forſeith. I am an innocent Man; *and went on to juſtify himſelf*, &c.

Judge of the Admiralty. You and the reſt of the Priſoners at the Bar have had a very fair Trial, and been fully heard upon your Defence; but the Jury, your Countrymen, upon whom you put yourſelves to be tried, have found you Guilty: So that the inſiſting upon your Juſtification cannot now avail you any thing, the Verdict being given; but if you have any thing to offer in Arreſt of Judgment, or can ſhew any Cauſe why the Court ſhould not proceed to give Judgment according as the Law directs, againſt Perſons convicted of Piracy, you ſhall have Liberty to ſpeak, and will be heard.

Forſeith. I deſire to be ſent into *India* to ſuffer there.

Cl. of Ar. *William May*, what have you to ſay, *&c.*

William May. My Lord, I being a very ſickly Man, never acted in all the Voyage. I have ſerved my King and Country this thirty Years, and am very willing to ſerve the *Eaſt-India* Company where they pleaſe to command me; and deſire the honourable Bench to conſider my Caſe, and if I muſt ſuffer, I deſire to be ſent into *India* to ſuffer there.

Cl. of Ar. *William Biſhop*, What have you to ſay, *&c.*

Wm. Biſhop. I was forced away; and when I went, was but 18 Years old, and am now but 21, and deſire Mercy of the King and the Court.

James Lewis. I am an ignorant Perſon, and leave myſelf to the King's Mercy.

John Sparkes. I leave myſelf to the King's Mercy, and to the Honourable Court.

Judge of the Admiralty. *Joſeph Dawſon*, you ſtand convicted upon four Indictments, by your own Confeſſion, for Piracy and Robbery. And you, *Edward Forſeith*, *William May*, *William Biſhop*, *James Lewis* and *John Sparkes*, having put yourſelves upon your Trials according to the Cuſtoms and Laws of your own Country, have been found guilty upon three ſeveral Indictments, for the ſame deteſtable Crimes committed upon the Ships and Goods of *Indians*, of *Danes*, and your own Fellow-Subjects. The Law for the Heinouſneſs of your Crime hath appointed a ſevere Puniſhment, by an ignominious Death; and the Judgment which the Law awards, is this:

> *That you and every one of you be taken from hence to the Place from whence you came, and from thence to the Place of Execution; and that there you, and every one of you be hanged by the Necks, until you and every one of you be dead: And the Lord have Mercy upon you.*

According to this Sentence, *Edward Forſeith* and the reſt were executed on *Wedneſday*, *November* the 25th, 1696, at *Execution-Dock*, the uſual Place for the Execution of Pirates.

CLXII. *The Trial of Captain* Thomas Vaughan *at the* Old-Baily, *for* High-Treaſon *on the High-Seas*, November 6, 1696, 8 W. III.

The Court being ſate, at which were preſent, Sir Charles Hedges, *Judge of the High Court of Admiralty, the Lord Chief Juſtice* Holt, *the Lord Chief Juſtice* Treby, *the Lord Chief Baron* Ward, *Mr. Juſtice* Turton, *and others of his Majeſty's Commiſſioners; the Court proceeded on this Manner.*

Cl. of Arr. MAKE Proclamation.

Cryer. O Yes, O yes, O yes. ‘All Manner of Perſons that have any thing more to do, *&c.* and were adjourned to this Hour, draw near, and give your Attendance.’ God ſave the King.

[*Then the Grand-Jury were called over, and the Appearances marked. And Witneſſes being ſworn in Court to give Evidence to them againſt* Thomas Vaughan, *they withdrew to hear the ſame.*]

(*Then the Keeper of* Newgate *was order'd to bring his Priſoner,* Thomas Vaughan, *to the Bar.*) (Which he did.)

Cl. of Arr. *Thomas Vaughan*, Hold up thy Hand. (*Which he did.*) Thou ſtandeſt indicted, *&c.*

How ſay'ſt thou, *Tho. Vaughan*, Art thou Guilty of the High-Treaſon whereof thou ſtandeſt indicted, or Not guilty?

T. Vaughan. Not guilty.

Cl. of Arr. *Culprit*, How wilt thou be try'd?

T. Vaughan. By God and this Country.

Cl. of Arr. God ſend thee a good Deliverance.

[*And then the Court proceeded to the Trial of the Pirates, and gave Notice to Mr.* Vaughan *to prepare for his Trial on* Friday *next, the 6th of* November, 1696.]

Die Veneris ſexto Novembris, *Annoque Regni Regis* Wilhelmi *Octavo, Annoque Domini* 1696.

Cl. of Arr. *CRYER*, make Proclamation.

Cryer. O yes, O yes, O yes. ‘All Manner of Perſons that have any Thing more to do at this Seſſions of *Oyer* and *Terminer*, adjourned over to this Day, draw near and give your Attendance. And you Sheriffs of the City of *London*, return the Precepts to you directed, upon Pain and Peril which will fall thereupon.’

[*Then the Under-Sheriff returned the Precepts.*]

Cl. of Arr. Make Proclamation.

Cryer. O yes. ‘You good Men of the City of *London*, ſummoned to appear this Day, to try between our Sovereign Lord the King and the Priſoner at the Bar, anſwer to your Names, as you ſhall be called, every one at the firſt Call, and ſave your Iſſues.’

[*The whole Pannel was called over, and the Appearances of thoſe that anſwered recorded, and the Defaulters were again called over.*]

Mr. *Phipps.* Will your Lordſhip pleaſe to order, that two Men may be brought from the *Marſhalſea*, in the Behalf of the Priſoner?

L. C. J. Holt. You ſhall have an Order.

[*Then the Court went on the Trial of the Six Pirates; and after the Trial was over,* Thomas Vaughan *was called to the Bar.*]

T. Vaughan. My Lord, my Irons are very uneaſy to me, I deſire they may be taken off.

L. C. J. Holt. Ay, ay, take them off.

Mr. *Phipps.* If your Lordſhip pleaſe, we have ſome Doubts as to the Indictment.

L. C. J. Holt. If you have any Exceptions, you ought to have made them before the Priſoner pleaded to it.

Mr. *Phipps.* I thought you had allow'd it, my Lord, in former Caſes.

L. C. J. No, we did not allow it as of Right due to the Priſoner; the Exceptions ſhould have been made before the Plea. You were indulg'd in being heard at firſt in the Caſes of *Rookwood*, *Cranburne*, and *Lowick*; but it was not the Intent of the Act to alter the Method of the Proceeding; and ſo upon Conſideration hath it been determined. The Priſoner hath Time given by the Act to make any Exception to the Indictment before he pleaded; but you may move what you will afterwards in Arreſt of Judgment, if it be material.

Cl. of Arr. *Thomas Vaughan*, Thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of Life and Death; if therefore you challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, before they be ſworn.

Mr. *Phipps.* There was one Man here that deſired to be excuſed, becauſe he was on the Grand-Jury; therefore it ſeems there are ſome returned upon this Jury that were on the Grand-Jury, which I think ought not to be.

L. C. J. Challenge them then.

Mr. *Phipps.* We do not know the Men.

[*Then the Pannel was called over, and a great many Challenges made, and the Twelve Men that were Sworn, were theſe:*]

Edward Leeds,
Nath. Green,
Hen. Sherbrook,
J. Sherbrook,
T. Emms,
Peter Parker,
Caleb Hook,
Joceline Roberts,
Tho. Parker,
Peter Gray,
Roger Poſton,
—— *Woolley.*

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes. ‘If any one can inform my Lords the King's Juſtices, and the King's Serjeant, the King's Attorney-General, the King's Advocate in his High Court of Admiralty, before this Inqueſt be taken of the High-Treaſon whereof *Thomas Vaughan*, the Priſoner at the Bar, ſtands indicted, let them come forth, and they ſhall be heard; for now the Priſoner at the Bar ſtands upon his Deliverance; and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth and give their Evidence, or elſe they forfeit their Recognizance.’

Cl. of Arr. *Thomas Vaughan*, Hold up thy Hand. (*Which he did.*) You that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Thomas Vaughan*.

Whereas, ‘That before and until the 8th Day of *July*, in the 7th Year of the Reign of our Sovereign Lord King *William* III. there was open War between our ſaid Lord the King, and *Lewis* the *French* King: And that the ſaid War continued on the ſaid 8th Day of *July*, in the 7th Year aforeſaid, and doth ſtill continue. And that for all the Time aforeſaid, the ſaid *Lewis* the *French* King and his Subjects were, and at preſent are Enemies of our ſaid Lord the King that now is: And that at the Time of the ſaid War, and before the ſaid 8th Day of *July*, in the 7th Year aforeſaid, the ſaid *Lewis* the *French* King ſet out, amongſt others, a certain ſmall Ship of War, called the *Loyal Clencarty*, of which *Thomas Vaughan*, a Subject of our ſaid Lord the King that now is, was Commander, with ſeveral *French* Subjects, Enemies of our ſaid Lord the King, to the Number of fifteen Perſons, in a Warlike Manner, to take and deſtroy the Ships, Goods, and Monies of our ſaid Lord the King, and his Subjects, and againſt our ſaid Lord the King, to wage War upon the High-Seas within the Juriſdiction of the Admiralty of *England*. And that at the Time of the ſaid War between our ſaid Lord the King, and the aforeſaid *Lewis* the *French* King, *Tho. Vaughan*, late of *Galloway*, in the Kingdom of *Ireland*, Mariner, being a Subject of our ſaid now Lord the King, as a falſe Rebel againſt the ſaid King his Supreme Lord, and not having the Fear of God before his Eyes, nor conſidering the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, and altogether withdrawing the cordial Love, and true and due Obedience which every true and faithful Subject of our ſaid Lord the King ought by Law to have towards the ſaid King; and the ſaid War as much as in him lay, againſt our ſaid Lord the King deſigning and intending to proſecute and aſſiſt; the ſaid *Tho. Vaughan*, on the ſaid 8th Day of *July*, in the ſaid 7th Year of the King, being a Soldier a-board the Ship of War, called the *Loyal Clencarty*, in the Service of the ſaid *Lewis* the *French* King, and being then on the High-Seas, within the Juriſdiction of the Admiralty of *England*, about fourteen Leagues from *Deal*, did then and there by Force and Arms, falſly, maliciouſly, wickedly, and traitorouſly aid, help, and aſſiſt the Enemies of our ſaid Lord the King, in the Ship of War called the *Loyal Clencarty*. And afterwards the ſaid *Thomas Vaughan*, in the Execution and Performance of his ſaid aiding, helping, and aſſiſting, maliciouſly, falſly, and traitorouſly ſailed a Cruiſing to ſeveral maritime Places within the Juriſdiction aforeſaid, by Force and Arms to take the Ships, Goods, and Money of our ſaid Lord the King, and his Subjects; againſt the Duty of his Allegiance, the Peace of our ſaid Lord the King, and alſo againſt a Statute in that Caſe made and provided.

‘And the ſaid Jurors of our ſaid Lord the King, upon their ſaid Oaths, farther repreſent, that the aforeſaid *Thomas Vaughan*, as a falſe Traytor againſt our ſaid Lord the King, further deſigning, practiſing, and with his whole Strength intending the common Peace and Tranquillity of this Kingdom of *England* to diſturb; and a War and Rebellion againſt the ſaid King upon the High-Seas, within the Juriſdiction of the Admiralty of *England*, to move, ſtir up, and procure; and the ſaid Lord the King, from the Title, Honour, Royal Name, and Imperial Crown of his Kingdom of *England*, and Dominions upon the High-Seas, to depoſe and deprive; and miſerable Slaughter of the Subjects of the ſaid Lord the King, of this Kingdom of *England*, upon the High-Seas, and within the Juriſdiction aforeſaid, to cauſe and procure; on the ſaid 8th Day of *July*, in the ſaid 7th Year of the King, upon the High-Seas, about fourteen Leagues from *Deal*, and within the Dominion of the Crown of *England*, and within the Juriſdiction of the Admiralty of *England* aforeſaid, falſly, maliciouſly, deviliſhly, and treacherouſly, by Force and Arms, with divers other falſe Rebels and Traytors (to the Jurors unknown), War againſt our ſaid now Lord the

' King, prepared, prompted, levyed, and waged. And that the ſaid ' *Thomas Vaughan* in Performance of his ſaid War and Rebellion, then ' and there, by Force and Arms, maliciouſly, wickedly, and openly aſ- ' ſembled and joined himſelf with ſeveral other falſe Traytors and Rebels ' (to the Jurors unknown) to the Number of fifteen Perſons, being armed, ' and provided in a warlike Manner with Guns and other Arms, as well ' Offenſive as Defenſive. And the ſaid *Thomas Vaughan*, then and there, ' being aboard the ſaid Ship of War, called the *Loyal Clencarty*, aſſembled ' with the other falſe Rebels and Traitors as aforeſaid, maliciouſly, wick- ' edly and traitorouſly ſailed a Cruiſing to ſeveral maritime Places, with ' the aforeſaid Ship of War, called the *Loyal Clencarty*, with an Intent to ' take, ſpoil, and carry away the Ships, Goods, and Money, of our ' ſaid Lord the King, and his Subjects, by Force and Arms, upon the ' high and open Seas, within the Juriſdiction aforeſaid; againſt the Duty ' of his Allegiance, the Peace of our ſaid Lord the King, his Crown and ' Dignities; and likewiſe againſt the Form of a Statute in this Caſe made ' and provided.'

Thomas Noden, } *Jurors.*
Samuel Oldham, }

Upon this Indictment he hath been arraigned, and upon this Arraignment he hath pleaded not guilty; and for his Trial he hath put himſelf upon God and his Country, which Country you are. Your Charge is to enquire whether he be guilty of the High-Treaſon whereof he ſtands indicted, or not guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the Time of the High-Treaſon committed, or at any Time ſince. If you find him guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty. If you find him not guilty, nor that he did fly for it, you are to ſay ſo and no more; and hear your Evidence.

Mr. *Whitaker*. May it pleaſe you, my Lord, and the Gentlemen of the Jury, the Priſoner at the Bar, *Thomas Vaughan*, ſtands indicted for High-Treaſon; That whereas on the 9th of *July*, there was a War between his Majeſty the King of *England*, and *Lewis* the *French* King; amongſt other Warlike Preparations that the *French* King did make, he did ſet forth a Ship called the *Loyal Clencarty*; That the Priſoner at the Bar, as a falſe Traitor, did liſt himſelf aboard this Ship; and on the High-Seas, about eleven Leagues from *Deal*, did traitorouſly aid the King's Enemies to take the King's Ships. This is ſaid to be againſt the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. He ſtands further indicted, for that he, the ſaid *Thomas Vaughan*, with ſeveral other falſe Traitors, did levy War, and arm themſelves with Arms, Offenſive and Defenſive, and was cruiſing on the High-Seas, off of *Deal*, with an Intent to take the King's Ships, and to kill and deſtroy the King's Subjects, againſt the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment he has pleaded not guilty. We ſhall call our Witneſſes, and prove the fact, and doubt not but you will do your Duty.

Dr. *Littleton*. Gentlemen of the Jury, you have heard the Indictment opened, as alſo what Sort of Crime the Priſoner at the Bar ſtands charged with, *viz*. That he, being a Subject of the Crown of *England*, has, together with his Accomplices, armed himſelf in a military Way, to murder and deſtroy his Fellow-Subjects, and as much as in him lay, to ruin his native Country, by ruining the Trade and Traffick, which is the great Support and Riches of the Nation. And that this Crime might be conſummate, he, with his Accomplices, has done what in him lay, to dethrone and diſpoſſeſs his ſacred Majeſty; as well knowing it was in vain to expect to make the Nation unhappy, as long as we enjoy ſo great and good a Prince. So that you are to look on the Priſoner as an Enemy and Traitor to his own Country; and not only ſo, but as one of the worſt and moſt dangerous Enemies; ſince he being a Subject of theſe Iſlands, was the better able to ſpy out our Weakneſſes and Defects, and thereby to do us the greater Miſchief. It is not to be expreſs'd what Ruin and Deſolation it would have cauſed to this Nation, had this Man and his Accomplices brought their wicked Intentions to effect. And all this was done to aid and aſſiſt the grand Enemy of *Chriſtendom*, and of our own Country in particular, the *French* King. Therefore, as you are Lovers of your King and Country, and your Fellow-Subjects, whom the Priſoner and his Accomplices would have deſtroy'd; I am ſure you will take Care to do the Nation Juſtice, and that he be brought to condign Puniſhment. Gentlemen, There is one Thing further that I muſt not omit, *viz*. That the Priſoner at the Bar being in Cuſtody for theſe very Crimes about a Twelve-month ſince, did not think fit to truſt to his Innocency, nor to his pretended *French* Extraction, but the Day before he was to be tried, he thought fit to break Priſon, withdraw from Juſtice, and run his Country: Which, though not a Confeſſion and full Proof, yet is a great Evidence of his Guilt.

* *Sir* John Hawles.

* *Mr. Sol. Gen.* May it pleaſe your Lordſhip, and you Genmen of the Jury, the Priſoner at the Bar, *Thomas Vaughan*, ſtands indicted for two Sorts of Treaſon: The one is for levying War againſt the King, the other is for aiding and abetting the King's Enemies. And to prove the firſt, the levying of War, we ſhall prove that he was a Captain of a *French* Ship, call'd the *Granado*, of *St. Maloes*; and that with that Ship he took and carried away many of his Majeſty's Subjects, and took ſeveral Merchant Ships, and carried them to *France*. We ſhall likewiſe prove that he was Captain of another *French* Ship, called the *Loyal Clencarty*, with which he was cruiſing off of *Deal*, where we had ſeveral Ships lying at the ſame Time: And there he being on board the ſaid Ship *Clencarty*, was taken Priſoner, with a Commiſſion, by which he was conſtituted Captain of the *Loyal Clencarty*, under the Hand of *Lewis* the *French* King.

And to prove him aiding and abetting to the King's Enemies, we ſhall prove againſt him this particular Fact; That he and his Accomplices did in the Year 1692, come to *London*, and went to *Tower-Wharf*, to enquire what Veſſels were ready to go down the River; and there was one laden with Piece-Goods, and he put himſelf, and ſeveral other of his Accomplices into this Veſſel, to go down the River; but they had contrived the Matter, and brought it ſo to paſs, that they fell on thoſe Men who had the Government of the Ship, and carried away this veſſel to *France*. Now, if this be true, the Priſoner is certainly guilty of aiding the King's Enemies: And to prove he was guilty of this, we will prove to you, that even in *France*, where he was at perfect Liberty, he owned he was the Contriver of all this, and that he had a thouſand Pound for his Share of what was taken from our Merchants. If we prove theſe two Facts againſt him, I doubt not but you will find him Guilty. We will call our Witneſſes.

Cl. of Arr. T. Eglington, Rich. Crouch, Samuel Oldham, John Bub, —— Noden. (Who appeared, and were ſworn.)

T. Vaughan. With Submiſſion to your Lordſhips, and the honourable Bench, I beg that they may be put aſunder, out of hearing of one another.

L. C. J. Let it be ſo; tho' you cannot inſiſt upon it as your Right, but only a Favour that we may grant.

Mr. ~~*Cowper.*~~ Set up *Richard Crouch*. Is your Name *Richard Crouch*?

R. Crouch. Yes, Sir.

Mr. *Cowper*. Give my Lord and the Jury an Account of what you know of the Ship *Coventry* taking of the *Clencarty*, and what you know concerning the Priſoner at the Bar in taking of her?

R. Crouch. We weighed our Anchor about Four a-Clock.

Mr. *Cowper*. Where were you?

R. Crouch. At the *Nore*.

Mr. *Cowper*. In what Ship?

R. Crouch. The *Coventry*. After we had been under Sail a matter of an Hour, we came to an Anchor with a little Wind; ſo, Sir, this *Thomas Vaughan* met with a Couple of Pinks, they were ſmall Veſſels, that he deſigned to take; but he ſaw us, and ſo lay by all Night.

Mr. *Cowper*. Who lay by?

R. Crouch. *Thomas Vaughan*, the Priſoner at the Bar.

Mr. *Cowper*. In what Veſſel was he?

R. Crouch. In a Two-and-twenty-Oar Barge; he lay by at the *Gunfleet*: The next Morning we weighed Anchor at Day-light; we ſaw him, and chaſed after him; and we made them, and he made us; and we made what Haſte we could, and coming up, we fired a Gun at him; and then we fir'd another, and then we went aſhore.

Mr. *Cowper*. What, do you mean that he run his Veſſel on the Sands?

R. Crouch. Yes; and then we fired another Gun at him, and then he got off again; and then we fired another Gun, and could not bring him to, and then he got off the Sands again; and when we came up to him, we manned our Long-boat, and Pinnace, and Barge, and had him at laſt. When he came on Board, he ſaid, I cannot deny but I am an *Iriſhman*; and that my Deſign was to burn the Ships at the *Nore*.

Mr. *Cowper*. Did he himſelf confeſs it?

R. Crouch. Yes, he did; that is the Man, I know him well enough.

L. C. J. When you took him, in what Ship was you?

R. Crouch. In the *Coventry*.

L. C. J. Out of what Ship was he taken?

R. Crouch. The *Two-and-Twenty-Oar Barge*.

L. C. J. What Ship did he belong to?

R. Crouch. I reckon it was my Lord *Barcley*'s Barge.

L. C. J. Who did it belong to then?

R. Crouch. To the King of *France*.

L. C. J. What Company was there in her? How many Men had ſhe aboard?

R. Crouch. About five-and-twenty Hands.

Mr. *Cowper*. Did you ever hear him ſay any thing of a Commiſſion he had?

R. Crouch. I heard he had a *French* Commiſſion, but I did not ſee it.

Mr. *Cowper*. Did you hear him ſay any thing of it?---*R. Crouch*. No.

Mr. *Cowper*. But he told you his Deſign was to burn the Ships at the *Nore*?-----*R. Crouch*. Yes.

Mr. *Cowper*. What Ships?

R. Crouch. The *Engliſh* Ships; there were ſeveral Ships there then.

L. C. J. Were there no *Frenchmen* aboard the Barge?

R. Crouch. No, that I can tell.

Mr. *Lechmere*. From whence did he come, from *England*, or *France*?

R. Crouch. From *Calais* in *France*.

L. C. J. Prithee hear me, This *Two-and-Twenty-Oar Barge*, did it belong to any other Ship?

R. Crouch. No, not that I can tell.

L. C. J. Did he call that Veſſel the *Loyal Clencarty*?

R. Crouch. Yes, my Lord.

[*Then* Edmund Courtney *was called.*]

Mr. Sol. Gen. Mr. *Courtney*, pray tell my Lord and the Jury what you know of the going away of a Cuſtom-Houſe Boat?

Ed. Courtney. I will tell you, if you pleaſe.

Mr. *Phipps*. My Lord, I think they ought not to examine to that, becauſe it is not laid in the Indictment. The carrying away of the Cuſtom-Houſe Barge is not mentioned in the Indictment; and by the new Act for regulating Trials in Caſes of Treaſon, no Evidence is to be admitted or given of any Overt-Act, that is not expreſly laid in the Indictment.

L. C. J. Nothing elſe? Suppoſe a Man be indicted for levying War againſt the King, or adhering to the King's Enemies, can't they prove any Act that makes out a levying of War, or an Adherence to the King's Enemy?

Mr. *Phipps*. With Submiſſion, not by that Act, my Lord, unleſs it be laid in the Indictment.

L. C. J. Levying of War is the Treaſon; may they not prove that levying of War, without being confined to any ſpecial or particular Act?

Mr. *Phipps*. With Submiſſion, by the 25th of *Edw.* III. levying of War, as well as imagining the Death of the King, muſt have the Overt-Acts, that are to prove it, expreſs'd in the Indictment.

L. C. J. Levying of War is an Overt-Act.

Mr. Sol. Gen. The Buſineſs of Overt-Acts is, where the compaſſing and imagining the King's Death is a Crime in Queſtion; and this muſt be diſcovered by Overt-Acts. But if Treaſon be falſifying of the King's Money, this is Treaſon; but there can be no Overt-Act of that, for that is an Overt-Act itſelf; but there muſt be an Overt-Act to prove the compaſſing and imagining the Death of the King, and in no other Sort of Treaſon.

L. C. J. Levying of War, that is an Overt-Act; ſo is adhering to the King's Enemies. Now compaſſing and imagining the Death of the King is not an Overt-Act in itſelf, but is a ſecret Imagination in the Mind, and a Purpoſe in the Heart; but there muſt be external Acts to diſcover that Imagination and Purpoſe.

Mr. *Phipps.* What is the Meaning of the new Act, then, that there ſhall be no Evidence of any Overt-Act, but what is laid in the Indictment?

L. C. J. What Overt-Acts are there in Clipping and Coining?

Mr. *Phipps.* That is not within the new Act of Parliament.

L. C. J. That is moſt true; the one is excepted, the other is not comprehended: But the Queſtion is upon the Statute of 25 *Ed.* III. to which the late Act doth refer. Now proving an Adherence to the King's Enemy is proving an Overt-Act. Suppoſe it be the Killing of the Chancellor, or Treaſurer, or Judge in the Execution of his Office, what Overt-Acts will you have then? Adhering to the King's Enemies, is a Treaſon that conſiſts in doing an Overt-Act.

Mr. *Phipps.* Yes, my Lord, I take it that it is; for the new Act, by ſaying, *that no Evidence ſhall be admitted of any Overt-Act that is not expreſly laid in the Indictment*, muſt be intended of ſuch Treaſons, of which by Law Overt-Acts ought to be laid. Now the Killing of the Chancellor, or Treaſurer, or Judge in the Execution of his Office, are not ſuch Treaſons of which it was neceſſary to lay any Overt-Acts in the Indictment, and ſo not within the Meaning of this new Law. But levying War, and adhering to the King's Enemies, which are the Treaſons in this Indictment, muſt, by the expreſs Purview of 25 *Ed.* III. be proved by Overt-Acts, which are to be alledged in the Indictment.

Mr. Sol. Gen. The new Act does not alter the Law in this Particular; what was Law before, is Law now; it leaves the Overt-Acts as they were before; and it ſays not that an Overt-Act need to be expreſs'd where it was not needful before. Now if a Man be indicted for compaſſing the Death of a private Perſon, there ought to be ſome Overt-Act to prove his Deſign; but if there be an Indictment for Murder, there needs no other Overt-Act to prove it, but the Murder itſelf.

L. C. J. But the Force of the Objection lies in this, *viz.* To ſay a Man levied War, or adhered to the King's Enemies, is no good Indictment; but it is neceſſary to alledge in what Manner he levied War, or adhered to the King's Enemies; as that he appeared in ſuch a warlike Manner, or did adhere to and aſſiſt the King's Enemies, by joining Forces with them, or otherwiſe aſſiſting them, or confederating with them; that muſt be ſpecified. But if you indict a Man generally for adhering to the King's Enemies, and not ſay how and in what Manner he did adhere to them, that is not a good Indictment; therefore, if you particularize what Enemies, and how and in what Manner he adhered to them, no Evidence can be given of any other Kind of Adherence, but that which is ſo ſpecified in the Indictment.

Mr. Sol. Gen. Then we muſt put all our Evidence into the Indictment.

Mr. *Phipps.* So you muſt, as to the Overt-Acts.

Mr. Sol. Gen. That will be the ſame Thing as to put in all our Evidence, if we muſt give Evidence of no Overt-Act but what is expreſs'd in the Indictment. But I do not take it, that the Act requires all Overt-Acts to be put in the Indictment.

Mr. *Phipps.* The Act ſays ſo. Suppoſe you had left out the Overt-Act, would the Indictment have been good?

Mr. Sol. Gen. We did not intend to put in all the Overt-Acts, but only what related to that Part of the Treaſon.

Mr. *Phipps.* The Treaſon muſt be proved by Overt-Acts, and the Overt-Acts that prove the Treaſon muſt be mentioned in the Indictment.

Mr. Sol. Gen. What! the Overt-Acts of the Treaſons before-mentioned, as counterfeiting the King's Money, and the like, are all to be mentioned?

L. C. J. Conſider, if you can make that a good Indictment, to ſay, that the Priſoner adhered to the King's Enemies, without mentioning any Overt-Acts to manifeſt ſuch an Adherence, then your Anſwer to Mr. *Phipps* is full; but if it be not a good Indictment, without alledging particular Acts of Adherence, then it neceſſarily follows, that if Particulars are alledged, and you do not prove them as is alledged, you have failed in the Indictment, and ſo his Objection will lie hard upon you.

Mr. Sol. Gen. My Lord, we framed our Indictment according to the Letter of the Statute.

L. C. J. In compaſſing the Death of the King, you muſt ſhew how that is manifeſted by the Overt-Acts.

Mr. Sol. Gen. But compaſſing and imagining muſt be diſcovered by ſome Overt-Acts.

L. C. J. Treby. This is a Doubt I have often thought of: I thought it moſt natural that the Word Overt-Act ſhould relate to the firſt Article, viz. *compaſſing and imagining of the King's Death:* For Overt-Act ſeems to be oppoſed to ſomething of a contrary Nature: Act is oppoſed properly to Thought, Overt is properly oppoſed to Secret. And that Sort of Treaſon conſiſting in ſecret Thought and internal Purpoſe, cannot be known, tried, and judged of, without being diſcloſed and manifeſted by ſome external open Act: Wherefore it is pertinent and reaſonable, in order to attaint a Man of ſuch Treaſon, that the Indictment ſhould charge and ſet forth the Act, as well as the Thought. And ſo it hath been uſed to be done.

But ſuch Order or Manner doth not ſeem ſo natural or neceſſary, in framing Indictments for other Treaſons, where the Treaſon conſiſts in viſible or diſcernible Facts, as levying War, *&c.*

Nevertheleſs, I think an Overt-Act ought to be alledged in an Indictment of Treaſon for adhering to the King's Enemies, giving them Aid and Comfort. And the Overt-Act or Acts, in this Caſe, ought to be the particular Actions, Means, or Manner by which the Aid and Comfort was given.

My Lord *Coke* declares his Opinion to this Purpoſe. His Words (which I read out of his Book here) are theſe: *The Compoſition and Connection of the Words are to be obſerved*, viz. [thereof be attainted by Overt-Deed.] *This*, ſays he, *relates to the ſeveral and diſtinct Treaſons* before expreſs'd, *and eſpecially to the compaſſing and imagining of the Death of the King*, &c. *for that it is ſecret in the Heart*, &c. Now the Articles of Treaſon before expreſs'd in the Statute of 25 *Ed.* III. are four. 1. Compaſſing, *&c.* 2. Violating the Queen, *&c.* 3. Levying War; and, 4. This of Adhering, *&c.* (And yet it is hardly poſſible to ſet forth any Overt-Act concerning the ſecond, otherwiſe than the Words of the Statute, that Article expreſſing ſo particular a Fact).

I do obſerve alſo, that theſe Words [*Being thereof attainted by Overt Fact*] do, in this Statute, immediately follow this Article of Adhering, *&c.* And it would be a great Violence to conſtrue them to refer to the firſt Article only, and not to this laſt, to which they are thus connected. If they are to be reſtrained to a ſingle Article, it were more agreeable to the ſtrict Rules of Conſtruing, to refer them to this of Adhering only.

L. C. J. That which I inſiſt on is this: Whether the Indictment would be good, without expreſſing the ſpecial Overt-Act? If it be, then this is a Surpluſage, and we are not confined to it; but if it be not a good Indictment without expreſſing it, then we are confin'd to it.

Mr. *Phipps.* I believe Mr. *Sollicitor* never ſaw an Indictment of this Kind, without an Overt-Act laid in it.

L. C. J. Can you prove the Facts laid in the Indictment? For certainly the Indictment, without mentioning particular Acts of Adherence, would not be good.

Mr. *Cowper.* Yes, my Lord; and as to the Evidence before you, we would only offer this: Whether in this Caſe, if the Indictment were laid generally, for adhering to the King's Enemies in one Place, and in another Place levying of War, and nothing more particular, it would be good? I doubt it would not. But when there is laid a particular Act of Adhering, we may give in Evidence Matter to ſtrengthen the direct Proof of that particular Act of Adhering to the King's Enemies, though that Matter be not ſpecially laid in the Indictment: For the Act goes only to this, That the Priſoner ſhall not be convicted, unleſs you prove againſt him the Overt-Acts ſpecially laid in the Indictment; but whether it ſhall not be heard, to make the other Overt-Act which is laid, the more probable? Now we have laid a ſpecial Overt-Act in the Indictment; and we have produced Evidence of it, and we would produce likewiſe collateral Evidence, to induce a firmer Belief of that ſpecial Overt-Act, by ſhewing you that he hath made it his Practice, during the War, to aid and aſſiſt the King's Enemies: But if the Jury do not find him guilty of the ſpecial Overt-Acts laid in the Indictment, they cannot find him guilty by the Proof of any other Overt-Act not laid in the Indictment. But if we prove he has made this his Practice, in other Inſtances, during the War, whether that Proof ſhall not be received?

Mr. *Phipps.* My Lord, I deſire the Act may be read. It expreſly contradicts what Mr. *Cowper* ſays; for it ſays, That no Evidence ſhall be given in the Overt-Act, that is not expreſly laid in the Indictment.

[*The Act was read.*]

L. C. J. That is, you may give Evidence of an Overt-Act that is not in the Indictment, if it conduce to prove one that is in it. And if conſulting to kill the King, or raiſe a Rebellion, is laid in the Indictment, you may give in Evidence an acting in Purſuance of a Conſult, that is, an Evidence that they agreed to do it: though that doing of the Thing is, of itſelf, another Overt-Act, but it tends to prove the Act laid in the Indictment.

Mr. *Phipps.* The Overt-Act laid in this Indictment is, his cruiſing in the *Clencarty*; and this Overt-Act you would prove, is no Evidence of that, nor relates to it, but it is a diſtinct Overt-Act of itſelf.

L. C. J. You cannot give Evidence of a diſtinct Act that has no Relation to the Overt-Act mentioned in the Indictment, though it ſhall conduce to prove the ſame Species of Treaſon.

Mr. *Cowper.* We would apply this Proof to the Overt-Act laid in the Indictment.

L. C. J. Any Thing that has a direct Tendency to it you may prove.

Mr. *Cowper.* We have laid the Overt-Act, that he did voluntarily put himſelf on board this Veſſel of the *French* King, the *Loyal Clencarty*, and did go to Sea in her, and cruiſe, with a Deſign to take the Ships of the King of *England*, and his Subjects. Now Part of the Overt-Act is, his Intention in the Act of Cruiſing; we do not charge him with taking one Ship; ſo that his Intention is a Member of the Overt-Act; and it muſt be proved, to make his Cruiſing criminal, that he deſign'd to take the Ships of the King of *England.* Now we think it a proper Intention, to ſhew, that during this War, before and after the Time of the Treaſon laid in the Indictment, he was a Cruiſer upon, and Taker of, the King's Ships; and this fortifies the direct Proof given of the Intention.

L. C. J. I cannot agree to that, becauſe you go not about to prove what he did in the Veſſel called the *Loyal Clencarty*; but that he had an Intention to commit Depredation on the King's Subjects: So he might, but in another Ship. Now, becauſe a Man has a Deſign to commit Depredation on the King's Subjects in one Ship, does that prove he had an Intention to do it in another?

Mr. *Phipps.* He was cruiſing in the *Clencarty*; that is the Overt-Act laid in the Indictment; and the Overt-Act you would produce is, his being in another Veſſel.

L. C. J. Go on, and ſhew what he did in the *Clencarty.* You the Priſoner, will you aſk this Man any Queſtions?

Mr. *Phipps. Crouch*, you ſaid, that the Priſoner did ſay he could not deny but he was an *Iriſhman*; how came you to talk about it?

R. Crouch. He ſaid, I cannot deny but I am an *Iriſhman.*

L. C. J. Did he ſay he was an *Iriſhman?* What were the Words he uſed?

R. Crouch. He told the Lieutenant he was an *Iriſhman.*

Mr. *Phipps.* What Diſcourſe was there? How came he to ſay that?

R. Crouch. I went by only, and heard the Words ſpoken to the Lieutenant.

L. C. J. Did he ſpeak *Engliſh?*——*R. Crouch.* Yes, my Lord.

L. C. J. If he ſpoke *Engliſh*, that is ſome Evidence he is an *Engliſhman*, though the contrary may be proved by him.

T. Vaughan. That would no more prove me an *Engliſhman*, than if an *Engliſhman* were in *France*, and could ſpeak *French*, would prove him a *Frenchman*, becauſe he could ſpeak *French.*

L. C. J. You ſhall be heard by and bye to ſay what you will on your own Behalf.

Mr. *Phipps.* Were there any *Frenchmen* on board the *Clencarty?*

R. Crouch. No, Sir.

Mr. *Phipps.* Mr. *Vaughan*, will you aſk him any Queſtions yourſelf?

Mr. *Cowper.* Call *T. Noden.*

T. Vaughan. How did you know that there were no *Frenchmen* aboard? Did I addreſs myſelf to you when I came aboard?—*R. Crouch.* No, Sir.

T. Vaughan. Did I not addreſs myſelf to the Captain when I came aboard? How came I to tell you I was an *Iriſhman?*

R. Crouch. They were all *Scotchmen*, *Engliſhmen*, and *Iriſhmen.*

Mr. *Phipps.* Mr. *Vaughan*, you need not take up the Time of the Court about that Matter.

Mr. *Cowper.* You may go on.

Mr. Sol. Gen. Did the Priſoner own that he acted by the *French* King's Commiſſion? Did you know any thing of his having a *French* Commiſſion?—*R. Crouch.* Yes, I heard he had one, but I did not ſee it; but I heard ſo by the Company.

L. C. J. Were there any *Frenchmen* aboard?

R. Crouch. No, not that I know of. They were *Dutchmen*, and *Engliſhmen*, and *Scotchmen*, and *Iriſhmen.*

Mr. *Cowper.* Call *T. Noden.* (*Who appeared, and was ſworn.*) Do you give my Lord and the Jury an Account of taking the Veſſel, call'd the *Two-and twenty-Oar Barge.*

T. Noden. Laſt Year, about *June* or *July*, to the beſt of my Remembrance, I belong'd to his Majeſty's Ship the *Coventry*, and we took the *Two-and-twenty-Oar Barge.*

L. C. J. How many *Dutchmen* were aboard?

T. Noden. I do not know of above one.

L. C. J. Treby. What were the reſt? Were there any *Frenchmen?*

T. Noden. Yes, there were ſeveral *Frenchmen* aboard. I belong'd to the *Coventry*; and as we were ſailing by the *Nore*, and the *Gunfleet*, our Captain ſpy'd a ſmall Veſſel ſailing by the Sands, and he ſuppos'd her to be a *French* Privateer, and he fir'd a Gun to make them bring to, and they did not obey; and at laſt fir'd a Gun, Shot and all, and they would not come to. Then the Captain order'd to man the Boat, and row after them: So the Barge, and Pinnace, and Long-boat were mann'd, and they came pretty near them. This Barge we took, was aground alſo; and they got her afloat, and ſhe run aground again: And as they were aground, moſt of them out of the Boat, our Long-boat ſtruck aground, and waded after them near half a League; and when we came to the Barge, there was this Captain *Vaughan*, and two or three and twenty more; and there was two *Dutchmen*, and, as I apprehended, ſome *Frenchmen.* There was in her a Blunderbuſs and ſmall Arms, and a conſiderable Quantity of Hand-Granadoes.

L. C. J. What Veſſel was you aboard?—*T. Noden.* The *Coventry.*

Mr. Sol. Gen. What Countryman did Captain *Vaughan* ſay he was?

T. Noden. I did not hear any thing of it. Our Captain examin'd the *Dutchmen* what Countryman the Commander was, and he ſaid he was an *Iriſhman*; but I did not hear it myſelf. When Captain *Vaughan* was brought aboard the *Coventry*, I was put aboard the Prize we had taken.

Mr. *Cowper.* Had you any Diſcourſe with Captain *Vaughan?*

T. Noden. No.

L. C. J. Did they endeavour to take your Ship?

T. Noden. No, but endeavoured to get away from us.

L. C. J. What Guns or Ammunition had they?

T. Noden. I cannot tell particularly; there was ſome Canvaſs Bags, every Man had a Carteridge Bag, and there were ſome Hand-Granadoes.

Mr. *Whitaker.* What Fire-Arms had they?

T. Noden. I cannot ſay how many; but they had Muſkets, and Piſtols, and two Blunderbuſſes.

Mr. *Cowper.* Did you underſtand whence this Ship, the *Loyal Clencarty*, came?

T. Noden. The *Dutchmen* ſaid they came from *Calais.* As near as I can gueſs, we ſpy'd them about Eleven a-clock, and we weigh'd Anchor in the Afternoon, on Sabbath-day, and they took us to be a light Collier, and endeavour'd to board us, as the *Dutchman* ſaid; but when they knew what we were, they endeavour'd to eſcape from us.

Mr. *Cowper.* Call *Sam. Oldham.* (*Who appeared, and was ſworn.*) Mr. *Oldham*, was you aboard the *Coventry* when ſhe took the Ship called the *Clencarty?*—*Sam. Oldham.* Yes, I was.

Mr. *Cowper.* Pray give an Account what you obſerved of the Priſoner *T. Vaughan* then?

Sam. Oldham. We weigh'd our Anchor firſt at the *Buoy and Nore*; ſo we ſaw a Prize in the Morning; the Captain ſaid it was a Prize, and we made Sail after him, and they ran on the *Goodwin Sands*: And the Captain ſeeing the Barge run aground, we fir'd at her to bring her to; we fir'd a ſecond, and ſhe would not come to, but ran aground again. When ſhe was aground, by the Captain's Order we mann'd our Boats, and out we went after her.

Mr. *Cowper.* Did you take her?

Sam. Oldham. We went, and our Long-boat ran aground; I was in the Long-boat, and we waded, I believe, a Mile and half after her.

L. C. J. What *Frenchmen* were aboard?

Sam. Oldham. I cannot juſtly ſay whether there were any.

L. C. J. Were there any?—*Sam. Oldham.* I think one or two.

Mr. *Cowper.* Were there any *Dunkirkers* or *Walloons* aboard?

Sam. Oldham. There was a *Dutchman*, who they call'd a *Fleming*; and I diſcours'd him.

L. C. J. How many outlandiſh Men were there aboard? Was there a Dozen, or how many?—*Sam. Oldham.* I cannot ſay the Quantity.

Mr. *Cowper.* Was there more than two or three?

Sam. Oldham. Yes, more than two or three.

L. C. J. What, Foreigners?

Sam. Oldham. Yes. And there were two *Engliſhmen.*

Mr. *Cowper.* What did you obſerve of the Priſoner at the Bar, at the taking of the Ship?

Sam. Oldham. I did not come aboard along with the Priſoner, but with his Man; and his Man ſaid he was an *Iriſhman*, and that he was Commander of the Boat.

Mr. Sol. Gen. What was their Deſign in that Ship *Clencarty?*

Sam. Oldham. I cannot tell that.

Mr. *Cowper.* Did they reſiſt in their being taken?

Sam. Oldham. I cannot tell that; I ſaw no Arms.

Mr. *Cowper.* You were in the Action; was there any Reſiſtance made?

Sam. Oldham. I ſaw no Reſiſtance; they offered to run, they were aground once, and got off again.

Mr. *Phipps.* You ſay there were Foreigners; what Countrymen did you believe thoſe Foreigners to be?

Sam. Oldham. I cannot juſtly ſay, I believe *Dutchmen.*

L. C. J. How many *Dutchmen* were there?—*Sam. Oldham.* I cannot ſay.

Dr. *Oldiſh.* But you ſaid there were ſome two or three *Frenchmen*, and that they ſpoke *French*; do you underſtand *French?*

Sam. Oldham. No, Sir.

Dr. *Oldiſh.* Then how do you know they were *Frenchmen*, and ſpoke *French?*

Sam. Oldham. They ſaid they were; they did not ſpeak *Engliſh*; ſeveral of the Ship's Company ſaid they were *French.*

L. C. J. If they were all *Dutchmen*, and appear in a hoſtile Manner againſt the King of *England*'s Subjects, they are Enemies, though we are in League with *Holland*, and the reſt of the Seven Provinces.

Mr. *Phipps.* The Indictment runs, That the *French* King, *quandam Naviculam vocat'* The Loyal Clencarty, *cum quamplurimis Subditis Gallicis, Inimicis Dom. Regis nunc, ad numerum quindecim Perſonarum, replet' preparavit.*

L. C. J. Suppoſe it doth?—Mr. *Phipps.* It is *Subditis Gallicis*, my Lord.

L. C. J. They will be Subjects in that Matter, if they act under his Commiſſion: They are Enemies to the King of *England*, and they have made themſelves the *French* King's Subjects by that Act.

Mr. *Phipps.* It appears not that they are *Frenchmen*, my Lord.

L. C. J. If *Dutchmen* turn Rebels to the State, and take Pay of the *French* King, they are under the *French* King's Command, and ſo are his Subjects. Will you make them Pirates, when they act under the Commiſſion of a Sovereign Prince? They are then *Subditi* to him, and ſo *Inimici* to us.

Mr. *Phipps.* It does not take away their Allegiance to their lawful Prince. They may go to the *French* King, and ſerve him; yet that does not transfer their Allegiance from their lawful Prince to the *French* King, and make them his Subjects. But however, to make them Subjects within this Indictment, they muſt be *Gallici Subditi*; ſo they muſt be *Frenchmen* as well as Subjects.

L. C. J. Acting by Virtue of a Commiſſion from the *French* King, will excuſe them from being Pirates, tho' not from being Traitors to their own State; but to all other Princes and States againſt whom they do any Acts of Hoſtility, they are Enemies: And their ſerving under the *French* King's Commiſſion, makes them his Subjects as to all others but their own Prince or State. And tho' they be not *Frenchmen*, yet they are *Gallici Subditi*; for it's the *French* Subjection that makes them to be *Gallici Subditi.*

Mr. *Phipps.* Pray, my Lord, ſuppoſe a Subject of *Spain* ſhould go over to the *French*, and fight againſt *England*; I take it, he may be termed an Enemy of the King of *England*, tho' his Prince be in League with our's; but, with Submiſſion, he cannot properly be ſaid to be a Subject of the *French* King: For ſuppoſe an Indictment of Treaſon againſt a Foreigner, ſhould ſay, *that he being a Subject, did commit Treaſon*; if it be proved he is not a Subject, with Submiſſion, he muſt be acquitted.

Mr. *Cowper.* There is a local Allegiance while he is in the Country, or Fleets, or Armies of the *French* King.

L. C. J. Dutchmen may be Enemies, notwithſtanding their State is in Amity with us, if they act as Enemies.

Mr. *Cowper.* Call *R. Bub.* (*He was ſworn.*) Was you aboard the *Coventry* when ſhe took the *Clencarty?*—*R. Bub.* Yes, Sir.

Mr. *Cowper.* Give an Account what you know of the Priſoner, *Tho. Vaughan*, at the Taking of that Ship.

R. Bub. We came aboard the *Coventry*, and were at the *Nore* at Anchor; our Pennant was taken down to be mended. So in the Night Captain *Vaughan*, with his *Two-and-twenty-Oar Barge*, rounded us two or three times. In the Morning we weigh'd Anchor, and fell down, in order to go to the *Downs*; and we came up with them, and fir'd at Captain *Vaughan*, and he would not bring to. With that, our Captain order'd to have the Barge, and Pinnace, and Long-boat to be mann'd, to go after him. They follow'd him, and at laſt came up with him, and came up pretty near; but could not come ſo near with the Long-boat, but were fain to wade up to the Middle a Mile and a half. We hoiſted our Colours, in order to fight them, and bore down ſtill upon them, and they would not fight our Men: And we took them out; and when they came aboard, the *Engliſhman* that was a Pilot was to have his Freedom, to pilot them up the River. He confeſs'd to the Captain, that Captain *Vaughan* intended to burn the Ships in the Harbour: And the next Day after the Pilot had confeſſed it, Captain *Vaughan* himſelf confeſſed it on the Deck, that he came over with that Deſign.

Mr. *Cowper.* Who did he confeſs it to?

R. Bub. To the Boatſwain and Gunner, as he was on the Deck, on the Larboard-Side; that he came on purpoſe to burn the Shipping in the Harbour.

L. C. J. Did he confeſs that himſelf?---*R. Bub.* Yes, my Lord.

L. C. J. Whereabout was this, at the *Buoy in the Nore?*

R. Bub. In the *Downs*, my Lord.

L. C. J. Where did the Ships lie that were to be burn'd?

R. Bub. At *Sheerneſs.*

Mr. Sol. Gen. He own'd himſelf to be an *Iriſhman*, did he not?

R. Bub. Yes.

Mr. *Cowper.* And that he came from *Calais?*---*R. Bub.* Yes.

Mr. *Cowper.* Had you any Diſcourſe with him about a Commiſſion?

R. Bub. No. But our Lieutenant and Captain had, but it was not in my Hearing; I will not ſpeak further than I heard, and what I can juſtify.

Mr. Sol. Gen. Will you aſk him any Queſtions?

Mr. *Phipps.* No.

Mr. Sol. Gen. Then call Mr. *Jo. Crittenden*, Marſhal of *Dover-Caſtle.* (*Who was ſworn.*) Mr. *Crittenden*, Pray what did you hear the Priſoner at the Bar confeſs of his Deſign in coming to *England?*

Mr. *Crittenden.* I did not hear him ſay any thing of his Deſign.

Mr. Sol. Gen. What did he confeſs?

Mr. *Crit.* He confeſs'd he was an *Iriſhman.*

Mr. *Whitaker.* Upon what Occaſion did he confeſs that?

Mr. *Crit.* When I enter'd him into my Book, I aſk'd him what Countryman he was.

Mr. *Cowper.* What are you?

Mr. *Crit.* I am the Marſhal of *Dover-Caſtle.*

Mr. *Cowper.* By what Name did he order you to enter him?

Mr. *Crit.* *Thomas Vaughan*, an *Iriſhman.*

L. C. J. Upon what Account did you enter him?

Mr. *Crit.* As a Priſoner.

Mr. *Cowper.* Did he ſpeak any thing of a Commiſſion?

Mr. *Crit.* I did not hear him ſay any thing of that.

Mr. *Phipps.* Have you your Book here?----Mr. *Crit.* Yes, Sir.

Dr. *Oldiſh.* Was he not in Drink when he ſaid ſo?

Mr. *Crit.* I believe he was not very ſober, indeed.

Mr. *Phipps.* Did you ever after hear him ſay he was an *Iriſhman?*

Mr. *Crit.* The next Day he deny'd it.

Mr. *Cowper.* When he had conſider'd the Danger of it.

Mr. *Crit.* The next Day he was examin'd by ſome of the Juſtices of the Peace.

Mr. Sol. Gen. Was you by when he was examined by the Juſtices?

Mr. *Crit.* Yes.

Mr. Sol. Gen. What did he then ſay?

Mr. *Crit.* Then he ſaid he was of *Martenico.*

Mr. Sol. Gen. Set up Mr. *Bullock.* (*Who was ſworn.*) Mr. *Bullock*, Do you know the Priſoner at the Bar?----Mr. *Bullock.* Yes.

Mr. Sol. Gen. Pray what have you heard him ſay of his Deſign that he came into *England* for?

Mr. *Bullock.* He came to *Dover* about the 14th of *July*, 1695, as I remember: I went with ſeveral others, who were brought by the Captain of the *Coventry*, and the Lieutenant, and ſome others: And when we came thither, he there owned himſelf an *Iriſhman*; but when he went the next Day to be examin'd, he ſaid he was of *Martenico.* He told me he had that Barge from the Duke of *Bulloign*, and came on the Coaſt, and was chaſed into the *Flatts*, where they took him.

L. C. J. Did you ever hear him ſay he had any Commiſſion from the *French* King?

Mr. *Bullock.* I know nothing of that; it was late, and we did not examine him then; but the next Day, when he came to be examined, he ſaid he was of *Martenico.*

Mr. Sol. Gen. What did he ſay his Deſign was?

Mr. *Bullock.* He ſaid, that ſeeing the Boat at *Bulloign*, he bought it of the Duke of *Bulloign*; and the Duke aſk'd him what he would do with her? And he ſaid, he would fit her up, and go and take a Ship at Sea, that is, upon our Coaſts.

Mr. *Phipps.* We are in your Lordſhip's Judgment, whether we need give any Evidence; for we think they have not proved their Indictment: For the Indictment ſets forth, *That the* French *King fitted out the* Loyal Clencarty, *of which* Thomas Vaughan *was Commander*; *and that very many* Frenchmen, *Subjects of the* French *King*, *were put on board.* Now the firſt Witneſs ſwears there were no *Frenchmen*; and another ſwears there was one or two; another, that they were Foreigners; but does not believe they were *Frenchmen.* So there is no Proof of that Part of the Indictment; nor is there any Proof that he was Captain of the *Loyal Clencarty:* So that none can ſay, it is the ſame Veſſel mention'd in the Indictment. Nor is any Act of Hoſtility proved; for all the Witneſſes ſay, that *Vaughan* never pretended to attack them, but run from them. So that all they depend on, to ſupport the Indictment, is to prove that he had a Deſign to burn the Ships at *Sheerneſs*; which will not ſerve their Turn; for the Words of the Indictment are, *ad prædandum ſuper altum Mare.* Now *Sheerneſs* is not *ſuper altum Mare*, but *infra Corpus Comitatus*; and then not within the Indictment.

Mr. *Cowper.* The Words Ships at *Sheerneſs*, do not imply, that the Ships lay within the Town of *Sheerneſs*, but off of *Sheerneſs*, which is *altum Mare.*

Mr. *Phipps* Then it is not in your Indictment; for that ſays, at *Sheerneſs.*

Mr. *Cowper.* No, off of *Sheerneſs.*

Mr. Sol. Gen. It is no Contradiction, to ſay the *Sea* is within Part of a County.

Mr. *Phipps.* The Indictment ſays at *Sheerneſs.*

Mr. Sol. Gen. Off of *Sheerneſs* is the high *Sea.*

Mr. *Phipps.* *Sheerneſs* is not the *Buoy in the Nore.* Then you muſt prove he was Captain at this Time: For the Indictment ſays, *Ad tunc fuit Capitaneus & Miles.*

L. C. J. One Overt-Act of adhering to the King's Enemies is, that he put himſelf as a Soldier on board the Ship.

Mr. *Phipps.* You will make one Part agree with another, That the *French* King did ſet out a Ship, and gave him a Commiſſion to be Captain of her.

L. C. J. The Witneſſes have prov'd he acted as a Captain.

Mr. *Phipps.* He was taken; and ſure, if he was taken, he muſt have his Commiſſion with him.

Mr. Sol. Gen. Examine the Marſhal, he took an Account of him: And by Direction of Mr. *Vaughan* himſelf he enter'd him as Captain; and he enter'd ſeveral Men in the Ship as *Frenchmen*, by their own Direction. (*Mr.* Crittenden *was call'd.*) Mr. *Crittenden* have you got your Book in which you made the Entry?----Mr. *Crit.* Yes, I have it.

Mr. Sol. Gen. By whoſe Order did you enter them?

Mr. *Crit.* By the Direction of Captain *Vaughan*, the Priſoner at the Bar.

Mr. *Cowper.* How did you know he was a Captain?

Mr. *Crit.* Becauſe he told me he was Captain, and I enter'd him as ſuch in my Book.

Mr. Sol. Gen. Captain of what?----Mr. *Crit.* The *Loyal Clencarty.*

Mr. Sol. Gen. Pray read your Entry in your Book.

Mr. *Crit.* *Thomas Vaughan*, Captain, *Iriſhman*, the 14th of *July*, 1695; and ſo of all the reſt of the Ship's Crew.

Mr. J *Turton.* Did you write theſe in the Preſence of Captain *Vaughan?*

Mr. *Crit.* Yes, in the ſame Room where he was.

Mr. *Phipps.* Did you write it by his Direction?

Mr. *Crit.* For his own Part, by his Direction; and for the reſt, by their Direction.

L. C. J. Take all the Circumſtances together, it is great Evidence, conſidering what they were about, and what Veſſel they had. Mr. *Crittenden*, can you tell how many *Frenchmen* were there?

Mr. *Crit.* I will tell you preſently. (*He counts them in his Book.*) There were thirteen.

Mr. Sol. Gen. Did Captain *Vaughan* hear any of them bid you enter them as *Frenchmen?*

Mr. *Crit.* I cannot be poſitive in that, I ſuppoſe he did; he was in the ſame Room.

L. C. J. Do you expect Witneſſes from *France* to teſtify where they were born and chriſten'd?

Mr. *Phipps.* One Witneſs ſays, there was not one *Frenchman* there.

L. C. J. Not to his Knowledge.

Mr. Sol. Gen. What do you know of his having a *French* Commiſſion?

Mr. *Bullock.* I did not ſee it.

Mr. *Whitaker.* Did he own his having any *French* Commiſſion?

Mr. *Bullock.* I cannot tell.

Mr. J. *Turton.* He own'd himſelf a Captain.

Mr. *Phipps.* He might be a Captain in another Ship, but not in this Ship; they ought to prove he was Captain at that Time, in that Ship, by the *French* King's Commiſſion.

L. C. J. All the Witneſſes ſay he acted as a Captain at that Time.

Mr. *Cowper.* He own'd himſelf the Captain of the *Loyal Clencarty.*

Mr. Bar. *Powis.* What can be plainer, than that he own'd himſelf Captain?

Dr. *Oldiſh.* This ſeems to me a very ſtrange Proof, to be built only upon the Sayings of theſe Perſons, that they were *Frenchmen*; and this to a Man who had no Authority to examine them, when it might have been eaſily prov'd in a regular Way, in Caſe they had been ſo; they might have been examined before a Magiſtrate, and thereby it would have appeared whether they were *French* or no. And 'twas abſolutely neceſſary in this Caſe, becauſe of the Contrariety of the Witneſſes; for the firſt Witneſs ſaid, there were no *Frenchmen* aboard; the next ſaid, there were two *Frenchman* and a *Dutchman*; and *Crittenden* ſaid, there were thirteen. Now how can theſe be reconciled, unleſs there had been a legal Examination of the Parties? But the Thing we would chiefly go on is this; I think they have fail'd in the Foundation of the Treaſon; that is, to prove the Priſoner a Subject of this Crown; neither is there the leaſt Colour of Proof thereof. At Night he came to Mr. *Crittenden*, and is in Drink; there he ſays he is an *Iriſhman:* The next Morning, when he is examin'd before the Juſtices, then he comes in a kind of Judgment, and then ſuch a Confeſſion would be of Moment; but then he confeſſes himſelf to be a *Frenchman* of *Martenico.* Now, my Lord, what Credit is to be given to theſe Confeſſions; when before the Marſhal he ſhall ſay, I am an *Iriſhman*; and the next Day, when he is on Examination, he declares himſelf a *Frenchman*; in one Confeſſion he is in Drink, in the other ſober? Now, my Lord, I ſay, what Proof is here? Here then the Foundation of the Treaſon fails: For the Indictment is, *That he being a Subject of the King of* England, *levies War.* Now, my Lord, if this Quality be not proved, all the reſt of the Indictment falls to the Ground: For it is impoſſible for him to commit Treaſon, where he is not a Subject; becauſe there can be no Violation of Allegiance. So that if he be a *Frenchman*, as he declared before the Juſtices, he cannot be guilty of Treaſon. So that here they have fail'd in the Foundation of all; that is, to prove him a Subject of *England.* And becauſe they affirm him to be ſo, it lies on thoſe that affirm it to prove it. But, perhaps, now they will ſay, that theſe little Confeſſions of his will throw the Burden of Proof on him. By no Means; when here is a ſtronger Preſumption on the other Side, a mere extrajudicial Saying to Seamen, that he is an *Iriſhman*, cannot balance his Confeſſion examined before the Juſtices, wherein he ſays he is a *Frenchman*; and ſo can never throw the Burden of Proof on him. Therefore it lies on them that aſſert this to prove it. But, my Lord, tho' it doth not lie on him, yet we will prove him to be a *Frenchman*, and born at *Martenico*, by thoſe that were at the Chriſtening of him, and have known him from Time to Time ever ſince. And becauſe they ſay he can ſpeak *Engliſh*, if you pleaſe to examine him, you ſhall hear him ſpeak natural *French*; ſo that that cannot prove him to be a natural *Iriſhman.*

Mr. *Phipps.* Such a Saying of a Foreigner will be of no great Weight; becauſe, if a Man go into a foreign Country, he may ſay he is that Countryman to get the more Favour.

L. C. J. What, to hang himſelf?

Mr. *Phipps.* No, my Lord; a Man that comes into a ſtrange Country, may very well think he ſhall find better Uſage, by pretending to be of that Country, than by owning himſelf to be a Foreigner. But we will prove *Vaughan* to be a *Frenchman.* Call *Robert French.* (*Then* Robert French *was ſworn.*) Mr. *French*, Pray give the Court and Jury an Account, whether you know Mr. *Vaughan* the Priſoner at the Bar, and how long you have known him, and what Countryman you take him to be, and the Reaſon why?

Rob. French. I have known him this fourteen Years.

Mr. *Phipps.* Where did you ſee him then?

Rob. French. I ſaw him in *Saint Chriſtophers.*

Mr. *Phipps.* Pray give an Account how you came to know him.

Rob. French. About ſixteen Years ago I was at *Mount-Surat*, and I came to *St. Chriſtophers*, and there I chanc'd to come into *Engliſh* Ground, among the Factors; and ſo they brought me to the *French* Ground; and coming there, I was in Company with ſeveral others that Night, and it happened I was told there was one Mr. *Vaughan* there; and I coming acquainted with him, he ſhew'd me this Youth (he was a Youth then): He told me he was his Son, and recommended him to me, becauſe he look'd on me to be a Man in Truſt and Buſineſs.

Mr. *Phipps.* From that Time what has he been reputed?

Rob. French. A Sea-faring Man.

Mr. *Phipps.* But what Countryman?

Rob. French. To be born in *Martenico.*

Mr. *Phipps.* In whoſe Dominions is that?

Rob. French. In the *French* King's Dominion.

Mr. J. *Turton.* What Occaſion had you to diſcourſe of the Place of his Birth?

Rob. French. Becauſe his Father was look'd upon to be a *Frenchman.*

Mr. J. *Turton.* His Father was a *Frenchman ?*

Rob. French. Yes, my Lord, and lived at *Martenico.*

Mr. *Cowper.* How old might he be at that Time ?

Rob. French. About Fifteen or Sixteen.

Mr. *Cowper.* How came you to be talking of his Birth, and with whom ?

Rob. French. One that was talking with me told me his Name was *Vaughan*, and that he was born there.

Mr. *Cowper.* What introduced this Diſcourſe ? How came he to tell you this, that he was born in that Place ?---*Rob. French.* His Father told me ſo.

Mr. *Cowper.* You were talking of one *Vaughan* of his Name: How many were in Company when there was this Talk ?

Rob. French. There were many of them.

Mr. *Cowper.* Name them.

Rob. French. It is ſo long ago I cannot remember them.

Mr. *Cowper.* Name as many as you can of them, as many as you do remember.------*Rob. French.* One Mr. *Bodiken*, a Factor.

Mr. *Cowper.* Who elſe ?——— *Rob. French.* Several others.

Mr. *Cowper.* You named one *Vaughan* before.---*Rob. French.* Yes, I did.

Mr. *Cowper.* But you had forgot him now.

Rob. French. No ; there was one *Vaughan.*

L. C. J. Were there any more ?

Rob. French. Yes, there was ; I remember the Company that went along with me.

L. C. J. Who were they ?

Rob. French. There were ſeveral Paſſengers that went over with me.

L. C. J. How came you to talk of this Man's Nativity ?

Rob. French. Becauſe his Father ſaid, he had not been out of the Iſland in twenty Years. (*At which the People laughed.*)

Mr. *Cowper.* What Place was this Diſcourſe in ?

Rob. French. At *St. Chriſtophers.*

Mr. *Cowper.* How did his Father's ſaying, he had not been out of that Iſland in twenty Years, prove his Son was born there ?

Rob. French. Becauſe he recommended him to me as a Sea-faring Man.

Mr. *Cowper.* What is that a Reaſon of ? What is that to his being born at *Martenico ?*

Mr. J. *Turton.* What Countryman are you ?

Rob. French. I am an *Iriſhman* born.

L. C. J. His Father acknowledg'd himſelf to be an *Iriſhman* born, did he not ?-------*Rob. French.* No, my Lord, he did not ſay where he was born : I do not know.

Mr. J. *Turton.* Have you continued any Acquaintance with Mr. *Vaughan* ſince ? How long did you ſtay at *St. Chriſtophers ?*

Rob. French. I ſtay'd but four-and-twenty Hours, to take in Water.

L. C. J. How long was it after this, before you ſaw this Gentleman, Captain *Vaughan ?*

Rob. French. I never ſaw him ſince, till I ſaw him in *London.*

(*Then the People laughed.*)

L. C. J. Pray, Gentlemen, have Patience. How do you know now, that this is the ſame Man that you ſaw fourteen Years ago ? For there muſt be a great Alteration in a Man in fourteen Years Time, from what was at that Time, being but fifteen Years of Age.

Rob. French. I believe in my Conſcience this is the Man.

L. C. J. Can you take it upon your Oath he is the Man ?

Mr. Bar. *Powis.* In what Language had you the Diſcourſe ?

L. C. J. How long were you in Company with him and his Father ?

Rob. French. I believe five or ſix Hours.

Mr. Bar. *Powis.* In what Language was this Diſcourſe with his Father?

Rob. French. My Lord, he ſpoke *Engliſh*, a Sort of broken *Engliſh.*

L. C. J. Where do you live yourſelf ?---*Rob. French.* I live in *Ireland.*

L. C. J. How long have you lived there ?

Rob. French. Nine or ten Years.

L. C. J. Whereabout in *Ireland ?*----*Rob. French.* In *Connaught.*

L. C. J. Nine or ten Years ?----*Rob. French.* Yes, my Lord.

Dr. *Littleton.* Did not Captain *Vaughan*, nor his Father, ſpeak *Iriſh* to you in that ſix Hours ?----*Rob. French.* No, my Lord.

Mr. J. *Turton.* How long have you been in *England ?*

Rob. French. Not above two Months.

Mr. J. *Turton.* Did you hear of Captain *Vaughan* being to be try'd ?

Rob. French. No, my Lord.

Mr. J. *Turton.* How did he come to hear of you, then ?

Rob. French. I heard he was in Town.

L. C. J. It is a ſtrange Thing ; you have a moſt admirable Memory, and Captain *Vaughan* has as good a Memory as you ; that you ſhould never have any Intercourſe for fourteen Years, and yet ſhould remember one another after ſo long a Time. It is a wonderful Thing too, that when he could not know you were in Town, yet he ſhould call you a Witneſs on his Behalf ; ſure he muſt have the Spirit of Prophecy.

Rob. French. He did not ſend to me at all.

L. C. J. How did you come to be here, then ?

Rob. French. I will tell you. It was my Cuſtom always to go and ſee Priſoners ; and I heard there were Priſoners in *Newgate* ; ſo I went to *Newgate*, and I met with one *Dwall* ; and I aſk'd him of another Gentleman that was there ; and I went to the other Side by Chance, and I met with Captain *Vaughan.*

L. C. J. What was thy Deſign ? Why didſt thou viſit *Newgate ?*

Rob. French. Becauſe it was my Cuſtom, becauſe it was an Act of Charity.

L. C. J. Did you go to *Newgate* out of Charity ?

Rob. French. I went to ſee my Friend, and carried a Letter to him. I went out of Charity.

Mr. *Phipps.* You were in the *Weſt-Indies*, upon the *French* Ground ; don't they ſpeak *Engliſh* on the *French* Ground, and *French* on the *Engliſh* Ground ?-----*Rob. French.* Yes.

Mr. *Cowper.* So they do here. Did you ever ſee Captain *Vaughan* before that Time ?-----*Rob. French.* No.

Mr. *Whitaker.* Did you viſit lately any other Priſoners in *Newgate*, beſides Captain *Vaughan ?*----*Rob. French.* Yes.

Mr. *Whitaker.* Give their Names.

Rob. French. I have viſited Mr. *Noland*, and another Gentleman that is with him ; and I went into the Houſe, and drank with him there.

Mr. *Whitaker.* What is that other Gentleman's Name ?

Rob. French. I do not remember his Name at preſent ; but he is a Companion of Mr. *Noland*'s.

Mr. *Whitaker.* Do you know him if you ſee him ?

Rob. French. I, I would.

L. C. J. Treby. How long have you been in *England ?*

Rob. French. But two Months.

L. C. J. Treby. Have you uſually viſited Priſoners in former Years ?

Rob. French. My Lord, wherever I have been it was my Cuſtom to do ſo.

L. C. J. Treby. But how doth it conſiſt that you, who are an *Iriſhman*, ſhould come hither to viſit Priſoners in *Newgate ?*

Rob. French. I can prove under my Lord Mayor of *Dublin*'s Hand, that I came here upon Buſineſs ; and I went to the Priſon to viſit the Priſoners for Charity-ſake, and did beſtow it according as I was able.

L. C. J. You had beſt ſtay there, and not go away ; for we may have Occaſion to aſk you ſome Queſtions.

Mr. *Cowper.* Do you not uſe, out of Charity, to be Evidence for them ?

Rob. French. No, never before in my Life.

Mr. *Whitaker.* What other Priſons have you viſited beſides *Newgate ?*

Rob. French. I did viſit none.

L. C. J. Treby. Had you no Charity for other Priſons ?

Mr. Bar. *Powis.* When you ſo viſit Priſons, on what Account is it ? Is it to give ghoſtly Advice ?

Rob. French. Upon a charitable Account, my Lord.

L. C. J. Ghoſtly Advice and Charity.

Mr. *Phipps.* Where is Mr. *Leſleur ?* (*He did not appear.*) Call Mr. *Gold.* (*Who appeared.*)

Cl. of Arr. That Man is attainted, but pardoned.

Mr. *Phipps.* Mr. *Gold*, how long have you known Captain *Vaughan ?*

Mr. *Gold.* I never knew Mr. *Vaughan*, before I ſaw him in the *Marſhalſea.*

Mr. *Phipps.* Is Monſieur *Leſleur* here ? Is Mr. *Deherty* here ?

(*Mr.* Deherty *appeared, and was ſworn.*)

Mr. *Phipps.* Do you know Mr. *Vaughan*, the Priſoner at the Bar ?

Mr. *Deherty.* Yes.

Mr. *Phipps.* How long have you known him ?--Mr. *Deherty.* Five Years.

Mr. *Phipps.* What has he been reputed all along, ſince you have known him ?---Mr. *Deherty.* A *Frenchman.*

Mr. *Phipps.* Did you know him in *France ?*

Mr. *Deherty.* Yes ; and he was reputed a *Frenchman* there.

Mr. J. *Turton.* What Occaſion had you to enquire into that, the Place of his Nativity ?

Mr. *Deherty.* I did not enquire at all ; but one that was his Servant was my Comrade a great while.

Mr. *Phipps.* Now we will prove where he was chriſtened, by one that was at his Chriſtening, Mr. *Daſcine.* (*He appeared and ſtood up, being ſworn, and ſpoke in* French *to the Court, pretending he could not ſpeak* Engliſh.)

L. C. J. If he cannot ſpeak *Engliſh*, there muſt be an Interpreter.

Mr. Sol. Gen. They muſt find an Interpreter, he is their Witneſs.

[*Then a Perſon in Court ſtood up, and told the Court he could ſpeak* Engliſh *as well as he ; that he had been a Bailiff's Follower for ſeveral Years.*]

L. C. J. You can ſpeak *Engliſh*, can you not ?

Mr. *Daſcine.* I will ſpeak as well as I can.

King's Meſſenger. I am a Meſſenger to the King, do you know me ?

Mr. *Daſcine.* Yes.

L. C. J. Prithee ſpeak *Engliſh.*

Mr. *Daſcine.* As well as I can, my Lord, I will ſpeak.

Mr. *Phipps.* Are you ſworn ?---Mr. *Daſcine.* Yes, my Lord.

Mr. *Phipps.* Do you know Captain *Vaughan ?*

Mr. *Daſcine.* In 1669 I was in *St. Chriſtophers* ; I went from *Roan*, and from thence I went with Hats and Cloth to *Crebeck*, and had a Letter to one *Thomas Williams*, a Factor in *Martenico.* And after I had done, as I was coming away, Mr. *Williams* deſired me to go to a Chriſtening, a Mile and half from *Port-Royal.* He told me there was one Mr. *Vaughan* had a Plantation there, and deſired him to be Godfather. And about two Days after, I went from *Port-Royal* to *St. Chriſtophers* again, and I came to *Roan* again in a Ship called *St. Joſeph.* So in 1677, I went to *St. Chriſtophers* again, and from thence to *Martenico*, to Mr. *Williams* ; I aſked him, What is become of that young Man we were at the Chriſtening ? And ſo he ſhewed me him that is here (*pointing to the Priſoner*).

L. C. J. That was in 1677 ?

Mr. *Daſcine.* In 1677. So I came from *Port-Royal* ; I went to *St. Chriſtophers*, and ſo took Sail, and came to *France* again. And 13 Years ago I went to *St. Chriſtophers* again, and to *Mountſerat* and *Martenico* ; and ſo when I was at *Martenico*, and aſked Mr. *Williams* of this young Man, that I was at his Chriſtening, and he ſaid, he is at ſuch an Houſe, and I ſaw him there.---*L. C. J.* Thirteen Years ago.

Mr. *Daſcine.* And we went and drank Punch together, and I came back for *Roan.*

L. C. J. When did you ſee him ſince that ?

Mr. *Daſcine.* Never till I ſaw him here a Priſoner.

L. C. J. How do you know he is the Man ?

Mr. *Daſcine.* He has a Bruiſe in his Side.

Mr. *Phipps.* What was the Gentleman's Name, at the Chriſtening of whoſe Child you were ?——Mr. *Daſcine.* *Thomas Vaughan.*

Mr. *Phipps.* What was the Child's Name ?

Mr. *Daſcine.* *Thomas Vaughan.*

Mr. *Phipps.* When you went the next Time to *Martenico*, did Mr. *Williams*, you ſpeak of, that was the Godfather, preſent this Perſon, Captain *Vaughan*, to you, as the Man who was then chriſtened ?

Mr. *Daſcine.* Yes, the next Time.

Mr. *Phipps.* Now is Captain *Vaughan*, that ſtands at the Bar, that very Gentleman ?---Mr. *Daſcine.* I am ſure it is he.

L. C. J. You ſay this Meeting was about 1669 ?---Mr. *Daſcine.* Yes.

Mr. Sol. Gen. Pray what was the Reaſon you were ſo inquiſitive to know what became of that Perſon that was chriſtened when you was there ?

Mr. *Daſcine.* Becauſe I being at the Chriſtening, I aſk'd him how the Child did.

L. C. J. How came to you to take ſuch extraordinary Obſervation of that Child? Was he ſuch a remarkable Child?

Dr. *Newton.* Where were you born?-----Mr. *Daſcine.* In *France.*

Mr. *Whitaker.* What are you?----Mr. *Daſcine.* A Barber by Trade.

L. C. J. What Employment have you?

Mr. *Daſcine.* An Officer in the *Marſhal*'s *Court* ſometimes.

Mr. Juſtice *Turton.* What was this Man's Father, what Sort of Man was he?----Mr. *Daſcine.* A tall Man.

Mr. Baron *Powis.* What was his Father's Name?

Mr. *Daſcine.* *Thomas Vaughan.*

Mr. Juſtice *Turton.* Was his Father living when you was there the ſecond Time?

Mr. *Daſcine.* The laſt Time I was there I did not ſee his Father, but I ſaw his Father the ſecond Time.

Mr. Juſtice *Turton.* But you ſaw Mr. *Williams*, his Godfather.

Mr. *Daſcine.* Yes.

Mr. *Phipps.* Call *Simon Danneaun.*

Tho. Vaughan. My Lord, he is ſick, and not able to come out of his Bed.

Mr. *Phipps.* Call *Francis Harvey.* (*Who was ſworn.*)

Mr. *Phipps.* Do you know Captain *Vaughan?*

Francis Harvey. Sir, in the Year 1693, I was in *France* with one Captain *Bontee*, who was taken Priſoner in *Auguſt* the ſame Year; and my Captain he had the Liberty to go up to *Paris* with a Guard, for his Pleaſure, and to learn the Speech. And, as it happened, we came to lodge in a Street, called *Dolphin-Street*, at the Sign of the *Crown*; and there was ſome Gentlemen that were there to learn the Speech, that were my Countrymen; and there was a young Man there, and he was acquainted over the Way, where this Gentleman, Captain *Vaughan*, lodged; he lodged at his Aunt's that ſold Silks; her Name was Madam *Wotton*; I ſaw this Gentleman there; I am ſure it is he; and with that I came acquainted with him, as well as the reſt.

Mr. *Phipps.* What was he reputed there?

Fr. Harvey. A Captain of a Ship.

Mr. *Phipps.* What did he go for there? A *Frenchman*, or an *Engliſhman*, or an *Iriſhman?*

Fr. Harvey. He went for a *Frenchman*, as I heard; one Time his Aunt, ſhe ſaid, that he was born in the *Weſt-Indies*, at *Martenico*, and that he was her Siſter's Son, that lived in *Martenico.*

Mr. Sol. Gen. You ſay he was a Captain of a Ship? what Ship?

Fr. Harvey. That I cannot tell.

Mr. Sol. Gen. When was that?-----*Fr. Harvey.* In 1693.

Mr. *Phipps.* Is Mr. *Lefleur* here?

Cl. of Ar. He is a Priſoner in the *Savoy*; he was taken in the ſame Ship with Mr. *Vaughan.*

Mr. *Phipps.* It is reaſonable he ſhould have been here, to give an Account of the Priſoner.

L. C. J. Then they ſhould have taken care to have had him here. Have you any more Witneſſes?

Mr. Sol. Gen. I think we have given ſufficient Evidence that he is an *Iriſhman:* But now we ſhall ſhew you, that all your Witneſſes have given a very extravagant Evidence to prove that he is a *Frenchman.* All he hoped for was, that the Proſecutors for the King could not be able to prove him an *Iriſhman*; he believed there were but three Men could prove him ſo; that was *David Creagh*, and two more; and ſo he writes to *David Creagh*, and tells him, *That his Life was in his Power, and he hoped he and the other two would not diſcover it.* This *David Creagh* was his Neighbour in *Ireland*; we will call him to prove that Capt. *Vaughan* was born at *Galloway* in *Ireland.*

Mr. *Whitaker.* And here is his Letter under his Hand. Bring *David Creagh.* (*Who was ſworn.*)

Mr. *Cowper.* I deſire, before he give his Evidence, he may look upon thoſe that have given Evidence about the Priſoner, one by one. (*Then he look'd upon* Robert French.) Mr. *Creagh*, do you know him.

D. Creagh. No. (*Then he looked upon the reſt.*)

Mr. *Cowper.* Have you had any of theſe Men come to you on a Meſſage?

D. Creagh. No, Sir.

Mr. Sol. Gen. Do you know *Thomas Vaughan*, the Priſoner at the Bar?

D. Creagh. Yes, I do.

Mr. Sol. Gen. How long have you known him?

D. Creagh. About two Years.

Mr. Sol. Gen. Was that your firſt Acquaintance with him?

D. Creagh. Yes.

Mr. Sol. Gen. What Place was he born at, as you have heard?

D. Creagh. At *Galloway* in *Ireland.*

Mr. Sol. Gen. From whom did you hear it?

D. Creagh. From all Perſons that I have heard ſpeak of him.

Mr. Sol. Gen. Did he ever own to you that he was born there?

D. Creagh. Yes, oftentimes in my Company.

Mr. Sol. Gen. Did you ever receive a Letter from him about your giving Evidence in this Matter?----*D. Creagh.* Yes, Sir.

Mr. Sol. Gen. Do you know this Letter? (*Which was ſhewn him.*)

D. Creagh. Yes, Sir.

Mr. Sol. Gen. Do you know his Hand?

D. Creagh. Yes, I partly know it.

Mr. *Whitaker.* Did you ever ſee him write?

D. Creagh. This is the Letter I received from him.

L. C. J. Read it. Do you think it is his Hand?

D. Creagh. I cannot ſwear it; but I believe it is his Hand.

Mr. *Phipps.* Have you ſeen him write?

D. Creagh. I have ſeen him write ſeveral Times.

L. C. J. Do you believe it is his Hand?

D. Creagh. Yes, my Lord, but I cannot ſwear it.

[*Then the Letter was read.*]

To Mr. David Creagh, *in* Newgate, *Theſe.*

Mr. *Creagh*,

‘I Have ſome Aſſurance that Mr. *Whitaker* has no Witneſs to prove me a Subject of *England*, but you, and two more, which I am glad of with all my Heart: I hope I may have none againſt me that wiſh me worſe than you and Capt. *Etherington.* If Mr. *Whitaker* has not ſworn you yet, I hope you will not appear againſt me. I declare, if I had more than my Life, I would lay it in your Hand. I am like to be ſent to *Newgate* this Day, and it is like you and ſome more will be ſent here, that we may not talk together. The *Dutch Dogs* took from me Eleven hundred Dollars in Money, which certainly troubles me more than the Thoughts of Death, which I value not a Straw; but I hope in four or five Days to be ſupplied. I fear they will keep me cloſe. I have all the Liberty imaginable here to write, and my Friends ſuffered to ſee me. I can ſay nothing that is comfortable, but that I am very well in Health, and nothing concerned, if my Money come in time.’

Friday Morning. *T. Vaughan.*

Mr. *Phipps.* Is that Letter proved? That is not to the Purpoſe; nor of any Weight, conſidering who proves it.

L. C. J. No, that none could prove him a Subject, but he and two more?

Mr. Sol. Gen. We will produce only one Witneſs more. Call Mr. *Jo. Rivet.* The Court being informed by ſome Gentlemen then on the Bench, that there was a Gentleman then in Court, one Mr. *Rivet*, who being of *Galloway*, could probably give ſome Account of the Priſoner; he was immediately called, and required to depoſe what he knew.

Jo. Rivet. My Lord, I am ſorry I am called where Life is concerned, when I came hither only out of Curioſity; but the Service I owe to this Government, obliges me to ſpeak what I know, now I am called to it. [*Then he was ſworn.*]

Mr. Sol. Gen. Do you know the Priſoner at the Bar? What Countryman is he?

Jo. Rivet. I have known him a great many Years; we were Children together in the ſame Town; we lived in *Galloway* in *Ireland.* I knew his Father, and Mother, and Brothers, and Siſters; and I remember him a Child, as long as I can remember any thing, I cannot determine to a certain Number of Years; and I remember him not only a School-boy, but alſo an Apprentice to one Mr. *Coleman.* And I wonder very much at what Mr. *French* ſays, for by the Name and Place of his Birth, he muſt have ſworn what he knows to be otherwiſe; for the *Frenches* are a Family in *Galloway*; his Father was an honeſt Gentleman, and went over into *Ireland* in the Rebellion, in 1641. and he there married a Woman, a Native of *Galloway*, and had ſeveral Children, one of which, in the latter End of King *Charles*'s Reign, turned Papiſt, and I believe the Grief for it haſten'd his Father's Death. I own Part of the Evidence may be true, about his being in the *Weſt-Indies*; but his Mother, I believe, was never out of *Ireland* in her Life.

Dr. *Oldiſh.* What was his Father's Name?----*Jo. Rivet.* *John.*

L. C. J. You ſay, you knew this very Gentleman an Apprentice to one *Tho. Coleman* at *Galloway.*

J. Rivet. I did ſo, my Lord.

L. C. J. How long is it ſince you ſaw him?

Jo. Rivet. I cannot be poſitive, I think at the Reduction of *Galloway* in 1691. I cannot ſay whether at or after; but I ſaw him about that Time, and knew him, and have known him from a Child; I knew him a School-boy, and knew his Brothers.

Mr. Juſtice *Turton.* What Year did you know him firſt?

Jo. Rivet. I dare not be poſitive; I remember him particularly well.

L. C. J. Are you ſure this is the Man?

Jo. Rivet. I know him as well as any Face I ever ſaw. I came accidentally into Court out of Curioſity; and one that knew me, that was of *Galloway*, gave an Account to the King's Counſel, and ſo I am called to give Evidence.

L. C. J. Do you know this *Robert French?*

Jo. Rivet. I cannot ſay I know him, for I ſee him but in the Dark; if I ſaw him in a better Light, it may be I may. (*Then* Robert French *was ſet up for* Mr. Rivet *to ſee him.*) I think I recollect the Face, I am not certain.

L. C. J. Do you know this Gentleman?

Rob. French. No, my Lord.

L. C. J. Where did you live?----*Rob. French.* In *Connaught.*

L. C. J. Did you know *John Vaughan* of *Galloway?*

Rob. French. I have heard of him, my Lord.

Mr. Baron *Powis.* What Trade was the Priſoner's Father?

Jo. Rivet He had the Market ſeveral Years; he lived very well, and kept a Publick Houſe in the Town.

Mr. *Phipps.* Did you know any other *Tho. Vaughan* but this?

Rob. French. No, not in *Galloway.*

Jo. Rivet. This may be a Confirmation of what I ſay: if it be the ſame Gentleman, his Hair is reddiſh.

L. C. J. Pull off his Peruke. (*Which was done.*)

T. Vaughan. My Hair is not red.

L. C. J. How are his Eye-brows?

T. Vaughan. A dark brown, my Lord, the ſame as my Wig.

Mr. Baron *Powis.* Let Somebody look on it more particularly. (*Then an Officer took a Candle, and look'd on his Head, but it was ſhaved ſo cloſe, the Colour could not be diſcerned.*)

Mr. *Phipps.* We can give an Anſwer to this, my Lord; we ſhall prove that there was one *John Vaughan* at *Galloway*, and he had a Son *Thomas*, that died ten Years ago. As for Mr. *Rivet*, he is a mere Stranger to us, we know nothing of him; and, by what I can perceive, he comes in as a Volunteer, not ſubpœna'd by either Side. And for Mr. *Creagh*, we ſhall ſhew he is not to be credited in any thing; for we ſhall prove him guilty of Felony, and that he ſwore, that if his Brother would not ſupply him with Money, he would ſwear Treaſon againſt him, and ſhop him in *Newgate*, and that he ſhould not come out till he came upon a Sledge; and if ſo, there is Nobody ſurely can believe he will ſtick at Perjury or Forgery, or any thing elſe which may be for his Advantage. Call Mr. *Chriſtopher Creagh.* (*Who was ſworn.*)

Mr *Phipps.* Pray do you know *David Creagh?*---*C. Creagh.* Yes.

Mr. *Phipps.* Is he any Relation to you?

C. Creagh. Yes, he is my Brother.

Mr. *Phipps.* Give the Court and the Jury an Account what you know of your Brother?

C. Creagh. It is an unnatural Thing to come on this Occaſion, and I am ſorry I am called upon this Account.

D. Creagh. Speak what you have to ſay?

Mr. *Phipps.* What do you know of your Brother, whether you have not found him guilty of ſtealing any thing?

C. Creagh. My Lord, I am upon my Oath; I have known ſomething of it, he has ſtolen ſome Gold from me.

L. C. J. You pretend to be ſo very nice; you are to anſwer to what you know of his Reputation in general, and of his Way of Living.

C. Creagh. His Reputation has been but very ſlender, I am very ſorry for it; ſeveral in the Court can give Account of it, as well as I. He ſerved a Relation of his at *Newcaſtle*; he ſerved there ſome Time, and came to Town, and came to me, and depended upon me, and I ſubſiſted him; and he took an Opportunity one Day, when I and my Wife were gone abroad, and nobody at home but the Maid, and went up Stairs, where my Wife's Room is, and there being a Saſh-window, he opens it, and took out of my Wife's Cloſet ſeveral Pieces of Gold.

L. C. J. How did you know that he did it?

C. Creagh. I found it out afterwards; he was my Brother, and therefore I did not proſecute him. I did not know he had it, 'till afterwards that I found to whom he had diſpoſed of the Gold. I inquired who was in the Houſe, and thought the Maid had it; and ſhe ſaid none had been there but my Brother; and he at laſt owned the Fact, and I had it again.

L. C. J. Have you any more to ſay of your Brother?

Mr. *Phipps.* Did he ever threaten to ſwear againſt you?

T. Vaughan. Or me?

C. Creagh. He has been confined in *Newgate* eighteen Months, and I ſubſiſted him in Charity; I allowed him all along; and he has been ſending to me by ſeveral Meſſages, that if I ſubſiſted him not with more Money than I did allow him, he would ſwear me into a Plot.

L. C. J. Did he tell you ſo?

C. Creagh. No, but he ſent me Word ſo.

L. C. J. Is the Man here that he ſent this Word by?

C. Creagh. Yes, the Man is here.

Mr. *Phipps.* Let him ſtand up.

L. C. J. Where do you live?

C. Creagh. In *Watling-ſtreet*; I am a Merchant; I declare it is not in Favour or Affection, but only in Conſcience, that I declare this.

D. Creagh. This is only to hinder me from giving my Evidence againſt a Merchant that I have taken up.

T. Vaughan. What Character had he in *Spain?*

[*Then* David Creagh *ſpoke, but was not heard.*]

L. C. J. What do you ſay of the Gold?

C. Creagh. He had it, my Lord.

D. Creagh. Why did you not proſecute me then, if I had it?

L. C. J. You are not ſure he took the Gold.

C. Creagh. I was ſo ſure he had it, becauſe I had it from him again by another Hand.

L. C. J. Did he tell you ſo, that he had it?

C. Creagh. No; but I had a Letter about it.

L. C. J. Where is that Letter?

C. Creagh. I have it not here.

L. C. J. Give not an Evidence of a Letter, without the Letter were here; it ought to have been produced.

Mr. *Phipps.* Call *Chriſtopher Heyden.* (*He was ſworn.*) Do you give the Court an Account what *David Creagh* has ſaid to you of ſwearing againſt any Body.

C. Heyden. Several Times, when my Maſter has ſent me to him, to pay him Five Shillings a-Week, or Five-and-Sixpence a-Week, to ſubſiſt him.

Dr. *Oldiſh.* Who are you Servant to?

C. Creagh. He is my Servant.

C. Heyden. This *David Creagh* has often told me, that I ſhould tell his Brother, that if he would not ſupply him with more Money he would ſwear againſt him. When I came to the *Seſſions-Houſe*, when the Pirates were tried the firſt Time, I was going thro' the Bail-dock, where this *David Creagh* call'd to me; and I aſked him what he did there? He ſaid he was to be Evidence againſt Captain *Vaughan.* No certainly, ſaid I, you do not know him, do you? Says he, Here's the Thing, it had been better for me that I had been an Evidence againſt him before this; and I am forced to be an Evidence againſt him, to ſave myſelf: And he bid me tell his Brother, God damn his Soul to all Eternity, if he did not ſend him Supply that Day, he would have him in *Newgate*, and that he ſhould not come out again till he came out upon a Sledge?

L. C. J Did he ſay ſo?---*C. Heyden.* Yes, my Lord.

C. Creagh. How long is it agone, Mr. *Heyden?*

C. Heyden. It was the Day the Pirates were tried; more than that, here was Mr. *Wroth*'s Man was with me at the ſame Time; and becauſe he ſhould not hear what you ſaid, you took me to the Door.

Mr. *Phipps.* Is *Daniel Bryan* here? (*He appeared, and was ſworn.*)

Daniel Bryan. I was ſubpœna'd here for I know not what; for I know not Captain *Vaughan.*

Mr. *Phipps.* Give me Leave to aſk you a Queſtion: Do you know, or have you heard of *Daniel Creagh?*-----*Daniel Bryan.* Yes, Sir.

Mr. *Phipps.* Will you give an Account of what he has ſaid of ſwearing againſt any Body?

Daniel Bryan. He has threaten'd his Brother ſeveral Times, that if he would not ſend him Relief, he would bring him in for ſomething, and would inform againſt him.

Mr. *Phipps.* Did he ſay he would ſwear againſt him?

Daniel Bryan. He did ſay he would inform againſt him.

Mr. *Phipps.* What did you hear him ſay of ſwearing againſt any one?

Daniel Bryan. He ſaid, he had rather others ſhould periſh, than himſelf.

Mr. *Whitaker.* This Man was condemned for the ſame Crime.

Mr. *Phipps.* Mr. *Vaughan*, have you any other Witneſſes? Call *Creighton.* (*Who was ſworn.*) What Countryman are you?

Creighton. A *Connaught* Man, I was born in *Galloway*; I believe Mr. *Rivet* knows me.

Mr. *Phipps.* Did you know one *John Vaughan*, that lived at *Galloway?*

Creighton. I know him very well.

Mr. *Phipps.* Do you know the Priſoner at the Bar?---*Creighton.* No.

Mr. *Phipps.* Do you remember that that *John Vaughan* had a Son *Thomas*, and what became of him?

Creighton. Yes, he had a Son *Thomas*; but I underſtood that he went ſomewhere into the Country, and there died; and it was ſpread all about the Town.

Mr. *Phipps.* Do you know what he died of?---*Creighton.* I cannot tell.

L. C. J. How long ago did he die?

Creighton. About ten Years ago. I knew all the Brothers.

Mr. *Phipps.* Did you know that *Thomas Vaughan?*

Creighton. I knew him very well.

Mr. *Phipps.* Is that Gentleman, the Priſoner, he?---*Creighton.* No.

Mr. *Phipps.* Do you believe that is not the Man?

Creighton. I believe not.

Mr. *Phipps.* Did you ever know any other *Thomas Vaughan?*

Creighton. No.

Mr. Juſtice *Turton.* Had not *John Vaughan* a Son Apprentice at *Galloway* to one *Thomas Coleman?*———*Creighton.* No, as I know of.

Mr. Juſtice *Turton.* How old was that Son, *Thomas Vaughan*, when you knew him?

Creighton. I was born at the next Door to that *Thomas Vaughan* that was reputed to be dead.

Mr. Juſtice *Turton.* Was not that *Thomas Vaughan* Apprentice to Mr. *Coleman?*---*Creighton.* I cannot certainly tell.

Mr. Juſtice *Turton.* How old was that *Thomas Vaughan* when he went away from *Galloway?*——*Creighton.* I cannot tell.

Mr. Juſtice *Turton.* What is your own Age?

Creighton. My Age is about Five-and-Twenty.

L. C. J. You have not ſeen him in Ten Years?

Creighton. No, my Lord.

L. C. J. Can you take it upon your Oath this is not the Man you ſaw ten Years ago, that *Thomas Vaughan* you knew?

Creighton. Yes, my Lord.

L. C. J. How old was he when you were acquainted with him?

Creighton. I cannot tell certainly; I believe he might be about Fifteen.

L. C. J. How long is that ſince?——*Creighton.* Ten Years.

L. C. J. What is your Name?

Creighton. Creighton.

Mr. *Cowper.* You ſay you knew him ten Years ago; pray what ſort of Perſon was he, and how did he differ from this Man?

Creighton. He was better ſet, and not quite ſo tall as this Man, and full of the Small-Pox; he was the quarrelſomeſt Boy in the whole Town.

Mr. Sol. Gen. You ſay he was not quite ſo tall as this Man?

Creighton. No, he was not quite ſo tall.

Mr. Sol. Gen. Do you think he might not grow ſince? This was ten Years ago, when he was but fifteen Years old.

Mr. *Cowper.* You knew him at Fifteen; how long had you known him?

Creighton. From my Infancy, 'till he departed the Town.

Mr. *Cowper.* During all that Tme, what Employmont was he in? Tell ſome Circumſtances.

Creighton. I think this *Vaughan* went to one Mr. *Ruſſel*'s School.

Mr. *Cowper.* What to do?---*Creighton.* To learn to write and read.

Mr. *Cowper.* And was he not an Apprentice in that Time?

Creighton. I cannot tell.

Mr. *Cowper.* Were you acquainted with him?——*Creighton.* Yes.

L. C. J. You lived next Door to him; ſure you muſt be acquainted with him?

Creighton. He was a fighting Boy; for I remember he did once thraſh my Coat ſoundly.

L. C. J. Where do you live now?

Creighton. At the *Caſtle and Falcon* in *Alderſgate-ſtreet.*

L. C. J. What Trade are you?---*Creighton.* A Shoemaker.

Mr. Baron *Powis.* How long have you lived here?

Creighton. This Ten Years.

Mr. Baron *Powis.* What did that *Thomas Vaughan* die of, that you ſay was dead before you came away, as it was reported up and down?

Creighton. I cannot tell.

Mr. *Cowper.* Juſt now you ſaid he went away from *Galloway*, and it was reported there that he was dead ten Years ago; now you ſay you have been in *England* ten Years.

Creighton. I came into *England* about ten Years ago.

Mr. *Cowper.* Did you hear it at *Galloway* before you came away?

Creighton. I heard it at *Galloway* before I came to *London*; and there are many can teſtify that there was a Report that he was dead.

Mr. Juſtice *Turton.* How long was he gone from *Galloway* before you came away?

Creighton. I cannot ſay to an Hour; I heard he was dead.

L. C. J. Well, well, he went away from *Galloway.*

Mr. Juſtice *Turton.* Have you not been here twelve Years?

Creighton. I think not; I came a little before the Revolution.

Mr. Juſtice *Turton.* That is eight Years ago: Juſt now you ſaid you had been here ten Years.

Mr. *Phipps.* Call *John Kine.* (*Who was ſworn.*) *John Kine*, did you know one *John Vaughan* in *Galloway?*

John Kine. Yes, I lived with him.

Mr. *Phipps.* What Children had he?——*John Kine.* Four Sons.

Mr. *Phipps.* Had he any one of thoſe Sons that was named *Thomas?*

John Kine. Not of thoſe four.

Mr. *Phipps.* Had he a Son *Thomas?*

John Kine. Yes, he had; he died about ten or eleven Years old of the Small-Pox.

Mr. *Phipps.* You ſay you lived with this *John Vaughan*; look upon the Priſoner at the Bar, is he any of thoſe Sons?

John Kine. No, Sir, I never ſaw this Man till now.

Mr. *Phipps.* How long did you live with him?

John Kine. About eight or nine Years.

Mr. *Phipps.* But how long have you been come away from him?

John Kine. About ten Years.

Mr. Juſtice *Turton.* How well do theſe two Witneſſes agree together? The other ſaid he died at Fifteen, and was pitted with the Small-Pox; this Man ſays he died at Ten, and of the Small-Pox.

L. C. J. Where do you live now?---*John Kine.* I live in the City.

L. C. J. How long have you lived there?---*John Kine.* Twelve Years.

L. C. J. How long was this *Thomas Vaughan* dead before you came hither?—*John Kine.* Really I cannot be poſitive, I believe about eight or nine Years.

L. C. J. Did *Thomas Vaughan* die of the Small-Pox?—*John Kine.* Yes.

L. C. J. That you are ſure of?

John Kine. I am ſure that was the Diſeaſe he died of.

L. C. J. You knew him well, I believe?

John Kine, Yes, my Lord.

L. C. J. How old was he when he died?—*John Kine.* About ten Years.

L. C. J. Where was he buried?—*John Kine.* At *Galloway.*

Mr. Juſt. *Turton.* Why does not the Officer take Care? There is one talking with the Witneſs. Can you now reconcile your Evidence? (*To the Priſoner's Counſel.*)

L. C. J. Have you any more Witneſſes?—Mr. *Phipps.* No, my Lord.

Mr. Juſt. *Turton.* What were the Names of all the Sons?

John Kine. The eldeſt was *John Vaughan*, the other *William Vaughan*, another *Edward Vaughan*, and another *James Vaughan*; that was all that he had alive.

Mr. *Whitaker.* There is never a *Thomas Vaughan* among theſe.

Mr. *Cowper.* *Thomas* died up and down in ſeveral Places.

Mr. *Phipps.* Mr. *Rivet*, do you know the Sons of that *John Vaughan?*

Mr. *Rivet.* He had all theſe Sons, *John*, *William*, *Thomas*, and *James*. He ſpeaks of a Son *Edward*; I cannot exactly remember whether there was ſuch a Son or no; tho' I have a rude Idea of it, but am not certain. I knew this *Thomas*, I went to School with him, and I ſaw him in the Year 1691, about the Surrender of *Galloway.*

Juryman. Is that Man at the Bar the ſame *Thomas Vaughan?*

Mr. *Rivet.* I am poſitive of that.

L. C. J. You ſaw him at the Surrender of *Galloway?*

Mr. *Rivet.* I did; it was about that Time.

Thomas Vaughan. I am a Subject of the moſt Chriſtian King; and I deſire, though I ſpeak *Engliſh*, that I may be examined in *French*, in a Matter that touches me ſo near. And you may ſee by my Commiſſion, my Lord, that I am a *Frenchman*; which I deſire may be read.

L. C. J. We ſhall not trouble you with that.

Thomas Vaughan. I can ſhew you my Commiſſion, wherein the King, my Maſter, declares me to be a Subject of *France.*

Dr. *Oldiſh.* Mr. *Vaughan*, I think, you need not trouble the Court to read the Commiſſion; the Commiſſion is the ſame as for all other Subjects of the *French* King, wherein he is look'd upon as a natural-born Subject of *France*; and ſo he owns himſelf upon his Examination before the Judge of the Admiralty.

L. C. J. Have you any more to ſay? As to the Examination, who can prove that?

Mr. *Cawley.* I can prove that, my Lord. (*Mr.* Cawley *was ſworn.*)

L. C. J. Is that *Thomas Vaughan*'s Examination?

Mr. *Cawley.* Yes, my Lord, it is ſigned by him, and taken before Sir *Charles Hedges* the 25th of *July*, 1695.

L. C. J. Read it. (*Then Mr.* Cawley *read the Examination of* Thomas Vaughan.)

The 27th of *July*, 1695.

Officium Domini contra Thomas Vaughan, *Capuem' Navicule*, The Loyal Clencarty.

The Examination of *Thomas Vaughan*, late Commander of the Ship the *Loyal Clencarty*, aged Twenty-ſix Years, taken before the Right Worſhipful Sir *Charles Hedges*, Kt. Judge of the High Court of Admiralty of *England.*

‘THIS Examinate ſaith, That he was born at *Martenico* within the Dominions of the *French* King, and is his Subject; but refuſes to anſwer of what Parents he was born: That he came laſt from thence about four Years ago as Commander of a Ship called the *Hare*, which had been before taken from the *Engliſh*, and came in her to *Nantz* in *France*, and hath ever ſince been in *France*, or cruiſing in *French* Ships: That he hath been a Commander ever ſince he was ſixteen Years of Age, and hath commanded ſeveral *French* Privateers, and was Commander of a Privateer of *St. Malo*, called the *Granada*, of 36 Guns, which about two Years ago took the *Diamond*; and the Examinate was never till now taken. Being aſked, Whether he ever lived in *England*, or in *Ireland?* he refuſes to anſwer. Being aſked, Whether he knew any thing of the taking and carrying off a *Cuſtom-houſe* Boat from the *Downs* to *Bulloigne?* Or, Whether he was then in *London*, or did give Directions to any Perſons, or knew of her being carried off? he anſwered nothing; but ſaid, That if any Perſon would prove it againſt him, he was preſent to anſwer it: But ſaith, That in *France* he heard of her being brought to *Bulloigne*; and he the Examinate bought her at *Bulloigne* of the Men that carried her away, and that ſhe coſt him 900 and odd Livres, and was then called the *Elizabeth* and *Anne*, or *Michael* and *Anne*, but which doth not remember: That he the Examinate ſtill hath the ſaid Veſſel at *Bulloigne:* That he cannot tell the Names of the Perſons he bought her of, and that took her away, but believes they had a Commiſſion: That ſomething above three Weeks ago the Examinate went with a Commiſſion from the *French* King on board a Two-and-twenty-Oar Barge, called the *Loyal Glencarty*, then at *Bulloigne*, as Commander thereof; and on *Monday* laſt was a Fortnight was taken by the *Coventry* Man of War at the *Buoy in the Gunfleet*; and that the Commander of the *Coventry* took away this Examinate's Commiſſion. Being aſked, Upon what Deſign he came out with the Barge? replied, That it was not to take the Air; That the Barge formerly belonged to the Lord *Danby*, and was taken by a *French* Privateer about a Year ago; That before he came out, he met with two *Engliſh* Seamen upon the Court of Guards at *Bulloigne*, who told the Examinate, that they had been taken Priſoners, and the Examinate took them in upon Charity; and afterwards met another *Engliſhman*, who told the Examinate, that he had been taken in Land-Service, and believes it was before Fort *Kenoque*; and the ſaid Perſon ſitting upon a Stone at *Bulloigne*, and not knowing what to do with himſelf, the Examinate took him on board for Charity, and deſigned to put the ſaid three Perſons aſhore in *England.* Being aſked, Whether he did not put in a Claim for the ſaid *Cuſtom-houſe* Boat, by Reaſon of her Captain? Or, Whether the Perſons that took her had any Commiſſion from him? he the Examinate anſwered, That they that took her, muſt anſwer for what they did, and he muſt anſwer for his Actions only.

Eodem die Capt'
coram me, ‘Thomas Vaughan.’
C. Hedges.

L. C. J. Mr. *Vaughan*, have you any more to ſay?

Tho. Vaughan. It is very hard Circumſtances I am under; if an *Engliſhman* was in *France*, under the Straights that I am here, it would be very hard for him to prove himſelf an *Engliſhman.*

L. C. J. You have had a very fair Trial, and you ſhall have Juſtice, be it for you, or againſt you.

Thomas Vaughan. I hope your Lordſhip will do me Right.

L. C. J. Gentlemen of the Jury, The Priſoner at the Bar, *Thomas Vaughan*, ſtands indicted for High-Treaſon, for adhering to the King's Enemies, *viz.* That he put himſelf as a Soldier in the Service of the *French* King, in a Veſſel called the *Loyal Clencarty*, with divers other Perſons on board her, that were Subjects to the *French* King, and Enemies to the King of *England*, with a Deſign to burn the King's, and his Subjects Ships; and for that Purpoſe went in that Ship. That the Priſoner was on board the Ship, and with ſuch a Deſign, is proved, without all Contradiction, by ſeveral Witneſſes that have been produced; that is, that the Two-and-twenty-Oar Barge, which is the ſame called the *Loyal Clencarty*, lay hovering about the *Buoy in the Nore*; thoſe Men in the *Coventry* imagined they had ſome Deſign of Miſchief to the Ships, and they made after him with the *Coventry.* It was apprehended by Captain *Vaughan* and his Crew, that the *Coventry* would be too hard for them, and ſo they did ſubmit, and were taken. And being examined on what Account he came on our Coaſts, it is confeſs'd by him, That he came with a Deſign to burn our Ships. You may obſerve what Sort of Men were aboard. You have heard it proved to you, that *Crittenden*, the Marſhal of *Dover*, entered thoſe Perſons taken aboard the *French* Veſſel, of what Nation, and what Quality they were; and there were about a Dozen of theſe *Frenchmen*, for they were entered as ſuch. Now, for a Subject of *England* to join with the King's Enemies, in purſuit of a Deſign to burn or take any of the King's, or his Subjects Ships, that is an Adherence to the King's Enemies. But it appears, not only that Captain *Vaughan* was in their Company, but that he was their Commander; which commanding the Veſſel, on board which were *French* Subjects, Enemies of the King and the Kingdom of *England*, is High-Treaſon, and the particular Fact of Treaſon for which he is indicted. And it appears that he had a Commiſſion from the *French* King to command this Veſſel, the *Loyal Clencarty.*

Now the Priſoner having this Commiſſion to be Commander of this Veſſel, though they who ſerved under him were not native *Frenchmen*, but other Foreigners, yet their ſubjecting themſelves to him, acting by Virtue or Colour of that Commiſſion, makes them to be the *French* King's Subjects, during their Continuance in that Service; for otherwiſe all Prizes, which they ſhould take, would make them to be Pirates; which none will pretend to maintain, when they acted by a Commiſſion from a Sovereign Prince, that was an Enemy. And if they ſhall cruize upon our Coaſts with a Deſign to take, or deſtroy any of the King's, or his Subjects Ships, they are Enemies, tho' they were the Subjects of a Prince or State in Amity with the King of *England.* But at this time there is no Neceſſity of entring upon this Queſtion, becauſe it is proved that divers, who were on board this Veſſel, were *Frenchmen*; the joining with whom, in Proſecution of ſuch a Deſign, is that Kind of High-Treaſon, of adhering to the King's Enemies. So that if Captain *Vaughan* was a Subject of *England*, he is proved guilty of High-Treaſon, if you believe the Evidence.

But now it is inſiſted on by Mr. *Vaughan* and his Counſel, that though he was exerciſing Hoſtility againſt the King of *England*, and deſigning Miſchief to his Subjects; yet, ſays he, I was not a Subject of *England*, I was born a Subject to the *French* King. If that be true, then he is not guilty of High-Treaſon; he is an Enemy, but not a Traitor: And that is the Point you are now to conſider of, whether he be a Subject of *England* or *France?*

Now as to that, he being taken under ſuch Circumſtances, and ſpeaking *Engliſh*, it is reaſonable to be preſumed that he is a Subject of *England*, unleſs he proves the contrary. But then you have heard by ſeveral of the Witneſſes, that when he was at firſt taken, he acknowledged himſelf to be an *Iriſhman*; and he did not only acknowledge it to them that aſſiſted in apprehending him, but being carried to *Dover*, when the Marſhal entered him in his Book as a Priſoner, he entered him not as a *Frenchman*, but he declared at that Time he was an *Iriſhman.* It may be, he did not conſider the Conſequence of it; for the next Day he was carried before the Mayor of *Dover*, and then having conſidered better of it, that it was not for his Intereſt to acknowledge himſelf an *Iriſhman*, he ſaid he was born a Subject to the *French* King, and at *Martenico.* There were *Scotchmen* and *Iriſhmen* taken at the ſame Time, and they were entered as of the Nation they belonged to, and ſo were divers entered as *Frenchmen.* So that unleſs he hath given ſufficient Evidence to the contrary, this is ſufficient to induce you to believe him an *Iriſhman* born.

But he has endeavoured to take off this Evidence that hath been given. Firſt, he ſays, it was when he was in Drink, that he did confeſs himſelf to be an *Iriſhman*; but when he was ſober, he ſaid he was a *Frenchman.* And beſides that, he calls a Witneſs, whoſe Name is *Robert French*, to give an Account of him. And *French* ſays, that about fourteen Years ago he was at *St. Chriſtophers*, on *French* Ground, and he did then ſee this *Thomas Vaughan*; he did take him then to be about the Age of Fifteen. He ſays he ſtay'd there about four-and-twenty Hours, and that he was in the Company of this *Vaughan* and his Father about five or ſix Hours. He ſays, his Father told him at that Time, that this young Man, who was then about fifteen Years of Age, was born at *Martenico.* He ſays farther, that his Father did recommend this Son to him to be a Sea-faring Man, being the Employment he intended him for; and he is ſure this is the Man. This *Robert French* was aſk'd, whether he ever ſaw this *Vaughan* from the Time he firſt ſaw him at *St. Chriſtophers* until this Time: He ſays he never ſaw him ſince that Time, till about two Months ago. He gives you this Account how he came to meet with him: He ſays he came to Town; and being a charitable Man, he uſed to viſit the Priſons; and he came to *Newgate* to one *Noland*; and there he ſaw Captain *Vaughan*; and though he had not ſeen him for fourteen Years before, yet he knew him again, and is poſitive that he is the ſame Perſon.

Another ſwears he knew the Priſoner about five Years, and he was reputed a *Frenchman*.

There has been another Witneſs produced, which is that *Daſcine*, who came up as a *Frenchman*, and talked *French*, pretending he could not ſpeak *Engliſh*; but on Examination it was diſcovered that he had an Employment in *England*, and was a Bailiff's Follower; and it appears he can ſpeak *Engliſh* very well; and notwithſtanding his Pretence, has given his Evidence in *Engliſh*. And he tells you, That he, about the Year 1669, did go to *St. Chriſtophers*, and afterwards to *Martenico*; and there he went to one *Williams*, who had a Friend whoſe Name was *Vaughan*, at whoſe Houſe there was a Chriſtening to be of his Son, to whom *Williams* was to be Godfather; and this Witneſs was carried thither, and the Child was chriſten'd *Thomas*. He tells you he went over again to *St. Chriſtophers*, and to *Martenico*, in the Year 1677, and that then he enquired for this Child, and did ſee him. Then he ſays, after that he went over again to *St. Chriſtophers*, and to *Martenico* about thirteen Years ago, and then ſaw him again; and, I think, never ſaw him ſince until very lately; and this Priſoner, he undertakes to tell you, is the very Perſon.

But then one *Harvey* tells you he ſaw him in *France*, in the Year 1693, and there he was taken to be a *Frenchman*, and he lived with a Woman that ſold Silk, that ſaid he was her Nephew, her Siſter's Son; and that he was born at *Martenico*. This is the Evidence he gives you to induce you to believe he is a *Frenchman*.

Now, in the firſt Place, before I open the Evidence in Anſwer to it, I deſire you to obſerve the Weight and Import of this Evidence that hath been produced by the Priſoner. Firſt, for this *French*, that ſays he ſaw Captain *Vaughan* fourteen Years ago, when he was about fifteen Years of Age; he had no former Acquaintance with him; ſtay'd in his Company but ſix Hours; and came away within four-and-twenty Hours after his Arrival; and never ſaw him again in fourteen Years: It is a ſtrange Thing that he ſhould know him again ſo well as to be poſitive that he is the ſame Perſon; for in fourteen Years there is a great Alteration in a Man: For a Man that has known one at the Age of fifteen, and not ſeen him in fourteen Years after, though before he was very well acquainted with him, cannot ſo eaſily know him again. But however he is poſitive, upon his Oath, that he is the ſame Perſon that he ſaw at *Martenico*.

Then as for *Daſcine*, you may conſider him, that he ſhould take Notice of a little Child that he ſaw chriſten'd ſeveral Years before; and that he ſhould now remember him when he had not ſeen him in thirteen Years; ſure he had a great Liking to this Child, that when he went to *Martenico*, many Years after, he ſhould be ſo inquiſitive after him: I muſt leave theſe Things to you to conſider of: That he might have an Aunt in *France*, that is very poſſible too.

But now conſider how this Evidence hath been endeavoured to be anſwered: Two Witneſſes have been produced to contradict that which they have ſworn. The firſt is *David Creagh*, who tells you he has known the Priſoner for two Years; and ſays he was always reputed to be an *Iriſhman*, and born in *Galloway:* He has often diſcourſed with him about his Country, and he told him that he was an *Iriſhman*, and born at *Galloway*. Then you hear what a Letter is produced, writ to *Creagh*, when he was to come upon his Trial; he mentions what his Defence was, and that it was impoſſible that any could do him any harm but he and two more. *Creagh* ſwears it is his Hand; that he hath ſeen him write, and he believes it is his Hand.

Then there is a Gentleman, Mr. *Rivet*, that came here by chance, who is a *Galloway* Man; he ſaith he knew the Priſoner's Father, who was reputed to come thither about the Time of the Rebellion in *Ireland*, in 1641, and lived at *Galloway*; and that this Priſoner, Mr. *Vaughan*, was his Son, and he knew him of a Child; was well acquainted with him; liv'd hard by him; remembers him an Apprentice in *Galloway*, and tells you to whom; and ſays he is ſure this is the very Man; and that he ſaw the Priſoner in 1691, about the Time and the Reduction of *Galloway*; and he is confident that the Priſoner is the Son of *John Vaughan*, at *Galloway*; and he gives you a particular Account of him and his Family, *viz.* of the Reputation and Manner of living of his Father; and what other Brothers he had: So that there is no Objection againſt his Credit; and it is hard to believe, ſince he is ſo poſitive and circumſtantial, that he can be miſtaken.

But the Priſoner and his Counſel have endeavour'd to anſwer all this Evidence; and firſt they have called *Creagh*'s Brother to prove that he is an ill Man; for that he came into this Town where his Brother lives, who ſubſiſted him and took him him into his Houſe; and one Day, when he and his Wife went abroad, he made bold with ſome of his Money; but they thought the Maid had it, and he charg'd her with it; but to his Satisfaction, it did afterwards appear that *David* had it.

Then there is another, *Chriſtopher Heyden*, *Chriſtopher Creagh*'s Servant, who ſays, he heard *D. Creagh* ſay he was forc'd to be an Evidence againſt *Vaughan* to ſave himſelf; and that he uſed to threaten his Brother, that if he would not give him more Money, he would ſwear againſt him. *Bryan* ſaith much to the ſame purpoſe. Theſe are produced to take off the Credit of *D. Creagh*'s Teſtimony.

But then, Gentlemen, as to the Place of the Priſoner's Birth; two other Witneſſes are produc'd to give you Satisfaction that this Captain *Vaughan* was not the Son of that Mr. *Vaughan* of *Galloway* whoſe Evidence I will open to you, and then you will ſee how coherent they are in their Teſtimony. The firſt is *Creighton*, a Shoemaker; he ſays he knew *Thomas Vaughan*, the Son of *John Vaughan* of *Galloway*, about ten Years ſince; he was a *Galloway* Man bred, and lived the next Door to *John Vaughan* that had a Son *Thomas*. He ſays he has been here about ten Years in *England*. He ſays he thinks that *Thomas Vaughan*, the Son of *John Vaughan*, was about the Age of fifteen Years; but that this Priſoner is not he; for that *Thomas Vaughan* was disfigured with the Small-pox; he remembered him well' he had Reaſon for it, for he once baſted him ſoundly; and that he went away from *Galloway* when he was about fifteen Years of Age, and was reported to be dead; and if it were ſo, this Priſoner cannot be the Perſon.

The other Witneſs is as poſitive as *Creighton*; for he ſaith, he knew this *John Vaughan* of *Galloway*, and his Son *Thomas*; and that *Thomas Vaughan*, Son of *John Vaughan*, died about ten Years ſince of the Small-pox. So that they have found two *Thomas Vaughans:* One tells you of one that was fifteen Years old, and was disfigur'd with the Small-pox; and the other tells you of *Thomas Vaughan*, who died of the Small-pox when he was ten Years of Age.

You are therefore to conſider the Evidence on both Sides. The Queſtion principally is, Whether the Priſoner be a Subject of the King of *England*. If you are ſatisfied that he is not an *Engliſh* Subject, but a *Frenchman*, then he is not guilty of this High-Treaſon; but if you are ſatisfied, by the Series of the whole Evidence, that he is an *Iriſhman*, and that he had a Commiſſion from the *French* King, and that he cruized upon our *Engliſh* Coaſts, in company with the King's Enemies, with a Deſign to take, burn, or deſtroy any of the King's or his Subjects Ships, you are to find him guilty of the High-Treaſon whereof he ſtands indicted; otherwiſe you are to acquit him.

Cl. of Arr. Swear an Officer to keep the Jury. (*Which was done.*)

(*After a ſhort Stay, the Jury returned into Court, and gave in their Verdict.*)

Cl. of Arr. Gentlemen, anſwer to your Names. *E. Leeds.*

Mr. *Leeds*. Here.

Cryer. Vous Avez, and ſo of the reſt.

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. Thomas Vaughan, hold up thy Hand. (*Which he did.*) Look upon the Priſoner. How ſay you, is he guilty of the High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the Treaſon committed?

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court hath recorded it: You ſay that *Thomas Vaughan* is guilty of the High-Treaſon whereof he ſtands indicted; but that he had no Goods or Chattels, Lands or Tenements at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge; and ſo you ſay all.

Jury. Yes.

Tho. Vaughan. My Lord, let me beg one Favour, that I may be uſed like a Gentleman; that I may be ſent to a Chamber, and not to a Dungeon; and that my Friends may come to me.

L. C. J. Capt. *Vaughan*, they ſay you once made an Eſape, and therefore the Keeper muſt keep with Humanity, but with all Security.

Tho. Vaughan. I deſire I may be kept like a Chriſtian.

L. C. J. The Keeper muſt do his Duty.

Cl. of Arr. Thomas Vaughan, hold up thy Hand. (*Which he did.*) Thou ſtandeſt convicted of High-Treaſon againſt our Sovereign Lord the King; What haſt thou to ſay for thyſelf why Judgment ſhall not paſs againſt thee to die according to the Law?

Tho. Vaughan. I am altogether a Stranger to the Law, my Lord; I refer myſelf to my Counſel.

L. C. J. Well, then you refer yourſelf to your Counſel. You have had a fair Trial, and have no Reaſon to complain of it: If your Counſel have any thing to ſay in Arreſt of Judgment, they ſhall be heard.

Mr. *Phipps.* My Lord, the Indictment has two Sorts of Treaſon laid in it; the one for adhering to the King's Enemies, the other levying of War; and with Submiſſion, I take it, that the firſt is not well laid; for it ſays that the Priſoner did adhere to the King's Enemies, but ſays not againſt the King. Now every Body knows that the *French* King is in War, not only with *England*, but *Holland* and *Spain*, and the Emperor: But if a Man join with the *French* againſt any of them, he adheres to the King's Enemies; and yet it cannot be ſaid to be againſt the King; therefore they ought to have laid it, that he did adhere to the King's Enemies *contra Dominum Regem*; it muſt be aiding and comforting them againſt the King that makes the Treaſon.

L. C. J. It does ſay ſo.

Mr. *Phipps.* No, my Lord; it only ſays that Captain *Vaughan* did adhere to the King's Enemies, and does not ſay it was againſt the King; and if that be Treaſon, is what we deſire to know.

L. C. J. If he adhere to the King's Enemies, it muſt be againſt the King, though he aſſiſt them only againſt the King's Allies; for thereby the King's Enemies may be more encouraged and enabled to do Miſchief or Damage to the King. Suppoſe you aſſiſt the *French* King againſt the King of *Spain*, that is now in Alliance and League with the King of *England*, and the *French* in actual Enmity; that is to adhere to the King's Enemies againſt the King.

Mr. *Phipps.* Would that be Treaſon, my Lord?

L. C. J. Yes, certainly; though that is not a Point in this Caſe, and ſo not neceſſary to be determined now; for the Act of Parliament of 25 of *E.* III. defines Treaſon in adhering to the King's Enemies, and expreſſes the Overt-Act in giving them Aid or Comfort; it is ſufficient to alledge the Treaſon in the Words of the Statute, adhering to the King's Enemies. An Overt-Act alledged, ſhews it to be againſt the King; and in purſuance of that Adherence, he did ſo and ſo: He was a Captain and Soldier in the Ship; did join with the King's Enemies, *&c.* with a Deſign to deſtroy the King's and his Subjects Ships; ſurely that is moſt manifeſtly an Adherence to the King's Enemies againſt the King.

Mr. *Phipps.* The Overt-Act, if it were alledged ſufficiently, would not help it; for if there can be an adhering to the King's Enemies, that is not Treaſon; they ought to alledge ſuch adhering as is Treaſon; and if the Treaſon itſelf is not well alledged, the Overt-Act will not help it.

L. C. J. There is an Overt-Act to ſhew it to be againſt the King. It is ſaid all along, he being in this Veſſel *Clencarty*, *cum diverſis Subditis.*

Mr. *Phipps.* But then that Overt-Act is not well alledged; for 'tis ſaid only he went a-cruiſing; whereas they ought to have alledged that he did commit ſome Acts of Hoſtility, and attempted to take ſome of the King's Ships; for cruiſing alone cannot be an Overt-Act; for he might be cruiſing to ſecure the *French* Merchant-Ships from being taken, or for many other Purpoſes, which will not be an Overt-Act of Treaſon.

L. C. J. I beg your Pardon. Suppoſe the *French* King, with Forces, ſhould come to *Dunkirk* with a Deſign to invade *England*; if any one ſhould ſend him Victuals, or give him Intelligence, or by any other Way contribute to their Aſſiſtance, it would be High-Treaſon in adhering to the King's Enemies.

Mr. *Phipps.* If the *French* King had deſign'd an Invaſion upon *England*, and Captain *Vaughan* had aſſiſted in his Veſſel in forwarding the Invaſion, it would have been Treaſon; but here is nothing mentioned but Cruiſing.

L. C. J. Cruiſing about the Coaſts of *England* with a Deſign to deſtroy the King's Ships.

Mr. *Phipps.* That Deſign ought to be made appear by ſome Act of Hoſtility; for in the Caſe of *Burton* and *Bradſhaw*, and others, which my Lord *Coke* cites, the agreeing to riſe and pull down Incloſures, and meeting and providing Arms for that Purpoſe, is agreed not to be levying of War; and they were indicted for conſpiring to levy War, upon the Statute of Queen *Elizabeth.* And in this Caſe, here being only a Conſpiring, and nothing attempted, it can be no more Treaſon than it was in that Caſe.

L. C. J. When Men form themſelves into a Body, and march Rank and File with Weapons Offenſive and Defenſive, this is levying of War with open Force, if the Deſign be publick. Do you think when a Ship is armed with Guns, *&c.* doth appear on the Coaſt, watching an Opportunity to burn the King's Ships in the Harbour; and their Deſign be known, and one goes to them, and aids and aſſiſts them, that this is not an adhering to the King's Enemies? Here are two Indictments, one for levying War, and the other for adhering to the King's Enemies; but the adhering to the King's Enemies is principally inſiſted on; and there muſt be an actual War proved upon the Perſon indicted in the one, yet need not be proved in the other Caſe.

Mr. *Phipps.* The ſame certainly is neceſſary in one as well as the other; for barely adhering to the King's Enemies is not Treaſon; but there muſt be an actual aiding and comforting them; and a mere Intention to aſſiſt the King's Enemies, is not an Adherence within the Statute of 25 *Ed.* III.

L. C. J. If there be not High-Treaſon in the Act alledged; that is, if it do not make out an Adherence to the King's Enemies, then your Objection would hold good.

Mr. *Phipps.* The going to cruize, my Lord, does not make out an Adherence to the King's Enemies; for his Cruiſing might be for other Purpoſes as well as to take the King's Ships; and your Lordſhip will intend the beſt in favour of Life.

Mr. *Whitaker.* To burn the King's Ships.

L. C. J. Treby. The Indictment is laid for adhering to, and comforting and aiding the King's Enemies. You would take that to be capable to be conſtrued adhering to the King's Enemies in other Reſpects; but I take it to be a reaſonable Conſtruction of the Indictment, to be adhering to the King's Enemies in their Enmity. What is the Duty of every Subject? It is to fight with, ſubdue, and weaken the King's Enemies: And contrary to this, if he confederate with, and ſtrengthen the King's Enemies, he expreſly contradicts this Duty of his Allegiance, and is guilty of this Treaſon of adhering to them. But then you ſay here is no aiding, unleſs there were ſomething done, ſome Act of Hoſtility. Now here is going aboard with an Intention to do ſuch Acts; and is not that comforting and aiding? Certainly it is. Is not the *French* King comforted and aided, when he has got ſo many *Engliſh* Subjects to go a-cruiſing upon our Ships? Suppoſe they man his whole Fleet, or a conſiderable Part of it; is not that aiding? If they go and enter themſelves into a Regiment, liſt themſelves and march, though they do not come to a Battle; this is helping and encouraging; ſuch Things give the Enemy Heart and Courage to go on with the War; or elſe, it may be, the *French* King would come to good Terms of Peace. It is certainly aiding and comforting of them to go and accept a Commiſſion, and enter into their Ships of War, and liſt themſelves, and go out in order to deſtroy their Fellow-Subjects, and ruin the King's Ships; theſe are Actings of an hoſtile Nature. And if this be not adhering, *&c.* it may as well be ſaid, That if the ſame Perſons had made an Attack upon our Ships, and miſcarried in it, that had not been ſo neither; becauſe that in an unproſperous Attempt there is nothing done that gives Aid or Comfort to the Enemy. And after this kind of Reaſoning, they will not be guilty, 'till they have Succeſs; and if they have Succeſs enough, it will be too late to queſtion them.

Mr. *Phipps.* Intending to levy War is not Treaſon, unleſs a War be actually levied.

L C. J. Treby. Is it not actually levying of War, if they actually provide Arms, and levy Men, and in a warlike manner ſet out and cruize, and come with a Deſign to deſtroy our Ships?

Mr. *Phipps.* It would not be an actual levying of War, unleſs they commit ſome Act of Hoſtility.

L. C. J. Yes, indeed, the going on board, and being in a Poſture to attack the King's Ships. As to the Fault you find with the Indictment, there is a Fault, but not in Point of Law; they might have laid it more generally, ſo as to have given more Evidence.

Mr. Baron *Powis.* However, it is well enough. But for you to ſay, becauſe they did not actually fight, it is not a levying War; it is not plain what they did intend. That they came with that Intention, that they came in that Poſture, that they came armed, and had Guns and Blunderbuſſes, and ſurrounded the Ship twice; they came with an armed Force; that is a ſtrong Evidence of the Deſign.

L. C. J. You would make no Act to be aiding and aſſiſting, but fighting.

Mr. *Phipps.* Then next I am in your Lordſhip's Judgment, whether the Statute of 28 of *Hen* VIII. by which Captain *Vaughan* is tried, is in Force, and be not repealed by the firſt and ſecond of *Philip* and *Mary*, which ſaith, That all Trials, in Caſes of Treaſon, ſhall be at the Common Law. Now by the Common Law, before the Statute 28 *Hen.* VIII. Treaſon done upon the Sea was tried before the Admiral, or his Lieutenant; and my Lord *Coke*, in the 12 *Rep.* in the Caſe of the Admiralty, ſaith, the Juriſdiction of the Admiralty is by the Common Law. By the Statute 33 *Hen.* VIII. Treaſon confeſſed before three of the Privy-Council might be tried in a foreign County, but that Statute is repealed by the Statute 1 and 2 of *Philip* and *Mary*; for by the Statute 33 *Hen.* VIII. *c.* 4. Treaſon committed in *Wales*, might be tried in what County the King would aſſign; but ſince the Statute of *Philip* and *Mary*, it muſt be in the proper County; ſo that we are in your Lordſhip's Judgment, whether the Statute of 28 *Hen.* VIII. be in Force; and whether, ſince the Statute of 1 and 2 *Philip* and *Mary*, Treaſons done upon the Sea, ought not to be tried before the Admirals, or anciently at the Common Law?

L. C. J. This is Treaſon by the Common Law, and the Trial is by the Method of the Common Law.

Mr. *Phipps.* 'Tis true that my Lord *Coke*, and other Authorities ſay, that the Statute 35 *Hen.* VIII. for trying Treaſons committed beyond Sea, is not repealed by the Statute of 1 and 2 *Philip* and *Mary*; but they do not ſay that this Statute is not repealed by the Statute of *Philip* and *Mary*; and the Books being ſilent in this, is the Reaſon why I propoſe this Queſtion for your Lordſhip's Judgment.

L. C. J. It is no more a Queſtion than the Trials of foreign Treaſon, and then the Determination of the Trials upon the 35th determines the Queſtion upon this.

Dr. *Oldiſh.* We muſt have two Witneſſes by the Rules of the Civil Law; an extrajudicial Saying of a Party may be retracted by them at any Time, that is the Civil Law, and ſo there can be but one Witneſs.

L. C. J. That is not the Law of *England.*

Dr. *Oldiſh.* I do humbly conceive that the Civil Law is not taken away in this Caſe; for though the Statute preſcribes the Form of Proceedings according to the Rules of the Common Law, yet as to the Crimes and Proofs, the Civil Law is ſtill in Force; and then the Party may retract his Confeſſion in Judgment, much more any extrajudicial Saying.

Mr. *Whitaker.* You are arraigning the Verdict.

L. C. J. That you ſhould have taken Notice of before the Verdict was given. But we think there is no Danger in hearing this Objection, becauſe it is ſo eaſily anſwered. How many Witneſſes were to the Confeſſion?

Sir *Charles Hedges.* We are not in a Court that proceeds according to the ſtrict Rules of the Civil Law; but if we were, that Law is not ſo abſurd as to allow that a Party may retract his Confeſſion at any Time, ſo as to make it have no Effect.

Dr. *Oldiſh.* There muſt be two Witneſſes at any Time.

Sir *Charles Hedges.* So there are here to the Confeſſion; but you miſtake, if you think that every Particular is to be proved ſtrictly as the Civil Law requires; for the End of the Statute which directs the Proceedings of this Court, was to facilitate the Method of making Proofs, that being found difficult by the Courſe of the Civil Law; and therefore was that Statute made, as plainly appears by the Preamble thereof.

Dr. *Oldiſh.* There is a new Statute that revives that Statute again, and that requires two Witneſſes; whereby it is reduced to the Rules of the Civil Law again.

L. C. J. Two Witneſſes there muſt be; but then conſider it is not neceſſary to have two to every individual Overt-Act: For ſuppoſe there be two Overt-Acts laid in the Indictments, for one Species of Treaſon, compaſſing and imagining the Death of the King; if there be one Witneſs that he bought a Dagger, and ſaid he would kill the King, and he is ſeen, it may be, going to the King's Bed-Chamber with the Dagger; another Witneſs ſays, he ſaid he would kill the King with a Piſtol, and bought a Piſtol, and he ſtood waiting to kill the King as he came by; that is another Overt-Act of the ſame Treaſon. If one Witneſs prove one, and another Witneſs prove the other, that is ſufficient Proof with us.

Dr. *Oldiſh.* It is another Queſtion, Whether he be a Subject?

L. C. J. That is not an Overt-Act; if there be one Witneſs to that, it is enough, there needs not two Witneſſes to prove him a Subject; but upon the Trial there were above two Witneſſes to prove it; that was *Crittenden* the Marſhal of *Dover*, *Creagh*, and *Rivet.* I muſt tell you, as the Doctrine of the Civil Law, it is not univerſally received in all Countries; it is received in ſeveral Countries as they find it convenient, and not as obligatory in itſelf.

Dr. *Oldiſh.* Yes, in all Places, as to Proof; for 'tis the Law of God and Nations, *ex Ore duorum, vel trium,* &c. and one Witneſs is no Witneſs.

Sir *Charles Hedges.* Two Witneſſes may be neceſſary to convict a Man of any capital Crime, but then it doth follow that there muſt be two Witneſſes to prove every particular Fact and Circumſtance. In this Point, touching the Place of the Nativity of *Thomas Vaughan*, was there not ſufficient in his own Confeſſion, together with the other Proofs on the King's behalf, to throw the Burden of Proof upon the Priſoner? You yourſelves ſeem to have been of that Opinion; you undertook to prove it, and 'tis you that have failed in that Particular.

L. C. J. Our Trials by Juries are of ſuch Conſideration in our Law, that we allow their Determination to be the beſt, and moſt advantageous to the Subject; and therefore leſs Evidence is required than by the Civil Law. So ſaid *Forteſcue* in his *Commendation of the Laws of* England.

Dr. *Oldiſh.* Becauſe the Jury are the Witneſſes in Reality, according to the Laws of *England*, being preſumed to be *ex vicineto*; but when it is on the high and open Seas, they are not then preſumed to be *ex vicineto*, and ſo muſt be inſtructed according to the Rules of the Civil Law by Witneſſes.

Mr. Baron *Powis.* This is not a Trial by the Civil Law; for that Statute was made to avoid the Niceties of your Law.

Mr. J. *Eyre.* He is tried with like Evidence, as in other Caſes of High-Treaſon.

Dr. *Oldiſh.* No, the late Act requires two Witneſſes.

Cl. of Ar. Make Proclamation of Silence.

Cryer. All manner of Perſons are commanded to keep Silence, while Judgment is giving, upon Pain of Impriſonment.

And then Judgment was given, according as the Law directs in Caſes of High-Treaſon.

The Commiſſion of Captain Thomas Vaughan, *which he had by Order of the* French *King.*

‘*LEWIS ALEXANDER* of *Bourbon*, Earl of *Toulouſe*, Duke of *Amville*, Commander of the King's Orders, Governor and Lieutenant-General for his Majeſty in the Province of *Britany*, Peer and Admiral of *France:* To all thoſe who ſhall ſee theſe preſent Letters, Greeting. The King having declared War againſt his Catholick Majeſty, the Favourers of the   of the Crowns of *England* and *Scotland*, and the *Eſtates of the United Provinces*, for the Reaſons contained in the Declarations publiſhed by his Majeſty throughout the Extent of his Kingdom, Countries, Lands, and Lordſhips under his Obedience; and his Majeſty having commanded us to take care that the ſaid Declaration be obſerved, in what doth depend upon the Power and Authority which his Majeſty hath been pleaſed to commit to our ſaid Charge of Admiral; We have, according to the expreſs Orders of his ſaid Majeſty, given Leave, Power and Permiſſion to *Thomas Vaughan*, living at *Bulloigne*, to arm and ſet forth in warlike Manner a Bark, called *The Loyal Clencarty*, of the Burthen of Ten Tons, or thereabouts, which is at preſent in the Port of *Bulloigne*, with ſuch Number of Men, Cannons, Bullets, Powder, Shot, and other Ammunitions of War, and Proviſions which are neceſſary to ſet her out to Sea, in a Condition to ſail and cruize upon the Pirates, and others without Commiſſion, as alſo upon the Subjects of his Catholick Majeſty, the *Eſtates of the United Provinces*, the Favourers of the   of the Crowns of *England* and *Scotland*, and other Enemies of this Eſtate, in what Places ſoever he can meet them, whether it be upon the Coaſts of their Country, in their Ports, or Rivers; alſo upon their Shores, or Places where the ſaid Captain *Thomas Vaughan* ſhall think fit to land to annoy the ſaid Enemies; and there to make uſe of all the Means and Arts permitted and uſed by the Laws of War, to take them and bring them Priſoners, with their Ships, Arms, and other Things in their Poſſeſſion.

‘Provided the ſaid *Vaughan* ſhall keep, and cauſe thoſe of his Crew to keep the Maritime Orders, and that he ſhall carry, during his Voyage, the Flag and Enſign of the King's Arms, and of Ours, and cauſe the preſent Commiſſion to be regiſtred in the Regiſtry of the neareſt Admiralty where he ſhall be equipped, and leave there a Roll ſigned and certified by him, containing the Names and Sirnames, the Births and Reſidence of his Crew; and make his Return to the ſaid Place, or ſome other Port of *France*, and make his Report before the Officers of the Admiralty, and no others, of what ſhall have happened during his Voyage, and give us Advice thereof, and ſend his ſaid Report to the Secretary-General of the Marine, with the Papers juſtifying the ſame, that we may give ſuch Orders thereupon as may be neceſſary.

‘And we pray and require all Kings, Princes, Potentates, Sovereigns, Eſtates, Republicks, Friends and Allies of this Crown, and all others to whom it ſhall appertain, to give to the ſaid *Vaughan* all Favour, Aid, Aſſiſtance and Succour in their Ports, with his ſaid Veſſel, Company and Prizes, which he ſhall take during his Voyage, without doing, or ſuffering to be done to him any Trouble or Hindrance; offering to do the like when we ſhall be by them thereunto required.

‘And we do command and require all Marine Officers, and others to whom it ſhall appertain, to let him ſafely and freely paſs with his ſaid Veſſel, Arms and Company, and the Prizes which he ſhall take, without doing, or ſuffering to be done to him any Trouble or Hindrance; but on the contrary, to give him all Succour and Aſſiſtance that ſhall be neceſſary. Theſe Preſents to be of no Force after one Year, from the Day of the Date hereof.

‘In Witneſs whereof We have ſigned theſe Preſents, and cauſed them to be ſealed with the Seal of our Arms, and counter-ſigned by the Secretary-General of the Marine, at *Verſailles*, the Tenth Day of the Month of *July*, One Thouſand Six Hundred Ninety-five.’

L. A. de Bourbon.

L. S.

By my Lord de Vallencour.

The preſent Commiſſion was regiſtred in the Regiſtry of the Admiralty of *Bulloigne*, after having been ſeen by us *James Abbot de la Cocherine*, the King's Counſellor, deputed to the Intendency of *Bulloigne*, exerciſing the Charge of Lieutenant-General of the Admiralty, in the Preſence of the King's Proctor, at the Requeſt of the ſaid Captain *Vaughan*, being preſent, whom we have permitted to ſail and cruiſe upon the Enemies of the Eſtate. Done at *Bulloigne* the Fourteenth of *July*, One Thouſand Six Hundred Ninety-five.

Maginon.

Verſionem hanc Anglicanam *in omnibus, cum ſuo Originali* Gallio *convenire teſtor*,

Wilhelmus Rocke, *Notar. Publ.*

He was afterwards executed according to his Sentence.

CLXIII. *Proceedings in Parliament againſt Sir* JOHN FENWICK, *Bar. upon a Bill of Attainder for* High-Treaſon, November, &c. 1696. 8 WILL. III.

Proceedings in the Houſe of Commons.

Veneris 6 *Die Novembris*, 1696.

ADmiral *Ruſſel* acquainted the Houſe of Commons, that his Majeſty had given Leave to lay before the Houſe ſeveral Papers in the Nature of Informations of Sir *John Fenwick*, in which he and ſeveral other Perſons of Quality were named; and deſired that they might be brought up to the Table, and read; and that he might have an Opportunity to juſtify himſelf, or if he did not, that he might fall under the Cenſure of the Houſe. And Mr. Secretary *Trumbal* being preſent, did ſay, That he had his Majeſty's Leave to lay thoſe Papers before the Houſe; and if the Houſe pleaſed, he would bring them up to the Table.

And accordingly (the Houſe ſhewing a general Inclination for it) they were brought up to the Table and read (being the Account he gave of the laſt Plot under his own Hand; and his Examination taken by Mr. *Vernon*, afterwards upon his Trial produced); and after the ſame was read, the Houſe ordered, That Sir *John Fenwick* ſhould be brought immediately before them; and that no Perſon ſhould in the mean time ſpeak with him, or give or receive any Paper from him. And the Houſe further order'd, That the Lord *Cutts*, Sir *Henry Hobart*, and Mr. *Norris*, three of their Members, ſhould ſee their Order executed.

And in the mean time adjourned to the Afternoon.

About Five a-Clock in the Afternoon Sir *John Fenwick* was brought with a ſtrong Guard (which the Lord *Cutts* had taken care for) to the Houſe; and being brought to the Bar, Mr. *Speaker* ſpake to him thus:

Mr. Speaker. Sir *John Fenwick*, the Houſe underſtand that you have ſhew'd ſome Inclinations to make a Diſcovery of the Deſigns and Practices of the Enemies of the Government; you have now an Opportunity to do it; and the Houſe require it from you, that you make a full and ample Diſcovery of all you know of that Matter.

Sir *John Fenwick.* Mr. *Speaker*, I ſuppoſe the Houſe is not ignorant of my Circumſtances. I am indicted of High-Treaſon, and have been arraigned: What I have done to ſerve the King and Nation his Majeſty knows; it hath been communicated to him by his Privy-Council. I do not know but what I ſay may hurt myſelf; and therefore I deſire that I may have ſome Security for myſelf, and I am willing to tell the full of all I know.

Mr. Speaker. Sir, if you pleaſe to withdraw for the preſent, the Houſe will ſend you their Pleaſure.

[*Sir* John Fenwick *withdrew. Was call'd in again.*]

* *Mr. Speaker.* Sir *John Fenwick*, ſince you withdrew, the Houſe have conſider'd of what you ſaid at the Bar. They do not think what you ſaid is an Anſwer to what they require; they do expect a full and candid Confeſſion from you of what you know; and they think that the beſt Way for you to obtain the Favour of the Houſe is to deal ingenuouſly with them.

Sir *John Fenwick.* Sir, I am in the Hands of the Law, and I would not do any thing that his Majeſty might be angry with me; for I do not know it is with his Majeſty's Conſent: I have acquainted him fully with all I know of the Matter; this is all the Account I can give you at this Time. 'Tis a dangerous Point that I am under; I know not but I may come to my Trial in a few Days; and what I may ſay may riſe up againſt me in a Court of Judicature: I humbly propoſe it to the Houſe, if they do not think it a hard Caſe for me to make any Confeſſion here, when his Majeſty hath all that I know. I ſhall be very ready to do what this honourable Houſe pleaſes to command me; but I deſire this Houſe will conſider my Circumſtances: I would not offend the King, nor offend this Houſe.

Thereupon Mr. *Speaker* again ſpake to him to withdraw. And being withdrawn, the Houſe debated, whether they ſhould acquaint him with their having thoſe Papers of Information. But they did not think fit to do it for this Reaſon, becauſe they thought thoſe Papers were a Contrivance, and made by others for him; and that the beſt Way to get the Truth out of him, would be for him to tell his own Story. Beſides, if the Houſe ſhould let him know they had thoſe Papers, he would only refer to thoſe Papers, as he had lately done, when he was examined by the King and Council.

'Twas alſo debated, whether there ſhould be any threatening Words uſed towards him; but they thought that not proper; for his Confeſſion ought to be free and natural. It was alſo debated, whether they ſhould take notice of his Majeſty's Conſent; but that was not thought fit, being thought derogatory to the Privileges of the Houſe. So the Houſe ordered him to be called in again; and Mr. *Speaker* delivered the Senſe of the Houſe to him in theſe Words.

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* Paul Foley, *Eſq.*

Sir John Fenwick *at the Bar.*

Mr. Speaker. Sir *John Fenwick*, the Houſe has conſidered of what you have ſaid, to excuſe your making a Diſcovery of your Knowledge of the Deſigns and Practices of the Enemies of the Government; and they think what you ſtand upon is only an Excuſe; they think you have no Reaſon to apprehend the King ſhould be angry with you for making any Diſcovery to this Houſe, this being the proper Place to enquire of all Things that do relate to the King and Government, eſpecially his Majeſty's Safety; and you ought to diſcover to them what you know. As to what you ſtand upon, that you ſhould not be prejudiced by what you diſcover here, I am commanded to tell you, they do take Notice by what you have ſaid here, that you have already, notwithſtanding what you ſay, diſcovered it to the King and Council: And they command me to tell you, that you have no Reaſon at all to apprehend, that you ſhall ſuffer any thing if you make a full and free Diſcovery here; no Man that ever did ſo, and dealt candidly with this Houſe, ever did: 'Tis in your Power to deſerve the Favour of the Houſe; 'tis requir'd by the Houſe, that you make a Diſcovery; and this is the laſt Time that you are like to be aſk'd to do it.

Sir *John Fenwick.* Mr. *Speaker*, I know not what Anſwer to make to this Houſe; I would not willingly offend it; what I have informed the King of is a great deal; and a Man would have ſome little Time to recollect himſelf; and I have been kept a very cloſe Priſoner, and had no Conveniency of Pen, Ink, and Paper; 'tis hard to remember juſt of a ſudden; and I would willingly be ſecure his Majeſty will not be angry with me. I was in hopes that his Majeſty would have informed the Houſe himſelf; he hath all that I know; my Circumſtances are hard, I am in danger every Day to be tried, and I deſire to be ſecured, that what I ſay ſhall not riſe up in Judgment againſt me; 'tis hard to make me accuſe myſelf under theſe Circumſtances, and very hard to put me on it now.

Mr. Speaker. As to what you ſay relating to the Fear of his Majeſty's Diſpleaſure, and the other Excuſe, you have had your Anſwer already. As to what you ſay relating to Time, if you will now declare what you know and remember, the Houſe will take it into Conſideration, whether they will give you farther Time to make up the reſt.

Sir *John Fenwick.* Sir, his Majeſty hath all exactly; 'tis impoſſible for me to inform you of it without accuſing myſelf: I do not really know what to aſk but a little Time, if they would pleaſe to give it me.

Mr. Speaker. Sir, you know already what the Houſe requires of you.

Sir *John Fenwick.* I do: But 'tis no Excuſe that I have made: What I have told is Truth, to the beſt of my Knowledge: I am not very good at Speaking; and if I might have a little Time, I ſhall do what they pleaſe to command me.

Mr. Speaker. If that be all you have to ſay, if you pleaſe to withdraw, you ſhall know the Pleaſure of the Houſe.

(*Sir* John Fenwick *withdraws. Is called in again.*)

Mr. Speaker. Sir *John Fenwick*, this Houſe have conſidered what you ſtood upon when you were here laſt, that your Memory was bad, and that you deſired Time; but the Houſe think it a Matter of great Moment to the King and the whole Nation, that thoſe that are their Enemies ſhould be diſcover'd as ſoon as poſſible; and this being a Matter within your Knowledge, the Houſe do not think fit to give you Time; but if they find, by your Diſcovery, that you deal candidly and ingenuouſly with them, and have told them as much as you know upon your Memory, they will conſider of your Requeſt of giving you Time for the reſt.

Sir *John Fenwick.* When firſt I ſpake to the Privy-Counſellor, I propos'd it to him, whether I might have a Pardon without being an Evidence againſt any Man; and in that Caſe I would ſerve the King ſo as to tell him all that I knew. It was upon Honour that I did it to him, and he took the Words in Writing from me, and ſent them to the King in *Flanders.* The King's Anſwer was, That he made no Objection as to my being an Evidence, nor his giving me a Pardon; but that I could expect no Pardon, 'till he knew what I could ſay: Upon that, I was encouraged to do what I did for his Majeſty's Service; and have found in all my Buſineſs ſince, whatever I do or ſay, the Anſwer is, 'Tis not ſatisfactory; and I am where I was. When this was done, there was a Meſſage ſent to me from the Lords Juſtices, That this was not ſatisfactory, and I muſt tell all I know: Now, when a Man hath told all he knows, and this muſt ſtill be the Anſwer, 'tis very hard. The King's Anſwer was, That I ſhould more fully make good what I had ſaid. Sir, I did afterwards explain what I had informed that honourable Perſon, and ſtill it was not ſatisfactory. I hope I ſhall not find this from this honourable Houſe: I am upon my Life, and I hope this Houſe will conſider of it: I know this Houſe is good Security if I had it; but 'till I have it, I am under theſe Circumſtances, and I may at laſt be told all is not ſatisfactory: I deſire the Houſe will pleaſe to conſider of it.

Mr. Speaker. Sir, you know the Pleaſure of the Houſe; you know what they require of you.

Sir *John Fenwick.* I am very unwilling to offend the Houſe; but theſe are very hard Circumſtances, to be told, when I have done all I can, 'tis not ſatisfactory.

Mr. Speaker. Sir, you know what the Houſe does expect; you muſt either give them Satisfaction in it, or withdraw.

[*Accordingly he withdrew.*]

And a Motion was made for Leave to bring in a Bill to attaint Sir *John Fenwick* of High-Treaſon; and after a Debate thereupon, the Houſe divided.

Yeas———179. Noes———61.

So it paſſed in the Affirmative.

Lunæ 9 *Die Novembris*, 1696.

The Bill for attainting Sir *John Fenwick* of High-Treaſon was preſented to the Houſe; and after a long Debate of ſeveral Hours, the Queſtion was put for the ſecond Reading of it; whereupon the Houſe divided.

Yeas———196. Noes———104.

So it paſſed in the Affirmative, and *Friday* Morning was appointed for it.

The ſame Day the Houſe order'd, That Sir *John Fenwick* ſhould have a Copy of the Order for reading the Bill the ſecond Time, and a Copy of the Bill; and that he ſhould be allow'd Pen, Ink, and Paper.

And further order'd, That Mr. *Attorney-General* and Mr. *Solicitor-General* ſhould prepare and produce the Evidence againſt him on *Friday* Morning.

And Mr. *Speaker* this Day acquainted the Houſe, that he had received a Letter from Mr. *Fuller*, which he thought fit to acquaint the Houſe with; but upon a Queſtion for reading of it, it paſſed by a very great Majority in the Negative; ſo that there was no Diviſion upon that Matter, but the Letter was writ in the Words following:

‘Sir,

‘I Preſume that no Perſon whatever, in the Intereſt of the preſent Go-
‘vernment, hath been more actually engaged with Sir *John Fenwick*
‘than myſelf, it being my Fortune ſeveral Times to bring Letters to him
‘from the late King and Queen at *St. Germains*, and to carry his Anſwers:
‘I have alſo been with him at Private Conſults of the late King's Adhe-
‘rents, as my Informations aſſert; ſo that if I may be ſerviceable to the
‘detecting his Treaſons, I ſhall be very ready to ſerve the Government,
‘and to demonſtrate my Integrity.

‘I am, Sir,
‘Your Honour's moſt humble
‘and devoted Servant,
‘*W. Fuller.*’

Martis 10 *die Novembris*, 1696.

Sir *John Fenwick* ſent the Speaker a Letter in theſe Words.

‘Sir, *Newgate*, *Nov.* 10.

‘I Would have addreſſed myſelf in the humbleſt manner I could to the
‘Honourable Houſe of Commons, from whom I received a Copy of a
‘Bill againſt me with their Order; but my Keeper will not carry any
‘Paper from me but to yourſelf, to whom I durſt not preſume to ſend a
‘Petition to deliver for me. Therefore I beg the Favour you will pleaſe
‘to acquaint the Houſe, that it is my humble Petition to them, That they
‘would give Leave for my Counſel, Sir *Francis Pemberton*, Sir *Thomas*
‘*Powis*, and Sir *Bartholomew Shower*, to come to me with my Solicitor,
‘*Chriſtopher Dighton*, to adviſe with alone. The Keeper will not ſo
‘much as let me ſend the Copy of the Bill and Order to my Solicitor, ſo
‘it is of no Uſe to me: I humbly beg they will pleaſe to give Order, that
‘I may have all Aſſiſtance that is neceſſary for me, and that you will par-
‘don this Trouble from, Sir,

‘Your moſt humble Servant,
‘John Fenwick.’

Upon this Letter they did readily order that he ſhould be allowed two Counſel to make his Defence, and that they might be alone with him; and after ſome Debate, did give Leave that he might have the Solicitor he deſired, though it was ſaid, his Solicitor was a very great Jacobite; and it was inſinuated, that he was ſuſpected to be concern'd in the Eſcape of *Goodman*; but it was alſo ſaid, that he had been made uſe of as his Solicitor to prepare for his Trial, and before that, in other Matters; and ſo that it might not be thought that there was any Hardſhip upon him, in that Reſpect, the Houſe thought fit to allow Mr. *Dighton* to be his Solicitor.

Jovis 12 *die Novembris*, 1696.

A Petition was preſented from Sir *John Fenwick*, as follows:

To the Honourable the Knights, Citizens, and Burgeſſes in Parliament Aſſembled,

The humble Petition of Sir *John Fenwick*, Bar.

‘Sheweth,

‘THAT there being a Bill of Attainder brought into this Houſe for the
‘Attainting of your Petitioner of High-Treaſon, and your Petitioner
‘is adviſed, that there are many weighty Reaſons to be offered againſt the
‘ſaid Bill;

‘Your Petitioner therefore moſt humbly prays, That your Honours
‘will be pleaſed to hear him by his Counſel againſt the Paſſing of the
‘ſaid Bill at the Bar of this Honourable Houſe; and to appoint ſuch
‘Time for the ſame, as to your Honours ſhall ſeem meet. And
‘your Petitioner ſhall ever pray, *&c.*

‘J. Fenwick.’

Which Prayer of his Petition was granted.

Veneris 13 *die Novembris*, 1696.

Sir *John Fenwick* was brought to the Houſe (by Order) from the Priſon of *Newgate*; and there being a very great Company of Strangers, both in the *Lobby* and *Speaker's Chamber*; and the Houſe being full of Members, to prevent the Inconvenience that ſuch a Number of People crowding in might occaſion, the *Lobby* was ordered to be cleared of all Perſons that were not concerned, and alſo the *Speaker's Chamber*, and that the Back-door of the ſame ſhould be lock'd, and the Key laid upon the Table: But it having been ſaid, that the Lords did admit the Members of this Houſe to hear their Debates; there was private Intimation given the Serjeant to let them remain in the *Speaker's Chamber*, when others were remov'd.

Then Sir *John Fenwick* was order'd to be brought to the Bar: But it being a Proceeding of that Nature, that none of the ancienteſt Members could give a Precedent, it was neceſſary to ſettle ſome Preliminaries; and the firſt Queſtion that was moved, was, Whether the Mace ought to lie upon the Table when Sir *John Fenwick* was in the Houſe, or whether the Serjeant ought not to ſtand by him with it at the Bar?

Mr. *Smith.* Sir *John Fenwick* being a Priſoner, the Mace ought to be at the Bar, and then no Member can ſpeak.

Mr. *Boyle.* This Hearing, of any Thing I can think of, is moſt like the Hearing of an Election; and then the Mace is upon the Table, and every one has Liberty to ſpeak and aſk Queſtions.

* Mr. Charles *Montague.*

* *Mr. Chanc. of Excheq.* The Mace ought not to be upon the Table, becauſe he is a Priſoner : The Sheriffs of *London* can't have him in Cuſtody here, and ſo they deliver him into Cuſtody of the Serjeant.

Mr. J. *Howe.* That Argument would be good, if he could not be in Cuſtody of the Serjeant unleſs he had the Mace in his Hand.

Mr. *Brotherton.* The Mace ought to be upon the Table, becauſe the Bill is to be read.

Mr. *Chr. Muſgrave.* The Mace ought to be upon the Table. Never any Bill was read but the Mace was upon the Table.

Col. *Granville.* If the Mace be not upon the Table, it would be a great Hardſhip to the Members that they cannot ſpeak, and a great Hardſhip upon the Priſoner that he cannot aſk any Queſtions. My Lord *Torrington* was brought Priſoner from the *Tower*, and upon Account of his Quality the Houſe did not let him go to the Bar : But while he was in the Houſe, the Mace was upon the Table, and he gave an Account of the whole Campaign ; and every Body was at Liberty to aſk what Queſtions they pleaſed.

* Sir *Thomas Trevor.*

* *Mr. Att. Gen.* The Matter is very new ; and I think 'tis neceſſary you reſolve upon the Method before you call in the Counſel, that you may acquaint the Counſel with it : I think it not proper that the Mace ſhould be upon the Table, becauſe he is a Priſoner ; though it may not be neceſſary that the Serjeant ſhould have it upon his Shoulders all the Time, but he may eaſe himſelf. I believe you will aſk Sir *John Fenwick* what he has to ſay, but no Queſtions to make him accuſe himſelf : And I humbly propoſe it to you, that after the Counſel is called in, they may open the Nature of the Evidence againſt Sir *John Fenwick*; and then, whether you will permit them to go on, or they ſhall withdraw, and the Houſe will conſider what Queſtions ſhall be aſked.

Col. *Mordaunt.* I hope the Queſtions will be taken down upon a Paper by the Speaker, and then read to us, that we may ſee if they be right, and ſo aſked by the Speaker.

Sir *Will. Williams.* If the Mace is not upon the Table, our Mouths are muzzled : We are in the Nature of Judges ; and ſhall we paſs a Vote that the Judges ſhall not aſk any Queſtions ?

Sir *Tho. Dyke.* I can't be informed without aſking of Queſtions : I know not whether you are a Houſe without it, without having the Mace upon the Table. And will you act in your higheſt Capacity without being a Houſe ? I do not know how it was when the Lord *Torrington* was here ; but when the Duke of *Leeds* was here, the Mace was upon the Table.

Mr. *Boyle.* I wiſh you had appointed a Committee to have ſettled the Preliminaries, and that the Bill had not been brought in at all ; what they labour, as a Matter to avoid Delay, may occaſion more. For though, when you carry the Mace to the Table, no Member ſhould have the Liberty to ſpeak, yet any Member hath Liberty to deſire that the Counſel may withdraw, and then they muſt withdraw, and the Mace muſt be brought upon the Table.

Mr. Chanc. of Excheq. That Gentleman is certainly in the right : But I think the Mace muſt not be upon the Table till when the Priſoner is here ; and I think the Queſtions muſt be aſk'd by the Chair.

The longeſt Examinations that I remember was of the Admiralty, and then the Queſtions were aſked by the Chair. For the Inſtance of my Lord *Torrington*, 'tis true, he had not the Mace with him, but he came at his own Requeſt, he came to give you an Account of his Proceedings ; and in that Caſe not a Queſtion was aſked by any Member ; any Member hath Liberty to propoſe any Queſtion, but it muſt be aſk'd by the Chair.

Afterwards the Queſtion was put, and it paſſed, That Sir *John Fenwick* ſhould ſtand with the Mace at the Bar.

Then a Queſtion aroſe about reading of the Bill : Some Gentlemen ſaid, it could not be read when the Counſel was preſent, for the Mace would be off the Table ; (and they ſeemed to be under a Difficulty by having paſſed the laſt Queſtion ;) others ſaid, it was not neceſſary to read it whilſt Sir *John Fenwick* was preſent, he having had a Copy of it ; but at laſt it was thought reaſonable, it being in the Nature of a Charge upon him, that it ſhould be read to him when preſent with his Counſel ; and 'twas ſaid, it was done ſo in the Caſe of Indictments, tho' Copies were delivered to them : But it ſhould be read only as a Matter of Form, as a Charge to which he was to anſwer ; but it could not be reckoned a ſecond Reading, according to the Rules of the Houſe, the Mace being off the Table ; and therefore it ſhould be read again when the Counſel and he was withdrawn.

And it was ſaid, that the Journals did take notice, that in ſome Caſes, as in the Caſe of an adjourned Debate, ſome Bills had been read four times ; and ſo it was agreed, and that Difficulty was ſolved.

And the Serjeant took the Mace, and brought Sir *John Fenwick* to the Bar ; and Counſel was admitted for him, and for the Bill, *viz.*

Mr. Serjeant Gould, *King's Serjeant, and Mr. Recorder* Lovel, *likewiſe King's Serjeant. And Sir* Thomas Powis, *and Sir* Bartholomew Shower, *for Sir* John Fenwick.

And Mr. *Speaker* opened the Matter thus :

Mr. Speaker. Sir *John Fenwick*, the Houſe have received Information that you have been in a horrid Conſpiracy againſt the Life of his Majeſty, and for bringing in a *French* Force to invade this Kingdom, that you have been indicted thereof ; and they have conſidered the Nature of the Crime with which you ſtand charged, and how deſtructive it would have been (if it had ſucceeded) to the very Being of this Kingdom ; and therefore, that you may not go unpuniſhed, if you are guilty, have ordered a Bill to be brought into this Houſe to attaint you for High-Treaſon, which hath been once read, and will be now read to you at the Bar ; and then you will hear the Evidence againſt you, and have Liberty to make your Defence : And though you cannot claim any Right thereto, this Houſe (to ſhew how ready they are to favour you, in giving you any reaſonable Help to make your Defence) do allow you Counſel to aſſiſt you therein ; and having granted you this their Favour, they do expect that you will make a good Uſe of it. I am likewiſe to acquaint thoſe that are your Counſel, that this Houſe do reckon their own Prudence will ſo guide them, as not to give any juſt Offence to this Houſe ; and that they will not be allowed to queſtion the Power of Parliaments to paſs Bills of Attainder, when they judge it requiſite ; of which this Houſe is more proper to judge than any private perſon, and therefore they will not allow you to debate that Point.

Let the Bill be read.

[*Clerk of the Houſe of Commons reads.*]

Whereas Sir John Fenwick, Bart. was, upon the Oaths of George Porter, Eſq. and Cordel Goodman, Gent. at the Seſſions of Oyer and Terminer held for the City of London, on the 28th Day of May, 1696, indicted of High-Treaſon, in compaſſing and imagining the Death and Deſtruction of his Majeſty, and adhering to his Enemies, by conſulting and agreeing with ſeveral Perſons (whereof ſome have been already Attainted, and others not yet brought to their Trial for the ſaid Treaſon) at ſeveral Meetings, to ſend Robert Charnock, ſince attainted and executed for High-Treaſon, in conſpiring to aſſaſſinate his Majeſty's Sacred Perſon (whom God long preſerve) to the late King James in France, to invite and encourage the French King to invade this Kingdom with an armed Force, by promiſing to join with and aſſiſt him with Men and Arms upon ſuch Invaſion. And whereas the ſaid Sir John Fenwick did obtain his Majeſty's Favour to have his Trial delayed from Time to Time, upon his repeated Promiſes of making an ingenuous and full Confeſſion of his Knowledge of any Deſign or Conſpiracy againſt his Majeſty's Perſon or Government, and of the Perſons therein concerned. And whereas he has ſo far abuſed his Majeſty's great Clemency and Indulgence therein, that, inſtead of making ſuch Confeſſion he hath contrived and formed falſe and ſcandalous Papers as his Informations, reflecting on the Fidelity of ſeveral Noble Peers, divers Members of the Houſe of Commons, and others, only by Hearſay ; and contriving therein to undermine the Government, and create Jealouſies between the King and his Subjects, and to ſtifle the real Conſpiracy. And whereas Cordel Goodman, one of the Witneſſes againſt the ſaid Sir John Fenwick, to prove the ſaid Treaſon, lately and ſince the ſeveral Times appointed for the Trial of the ſaid Sir John Fenwick, at one of which Times the ſaid Sir John Fenwick had been accordingly tried, had it not been for the Expectation of the ſaid Diſcoveries ſo often promiſed, is withdrawn ; ſo that the ſaid Cordel Goodman cannot be had to give Evidence upon any Trial. Be it enacted by the King's Moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in this Parliament aſſembled, and by the Authority of the ſame, That the ſaid Sir John Fenwick is hereby Convicted and Attainted of High-Treaſon, and ſhall ſuffer the Pains of Death, and incur all Forfeitures as a Perſon attainted of High-Treaſon.

Mr. Speaker. Mr. Serjeant *Gould*, the Houſe expects from you, and Mr. Serjeant *Lovel*, that you open the Evidence you have to prove the Suggeſtions of the Bill.

Mr. Serj. *Gould.* Mr. *Speaker*, we are here, in Obedience to your Commands, to give an Account of the Charge, and likewiſe of the Evidence of the Fact, that is againſt this Gentleman, Sir *John Fenwick.* The Charge againſt Sir *John Fenwick* is for High-Treaſon, and High-Treaſon of the higheſt Degree ; 'tis no leſs than a Deſign of depoſing the King, and ſubverting the Government, and ſubjecting it to a *French*, arbitrary, and ſlaviſh Power. It further charges, that in Proſecution of this Conſpiracy, he hath met, together with ſeveral others, who have conſulted, conſented, and agreed together to bring in a *French* Army upon us ; and in order to that, as a particular Overt-Act, it is charged, that they contrived to ſend one to the late King *James* to bring in a *French* Power upon us. It is charged ilkewiſe, that he conſpired to levy War upon us, and for that Purpoſe did provide Piſtols, and other warlike Arms. This I take to be the Subſtance of the Charge, as laid in the Indictment.

Now, may it pleaſe you, Mr. *Speaker*, as for the Evidence of the Fact charged and alledged in this Indictment : It is no Secret certainly to any at this Time of Day (after ſo many Trials, ſo many Convictions, ſo many Attainders), that for ſome Years laſt paſt there hath been a wicked Conſpiracy to bring in a *French* Power upon us, to ſubvert this good Government, and to depoſe the King ; but God Almighty, by ſpecial Providence, hath always prevented and diſappointed them. We know, ever ſince the Buſineſs of *la Hogue* (in which, even by a Miracle, God diſappointed them) they have been ſtill reſtleſs, and have been induſtrious to ſet up again this Deſign ; and for this have plotted to bring in a *French* Power, and have not had any Regard to the King's Mercy ſhewed to them, and that in paſſing ſeveral Acts of Parliament, but have ſtill perſiſted in the ſame Deſigns.

As to the Charge upon this Gentleman at the Bar, we ſhall ſhew you that in Time : In the Year 1694, for ſeveral Months there was a Conſpiracy carried on, but did not take Effect ; afterwards, in Time, I think the Beginning of *June*, or latter End of *May*, there were ſeveral Conſults, or Meetings, at the *King's-Head* Tavern at the Upper End of *Leadenhall-ſtreet*, where this Gentleman that now ſtands charged at the Bar was preſent ; there were ſeveral Gentlemen, and among the reſt (as it hath and will appear upon Evidence) there was Sir *John Fenwick*, my Lord *Montgomery*, and ſeveral others, whereof Captain *Porter* and *Goodman* were there likewiſe preſent : It was then propoſed, that one *Charnock* (ſince executed, and agreed upon by all to be preſent) ſhould go over into *France* to the late King *James*, to communicate to him their Reſolution and Sincerity in being ſerviceable to him in levying War here to depoſe the King, and ſubvert the Government ; who was to intercede with the *French* King, ſo that there might be Forces ſent from *France*. But after this, *Charnock* (preſent ſtill this Gentleman) comes and propoſes this thing again, and tried whether they were ſincere and real in their former Reſolutions. To which they all replied, and did agree and aſſent, that it ſhould be done, and they were very zealous in the Matter, and the Forces were at that Time propoſed. And what was that ? Why, truly, no leſs than 8000 Foot, and 2000 Dragoons of *French*, with an Aſſurance of 2000 Horſe from this Country. *Charnock* did go into *France*, and did communicate this Matter ; and after he had communicated this Matter he came back, and brought Anſwer, that King *James* had endeavoured to anſwer their Expectations, but at that Time the *French* King could not ſpare his Forces ; but however, returned his Thanks to them.

This paſſed on till towards *Chriſtmas* laſt; then comes over Sir *George Barcley* upon this Expedition, and there was a Commiſſion prepared for that Purpoſe: And as to one Part, he brought along with him a Detachment of ſome of King *James*'s Guards, who was to aſſaſſinate the King. The next Part was for raiſing a Rebellion; now that fell to Sir *John Fenwick*'s Part. As to the aſſaſſinating Part, you have had ſeveral Examples made already. This we have Evidence to prove; and if we prove this Matter as we have opened it, then I think there is no Perſon whatſoever, but will agree that this is High-Treaſon in the higheſt Degree. Now, Sir, here ſtands our Matter: Here was an Indictment found according to the Law you made laſt Seſſions of Parliament, by two Witneſſes to one Species of Treaſon againſt Sir *John Fenwick*; we have one of theſe Witneſſes here *viva voce:* But Sir *John Fenwick* hath protracted his Trial by frequent Aſſurances of making a Diſcovery, which hath terminated in what you have already mentioned in your Bill; by Means of which, Sir *John Fenwick* hath not been try'd; whereas he had been try'd in courſe, without theſe Applications, and found guilty: But now he hath had all this Time, that *Goodman* is withdrawn is plain, and we think (but that we muſt leave to the Judgment of this honourable Houſe) may be reaſonably ſuppoſed, by Contrivance, to take off this Proſecution of Sir *John Fenwick.* For why? The Inference is from a Fact that we ſhall prove to this honourable Houſe: There hath been the like Attempt upon Captain *Porter*, but Captain *Porter* hath been more ſtedfaſt; he hath been ſo reſolved, that he ſtood his Ground; and, to ſpeak the Truth, notwithſtanding he hath been highly attempted: For we ſhall prove to you, that one *Clancy* comes to Captain *Porter*, and tempts him to withdraw into *France*, with Aſſurance of a Pardon, and he hath Three Hundred Pounds paid him in Hand, and Three Hundred more he was to be paid when he ſhould come into *France*, to be remitted by Bills of Exchange: Beſides, he was to have 300*l.* a-Year; 100*l.* from my Lord *Ayleſbury*, 100*l.* from my Lord *Montgomery*, and the other 100 *l.* a-Year from Sir *John Fenwick*, and this to be an Annuity during his Life: And thus far we ſuſpect Sir *John Fenwick* may be concerned; for his Lady came (he did not come perſonally, but his Lady did) and gave her Honour and Aſſurance, that it ſhould be all performed, and much more, if he would withdraw himſelf.

Captain *Porter* preſently made a Diſcovery of this, and takes the 300 *l.* which was paid down; upon this it hath been ſo far proceeded, that *Clancy* hath been indicted for it, and convicted, and hath received Judgment, and I ſuppoſe there hath been Execution: We have the Record of all theſe Proceedings.

We have this Circumſtance farther in the Caſe, (which it is my Duty to open to this Houſe) to ſhew what Labour there hath been to ſtifle the Truth of the Fact, upon taking of Sir *John Fenwick:* There was one *Webber* taken with him, and he ſlid a Letter into one *Fowl*'s Hand, and this was to be ſent to my Lady *Fenwick:* And what is the Import of this Letter? The Import of it is (they could not prevail with *Porter*, as I opened juſt now, therefore), you muſt influence the Jury, get two or three ſtout Jurymen to ſtarve the reſt, for we have nothing elſe to depend upon: Theſe Things we ſhall humbly offer to prove, according to our Duty, and according to the Order of this Houſe, and then leave Sir *John Fenwick* to make his Defence.

Mr. Recorder. Sir, in what I ſay, I ſhall endeavour, as I ought to do, to purſue the Method of this Bill: And firſt, I will take Notice, that it is the Pleaſure and Direction of this Houſe, that we ſhould attend this Houſe this Day, to produce the Evidence againſt Sir *John Fenwick.*

The Crime for which he ſtands indicted is High-Treaſon: I preſume the learned Gentlemen on the other Side will not deny, but that the compaſſing and conſpiring the Death and Deſtruction of the King is High-Treaſon; and that to endeavour it, or ſhew it by an Overt-Act, to cauſe a foreign Power to invade the Realm, or to hold Correſpondence, or adhere to the King's Enemies, is likewiſe High-Treaſon; and therefore I ſhall not trouble the Houſe to ſay any thing to it one way or another, becauſe I believe they will not deny it.

In the next Place, the Bill does take Notice, that Sir *John Fenwick* hath been indicted at the *Old-Baily*, in *May* 1696. Sir, by the Law of this Houſe of Parliament made laſt Seſſions, no Man ought to be indicted of High-Treaſon without two Witneſſes; purſuant to that Law, Sir *John Fenwick* hath been indicted upon the Oaths of two Witneſſes, Captain *Porter* (whom we have here) and *Goodman* (whom we then had, and he did ſwear), and upon the Evidence of theſe two Witneſſes the Jury found the Bill.

We have this farther Matter; For before the Time the Bill was preſented to the Grand-Jury, there was an Examination taken both of *Porter* and *Goodman* in Writing, and I think it was before a worthy Member of this Houſe, to whom I appeal in this Caſe, and in thoſe Informations (if I miſtake not) the ſame Informations they gave againſt Sir *John Fenwick* as they gave againſt Mr. *Cook*; and upon the Trial of *Cook* they were ſworn, and did juſtify and verify the Informations they gave before: And then, if you pleaſe, we ſhall call Witneſſes to prove, that upon the Trial of *Cook*, *Porter* and *Goodman* gave that Evidence that did equally affect Sir *John Fenwick* (for he was then withdrawn, and could not be taken); and the Evidence was, That *Cook*, Sir *John Fenwick*, with my Lord *Ayleſbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Freind*, *Charnock*, *Goodman* and *Porter*, were all together at a Conſult eſpecially appointed for the carrying on theſe traitorous Purpoſes; they gave the Court a great deal of Trouble, whether *Goodman* was there at that Time, and they did call ſome Servants of the Houſe that did prevaricate, but the Court was thoroughly ſatisfied; and it hath appeared more plainly ſince, that they did abuſe the Juſtice of the Court, for that *Goodman* was undoubtedly there. Sir, *Cook* upon the Trial was convicted, and had Judgment of Death. And, Sir, he is attainted; but it does not become me to ſay, why he is not executed: His Majeſty, no doubt, hath great Reaſon for it. But this I may ſay, being preſent at the Trial, nothing was made more plain; and Sir *John Fenwick* appeared to be equally concerned.

To ſhew Sir *John Fenwick* is guilty, I crave leave to add this, he did withdraw himſelf, and fled, and was enquired after with Diligence; and at laſt he was found.

We ſhall make good all we have begun with, by Evidence (we hope) to the Satisfaction of this Houſe.

Mr. Serj. *Gould.* If you pleaſe, Mr. *Baker*, that is Solicitor for the King in this Caſe, does attend at the Door with all the Papers; we deſire that he may be let in.

Mr. Speaker. Serjeant, call in Mr. *Baker.* (*Which was done.*)

Mr. Speaker. What do you call Mr. *Baker* for?

Mr. Serj. *Gould.* To give an Account of this Indictment, for we have a true Copy from the Record.

Sir *Thomas Powis.* Mr. *Speaker*, ſince I am here aſſigned Counſel for the Priſoner, by the Allowance of this Honourable Houſe, upon his Application, without my Privity, I crave Leave humbly to acquaint you, in Behalf of my Client: I take it for granted, that he is, I am ſure we that are Counſel for him are, a little ſurpriſed in what the King's Counſel are going about; for in Truth, we were not aware, nor do we find that any Notice was given to the Gentleman at the Bar, that there would be any Proceeding againſt him by examining of Witneſſes, or giving of Evidence; he had (it ſeems) the Vote of the Houſe ſent to him, and likewiſe a Copy of the Bill; but I could not underſtand that the Houſe had given Notice that he ſhould be prepared by Witneſſes, if he had any, or be at Liberty to produce them. Nor was there the leaſt Notice to him, that there would be a Proceeding againſt him by Way of giving Evidence. He did, as I find, humbly apply himſelf, by Petition, that he might be heard by Counſel againſt the paſſing of the Bill; and I ſhall very carefully obſerve thoſe Directions you gave us, which I hope we ſhould not have ſtood in need of, but have behaved ourſelves as becomes us, and not have drawn in queſtion the Power of Parliaments: I never had a Thought to do ſuch a thing; but this I humbly lay before you for your Conſideration, whether, without any ſort of Notice, that I perceive, he had from this Houſe, to make his Defence to any Evidence, and conſequently there could be no need of Witneſſes on his Behalf; whether you will ſo proceed, unleſs he had had Forewarning to provide himſelf otherwiſe than by the printed Votes, which (I ſuppoſe) he had no Opportunity of ſeeing; and whether, within the Words you are pleaſed to acquaint us with, we may be heard as to the Reaſonableneſs of this Proceeding, that by and bye we muſt crave Leave to ſpeak unto.

Mr. Speaker. Sir *John Fenwick* did petition, it is true, that he might be heard by Counſel at the Bar againſt paſſing the Bill; but he likewiſe petitioned for Counſel and a Solicitor; and the Anſwer from the Houſe was, That he ſhould be allowed Counſel to make his Defence.

Sir *Tho. Powis.* Yes, Sir, I have ſeen the Order of the Houſe; and truly there did not any Thing occur from it to me, that it ſhould be expected that he ſhould produce Witneſſes; for he praying that he might be heard againſt paſſing of the Bill, and the Order of the Houſe being that he might have Counſel for making his Defence, I did not apprehend that it impower'd us ſo to be prepar'd as to bring Witneſſes, eſpecially there being no Notice given to him to bring Witneſſes, nor no Way for him to compel them to come here.

Sir *Bart. Shower.* Mr. *Speaker*, we do acknowledge that we are ſo far ready as to offer ſome Conſiderations againſt the Reaſonableneſs of the Bill, not againſt ſuch Bill in general, but againſt Sir *John Fenwick* in particular, and upon thoſe Suggeſtions in the Bill; but in reſpect of his making his Defence againſt Matter of Fact, and to anſwer the Charge of the Bar, we are not ready. The firſt Time we had Notice that Sir *John Fenwick* ſhould attend, or be brought to the Bar, was laſt Night at Nine or Ten a-Clock at Night; 'tis true, the Order ſaid the King's Counſel ſhould produce Evidence for the Bill upon this Day; but it was not order'd that there ſhould be Evidence produced for Sir *John Fenwick*, or at that Time that he ſhould be perſonally preſent: We are ready, with Submiſſion, to offer what we have to ſay againſt the paſſing of this Bill, upon the Suggeſtions made in the Bill, as Sir *John Fenwick*'s Caſe is there repreſented; but to anſwer them in reſpect of Truth or Falſehood, that we are not prepared to do: Whether you will hear them to that, before you have heard us, in the other Particular, that we ſubmit to you.

Note, *This Order was made the Day before at the Riſing of the Houſe.*

Mr. Speaker. Sir, you had Notice on *Wedneſday* laſt, that Sir *John Fenwick* ſhould have Liberty to make his Defence by Counſel; and if you had doubted whether he ſhould be admitted to do it by Witneſſes, you might have applied to have known the Pleaſure of the Houſe: But if that be what you ſtand upon, if you will withdraw, you ſhall know the Pleaſure of the Houſe.

Mr. Serj. *Gould.* I muſt confeſs we depended on it, and expected no other Thing than the Bar Evidence. This was our Order, and I apprehended that the Petition meant the ſame Thing: For, as I remember, it was an Order likewiſe that the King's Counſel ſhould produce the King's Evidence: What Reaſon was there for that Evidence, unleſs Sir *John* was to apply himſelf to anſwer it?

Mr. Recorder. I beg your Leave to obſerve with what Reaſon the Counſel on the other Side make this Objection; when 'tis the Import of this Bill, that Sir *John Fenwick* is guilty of High-Treaſon: And your Order ſays, They are to be heard againſt the Bill, that is to ſay, they are to be heard againſt the High-Treaſon charg'd upon him by this Bill. Therefore the Houſe did direct us to produce the Evidence againſt Sir *John Fenwick*, to verify the Suggeſtions of this Bill: And ſo I cannot apprehend what can be more proper at this Time, but to prove the Fact againſt Sir *John Fenwick*; and 'tis their Buſineſs to defend it as well as they can.

Sir *Tho. Powis.* What was ſaid by the learned Gentleman on the other Side, I hope, will be ſome Reaſon why we might be of Opinion, that we ſhould not have Occaſion to produce Witneſſes: And the Truth is, this Bill does no where ſo much as ſay, Sir *John Fenwick* is guilty of High-Treaſon; and therefore Mr. *Recorder* was under ſome Miſtake, when he ſaid the Bill charged that he was guilty. The Bill does not any where make ſuch an Allegation; there is nothing but a Recital that he was indicted for ſuch a Treaſon; and then it recites, That whereas he had protracted his Trial by ſuch Means, and *Goodman* had withdrawn himſelf; (but it does not ſay with his Privity;) and then follows the enacting Part; *Be it enacted*, &c. So that there is no ſuch Thing as any Allegation that he is guilty, whereby we could imagine that that was the Fact or Queſtion between us. We now offer theſe Things humbly to you, and ſhall readily ſubmit to what you think fit to do in it.

Mr. Recorder. Sir *Thomas Powis* ſays, That Sir *John Fenwick* is not charged with his doing any Act, or being guilty of High-Treaſon; but the Bill takes Notice that he ſtands indicted for it: Then it will be enough for us to prove that he ſtands indicted, unleſs the Houſe think fit to let us go into the Evidence of his being guilty.

Sir *B. Shower.* We do not oppoſe the producing Evidence to prove the Suggeſtions of the Bill, and the Recitals of the Bill ſpecified: But if they attempt to prove him actually guilty, by living Witneſſes, as they have opened it here, that we humbly beg leave to oppoſe. But if they think fit to prove the Suggeſtions of the Bill, that there was an Indictment, that there were Witneſſes ſworn, and one is withdrawn, and the Promiſes of making Confeſſion, and his prevaricating in that Matter, we are ready to make our Defence to that.

Mr. Speaker. Gentlemen, you muſt withdraw before you have the Directions of the Houſe.

Accordingly Sir John Fenwick, *and the Counſel of both Sides, withdraw.*

And being withdrawn,

Mr. Speaker. Gentlemen, you have heard what is ſtood upon by the Counſel for Sir *John Fenwick:* They ſay, if you call only Evidence to prove the Suggeſtions of the Bill, they are ready to anſwer them; but if you call any Evidence to prove Sir *John Fenwick* guilty of a Conſpiracy, by living Witneſſes, they pretend they are not ready, and ſay, They did not know they ſhould be allow'd Liberty to produce any Witneſſes.

Sir *Tho. Littleton.* Mr. *Speaker*, the Counſel could not think that the Bill ſhould ſet forth that Sir *John Fenwwick* was indicted, but that the Houſe would know by what Means; and that *Goodman* was gone away, and we ſhould not enquire by what Means. What are the Objections by the Counſel againſt the Bill? Say they, we are ready to give Reaſons againſt the Bill; they do not ſay down-right againſt your Juriſdiction: But, ſay they, we are ready to ſhew 'tis not reaſonable in this Caſe, as ſtand Circumſtances, to paſs this Bill: Sir *John*'s Petition was to be heard down-right againſt the Bill. If that was your Intention to hear him to that, and to that only, I conceive you would not have worded your Anſwer as you did: You order'd him Counſel to make his Defence; and at the ſame Time order'd the King's Counſel to produce the Evidence: How could they underſtand it, but to make Defence to the Evidence? It may be they have a mind to have another Fee: Whether you will think fit, in the Circumſtances you ſtand, to give them further Time, I do not know: But the Circumſtances of the Kingdom, and the King's Life, muſt be conſidered as well as Sir *John Fenwick.* What is the Meaning that they are not prepared? I ſuppoſe it is to have further Time; but I think your Order is ſo plainly worded, that they could not ignorantly miſtake it.

Lord *Norryes.* I riſe up to the Matter of Fact: That Gentleman tells you your Order is plainly worded; 'tis ſo, if they had timely Notice of it: But the Counſel at the Bar tell you, they had no Notice of this Order till Ten a-Clock laſt Night.

Mr. Speaker. That noble Lord does miſtake; for that which they ſay they had no Notice of till laſt Night, was, that Sir *John Fenwick* ſhould be brought hither; but the Notice that he ſhould be heard by his Counſel for his Defence was ſent him the Day before.

Lord *Norryes.* This very Order, for his Majeſty's Counſel to produce the Evidence, was made but upon *Thurſday.*

Mr. Speaker. Then I miſtake. But the Order that was made upon his Petition, I ſent away immediately: But the Order they mean, I ſuppoſe, is that for bringing him hither.

Mr. *Cowper.* Say the Counſel for Sir *John Fenwick*, We come prepared to make Defence to every Thing charged in the Preamble of the Bill, but what is not charged, we do not come prepared to make Defence to. Now, they conceive the Fact of High-Treaſon is not charged upon him by the Bill; and if true, it is of great Weight; but as it is, 'tis none: For firſt, 'tis plain the Preamble recites, that he was indicted for High-Treaſon by the Grand-Jury; that is a Charge of High-Treaſon within the Bill; for it ſays, he was charged by the Oaths of his Country upon the Oaths of two Witneſſes; and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, Can any one think, that ſits here as a private Judge, that the High-Treaſon thus recited, as found by the Grand-Jury, was no Part of his Charge? The very Nature of the Bill ſpeaks; for could any one think, that you would ground a Bill of Attainder upon a Suggeſtion, that he being indicted of High-Treaſon, had ſpirited away one of the King's Evidence, or for giving falſe Information? So that this is trifling with the Houſe, with Submiſſion.

Sir *Rich. Temple.* Can any Body ſay any Thing of the Intention of the Houſe, when 'tis reduced into a Bill? Is it not the Bill that he is to make his Defence to? And the Gentleman that ſpake, ſays, that nobody could think otherwiſe: Why, Sir, nobody is to think otherwiſe than the Bill ſtates it.

Now the thing before you is, Whether upon the Suggeſtions of this Bill 'tis fit for you to paſs it? The Caſe of *Mortimer* was, That he made his Eſcape, being under an Indictment of High-Treaſon; and it came before the Houſe, Whether upon the Statute of 25 *E.* III. it was High-Treaſon? But they did not debate the Fact.

Now you have brought a Bill here, and all the Ground is, that he was indicted for High-Treaſon, had thus and thus prevaricated, and delay'd his Trial upon Promiſes of Confeſſion; and in Concluſion, one of the Witneſſes is withdrawn: Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any thing but what is ſuggeſted in the Bill. If you had put the Iſſue upon the Guilt of Sir *John Fenwick*, he muſt have a fair Trial in ſome Place, and that he cannot have here upon Oath; for upon all Bills of Attainders they have had a fair Trial above.

Mr. *Smith.* I always thought, when a Bill of Attainder was to paſs through this Houſe, that every Man was concerned to hear what Evidence he could, to make it appear whether the Perſon was guilty of the Facts that were alledged againſt him to condemn him for; and, I take it, the principal thing to be conſidered is, whether he be guilty of ſuch a Crime as deſerves ſuch a Puniſhment? So that, I take it, the Queſtion now is, Whether Sir *John Fenwick* hath had that Notice to produce his Evidence, as is convenient? For I think we ſhould loſe Time to let Counſel ramble upon the Reaſonableneſs of our Proceedings; the Queſtion is, Whether he is guilty of the Fact? Sir, I can never think the Counſel could underſtand your Order, when it ſays, to make his Defence, but it muſt be to the Fact upon which he is to be condemned. You have already determined that Point, as to his prevaricating, but that is not the Matter that ſhall make me find him guilty; but the Evidence that will weigh with me is the Evidence of High-Treaſon, and how far they can anſwer it.

Mr. *Hooper.* The Queſtion is, Whether or no there be a ſufficient Guilt laid to this Man's Charge? For in all Courts of Judicature this is a certain Rule, You muſt proceed *ſecundum Allegata & Probata*; and you ſhall not go about to prove a Thing unleſs it be alledged. Now the Queſtion is, Whether this Thing be alledged in the whole Bill, that Sir *John Fenwick* is guilty of High-Treaſon? And if not, you will go about to prove what is not alledged. 'Tis true, it hath been alledged that a Bill hath been found; but ſeveral have been indicted who have been acquitted. It is poſſible the Priſoner at the Bar may be guilty; but I think we muſt obſerve that Method here, that is obſerved every where elſe, and that is, not to go about to prove any thing that is not alledged.

Mr. *Clerk.* The learned Gentleman hath made an Objection that perhaps would hold very well in *Weſtminſter-Hall:* But I ſuppoſe he may remember this Bill muſt have a ſecond Reading before you, as a Houſe; and then perhaps the Allegations may be different from what they are now. But the principal Matter before you is, Whether this Gentleman be guilty of High-Treaſon, or no? And if they did not prepare to that Part, I think they were negligent to their Client; for it appears to be that Part that is moſt ſenſibly like to affect him.

Mr. *Howe.* The more I hear the Matter debated, the more it ſeems ſtrange to me. I have heard the Bill read, and took Notice of the Heads of it: I always underſtood the Preamble of the Bill to be the Inducement to the End of it: I was mightily ſurpriſed to hear the King's Counſel attempt to make good——I think they did not ſpeak materially to one Point of the Allegations in the Bill, ſo that the Allegations do ſignify nothing: Or elſe, if they intended theſe Allegations ſhould ſignify any thing, we muſt have theſe Allegations proved before we paſs our Judgments upon the Bill: Whereas the Counſel, inſtead of endeavouring to prove that he was indicted for High-Treaſon, (tho' hinted at) would prove him guilty of High-Treaſon; inſtead of proving that he had prevaricated, they ſay not one Word of it; inſtead of proving that he has forged Papers, in order to alienate the Minds of the King's Subjects, they ſay nothing to it, tho' in the Bill it is alledged as High-Treaſon.

We muſt not go here upon private Fancies and Opinions; no Man that heard my Lord *Delamere*'s Trial but believed him to be guilty of the Fact; yet he was acquitted, becauſe there was no Evidence ſufficient againſt him. I think you muſt ſtick to one of theſe Points; if you ſtick to this, to prove him guilty of High-Treaſon, you muſt alter the Bill; and then that muſt be proved out of the Mouths of two Witneſſes. If you pleaſe to ſtick to the Bill, then I hope the King's Counſel will go on to prove the Allegations of it, or let us know why they do not: I ſhall no more give my Vote to hang him, becauſe he is indicted of High-Treaſon, than I ſhall becauſe he hath been in *Newgate.*

Mr. *Sloane.* I think a great deal of your Time in debating this Matter may be ſaved; though I will allow, the Bill might have been drawn better, and that a Bar-Indictment is not a ſufficient Ground of itſelf for a final Deciſion of this Matter: But when at the Time of finding the Indictment there were two Witneſſes, and one of them is withdrawn, and as is ſuppoſed, by his Means; if the Bill ſeems imperfect for any thing before you now, you will not ſtay all the Proceedings upon it; but if you ſee it imperfect, and it may be amended, you will amend it at the Committee. I think the Favour you have given is abuſed, and that 'tis perfect trifling from the Bar. In one Breath they ſay, they could not get ready, for they had no Notice 'till laſt Night; and in the next Place they ſay, they will go on to every thing but his being guilty; and I believe they never will be prepared for that.

Mr. Att. Gen. Sir, I am very unwilling to ſpeak any thing in this Matter; becauſe, Sir, by the Place I have the Honour to ſerve his Majeſty in, as one of his Counſel, if it was in the Courts below, I muſt proſecute on Behalf of the King: But I am very ſenſible while I am in this Houſe, I am in another Capacity; I am to vote here as a Judge, and not as a Party.

That which I do now trouble you about, is in Relation to the Matter that hath been objected; That the Bill does not expreſsly affirm, that Sir *John Fenwick* was guilty of High-Treaſon, but only that he was indicted for it. Truly I thought, and do ſtill, with humble Submiſſion to the Houſe, that that Matter of affirming him to be guilty of High-Treaſon was not to be inſerted in the Bill; for that will be the Conſequence of your Judgment and Opinion, upon hearing of the Evidence. That worthy Member that ſpake laſt, ſaid, the Bill might be better drawn; I am ſorry we had not his Aſſiſtance in it: But, with Submiſſion to his Underſtanding, I think that had been too much Preſumption, 'till you are ſatisfied whether he was guilty or no. We could only go ſo far as to ſet forth the Faults that we knew; as, that he was indicted, that we can verify, and can't take this to be like the Caſe of an Indictment; for there you muſt affirm ſuch and ſuch Things that cannot be altered afterwards. But a Bill in Parliament hath many Steps; you read it ſeveral Times, and commit it; ſo that you alter the Suggeſtions of the Bill, as the Caſe appears to you to be verified; and if you be of Opinion that he is not guilty, you will not condemn him becauſe he is indicted: However, that is not unmaterial, but proper to be ſet forth for a Ground of your Proceedings, that there was a

Probability of his being guilty from that Accuſation. Therefore, Sir, I confeſs I can't think that thoſe Gentlemen that are Counſel for Sir *John Fenwick* could think, that you did intend to proceed otherwiſe than to hear Counſel as to the Fact: they could not think that upon Proof of his being indicted, that that would be Ground enough for you to proceed to paſs the Bill: For how could any Body think, but you would come to examine the Fact? I can't ſee how they ſhould come to miſtake, unleſs 'twas wilfully.

Mr. *Price*. The Matter now debated, is, What Method ſhall be followed, or what Evidence ſhall be given upon this Bill? or whether Evidence ſhall be given of any other Matter than is ſuggeſted in the Bill? I muſt confeſs, making a falſe Step at firſt ſetting out, hath put us out of the Way hitherto; for in the Caſe of my Lord *Strafford*, Witneſſes were examined, and Adjudication that he was guilty, before any Order for a Bill of Attainder. But ſince you are in this Way, conſider whether the Counſel againſt the Bill have gone according to their Order: The Order was, that Counſel ſhould be heard to prove the Suggeſtions of the Bill, and the Counſel for Sir *John Fenwick* do not oppoſe that; but the Counſel for the Bill open more Things than are comprehended in the Suggeſtions of the Bill: for the Suggeſtion is only a Recital, and hath no poſitive Averment. And though the Bill and an Indictment is not the ſame, yet they muſt be the ſame in this, to put a charge upon the Perſon. If the Preamble is not to any Purpoſe, what need they have made any, but have ſaid only, Let him be attainted? To what purpoſe does Sir *John Fenwick* come to the Bar? If it is to any Purpoſe, 'tis to anſwer the Charge of the Bill. That learned Perſon ſays, to ſuggeſt that he is guilty till the Matter is proved, then there muſt be an Amendment in that Point, and that will make it a new Bill, and then he muſt have another Day to anſwer the new Charge: But they might as well have ſaid he was guilty of High-Treaſon, as to ſay in the enacting Part, that he ſhould be attainted. Therefore, if the Gentlemen for the Bill will proceed and prove the Preamble of the Bill, let them; otherwiſe let there be another Day for Sir *John Fenwick* to attend, and let them do all together.

Sir *Chriſtopher Muſgrave*. I think, as to that learned Perſon, nothing is to be laid to his Charge, for I think they have drawn the Bill purſuant to the Directions; and I am ſure if they had drawn it otherwiſe, before they had known the Senſe of the Houſe, I think they had been guilty of a Crime.

That which ſeems to be before you, is, what was opened by the King's Counſel, and that was to prove the Treaſon. Now, Sir, I would be glad to know of any Perſon, whether any thing is to be admitted to be proved at your Bar but what is in your Bill. For let us have a little Regard to the Proceeding in *Weſtminſter-Hall*: Can any Perſon, upon an Indictment of High-Treaſon, offer Evidence of any Treaſon but what is expreſs'd in the Indictment? And I think this is the ſame in Effect; for here you draw a Bill of Attainder againſt Sir *John Fenwick*, and in Juſtice you ſend him a Copy of it, and, with great Favour too, you allow him Counſel to defend himſelf to that, as to the Suggeſtions that are in the Bill; otherwiſe, to what End did you ſend him the Copy of the Bill? Now, if you will admit of any thing to be proved but what is in your Bill, I know not of what dangerous Conſequence it may be, for 'tis impoſſible to be prepared for it.

Mr. Sol. Gen. If the Counſel againſt the Bill could be any way miſtaken, or think the Bill defective, I am for giving them longer Time to make their beſt Defence; but think neither one nor the other of them true; but your Order was to draw a Bill for attainting Sir *John Fenwick* of High-Treaſon; and I think if the Bill had gone no farther, but enacted that he ſhould be attainted of High-Treaſon, we had ſtrictly purſued your Order; for the Preamble is no neceſſary Part of the Bill.

A Bill and an Indictment are of quite different Natures; there is a Form for an Indictment, but no Precedent for an Act of Parliament.

As to the Preamble, the Debate, when it was ordered, went no farther than that he was accuſed of High-Treaſon, and was like to have been brought to his Trial: and to delay it, he pretended to make an ingenuous Confeſſion; and inſtead of that, there was produced a Paper which you have cenſured (as you thought fit), and upon that you voted a Bill to be brought in to attaint him of High-Treaſon: What then could be expected more for the Inducement, but the Debate upon which it was ordered?

If this Houſe had thought fit to examine Witneſſes before (as now), no doubt but the Bill would have ſuggeſted that he was guilty of High-Treaſon; but 'tis Time enough for you to ſuggeſt that, after you have heard what Witneſſes there are. If the Counſel did not know this, notwithſtanding all that I have ſaid, I am for giving them Time; but (with Submiſſion) it was impoſſible for them to miſtake it: If the Bill had went no farther than, Be it enacted, that he ſhould be attainted of High-Treaſon, then they had ſome Colour to ſay there were different Species of High-Treaſon, and they could not tell to what particular Facts they muſt apply themſelves: But when the Indictment is recited, which charges him with particular Facts, and tells him by what Witneſſes the Bill was found, it was impoſſible not to know that this was the High-Treaſon you did intend to enact that he ſhould be attainted for: But when they ſay they are not ready, truly there may be ſome Reaſon for it; for I believe they never will be ready: Sometimes Men will be wilfully miſtaken, and ſometimes 'tis their Misfortune to be ſo. They ſay they are miſtaken; which of theſe are true, I know not, but we have ſeen already the Time when he hath trifled with the Courts of Juſtice; he hath delay'd his Trial till one Witneſs is withdrawn; if you give him longer Time, he may have the good Fortune to have the other gone too. I ſee no Reaſon for you to forbear hearing of the Evidence.

Mr. *John Montagu*. I am not ſurprized to hear Sir *John Fenwick* deſire Time; for giving him Time is giving him Life; nor for his Counſel to tell you his Witneſſes are not ready; 'tis a common Excuſe; I hardly ever knew a Perſon brought upon his Trial, but that was his Excuſe; and yet I have ſeldom known it allowed as a good Excuſe: But 'tis objected, you muſt go *ſecundum allegat' & probat'*; and nothing being in this Bill like what the Counſel for the Bill did open, 'tis not fit to hear them call Witneſſes to what is not alledged in the Bill. I grant that; and yet I think they ought to be allowed to call Witneſſes to prove every thing they have opened to you: 'Tis agreed they ought not to have brought in a Bill, to ſay in point blank Terms, he is guilty of High-Treaſon; but they ſay, you ſhould have charged with what Treaſon he is accuſed of, and then they ſhould have been admitted to prove it. With Submiſſion, the Bill does that thing; for the Bill does recite, that he is indicted of High-Treaſon, in compaſſing, *&c.* This is the Treaſon that is charged upon him by this very Bill: Now ſure you will permit them to prove what is alledged in the Bill. What did the Counſel for the Bill open? That at ſeveral Meetings they met to conſult of the Matter that this Bill takes Notice of. Did not he tell you when *Charnock* came firſt there for that Purpoſe, and when *Charnock* met them again for their Aſſurance? Now this being ſo plainly ſet forth in the Bill here, which recites, that this Matter was proved by two Witneſſes, upon the Credit of whoſe Teſtimony this Matter was found, and that one of them is gone away; and, ſay they now, we are ready to prove the Matter then ſworn: Is not that proper to ſatisfy Gentlemen's Conſciences that won't convict this Man without Evidence?

Sir ***Fr. Winnington***. Mr. *Speaker*, I humbly conceive the Queſtion is not now, Whether Sir *John Fenwick* is guilty, or no? But, Whether the Objections the Counſel for him have made, be ſo ſtrong as you will grant what they move to you? They tell you, if Counſel will proceed upon nothing but what is ſuggeſted in the Bill, according to your Order, we are ready to make our Defence. It was ſaid the King's Counſel was ordered to give their Evidence; that can have no Interpretation but as to the Matters in the Bill.

Says the King's Counſel, We will prove him guilty: Says the Counſel on the other Side, I hope the Houſe will give us Time to encounter them in that, for you have no ſuch Thing in the Bill; the ſending them the Copy of the Bill was as much as to ſay, You need not prove any thing but what is therein aſſerted. 'Twas ſaid by the learned Gentleman there, that there might have been an Act of Parliament which might have ſaid only, Be it enacted, that ſuch a Man be attainted, without giving any Reaſon. I cannot deny but it might be ſo without any Reaſon, but I don't believe it will be ſo. And another learned Perſon was for mending of the Bill: Says he, When you have the Matter of Fact proved before you, it may lead you to the amending of the Bill, and inſerting what you pleaſe, and enacting of it; but does not anſwer what the Counſel ſaid on the other Side: Would you have us anſwer what we did not know that you would ſtand upon? The Queſtion is not, Whether he be guilty or no? But, Whether the Objections that are made be good to give them Time?

Col. *Granville*. Sir, the Counſel (by what I obſerved from them) have ſtarted two Difficuties, and really (to me) both ſeem very material; the firſt is, Whether the King's Counſel ſhall be at Liberty to prove any thing that is not ſuggeſted in the Bill? The other is, Whether Sir *John Fenwick* had due Notice to make his Defence?

The firſt is a Matter of very great Moment: You are proceeding upon a Bill where not only the Life of Sir *John Fenwick*, but the Life of every Man in *England* is in ſome meaſure concerned: When a Precedent is made in this Caſe, Nobody knows who may be affected or hurt by it; and therefore I deſire you will ſettle that Matter, and have the Judgment of the Houſe, whether they will admit the Counſel to prove any thing that is not ſuggeſted in the Bill? If you will, I do not ſee how any Man that ſtands at the Bar of your Houſe, can be prepared to make his Defence. For there ſhall be one Crime alledged in the Bill, and when he comes to the Bar, the Counſel that are to proſecute, ſhall go quite off from that which is laid in the Bill, and produce you Evidence to a new Crime; and he ſtares and looks round him, and you had as good allow him no Counſel, or Copy of the Bill. This you thought ſo neceſſary for every Man that was to come upon his Trial for his Life for Treaſon, that you altered that Trial, and declared no Man ſhould have any Treaſon proved againſt him that is not alledged againſt him in the Indictment.

We have had great Complaints of *Weſtminſter-Hall*; and if the Parliament ſhould proceed in this manner, may have the ſame again. If they are too raſh in their Proceedings, they will be countenanced mightily in them, if you ſhould proceed againſt a Man, and condemn him for one Thing, when he is accuſed of another. I deſire to know, how we can proceed in a Bill upon which Sir *J. Fenwick* is to be proved guilty, and he hath no Opportunity to anſwer it? I take it, as this Bill is drawn, Sir *J. Fenwick*'s Guilt is noway concerned in it: For whereas the worthy Gentlemen tell you the Treaſon is ſpecify'd, there is no Treaſon ſpecify'd, otherwiſe than he is indicted for it.

Mr. *George Rodney Bridges*. Sir, I think the proper Queſtion before you is, Whether you will allow Sir *J. Fenwick* Time to produce ſuch Witneſſes as he ſhall deſire for his Juſtification? 'Tis a little ſtrange to me, that the Gentlemen that are of Sir *J. Fenwick*'s Counſel ſhould inſiſt upon thoſe Things, to deſire farther Time for his Preparation, when (I think) 'tis very plain, they were told what they were to prepare for by the Bill; which was, they were to juſtify Sir *J. Fenwick* againſt thoſe Things he ſtands indicted for; and the Matter of the Indictment is the Thing to be proved before you, and the Witneſſes to make it good are likewiſe mentioned; one of them is gone, but his Teſtimony remains upon Oath, not only to the Grand-Jury, but in another Place, that I am told of: I do not think you will think it reaſonable, after the King's Counſel have made out their Evidence, to give him Time to make their Obſervations upon the Charge; ſo you will conſider before you hear the King's Counſel, whether you will allow him farther Time, or no.

Sir *Joſ. Williamſon*. Mr. *Speaker*, the Gentleman that ſpoke laſt ſtates the Caſe to be, Whether you will think it reaſonable to allow Sir *J. Fenwick* farther Time to produce his Witneſſes? You may, Sir, make that the Queſtion; but that will depend upon another, which is, Whether you think that Sir *J. Fenwick* had not Notice enough to prepare to defend himſelf againſt the Charge contained in the Preamble of the Bill? And I add this further, Whether the Manner and Way of expreſſing that particular Charge in the Bill, is not ſo worded, ſo charged, as here expreſly to become a Charge that he is to anſwer for, and not only as a Matter of Fact hiſtorically related, not to come in Proof here: For if it proves to be well charged in the Preamble, 'tis a particular Fact of Treaſon he is to anſwer for in this Houſe; and then he hath had Time enough; ſo that now you are to judge of your own Way of expreſſing yourſelves. I believe every Gentleman knows it was the Senſe and Meaning of the Houſe, that thoſe are the particular Treaſons mentioned in the Indictment with which he ſhould be charged at the Bar, and have Time and Liberty to defend himſelf; and not only to the Allegations, that he had been indicted, *&c.* Now, Sir, if you ſhall allow theſe Gentlemen to except againſt your Way of expreſſing yourſelves, that I ſubmit to you: But 'tis clear to me, that this was a very good and proper way of expreſſing yourſelves, to charge him with theſe Facts, and to give him Liberty to diſprove it. If he and his Counſel underſtood it otherwiſe, the Queſtion is, Whether their differing with you in the Way of expreſſing it, ſhall be allowed to them, without taking a reaſonable Exception to it? You are ty'd here to the ſtrict Rules of Juſtice; but as to the Forms of Proceeding below, I do not think you are. Our Meaning was, moſt certain (though he was indicted, that at was nothing to us), that they ſhould bring their Proof to our Bar to prove him guilty; and if you ſhould give him two or three Days Time, you muſt mend your Bill to their Way of Expreſſion, and to their Senſe

Mr. *Brotherton.* I take the Queſtion to be now, Whether the King's Counſel ſhould give Evidence of any other Matter than what is alledged in the Bill? As to that, I muſt obſerve to you, that this Bill does not ſet forth any particular Charge againſt him; it does not ſay, that he ſuch a Day did ſuch a Fact, whereby he can make his Defence; 'tis only the Recital of an Indictment; and it does not ſay the particular Time and Place where the Fact was done. Now as to what that Gentleman ſays, if it had been ſaid generally, that he ſhould be attainted, it had been ſufficient. 22 *H.* VIII. the Statute for attainting one for putting Poiſon into a Pot, *&c.* there is the Day and Year when the Fact was committed; and ſo he might make his Defence. Then the King's Counſel offer to prove, that this *Goodman* was convey'd away by Sir *John Fenwick*; and there is no ſuch Charge in the Bill; for the Bill only ſays, that he is withdrawn; and I am of Opinion they ought to give Evidence of nothing but what is in the Bill.

Mr. *Whitaker.* As to the Exceptions made by the Counſel to the Inſufficiency of the Bill, by which they pretend Sir *John Fenwick* was led into an Error, ſo that he had no due Notice, I muſt needs ſay, if they were in *Weſtminſter-Hall* they would be in the Right: But this Houſe is not bound to thoſe Forms: for I believe the enacting Clauſe would do the Buſineſs of Sir *John Fenwick* well enough, if all the reſt were laid aſide; and I will conſider it with as much Tenderneſs and Conſcience for the Priſoner at the Bar, as any that brings Arguments from *Weſtminſter-Hall.* I would conſider, whether ſuch a Defence as they have made, that from the Bill (as to what is laid in it) he had not Notice enough to prepare to make his Anſwer: They ſay, a Recital is no direct Affirmation in civil Matters: It is an Affirmation; for to ſay, *Whereas ſuch a one is Bound*, is good in a Declaration upon a Bond. Now I would know, whether this be not enough, to ſay, That he is indicted, without any Allegation that he is guilty? Had the Bill no Recital at all, it had been an Objection; but it may be, it had been ſuch an Objection, that they ought to have done ſomething of their Parts, as to have deſired the Opinion of the Houſe to what they ſhould have anſwered: For ſuppoſe there had been no Recital at all (and you may make what Recital you think fit) what ſhould Sir *John Fenwick* have done? There are ſome Inſtances at Common Law: A Man is indicted for being a common Barrater, and there are no Inſtances given in the Indictment; why then he comes and prays the Court, that they may declare what Inſtances they will give, and that they may give no other Words in Evidence: Therefore I queſtion not but that ſhould have come on his Part; he is to be heard as to the enacting Part of the Bill; and under Favour, you could do no otherwiſe. Now if they do offer to give Evidence of any Treaſon that is not ſpecified in the Recital of the Bill, and the Counſel make an Objection to it, I ſhall agree with them.

Becauſe many Lords in the Gallery.

Sir *Ed. Seymour.* My Lords, and you Mr. *Speaker*, what hath been ſaid to you by that worthy Perſon that ſpake laſt, no doubt, is true; That if there had been no more than the enacting Clauſe, it would have done Sir *John Fenwick*'s Buſineſs with a Witneſs, or rather without a Witneſs: But that is not the Queſtion we are diſputing here; but the Queſtion is, Whether you will give Sir *John Fenwick* longer Time to make his Defence to that Part he inſiſts on, that is not contained in the Bill? You are well ſatisfied that you cannot go through with the Suggeſtions To-night, and the Debates, and what relates to it; and I find no Perſon againſt putting it off, but becauſe it would be a Delay; and if it be no Delay, that Reaſon is out of Doors.

Paſt Three a-Clock.

They tell you, the Counſel could not but take Notice of the Matters ſuggeſted in the Indictment: I cannot think that is reaſonably argued; becauſe they do know the Practice and Method is ſuch, that they can take Notice of nothing but what is ſpecified and contained in the Bill. And therefore, there being no Guilt charged upon Sir *John Fenwick* in the Bill, is it reaſonable they ſhould come and accuſe themſelves here, or make a Defence to what is not charged? No; but, ſay they, it is implied: This is an untrodden Path, and you ought to walk as ſecurely in it as you can. 'Tis extraordinary that you bring Sir *John Fenwick* here to anſwer for Treaſon, when 'tis allow'd in the Suggeſtions of the Bill, you have but one Witneſs to that Treaſon; and when you take theſe extraordinary Steps, you ſhould comply with him as much as you can in the Forms. For if Treaſon be not Treaſon unleſs it be proved by two Witneſſes, and you will give him Liberty to make his Defence, I think it no Loſs of Time; for you cannot go through the Bill To-night, to ſee whether Sir *John Fenwick* be guilty of what is contain'd in the Indictment. And I will give you one Reaſon why he could not be prepared to make his Defence in ſo ſhort a Time; for he could not produce his Evidence if he had any; and if you give him longer Time, I ſuppoſe you will think fit that Sir *John Fenwick* ſhould give an Account of what Witneſſes he ſhall make Uſe of for his Defence; and you will give an Order for thoſe Witneſſes.

Mr. *Harcourt.* If Sir *John Fenwick*'s Buſineſs muſt be done, I hope we ſhall do it like rational Men, and what we enact, be able to give a reaſonable Account of it in the Preamble of the Bill.

As to the Queſtion propoſed, your Debates have run ſeveral Ways: The firſt is, Whether Sir *John Fenwick* ſhall be allowed further Time? And in this Caſe, whoever I differ with, 'tis of that Nature that I muſt deſire the Liberty of ſpeaking my Mind. I muſt confeſs, I ſee no Room for inlarging the Time; and I ſhall humbly ſubmit my Opinion to other Gentlemen, whether he ſhould have further Time to prepare his Witneſſes? And for that, pray conſider the Nature of the Matter before you.

Sir, there is nothing certain that is alledg'd in the Bill; and ſhould you allow him further Time to anſwer that which is not alledg'd, I cannot imagine what Effect you would have of it. 'Tis ſaid indeed, he ſtands indicted; but 'tis nowhere ſuggeſted, that he is guilty of that Indictment. This general Charge ſeems a great Hardſhip: There is no one Thing that ſo many have been unjuſtly taken off by, as the Uncertainty of alledging general Facts in Indictments of High-Treaſon; nor has any Thing been complain'd of in ſuch Trials for a greater Grievance. What have you done in the Bill for regulating of Trials in Caſes of High-Treaſon? In that Bill you have reformed that Abuſe, and taken Care, that whatever Treaſon a Man might be guilty of, yet he ſhall never, upon his Indictment, anſwer to any Fact, unleſs the particular Overt-Act be expreſsly laid and affirmed in his Indictment.

That which ſeems moſt reaſonable in this Caſe to be done, is, not to inlarge the Time; but when you think fitting to proceed, proceed upon what is before you. Here are ſome Matters expreſsly alledg'd; let them go over the Recital, ſee whether they can prove that; but I cannot imagine to what Purpoſe you ſhould give the Priſoner further Time to anſwer nothing; for that which is not charged is ſo.

Mr. *Finch.* Mr. *Speaker*, Sir, this is a Queſtion, in my Opinion, of very great Conſequence: You are very well told from below, that this is an untrodden Path; and I am the more confirm'd 'tis ſo from this Debate.

We are told, that Sir *John Fenwick*, or his Counſel, could not be ignorant of what they were to prepare themſelves for. For this was our Meaning, ſays one Gentleman, though I find the Path is ſo untrod, we are very unfortunate in expreſſing of it, for we have not ſaid it at all in this Bill; we have ſaid, Sir *John Fenwick* was indicted, *&c.* Sir *John Fenwick* hath had a Copy of this Bill ſent him, Counſel allow'd him, and upon a ſecond Reading he comes to make his Defence. We are told, the Proceeding upon this Bill is not to be reſembled to the Proceeding in *Weſtminſter-Hall*; and this is ſufficient in a Bill (tho' in an Indictment it would not), without alledging that Sir *John Fenwick* is guilty. But one would think, that if Sir *John Fenwick* is guilty, every Allegation in the Bill, that is, the Inducement to the Bill, which is for attainting him, ſhould be a good and juſt Ground for the Attainder; and then, this Gentleman, that hath had a Copy of the Bill to prepare for his Defence, and ſhew you Reaſons why the Bill ſhould not paſs, though our Proceedings are not to be reſembled to the ordinary Proceedings, yet we are to expect from him ſuch a Defence as the ordinary Proceedings in *Weſtminſter-Hall* would require: But I think this is hardly to be expected; one might have thought, and reaſonably enough, that it might have come into his Imagination, that if there had been Ground to attaint him, by the ordinary Proceedings and Methods of Juſtice, the Parliament would not have taken an extraordinary Courſe to come at it: For I can never think it a good Reaſon to proceed this Way, that is, for the ſaving of Time; and if there be extraordinary they muſt gueſs at that out of the Bill: Now that is grounded upon thoſe Suggeſtions that I have cited; and then I ſhould have imagined, that whereas he had been indicted upon the Oaths of two Witneſſes, as the Law requires, and one of them was withdrawn; that you had rather intended to have charged him with ſome Contrivance to elude Juſtice, whereby you had Reaſon to exert your extraordinary Authority to proceed againſt him by Way of the Legiſlative; and I do not find we have any Precedent to warrant this Proceeding, tho' in our Debates we have endeavoured to find one: yet I cannot but obſerve the Conſequence of this hereafter: For whether we can find a Precedent to warrant this Proceeding in former Ages, or not, we are making a Precedent for our Poſterity. And conſider the Conſequence of this Precedent you are making; I think all the Bills in Parliament are grounded by the moſt ſerious Ways of Deliberation, before you come to Judgment: And Bills of Attainder ought much more, ſure, to require the Serioufneſs of your Debates; but I cannot but obſerve the Steps now made; I am afraid there was a wrong Step at firſt; I was not here the firſt Day: But I recollect ſome Things from the Bill itſelf; the Tenderneſs of thoſe Things upon which this enacting Clauſe does ſtand. Here was no Evidence given to induce the Houſe to bring in this Bill of Attainder; when this Bill is brought in the Houſe, and the Preamble that ſuggeſts that which is the Ground of the enacting Part conſider'd in the Houſe; and the Houſe did not think it reaſonable to proceed to the Reading of it a ſecond Time; I remember we were told, Won't you read it a ſecond Time, when you may have an Opportunity of having thoſe Suggeſtions prov'd to you? This was the Ground why this Bill was read a ſecond Time. For conſider, otherwiſe a Gentleman may, in any other Caſe as well as this, deſire Leave to bring in a Bill for attainting ſuch a one; and tell you, you ſhall have a good Reaſon given to you for it afterwards; and though the Reaſons ſuggeſted in the Bill are not ſufficient, you may have Reaſons out of the Bill that are ſufficient. What a Precedent will this be! Why, Sir, Length of Time gives a Sanction to thoſe Precedents which the Age that makes them think not of; and they become good Examples to Poſterity, that were even very heinous Precedents to the preſent Times. Now if this ſhall ſtand, as now in the Bill, I would aſk, What Man in *England* is ſecure, when a Parliament ſhall ariſe that hath a Mind to attaint him? Why then, Sir, if you do amend the Bill, conſider the Method of your Proceedings; you do yourſelves, in effect, declare, that for bringing in of the Bill, for twice reading of the Bill, you had no Ground at all; for otherwiſe you had good Grounds recited in the Bill, and that muſt be a ſufficient Ground to attaint him; and if you declare it no ſufficient Ground to attaint him, you declare you have brought in a Bill, and read it twice, without any Ground. Whether you will allow Liberty to offer at your Bar any Suggeſtions otherwiſe than in the Bill, that I muſt ſubmit to you; and for giving Time, ſince that is a Queſtion of a very extraordinary Nature; but have humbly offered my Thoughts, whether any thing ſhall be offered otherwiſe than is ſuggeſted in the Preamble of the Bill ? I hope you will not, for the Precedent ſake you are now making ; which if you do, I am afraid Bills of Attainder may become now as frequent as Bills of Attainder were in *Richard* II.'s Time ; which I hope never ſhall be.

Lord *Norreys*. Mr. *Speaker*, I will not pretend to tell you, that you are bound by other Rules than Rules of Juſtice ; but what is Juſtice in *Weſtminſter-Hall* is ſo here, and every where. And laſt Year you thought it Juſtice, that no Man ſhould be brought to a Trial, but he ſhould know what were the particular Facts that were alledged againſt him.

Lord *Cutts*. I think it, in ſome Meaſure, a Misfortune, that a Matter of this Nature, as is your preſent Debate, hath held you ſo long ; and conceive it a Thing to be wiſhed, that every Gentleman that ſpeaks upon this Occaſion, would apply himſelf more cloſely to Reality, and leſs to Forms ; I mean, to Forms, conſider'd merely as Forms ; for it ought to be true Reaſon that is convincing to you : And you ought not to tie yourſelves to any Forms upon this Occaſion, but ſuch as are grounded upon Reaſon ; and really I have not heard any Thing that fell from any Gentleman, that ſhews his Doubt of the Nature and aggravating Circumſtances of the Crime of the Priſoner ; but it hath conſiſted with the great Candour and Juſtice of this Houſe, to ſhew this Favour to the Priſoner before you. The Counſel ſay, they are unprepared ; if they mean they ſhould prepare themſelves for more Grounds of Difference and Chicanery, I would not give them farther Time ; I can't perceive there is any Reality of Argument in it ; and there is in Reaſoning, as in Religion, ſometimes a Form without a Power.

Sir *Tho. Dyke*. Sir, you have now two or three Queſtions before you ; I deſire you will confine our Debates to one Point : I think, whatever Opinion Gentlemen may be of concerning the Proof, I think the Point under your Conſideration, if you will make a right Judgment, is the Preamble of your Bill, which I take to be the Foundation of it, and the Cauſe for which you attaint this Gentleman : Now the Preamble does not recite, and ſay, he is guilty, but only indicted ; nor ſet forth any Time ; nay, it does not ſay he was arraigned. So that theſe Things are very uncertain, and yet you muſt attaint him for the Things recited in your Bill. And you know theſe Acts of Attainder are extraordinary Methods in Caſes of Treaſon ; and if you put it upon this Point, that the Act attaints him for one thing, and the Counſel ſhall prove another, it makes it more uncertain than it is, and no Man can be ſafe ; and therefore I hope you will confine the Counſel to Proofs of the Matter contained in the Bill.

Mr. J. *Howe*. Sir, I ſhall not move you to any thing that may tend to a Delay of the Matter before you : I think, if you pleaſe to go on upon the Matter ſuggeſted in the Bill, they are Allegations which muſt be proved before the Bill is committed ; and that will not hinder Sir *J. Fenwick* from being examined to the Treaſon likewiſe. Therefore all that is alledged in this Bill, I ſuppoſe, being thought neceſſary to be proved, I deſire he may be called in, and the Counſel may go on to prove what is alledged in the Bill, and afterwards Sir *J. Fenwick* may anſwer them.

Lord *Coningſby*. If the Queſtion was, Whether you ſhould grant this Gentleman Time or no to make his Defence, I ſhould not have troubled you. But the Queſtion now ſeems to be, Whether the Bill does depend upon the bare Suggeſtions of the Bill, or upon the Guilt of Sir *J. Fenwick?* And therefore if Gentlemen do inſiſt upon it, that he ſhould have longer Time to defend himſelf, as to his being innocent or guilty, I ſhall not oppoſe it ; but if you think fit to put it off, as if the Fate of the Bill did depend upon the Suggeſtions of it, I can't agree to that Matter ; therefore I deſire a ſhort Time may be given him to anſwer the Matter of his Guilt.

Mr. *Harley*. I find all Gentlemen that ſpeak of this Subject, to ſay this Matter is of a very extraordinary Nature, and you have entered into it by very extraordinary Methods : But I muſt only obſerve, that this being the firſt Bill of this Kind that hath been brought into the Houſe, before any Proof, Gentlemen muſt be excuſed if they are cautious what Steps they do take ; and when the Wiſdom of the Houſe has thought fit to take quite different Methods, as to the Preliminaries, 'tis not to be wondered if they meet with Difficulties in their Proceedings.

Some Gentlemen preſs for more Time to be given to Sir *J. Fenwick* to be prepared ; and others urge, that you ſhould declare, whether the Counſel ſhould be heard to any Thing but what is ſuggeſted in the Bill. And I think you muſt give a Determination to the laſt Queſtion, though the whole Houſe agreed to give him longer Time : For if you give him longer Time, it will after come to the ſame Debate, whether they ſhall be heard to any Thing but what is ſuggeſted in the Bill ? If you ſhould think fit to add any Thing, then it will be reaſonable that he alſo ſhould be heard to that ; for in the Caſe of the Death of a Man, let him deſerve never ſo much, yet he does not deſerve to die unjuſtly by your Hands.

It ſeems a very plain Propoſition, that when a Man is accuſed, he ſhould not anſwer to what he is not charged with ; and to charge it with *Innuendo's* and *Implications* is ſo uncertain, that as I always have ſeen it denied in this Houſe, ſo I hope I ſhall not ſee ſo great an Aſſembly give any Countenance to it. They did tell you, they were prepared to ſpeak to the Reaſonableneſs of the Bill ; but this Matter not being ſuggeſted in the Bill, they are not prepared to ſpeak to it.

Sir *Tho. Littleton*. I ſee now where your Debates have led you : I thought the regular Subject of our Debates had been the Point upon which the Counſel withdrew ; and that was for Time. For what ? Why, to prepare themſelves to anſwer any Evidence that might be given againſt them ; becauſe they perceived you did expect the Counſel for the Bill ſhould produce their Evidence. But they made an Objection : Say they, We did not underſtand your Order was, that we ſhould come prepared to oppoſe any Teſtimony *viva voce* to be given againſt us, but only prepared to ſpeak to the Reaſonableneſs of the Bill. Now, Gentlemen, after five or ſix Hours Debates, have been willing to accommodate the Matter (that nobody might think that any one preſſed a Matter unreaſonable), that they might have Time : But ſome Gentlemen will not be ſatisfied with granting what the Counſel deſired, but they deſire more. And what is that ? Why, that is, to know the Opinion of the Houſe, whether you will admit any one Thing to be proved that is not ſuggeſted in the Bill ? And I do take this to be within the Suggeſtions of the Bill, as fully as can be expreſſed. For what does the Bill ſay ? The Bill does ſay he was indicted of High-Treaſon, and that one of the Witneſſes is gone : And Gentlemen come to the Concluſion, and ſkip over the immediate Part of the Bill ; for the Bill does ſay, that he did incite and conſult, *&c.* And the Objection of the Counſel was not againſt the Evidence ; but they ſaid, they were not prepared at that Time to anſwer it, and there they leave it ; and thereupon the Houſe go on upon the Debates. What can we expect that they intended ? They might think, either we ſhall gain our Point, and the Houſe will give us Time ; or otherwiſe, if they go on and hear this Evidence, then we ſay we wanted Time. And that will be only Evidence *ex Parte*, and not carry ſo much Weight with it, tho' we have nothing to ſay to it ; or they might think it may have this Effect, that the Houſe will not go on, and hear any Evidence at all : In either of theſe Caſes, we have the faireſt Advantage that we can have, on the ſecond Reading of the Bill, in Defence of our Client : All they deſired was, that they might have Time ; and I hope that which ſatisfied them that are moſt concerned, may ſatisfy any Gentleman of the Houſe.

Mr. J. *Howe*. The Queſtion is not, what they aſked, but what is reaſonable for us to grant ? I was in the Beginning againſt any Delay, and I think there is no Occaſion of Delay : All I deſire is, Sir, that the King's Counſel may be deſired to prove the Suggeſtions of the Bill *ex Toto*.

Mr. Sol. Gen. Moſt that have ſpoke of this Matter have ſaid, that the Matter is very generally laid in this Bill, and the Counſel could not very well know to what to apply themſelves : That it ſpeaks of High-Treaſon in general, and of aiding the King's Enemies, which is very general : It recites that indeed ; but the Indictment is legal, according to the late Act of Parliament. 'Tis not only ſaid, that he deſigned the Death of the King, but for that Purpoſe he and others met together, and agreed to ſend *Charnock* to *France*, to go to King *James*, to induce the *French* King with an armed Power to invade *England*. Now how can any Thing be more particularly charged ? And the Indictment is ſo charged in your Bill. I think therefore the Counſel could not be ignorant to what they ought to apply themſelves : But by what I perceive, Gentlemen are very well contented to give him further Time. I remember, when the Bill was firſt brought in, there was a long Debate for a ſecond Reading ; and ſome Gentlemen thought it hard to be tried by ſo great an Aſſembly, and ſaid, they had rather be tried by a fewer Number : But I ſhall obſerve, that you have ſent the Copy of the Bill to Sir *J. Fenwick* beforehand, and you ſent him Notice that he ſhould provide himſelf But I remember a much better Man than Sir *J. Fenwick*, who had the Misfortune to be under an Accuſation of High-Treaſon, had his Indictment one Hour, and was tried the next ; and tho' he pleaded to have his Trial put off till the Afternoon, he could not prevail with the Court of Juſtice to do it : Sir *John Fenwick* hath had a Copy of his Bill for two or three Days, but he never had any Copy till he had pleaded,

Mr. *Waller*. I ſtand up only for my Information ; that which I would know is, whether the Counſel did not aſk you the Queſtion, whether they ſhould be bound to anſwer any thing that is not in the Bill ? If they aſked that, then the Gentleman that ſpake here is anſwered ; and the Gentlemen of the Houſe do not inſiſt upon what Sir *J. Fenwick*'s Counſel did not inſiſt on. And I do think the King's Serjeant, who opened the Proceedings, after he had opened what had been before the Grand Jury, ſeemed to make it a Charge, as if Sir *J. Fenwick* had been condeſcending to the withdrawing of *Goodman*. Now that ſeemed as if they deſigned to make that a Part of the Evidence.

Sir *Richard Temple*. The Counſel did not inſiſt upon it, only to anſwer the Suggeſtions of the Bill : Every Body knows, they objected to the others going on with the Evidence they opened, becauſe it was not in the Bill ; and the King's Counſel could not ſo much as alledge, that it was in the Bill ; and they would have gone on to have proved the Indictment. There is another Thing : It is told you, as if the Preamble had ſuggeſted ſomething of this Kind, that there was a Meeting. Now that Gentleman that ſpake laſt but one, has cleared it, that it only recites, he was indicted for theſe Things ; and this brings nothing in Iſſue, whether he be guilty or no. Now I think the preſent Queſtion, and only Queſtion before you, is upon the Suggeſtions of the Bill ; for you can bring nothing in Iſſue here, but what is in the Bill ; and Nobody can inſiſt, by the Rules of Reaſon or Juſtice, that any Man ſhould be heard to any Matter of Fact but what is in the Bill. And therefore I think there is nothing before you, but that you ſhould give Direction to hear them to what is ſuggeſted in the Bill.

Mr. *Methwen*. Sir, I ſpeak to the Method of your Debates : Your Debates ariſe upon an Objection that was made by Sir *J. Fenwick*'s Counſel, againſt the Counſel for the Bill going on with their Evidence to prove Sir *J. Fenwick* guilty of High-Treaſon.

I muſt beg leave to differ, as to what the Counſel did ſay, from ſome of the Gentlemen that ſpake laſt ; the Force of their Objection was, that they ſhould not now go on, for they were not prepared to anſwer them ; and the Reaſon they gave was, that they had not formal Notice ; and the other afterwards ſpake to the Shortneſs of the Time : Your Debates for a long Time went purſuant to this, whether you ſhould allow them further Time or not ? But the Length of your Debates hath raiſed a new Matter : Tho' I think that Doubt, though it was not made by the Counſel, may be very properly made by any worthy Member that hath that Doubt, whether, as the Bill is brought in, the King's Counſel might at any Time ſpeak to that Point, though Sir *J. Fenwick* be acquainted with it ? And I muſt always agree, that Doubt ought to be reſolved, before you come to reſolve, whether farther Time ſhall be allowed him or not ; and therefore I propoſe it, that this Queſtion may be put, Whether the Houſe will hear, at the Bar of the Houſe, the Evidence there is to prove Sir *John Fenwick* guilty of the High-Treaſon whereof he was indicted ?

Col. *Wharton.* You have three or four Queſtions upon your Paper; and now, after ſo long a Debate as we have had, I hope Gentlemen will not think fit to ſtart new ones; and I hope you will take Care that Gentlemen ſhall not riſe up three or four Times to ſpeak to this Matter. You have another Rule of the Houſe, That when a Queſtion is moved, and ſeconded, though another Queſtion is moved afterwards, yet that muſt be the firſt Queſtion that is to be put; and I hope you will keep us to theſe Rules.

I wonder at ſome Objections: 'Tis told you, that this is ſuch a Proceeding that never any Thing of this Kind was before; and that you are here going to read a Bill of Attainder, before you have had any Manner of Evidence upon which you ſhould ground the bringing in of this Bill. Gentlemen muſt remember, or ſhould have informed themſelves; for 'tis very certain that you had very good Grounds to vote this Bill to be brought in: I ſee the Gentleman that brought in his own Accuſation; you had his own Diſcovery read, and Mr. *Attorney* did inform you what was againſt him, and how he ſtood indicted. And another Gentleman by me, told you, he was with him, and there was a Treaty for his Pardon; this was Evidence for reaſonable Men to go upon. And to tell you that theſe Precedents will endanger your Liberty! Under Favour, this is the Ground of all your Liberty. 'Tis by this Power of Proceeding, when you have not that Evidence that *Weſtminſter-Hall* requires, by which you will keep great Men in Awe.

Now, give me Leave to ſpeak to the Queſtion that I think you ought to put: 'Tis told you by the Counſel for the Priſoner, that they are not appriſed what the Senſe of the Houſe was, and upon that Account they deſired further Time: I confeſs, when you allow'd Counſel, I was of Opinion it was a Favour; and now ſince they have made this Objection, though I do not believe you are obliged to allow them further Time, yet I had rather err on that than the other Side; and therefore I think the faireſt Thing is to allow them ſome further Time.

Mr. Secretary *Trumbal.* Mr. *Speaker*, I have attended all this Day to your Debates, which are now in my Opinion of a very extraordinary Nature; for a great deal of your Time hath been ſpent upon Motion of the Counſel for the Priſoner at the Bar, whether you ſhould allow them further Time or no: And now, by what I recollect from the Senſe of ſeveral Gentlemen, the Houſe ſeems willing to allow them further Time; even that is oppoſed at this Time of Day.

Sir, the King's Counſel have open'd the Matter of Fact, upon which they did intend to produce their Evidence; and when they had open'd the ſeveral Heads, the whole Objection that I heard made by the other Side, was, They did not think the King's Counſel could have proceeded to examine Witneſſes upon thoſe Facts; and that they were not prepared to bring Witneſſes on the Side of the Priſoner, and therefore pray'd for further Time: Truly, whether that be reaſonable or no, or whether upon one Favour, the Houſe think fit to grant another; I cannot tell what might appear, if it had come to a Queſtion; ſince the Life of a Man is concerned, we ought to be tender of it, and I ſhall be as tender as another; therefore I am of Opinion, that a reaſonable Time ſhould be allow'd. To do what? Why, upon the Evidence the King's Counſel ſhould produce, they ſhall bring their Witneſſes on the other Side to anſwer them. Whether the King's Counſel will produce Evidence that is foreign to the Bill, that will be in Judgment of the Houſe; but it was a good Motion made below, which I cloſe withal, that a ſhort Time may be allowed them to make their Defence, and bring their Witneſſes.

Mr. *Speaker.* Gentlemen, you have had a long Debate; I do not remember any formal Queſtion that was propoſed at firſt, till ſuch Time as I read to you what I thought was the Queſtion upon the Debate; when I read you the Queſtion for further Time, there were ſeveral Members ſtood up, and ſaid, that was not the Queſtion; and took Exceptions to it, and propoſed that the Counſel ſhould be confined to produce Evidence only to the Matters ſuggeſted in the Bill; ſo that now I have two Queſtions upon my Paper, which I will read to you, and put which you will. One Queſtion is, That they be confined to make their Proof to what is ſuggeſted in the Bill. The ſecond Queſtion is, That Sir *John Fenwick* be allowed further Time, *&c.*

Sir *Chriſtopher Muſgrave.* A Gentleman ſaid, the ſecond Queſtion upon your Paper was but lately ſtarted; but I remember, a little after the Counſel was withdrawn, it was moved, Whether you would give them further Time? And I preſently after, in the Debate, did take the Freedom to aſk, Whether it was intended they ſhould anſwer to any Thing but what was contained in the Bill? And, I remember, there was a Gentleman of the long Robe ſaid, That there was nothing offer'd by the King's Counſel, but what was within the Suggeſtions of the Bill. Another Gentleman ſaid, When they may have longer Time, they'd not ſeem ſo fond of it; 'tis indifferent to me, provided he be prepar'd to anſwer. But I cannot but obſerve, that the Concluſion of that honourable Perſon was, that at laſt you muſt come to determine the Queſtion. You are likewiſe told by an honourable Perſon nearer the Bar, Why do you diſpute this, now you have order'd the King's Counſel to produce the Evidence; and ſo you have concluded yourſelves? But for myſelf, I muſt confeſs, I did never think the Evidence was to be heard otherwiſe than as to the Suggeſtions of the Bill. And if that Point be to be determined, why will not you determine it now, rather than to have another Debate upon it?

Mr. *Boſcawen.* That which is preſſed by ſome Gentlemen, is begging of the Queſtion. What have we here brought Sir *John Fenwick* for? Was it not to ſatisfy ourſelves, whether Sir *John Fenwick* was guilty of High-Treaſon? Now that is ſuppoſed, by ſome Gentlemen, not to be within the Bill: If it be not within the Bill, I deſire you would throw out the Bill. But the Thing is, we muſt not examine to thoſe Things that will make Sir *John Fenwick* guilty. Sir, this is a very nice Thing, and very curiouſly woven. The great Thing, ſay ſome Gentlemen, we muſt take Care of, is the Blood of a Man: Does any one ſay he is innocent? No: But we muſt have ſome Way or another that he muſt not be brought to his Trial. I deſire, as *Engliſh* Men, you will not only take Care of the Life of one Man, but of the Life of the King; of the Lives of our Wives and Children, and all our Families. What will they ſay without Doors? You are afraid to meddle with Sir *John Fenwick*; and therefore you will ſlide it away upon another Point; that his being guilty of High-Treaſon is not within the Bill. I am not for taking the Advantage of Time; I deſire, as it was moved before, that you will give him Time, and try whether he be guilty of this Treaſon or no; or otherwiſe do nothing in it at all.

[*Then the Order was made for Candles to be brought in.*]

Sir *Thomas Littleton.* Now you have Candles brought in, it will be fit for you to return to the Queſtion: For my Part, I am willing to put both: But I think the laſt Queſtion that you have upon the Paper, properly ſpeaking, is to be put firſt; and that is, That the Houſe will proceed to examine Witneſſes to the Treaſon in the Bill for which he ſtands indicted.

Mr. J. *Howe.* I think the Queſtion ought to be, That his Counſel be directed to bring Witneſſes to the Allegations in this Bill.

Sir *Thomas Littleton.* I propoſe it to you thus; That the Houſe will proceed to examine Witneſſes at the Bar, to the Treaſons mentioned in the Bill for which he was indicted.

Mr. J. *Howe.* I think that Gentleman might very well have moved the Queſtion without that Limitation; for that is as much as to ſay, that Witneſſes ſhall be examined to none of the Treaſons in the Bill, except thoſe for which he hath been indicted; and that is a Limitation, I hope, ſhall not be put to the Enquiries of this Houſe. I hope you will put it, That they ſhall bring Evidence to the Matters alledged in the Bill generally: There are ſeveral other Allegations in the Bill which I would have him anſwer to; as the alienating the Affections of the King's Subjects from him, which I take to be High-Treaſon.

Members. No, no.

Mr. J. *Howe.* Why? If it be not High-Treaſon, it hath nothing to do in that Place. I believe 'tis a very high Crime, and would induce me very much for the Puniſhing of Sir *John Fenwick.*

Mr. *Norris.* Sir, I do not know how the Queſtions may be carried ſince Candles are come in; but I think 'tis for the better I think there are two Things have been ſpoken to; one is this Bill: I find thoſe Gentlemen that were againſt the Bill on *Friday*, are more againſt it now. I was for the Bill then, and am now for a ſecond Reading of it: I think the Bill is very plain, and know not what they would have mentioned in it more, unleſs they would have had the *King's-Head-Tavern*, and what Wine they drank there. I think there is all the Reaſon in the World to hear the Witneſſes to prove him guilty of High-Treaſon. As to the Point of Time, I ſhould be very willing to allow it them, if that Queſtion was put; and, I think, you have been very favourable to him already, in allowing him Counſel

Mr. *Smith.* I would only obſerve, when the Bill was to be brought in, the Objection was, that you had not Witneſſes. And now the Queſtion is, Whether you can hear Witneſſes upon Facts not particularly aſſigned in the Bill? I believe no Man can ſay, but that in the Indictment there are particular Facts that ought to be examin'd: I do own, for my Part, if Sir *John Fenwick* was a greater Man than he is, it were better he ſhould eſcape, than you ſhould ſpend ſo much Time about him. Sir, the Indictment is mentioned in the Bill; no Man thinks that *Goodman*'s going away, is Reaſon enough for bringing in ſuch a Bill againſt Sir *John Fenwick.*

Mr. Speaker. Shall I read you the Queſtion?

That Sir John Fenwick *be allow'd further Time to produce Witneſſes in his Defence, againſt the Charge of High-Treaſon, and that he name his Witneſſes.*

Which Queſtion was put, and paſſed in the Affirmative.

Mr. Speaker. The other Queſtion is,

That the Counſel, who are to produce their Evidence againſt Sir John Fenwick, *be allowed to prove Sir* John Fenwick *guilty of High-Treaſon.*

Sir *Thomas Littleton.* I do think one of the Reaſons why this Bill was brought, was, becauſe poſſibly, by the Abſence of this Witneſs, he could not, ſtrictly ſpeaking, be proved guilty; though all Mankind is ſatisfied in his Guilt. And therefore I queſtion whether it will amount to a legal Proof: And if you had ſuch a Proof as would convict him by the common Proceedings of Law, I ſhould not have been for a Bill of this Nature; for 'tis againſt the Honour and Dignity of this Houſe, to do the Work that an inferior Court can do. But probably, by the Abſence of this Witneſs, Sir *John Fenwick*, at a Trial in the *Old-Bailey*, might eſcape; though at the ſame Time 'tis highly probable, the Witneſs that is wanting to convict him, is by his Means gone out of the Way. Therefore I ſpeak to the Wording of the Queſtion; you ſay, *Shall be allowed to prove.* I would willingly prevent what may be objected when we come upon this Debate: If you do uſe the Word *Prove*, they may ſay, this is not Proof; for ſtill *Goodman* is not here. If you pleaſe to ſay, That we will examine Witneſſes to the Treaſon, and we will be Judges how far it appears to us, whether he be guilty, or not guilty.

Mr. Speaker. Will you let me propoſe it to you thus then? That the Counſel, in producing their Evidence againſt Sir *John Fenwick*, be allowed to examine Witneſſes touching the Treaſons mentioned in the Bill, for which Sir *John Fenwick* is indicted.

Mr. *Montagu.* I do not obſerve, that in reading of it you ſay any Thing as to the other Allegations of the Bill: I think you ſhould word it, That the Counſel be allowed to produce Evidence to the Allegations in the Bill, and the Treaſons whereof he ſtands indicted.

Mr. Speaker. Well then, the Queſtion is this, That the Counſel that manage the Evidence againſt Sir *John Fenwick*, be allow'd to produce Witneſſes touching the Allegations in the Bill, and the Treaſons whereof he ſtands indicted.

Which Queſtion being put, it paſſed in the Affirmative.

Mr. Speaker. Will you pleaſe to appoint a Time for it?

Mr. J. *Howe.* That I would move you is this: You were ſo extremely late before you went upon this Information, that you had not Time to go through any Part of it; therefore I would move you, that you would appoint early in the Morning for Sir *John Fenwick* to be Here.

[*And thereupon it was Ordered, That Sir* John Fenwick *ſhould be remanded to* Newgate, *and brought to the Houſe on* Monday *Ten a-Clock.*]

Mr. *James Montague.* Sir *John Fenwick* now inſiſted he had not Notice; I humbly move, that he may be brought in, and acquainted with what you have ordered. (*And accordingly Sir* John Fenwick *was brought to the Bar.*)

Mr. Speaker. The Houſe have conſidered of what Sir *John Fenwick* hath ſaid at the Bar, by his Counſel, and they are of Opinion, That Witneſſes ought to be examined there, to prove the Allegations of the Bill, and to prove him guilty of High-Treaſon whereof he ſtands indicted; but in Favour to you, becauſe your Counſel ſaid you were not prepared, the Houſe is willing to give you Time till *Monday* next, to make your Defence; and they require you to give in a Liſt of your Witneſſes; and if you ſend to me, you may have a Warrant for their appearing at that Time; and they require you to be here, ſo that they may proceed upon the Bill exactly at Ten a-Clock.

And Sir John Fenwick *being withdrawn,*

Reſolved,

That the Bill for Attainting Sir John Fenwick *of High-Treaſon, be read a ſecond Time on* Monday *next.*

Lunæ 16 *die Novembris,* 1696.

Mr. Speaker. Gentlemen, I would receive your Directions in one Thing: You have ordered a Member to produce a Letter, and the Counſel, in opening the Evidence, have referred to it. That Member deſires to know the proper Time for him to do it; Whether, while the Counſel are managing the Evidence at the Bar, or whether he muſt ſtay till they are withdrawn?

Mr. *Sloane.* As to this Matter, I do not queſtion but 'tis to be offered as an Evidence: And by the ſame Reaſon that you give him the Favour to examine the Witneſſes that are produced againſt him, for the ſame Reaſon the Letter ought to be read in his Preſence, that he may explain it, or deny it: And give me leave to tell my Thoughts of another Matter: If that worthy Member is to offer Evidence of what he took from Sir *John Fenwick*'s Mouth, (though a Member commonly gives his Evidence in his Place, after the Counſel is withdrawn) I think 'tis not only fit to produce the Letter in his Preſence, but that Sir *John Fenwick* ſhould hear what he ſays, and deny it if he can.

Mr. Speaker. Is that your Pleaſure, that the Letter be produced before Sir *John Fenwick,* and that the Evidence to be given by Mr. *Vernon* ſhall be in the Preſence of Sir *John Fenwick?*

The Queſtion being accordingly put, it paſſed in the Affirmative.

[*Then the Serjeant was ordered to take his Mace, and go into* Weſtminſter-Hall, *and ſummon the Members.*]

And being returned, The Order of the Day for proceeding on the Buſineſs of Sir John Fenwick *was read.* [*It being a Quarter before Eleven a-Clock.*]

(*Then Sir* John Fenwick, *and the Counſel and Solicitors on both Sides, were brought in.*)

Mr. Speaker. Sir *Thomas Powys,* when you were here laſt, you inſiſted upon it, That the Counſel againſt Sir *John Fenwick* ſhould be kept to the Proofs relating to the Allegations in the Bill only; or elſe that you might have further Time, becauſe the Witneſſes were not ready. The Houſe have conſidered that Matter, and in favour to Sir *John Fenwick,* that he might have no Surprize, have given him to this Day; but they do allow the Counſel to give Evidence not only as to the Allegations in the Bill, but to prove Sir *John Fenwick* guilty of High-Treaſon; and therefore, Mr. Serjeant *Gould,* you are at liberty to go on with your Evidence.

Mr. Serjeant *Gould.* May it pleaſe you, Mr. *Speaker,* We are here to give in our Charge, and the Evidence that we have againſt Sir *John Fenwick.* I find by your Order, that we are now allowed to produce Evidence touching the Allegations of the Bill, and likewiſe of the Treaſons for which he ſtands indicted; therefore I ſhall beg leave to open firſt, how he ſtands charged by the Indictment.

The Indictment firſt charges him with Compaſſing and Deſigning to depoſe the King, and put him to Death. The ſecond Charge is, For inciting the *French* King to ſend an Army of Soldiers to invade this Kingdom, and to make a miſerable Slaughter amongſt the Subjects of this Kingdom. The third Thing is, For adhering to the King's Enemies. The fourth Part is, That to effect this, he, together with ſeveral others, that is to ſay, *Charnock,* Sir *John Freind,* and others, did conſult, propoſe, treat, and agree to invite the *French* King to ſend a Number of Soldiers to invade this Kingdom, and to procure great Numbers of armed Men againſt the King to riſe and be formed; and with theſe Enemies, upon their landing and invading this Kingdom, to join, for to make and carry on a Rebellion and War in this Kingdom. And further it charges, That he did conſult, conſent and agree, to ſend *Charnock* as a Meſſenger from Sir *John Freind,* and others, into *France* to the late King *James,* to propoſe to him, to procure the *French* King to ſend Soldiers and armed Men to invade this Kingdom. Then likewiſe to effect this, the Indictment charges him with providing Horſes, Piſtols, and other warlike Arms. This is the Charge of the Indictment; and theſe Matters are in the Bill: For the Bill does charge him with compaſſing and imagining the Death and Deſtruction of the King, with adhering to his Enemies, by conſulting and agreeing with ſeveral Perſons at ſeveral Times, to ſend *Charnock* to the late King *James* in *France,* to invite and encourage the *French* King to invade this Kingdom with armed Forces, and Promiſes to join them, and aſſiſt them with Men and Arms.

Then the Bill does take notice of other Matters, That Sir *John Fenwick* hath protracted his Trial, by giving Aſſurances to the King to make a plain Diſcovery; by Reaſon of which he did not come to his Trial; and now one of the Witneſſes againſt him is withdrawn. May it pleaſe you, Sir, This is the Charge as it ſtands before this honourable Houſe; and the Evidence we ſhall charge him with, will be of this Nature: We ſhall give you an Account, That the latter End of *May,* or Beginning of *June,* Sir *John Freind* and *Charnock,* and ſeveral other Perſons, met at the *King's-Head,* and upon that Meeting they conſulted how to invade this Kingdom; and they concluded in this, That they would ſend *Charnock* into *France*; and he was to propoſe it to King *James,* That he ſhould procure 8000 Foot, and 2000 Horſe and Dragoons; and upon their Landing they were to join them with 2000 Horſe. After this they had another Meeting; for *Charnock,* to be ſure of the Matter, would have another Meeting; and then he propoſed it to them, Whether they continued in the ſame Reſolution? And they all then declared, particularly Sir *John Fenwick,* That they did approve of it, and ſtuck by it; and that *Charnock* ſhould go for that Purpoſe to *France. Charnock,* in Purſuance and Execution of this Treaſon, does go to *France,* and brings back a Meſſage, That the Matter had been communicated to the *French* King; but at that Time he was not ready for them, and could not ſpare his Soldiers, and his Troops. Then it reſted for ſome Time, till towards *Chriſtmas,* when Sir *George Barcley* came into *England,* and he brought with him a Detachment of about Sixteen; and their Province was to aſſaſſinate the King. But there was another Part, and that was the Invaſion; and in that Part was Sir *John Fenwick* concerned, which we ſhall produce our Evidence to prove upon him; but it does fall out, that we have but one Witneſs to this Matter that we can produce *viva voce*; though when this Indictment was found (for it was found upon the Act laſt Seſſions, which required two Witneſſes to each Species of Treaſon) we had two; but one is ſince withdrawn, and that is touched in the Bill, as in Truth the Fact is. Now, if Sir *John Fenwick* had come on in the ordinary Courſe of Proceedings to be tried, Sir *John Fenwick* might have been tried upon this Indictment, for then *Goodman* had been there; but he procraſtinates his Trial, he makes Application to the King, and gives him Aſſurances from Time to Time of an ingenuous Diſcovery; but inſtead of that, when *Goodman* now is withdrawn, theſe Aſſurances have terminated in this counterfeit Confeſſion that hath been laid before the Houſe, and is charged in the Bill.

But, Sir, to ſupply this, we ſhall produce the Examination of Mr. *Goodman*; we ſhall prove to you not only the Evidence that hath been given upon this Indictment, upon which he hath been arraigned, but alſo the Evidence which hath been given upon the Trial of *Cook,* who was convicted upon that Evidence. We ſhall go by theſe further Steps in the Caſe, and humbly offer it to the Conſideration of this Houſe, how far Sir *John Fenwick* will be affected with it: And that is this; Here hath been *Goodman,* and Captain *Porter* who ſtill ſtands his Ground; but they have tempted him with 300 Guineas in Hand, and 300 more was to be remitted to him upon his firſt landing in *France,* with Aſſurance likewiſe of King *James*'s Pardon, and likewiſe 300 *l.* a Year; 100 *l.* a Year whereof was to be ſettled by Sir *John Fenwick.* This Propoſition ſprung from one *Clancy:* It could not be expected that Sir *John Fenwick* ſhould appear in his proper Perſon, but he did by his Lady, who was with Captain *Porter,* and gave him Aſſurance of all that was propoſed by *Clancy,* that That ſhould be performed, and a great deal more.

We ſhall further give this Account, That when Sir *John Fenwick* was taken, there was a Letter handed to a third Perſon; and it appears by That, that he thought himſelf at that Time not ſafe, unleſs they could corrupt the Jury: For, ſays he, we muſt now get two or three ſtaunch Perſons that will ſtarve the reſt. Theſe Steps we ſhall proceed upon, and begin with the Indictment, and call our Witneſſes to it.

Mr. Serjeant *Lovel.* Mr. *Speaker,* I ſhall not repeat what hath been ſaid; becauſe I know what hath been materially ſaid can't paſs the Obſervation of this Houſe. The Method we deſire leave to proceed in, is the Method you have preſcribed us; and that is, firſt to prove the Allegations of the Bill. And that we ſhall make appear to you by undoubted Proofs, That Sir *John Fenwick* does ſtand indicted for theſe Treaſons at the Seſſions at the *Old-Bailey,* the 28th of *May,* upon the Oaths of *Porter* and *Goodman*; that we ſhall prove by Records, and that is not capable of any Traverſe or Denial. We ſhall alſo prove, by Matter of Record, That ſeveral who were concerned with Sir *John Fenwick* in this Conſpiracy have been tried and attainted; and then we ſhall call a living Witneſs to prove Sir *John Fenwick* guilty of Treaſon in the higheſt Manner. Mr. *Tanner,* deliver in the Indictment of Sir *John Fenwick.*

[*Which was delivered in, and read at the Table.*]

Mr. Serjeant *Lovel.* The Bill does charge, That he ſtands indicted upon the Oaths of theſe two, Captain *Porter* and Mr. *Goodman:* Beſides, I muſt beg leave to obſerve, that by the Act of Parliament made laſt Seſſions, 'tis enacted, That no Perſon ſhall be indicted unleſs upon the Oaths of two Witneſſes: Had not theſe Witneſſes been ſworn before the Grand Jury at that Time, this Bill could not have been found according to that Law, nor would Sir *John Fenwick* have pleaded: But he hath been arraigned, and pleaded; ſo that we ſubmit it to this Houſe, that it does appear upon Record, That this Indictment was found upon the Oaths of two Witneſſes. Beſides that, two Witneſſes are ſubſcribed to the Bill. Now that other Perſons have been indicted, and convicted upon the ſame Evidence, we ſhall prove, and that likewiſe by Records.

Mr. Serjeant *Gould.* I thought when we came to give you an Account of the Abſence of *Goodman,* then to have given you an Account of this, and other Matters.

Mr. Speaker. You will agree upon your Method, Gentlemen: Who do you call in the firſt Place?

Mr. Serjeant *Gould.* Captain *Porter,* Sir. (*Who being preſent.*)

Mr. Serjeant *Gould.* I deſire, Mr. *Speaker,* that he will give an Account of what he knows concerning this Matter, as alſo of what is charged in the Indictment.

Mr. Speaker. Captain *Porter,* the Houſe requires you to give them an Account of your Knowledge of any Conſpiracy, by Sir *John Fenwick,* againſt the King and this Government; and likewiſe of your Proceedings upon the Indictment againſt him for High-Treaſon.

Captain *Porter.* About the middle of *May* was Twelve Months, there was two Conſultations, one at the *King's-Head* in *Leadenhall-Street,* and the other in *Pall-mall*; theſe two Conſultations were for the Conſidering of the beſt Means to bring the late King *James* into *England* again: For it was ſaid, that King *William* being gone beyond Sea, he had left but few Forces, and therefore they thought they could not have a fitter Opportunity than that Juncture; upon which, they pitched upon *Charnock* to go into *France*, and make ſome Propoſals to the late King *James*, to borrow 10000 Men of the *French* King, whereof there ſhould be 8000 Foot, 1000 Horſe, and 1000 Dragoons; and it was propoſed, when they came over, to meet them with 2000 Horſe.

Mr. Speaker. Where was this?

Captain *Porter.* Our firſt Meeting was at the *King*'s *Head* in *Leadenhall-ſtreet*; after that, Mr. *Charnock* deſired another Meeting, and then we met at *Mountjoy*'s in *St. James*'s, and we all ſtood to what we had before reſolved, That he ſhould go over to King *James*, and make this Propoſal; and that if he could get ſo many Men of the *French* King, we would meet him with ſo many Horſe.

Mr. Speaker. Sir, you ſay the firſt Meeting was at the *King*'s *Head* in *Leadenhall-ſtreet*; who was then preſent?

Captain *Porter.* There was my Lord *Ayleſbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, *Charnock*, Mr. *Cook*, and myſelf; we dined there, and after Dinner Mr. *Goodman* came in to us.

Mr. Speaker. Did Sir *John Fenwick* hear this Diſcourſe?

Captain *Porter.* Yes, Sir.

Mr. Speaker. Did Sir *John Fenwick* conſent to it?

Captain *Porter.* He did abſolutely conſent to it. Sir *John Freind* did propoſe it; ſays he, Do not let us propoſe more than we can bring.

Mr. Speaker. Then you ſay you had a ſecond Meeting?

Captain *Porter.* When we agreed upon this Buſineſs in *Leadenhall-ſtreet*, Captain *Charnock* deſired another Meeting, to know if we continued in our Reſolution; and the next Meeting was at Mrs. *Mountjoy*'s; I think then my Lord *Montgomery* was not there, nor Mr. *Goodman*; but there was my Lord *Ayleſbury*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, Mr. *Charnock*, and myſelf.

Mr. Speaker. How long after?

Captain *Porter.* About eight or ten Days, to the beſt of my Remembrance.

Mr. Speaker. What was ſaid at that Meeting?

Captain *Porter.* The ſecond Meeting was to agree to the ſame Thing: We deſired *Charnock* to go as ſoon as poſſible to acquaint King *James*, that the ſooner he came that Year, the better.

Mr. Speaker. Did Sir *John Fenwick* conſent and agree, at the ſecond Meeting, to his going into *France* to procure the Forces?

Captain *Porter.* Yes, Sir.

Mr. Speaker. Will you give the Houſe an Account of any Thing elſe you know, relating to this Matter?

Captain *Porter.* That is all.

Mr. Serjeant *Gould.* Was you examined by the Grand-Jury, when the Bill was preſented againſt Sir *John Fenwick?*

Captain *Porter.* Yes, Sir.

Mr. Serj. *Gould.* What Evidence did you give to them?

Captain *Porter.* The very ſame I give now.

Mr. Speaker. Mr. Serj. *Gould*, what have you to ſay further to him?

Mr. Serj. *Lovel.* We would aſk, whether Mr. *Cook* was at the firſt Meeting?

Captain *Porter.* Yes, Sir, he was at both Meetings.

Mr. Serj. *Lovel.* Was Mr. *Goodman* at the preferring of the Bill of Indictment at the *Old-Bailey?*

Captain *Porter.* I ſaw him go into the Jury, and he told me it was for the ſame Thing.

Mr. Serj. *Lovel.* We have ſome of the Jury here, and we will call them to that.

Mr. Serj. *Gould.* Now, if it pleaſe you, Sir, we will aſk him to the Matter concerning *Clancy*'s tampering with him.

Mr. Speaker. Will you give the Houſe an Account of that Matter?

Sir *Tho. Powys.* By your Favour, I hope you will give us leave to interpoſe in this Matter: For I am ſure in the Caſe of Life, and in Caſe where there is a Law prepared to be made ſubſequent to the Fact, to condemn any Man to Death, you will not only have good Evidence, but that which is legal Evidence. And I take it, that in Caſes of this Nature, of a ſubſequent Law, the Evidence ought to be much ſtronger, and much fairer than when a Man is to be tryed by a Law in Being. If they ſhould offer that which was ſaid in the great Caſe of my Lord of *Strafford*, (which Attainder there hath been an Act of Parliament to reverſe) by a Gentleman that did then appear againſt my Lord of *Strafford*, That where the Houſe proceed in a legiſlative Way, there needs no Evidence at all; but every Man may follow the Dictates of his own Thoughts and Conſcience: ('Tis in *Ruſhworth*'s *Collections*, *fol.* 377.) Yet, I hope, you will be of another Opinion, and expect ſtronger Evidence, than if a Man was to be tried by a Law in Being. Now that which is offered now, cannot be allowed in any Court of Juſtice: They were going about to ſhew, That my Lady *Fenwick*, the Wife of the Gentleman at the Bar, that ſhe had uſed ſome Means to take off *Goodman*'s Evidence, and they would make uſe of that againſt her Huſband. Now, what any Man's Wife ſays cannot be made uſe of againſt him, as nothing that ſhe ſays or does can be made uſe of for him; and, by the ſame Rule of Juſtice, it cannot be made uſe of againſt him: For otherwiſe the Rule would be unequal, That ſhe might be a Witneſs againſt him, but not a Witneſs for him; that ſeems ſo unjuſt, that it will not be admitted in any Court whatſoever.

Sir *Barth. Shower.* By your Votes the Priſoner is allowed Counſel, and the King's Serjeant is to produce the Evidence againſt the Priſoner: That Phraſe of Evidence makes us believe, or at leaſt to hope, that you will give us leave to object to that which is not ſo; and in this I appeal to the Knowledge of the Gentleman on the other Side, who hath had a great deal of Experience of this Kind; and I am ſure, in all his Obſervations in the *Old-Bailey*, he can't ſay this was ever admitted in Caſe of Treaſon, nay not in Felony, the Actions or Sayings of other Perſons; and I muſt confeſs I wonder to hear him move it now.

When attempted on behalf of a cloſe Priſoner, that was not viſited by any Body, it was not admitted that the Actions of a third Perſon at large ſhould be admitted againſt him: There the Actions of a Wife cannot be Evidence for, nor againſt her Huſband. It was never but in one Caſe, and that for Sodomy, allowed, and that was after two or three Witneſſes beſides had been produced; and by the Opinions ever ſince, it hath been allowed not to be Law; and that for the Economy, the Danger might follow in Caſes of Matrimony and Families. Now they both do concern the Acts of other Perſons, and not Sir *John Fenwick.* Beſides, I have one Objection more, and that is, There is no ſuch Thing alledged in the Bill: and, with Submiſſion, you have declared, That they ſhould produce Evidence as to the Allegations in the Bill, and the Treaſons in the Indictment; but I can't find any Order that they ſhould produce Evidence concerning the carrying away of any Witneſs; and 'tis not alledged, that *Goodman* is withdrawn by Sir *John Fenwick*'s Privity. As to *Porter*'s being tampered with, there is no Colour of Suggeſtion in the Bill; ſo that this neither being in the Bill, nor being Evidence at Law, we muſt be ſurprized very much by it, if you ſhould admit it.

Mr. Speaker. You hear the Exception, What do you ſay to it?

Mr. Serj. *Gould.* I think what theſe Gentlemen ſay, will receive a plain Anſwer. They have made an Objection without anſwering the ſubject Matter; it is an Allegation in the Bill, That *Goodman* hath withdrawn himſelf. Now the Uſe we make of this is, to let us in to give an Account of what *Goodman* hath ſworn, and to entitle us to read his Examination: For, ſay we, he hath been tampering to ſtifle this Conſpiracy, to take off the King's Evidence. For nobody doubts of the execrable and wicked Conſpiracy; and 'tis as plain, here hath been two Witneſſes to prove it; and as plain, that this Indictment is found according to the late Act of Parliament, upon the Evidence of *Porter* and *Goodman.* Now, to ſhew this Conſpiracy is carrying on, we offer to prove the Tampering that hath been to take off the King's Evidence, and to lay that before the Conſideration of this Houſe; ſo the Uſe we make of it, is only preparatory to let us in to tell you what *Goodman* hath ſworn, and in good Time we ſhall produce to you an Indictment, where, upon his very Oath, and upon the ſame Evidence as we offer here, another of the Traitors hath been convicted; and therefore we humbly offer it, Whether, as this Caſe is, we ſhall not be admitted to prove this Tampering?

Mr. Serj. *Lovel.* Before we withdraw, I beg two Words as to what is objected on the other Side, for the learned Gentleman appeals to me; and I muſt appeal to the Knowledge of ſome Members that are learned in the Law, and to all, That even in criminal Caſes, Courts are not bound up to poſitive Evidence, but that the Evidence of Circumſtances, and ſome Perſons to corroborate them, is admitted: And if it ſhould be ſo, that nothing but poſitive Evidence ſhould convict, we ſhould have very few Convictions at the *Old-Bailey*; as to Clipping and Coining, where One is convicted by poſitive Evidence and direct Proof, Forty are convicted and attainted by Circumſtances, as Materials found about them, and putting off Counterfeit-money. Sir, I muſt ſubmit to you, Whether, as the Nature of this Caſe is, this Houſe will not think fit to hear all Evidence that may concern this Matter, whether Certain or Circumſtantial; and the Wiſdom of this Houſe will diſtinguiſh afterwards, what they think is material, and what is not. We do take this to be Part of the ſame Conſpiracy we do charge the Priſoner at the Bar with, that he might not come to condign Puniſhment; and therefore we pray, that let the Proceedings of other Places be what they will, that you will hear the whole Matter in this Caſe, whether the Evidence be poſitive or circumſtantial.

Sir *Thomas Powys.* I think they miſtake us when they give us ſuch an Anſwer. We doubt not but there is poſitive Evidence and circumſtantial; but we ſuppoſe this to be no Evidence at all. Mr. *Recorder* tells us true, That circumſtantial Evidence is frequently made uſe of; but we ſay, That whatever my Lady *Fenwick* hath ſaid or done, is not to be admitted as Evidence againſt the Priſoner at the Bar; becauſe what ſhe hath ſaid by Way of Endeavour to draw off *Goodman*, is no Evidence at all to be offered againſt her Huſband, and is not ſo much as circumſtantial Evidence.

Sir *Barth. Shower.* We do agree, If the Bill had been brought in againſt my Lady *Fenwick*, or againſt *Clancy*, this had been proper Evidence; and they did, and may deſerve Puniſhment for it themſelves: But this is no Evidence againſt Sir *John Fenwick*, that is here.

Mr. Serj. *Lovel.* We think 'tis properly before the Houſe, even by the Order of the Houſe itſelf: For in the firſt Place, we are to ſpeak to the Matters contained in the Bill. One Matter is, That Sir *John Fenwick* had been tryed before now but for Reaſons mentioned in the Bill; and that he delayed his Trial till ſuch Time as *Goodman* was withdrawn; therefore what lies before us by the Direction of the Houſe, is, That till ſuch Time as *Goodman* was withdrawn, Sir *John Fenwick* did pretend to go on to make a Diſcovery, and afterwards put it off with what is charged in the Bill: But ſay they, What is done by my Lady *Fenwick*, is no Evidence againſt him. When all the Circumſtances are laid before the Houſe, what Dealings there was with Captain *Porter*, and what was ſaid at that Time, and the Conſequence preſently after *Goodman*'s going away, I hope it is as much Evidence as the Caſe will bear.

Sir *Richard Temple.* Sir, Deſire they may withdraw.

[*Accordingly they withdrew.*]

Sir *Richard Temple.* I think it much concerns the Honour of the Houſe, when a Priſoner is at the Bar, that he ſhould be allowed the Right of an *Engliſhman*; what you do here, may be a Precedent in after Ages: You are told what is offered as Evidence here is admitted in no Court, and the Anſwer that is made to it, is of no Force at all; they tell you there is no Allegations in your Bill, That Sir *John Fenwick* had any Hand in his Withdrawing, nor nothing in the Indictment of it, and for that Reaſon the Evidence ſeems improper; and if it was, this would be no Evidence at all; for the Oaths of other Perſons is no Evidence againſt the Priſoner, to make him guilty of any Thing.

Lord *Cutts.* I think 'tis agreed already, That the Counſel for the Priſoner ſhould not meddle with the Authority and Juriſdiction of this Houſe: For if we are to be ty'd up to all the Forms and Niceties obſerved in inferior Courts, then to what End is the Priſoner brought here? I think, Evidence ought to be admitted, that may clear every Man's Conſcience, that this Bill againſt Sir *John Fenwick* ought to paſs.

Mr. J. *Howe*. A Gentleman ſaid, We are not ty'd to the Forms of inferior Courts; but tho' we are not ty'd to the Forms of inferior Courts, we are ty'd to that which was the Ground of them, and that is, right Reaſon and true Senſe: They have alledged that he was indicted; nobody doubts it. That *Goodman* is withdrawn, nobody doubts it. But what is that to Sir *John Fenwick?* It might be with a Deſign for Good or Evil to Sir *John Fenwick*. My Lord *Jefferies* ſaid, at my Lord *Delamere*'s Trial, (as I am informed) That one Witneſs, with good Circumſtances, was enough to convict a Man of High-Treaſon. And I am told, it was told him then, that if they ever met him in the Houſe of Lords, he ſhould anſwer it with his Head. I deſire you would aſk Captain *Porter*, when he comes in, Whether this was diſcourſed before Dinner, at Dinner, or after Dinner? And whether he knows that *Goodman* heard this or no?

Mr. Chancel. of the Exchequer. There ſeems a particular Shyneſs to know the Truth of this Matter, I mean in the Counſel t'other Day: The Gentleman ſays, That *Goodman* might be withdrawn to the Prejudice of Sir *John Fenwick*, as well as for his Good: I deſire you will not let the Government be ſo ſtigmatized. You have given leave to the Counſel to examine to any Thing that may be added to the Bill; for upon a Commitment, I can move you to put any Thing that ſhall be thought reaſonable.

Sir *Thoma. Dyke*. It may be a reaſonable Thing to enquire why *Goodman* is withdrawn? But the Queſtion is, Whether this be a proper Time? The Houſe is not ty'd to the common Forms, but they are ty'd to the common Rules of Equity: And the Queſtion is, Whether the Houſe will permit any Perſon to ſuffer by the Acts of another?

*Mr. Sol. Gen**. it is diſcretionary, whether you will determine that this is Evidence now, or after you have heard it. I can't tell at whoſe Trial it has, but I won't enter upon the Legality of the Thing; 'tis one Thing when a Man is to be tried by a Jury, and another Thing when he is to be tried before Judges. A Jury may be ſo ſway'd and poſſeſſed by it, that it may not be fit for them to hear it: But look into the Court of *Chancery*; and there Depoſitions, if one Side ſay they are Evidence, and the other Side ſay they are not, are every Day admitted; and the Rule is, That it is ſooner diſpatched by hearing of it, than not. You do not ſit here as a Jury, but as Judges, and will conſider how far the Actions of a Wife ſhall concern her Huſband; you will do the Priſoner Right, and yourſelves Right, if you will hear them.

Sir *Francis Winnington*. The Queſtion is, Whether the King's Counſel——

Mr. Speaker. Let me ſet you right; they are not here as King's Counſel.

Sir *Fr. Winn*. Very well: But in this Houſe you are the Judges and Jury too. The Evidence that is opened, is to induce you to believe that he is guilty; and the Gentleman that ſpake laſt will not allow it to be a legal Evidence. Then the Queſtion is, Whether you, being Judges of the Fact as well as of the Law, ſhould be afraid to be induced to believe a Fact, by that which is not legal Evidence? Suppoſe my Lady *Fenwick* had had the Deſign, and had told her Huſband what ſhe intended to do, and he ſhould have ſaid, he ſcorn'd it: This is poſſible, if you go to ſuppoſing; and that he might apprehend it would do him a Miſchief. Now it can be to no Purpoſe to hear this Evidence, unleſs it be to ſatisfy the Houſe, in order to attaint the Priſoner. No, but ſay they, Let us hear, and we will judge afterwards: Why ſo? It can't affect the Priſoner: And if any Perſon hereafter have a Mind to have my Lady *Fenwick* puniſhed, they may examine it.

Mr. *Sloane*. The Gentleman that ſpake laſt hath made one Suppoſal; let me make another. He ſuppoſes, That it may appear by the Evidence, upon the Examination of Witneſſes, that what my Lady *Fenwick* or *Clancy* did, was contrary to the Direction of Sir *John Fenwick:* If the Evidence happen to be ſo, 'tis nothing. But we may ſuppoſe again, Suppoſe it happens, that it appears by the Evidence, that it was for the Benefit of Sir *John Fenwick* to the greateſt Degree, to get away one of the Witneſſes; *& cui bono*, is the ſtrongeſt Preſumption to me. I do allow, in *Weſtminſter-Hall*, that a Woman ſhould not be a Witneſs for or againſt her Huſband; but if ſhe be directed by her Huſband, *Qui facit per alium, facit per ſe*; you do not alledge all the Evidence in the Indictment, that runs in general; if the Evidence differs as to Time and Place, ye may find him guilty of the Indictment.

Lord *Norryes*. Becauſe I would not willingly go upon Suppoſitions, I deſire the Clerk may read the Queſtion that you have paſſed the laſt Day, to examining Evidence.

[*Which was accordingly read.*]

Now I deſire to know, Whether this be Treaſon within the Indictment, or any of the Allegations of the Bill: Otherwiſe, I think you have tied yourſelves up by that Rule.

Mr. *Pelham*. I did expect the Gentleman that ſpake lately would have cleared the Matter. He gave you a Diſtinction between the Proceedings of *Weſtminſter-Hall* and the *Court of Chancery*. I am ignorant of both. I deſire to know, Whether we are to go here by the Proceedings of *Weſtminſter-Hall*, or the *Court of Chancery*. If we are not tied by theſe Rules, we may let ourſelves into any Evidence that will induce us to believe him guilty or not guilty: If we are tied to thoſe Rules that are obſerved in all Courts of Juſtice, where Trials of Treaſon are had, this can be of no Validity: So I deſire to know, whether we are to go according to the Proceedings of thoſe Courts, or whether we may proceed as the *Court of Chancery?*

Sir *Tho. Littleton*. The honourable Member that ſpake laſt, deſires to know, Whether we are bound by the Rules in *Weſtminſter-Hall*, in their Proceedings, or not? I believe it would have been to very little Purpoſe to have thought of this Bill, if thoſe Courts could have convicted him. I believe, if the Counſel had tied you to the Proceedings of *Weſtminſter-Hall*, and therefore that you could not have proceeded on this Bill, you would have taken Notice of them, and reprimanded them for ſaying ſo. I know not what to ſay to the Proceedings of *Chancery* in this Caſe; but I ſuppoſe upon this Trial, you will inform yourſelves by the beſt Methods you can; and every Man, according to his Judgment, be for or again the Bill. If upon what I hear, I am of Opinion he is notoriouſly guilty, I ſhall freely paſs the Bill. If I do ſo much as doubt that he is guilty, according to the old Rule, *Quod dubitas ne feceris*, I ſhall not be for it; and in order to this, I am for hearing every body that comes before us. It is ſaid, that poſſibly *Goodman* is withdrawn to Sir *John Fenwick*'s Prejudice; I would be glad to hear that; if ſo, I ſhall have the worſe Opinion of the Bill. They ſay, 'tis not alledged in the Bill, concerning Captain *Porter*'s being tamper'd with; but 'tis alledged, That *Goodman* is withdrawn; and that 'tis not alledged that Sir *John Fenwick* was privy to it; but it may weigh to Gentlemen's Judgments, how he comes to be withdrawn. They that tamper with one Witneſs may be thought like to tamper with another. They tell you, That the Evidence of a Man's Wife will not weigh againſt her Huſband. It may be ſo in point of Law; but if you think yourſelves bound up to the ſtrict Rules of Law, diſpoſe of your Bill preſently.

Sir *Will. Coryton*. You have been pleaſed to give Leave to the King's Counſel to prove Matters againſt Sir *John Fenwick*. You have heard Captain *Porter* upon the Fact. If they had opened the Matters, that Sir *John Fenwick* was inſtrumental to convey *Goodman* away, I ſhould have been willing to have heard it: But they opened it, That my Lady *Fenwick* was inſtrumental in Conveying away *Goodman*; and this ought in no ſort to be admitted. An honourable Gentleman of the Long Robe made a Difference in the Proceedings between the Court of *Chancery*, and the Courts of *Weſtminſter-Hall*; but I would fain know, if a Fact was ſtated, Whether my Lord Keeper could determine the Matter before a Commiſſion went to prove it. 'Tis true, we are not tied to the Forms of Law, but we are tied to the Forms of Juſtice. I know no Caſe where a Wife is admitted to be a Witneſs for or againſt her Huſband. In *Brown*'s Caſe, indeed, who took a Woman away, and forced her to marry him; the Queſtion was, Whether ſhe ſhould be admitted? And in that Caſe ſhe was admitted as a Witneſs, becauſe the Neceſſity of the Thing required it; and there was no other Way to prove, whether he had her Conſent or not. Another Caſe there was of my Lord *Caſtlehaven*, where from the Nature of the Thing it was admitted; for it was impoſſible there ſhould be any other Proof of it. But if my Lady *Fenwick* be guilty of this Matter, it muſt only by way of Inference affect Sir *John Fenwick*. They tell you, they inſiſt upon it as an Indictment; then it comes to be a Matter of Conſequence; and therefore, ſince the Matter hath been fully ſtated to the Houſe, as to what they would prove, I think we may now give our Judgment upon it.

Mr. *Boſcawen*. You are here in your Legiſlative Power, and are no more tied to the Rules of Law in Examining of Witneſſes, than you are in giving of Judgment; for you can give thoſe Puniſhments that never are given in *Weſtminſter-Hall*. I am of Opinion, that my Lady *Fenwick* cannot be examined for or againſt her Huſband; but if he ſend her to ſollicite for him, it ſhall have ſome Weight with me. Thoſe that don't believe it from what he ſays, may give their Judgment accordingly: I deſire to know of this Gentleman, if I don't believe it, whether I can give Judgment againſt him? I believe a Man's Conſcience ought to go with his Judgment.

Mr. Speaker. I will read the Queſtion: That Captain *Porter* be examined to the Attempt of taking off his Teſtimony as to the late Conſpiracy.

[*Which Queſtion being put, it paſſed in the Affirmative.*]

Mr. *Harley*. I ſuppoſe you will let the Counſel of both Sides have firſt done with their Queſtions, and then there will be ſome Queſtions propoſed to you.

Mr. J. *Howe*. They tell you how that Sir *John Fenwick* was indicted, and that *Goodman* is withdrawn; but there is one Thing the Counſel of both Sides ſlip over, and that is, Sir *John Fenwick* hath given in falſe Informations; it looks as if they were agreed on both Sides in that Matter: I deſire the King's Counſel may be aſked, Whether they have any Evidence of that Matter?

Col. *Crawford*. Since I am mention'd in that Paper——

Adm. *Ruſſel*. I believe, though that Gentleman was afraid that Matter would have been paſſed over, yet that the Gentlemen of this Houſe that are therein named will take Care, for their own Vindication, That that Matter ſhould not be ſlipped over; I ſuppoſe the proper Time for that is, when the Evidence is over; I aſſure you, if nobody elſe will, I will.

[*Then Sir* John Fenwick, *and the Counſel of both Sides, and Captain* Porter, *were brought in.*]

Mr. Speaker. Sir *Tho. Powys*, the Houſe hath conſidered of your Exception to the Teſtimony of Captain *Porter*, as to the Point he was to be examined to, and they are agreed, That 'tis fit that all the Evidence ſhould be laid before them, and they can judge afterwards, whether it be material or fit to be allowed, or not. Therefore, Captain *Porter*, pray do you give the Houſe an Account at large of what Attempts have been made upon you, at any Time, to draw you off from your Teſtimony, with reſpect to the late Conſpiracy.

Capt. *Porter*. I had a Meeting with one *Clancy*, firſt in *Mitre-Court*, at and afterwards at the *King*'s-*Head* Tavern by the Play-houſe: At thoſe Meetings he propoſed to give me 300 Guineas to bear my Charges to *France*, and to ſend me a Bill for 300 more; and likewiſe that I ſhould be allowed 300*l*. a Year.——

Mr. Speaker. How long had you been acquainted before?

Capt. *Porter*. Several Years.

Mr. Speaker. Did he tell you who he came from?

Capt. *Porter*. He ſaid, he had been with —-- *Fenwick*, who deſired him to make this Propoſal to me.

Mr. Speaker. How often had you Meetings with him?

Capt. *Porter*. About ſeven or eight Times.

Mr. Speaker. What Satisfaction did he give you, that Sir *John Fenwick* would perform the Agreement?

Capt. *Porter*. He told me, my Lady *Fenwick* and my Lady *Montgomery* ſhould meet and confirm every Thing that Night. The Day before I was to go, I met with my Lady *Fenwick*, who told me, my Lady *Montgomery* could not come, becauſe one of her Children was fallen ſick.

* Sir *John Hawles*.

Mr. Speaker. What Satisfaction did ſhe give you, that Sir *John Fenwick* would perform what *Clancy* had propoſed ?

Capt. *Porter.* She ſaid, what *Clancy* had propoſed ſhould certainly be made good.

Mr. Serj. *Gould.* Did you receive any Thing in part, in purſuance of this Agreement ?

Capt. *Porter.* I received 300 Guineas of *Clancy*, and he promiſed to me a Bill of 300 more, which was depoſited by ——— *Fenwick* in his Hands, to be ſent after me into *France.*

Mr. Serj. *Gould.* Pray, what Letter was that he brought you ?

Capt. *Porter.* He brought me a Letter, and ſaid it was writ by Sir *John Fenwick* to King *James* on my behalf.

Mr. Speaker. Did he deliver that to you ?

Capt. *Porter.* No ; he delivered it to the Gentleman that was to go with me, one Captain *Donelagh.*

Mr. Speaker. Why did you not take that Letter into your own Hands ?

Capt. *Porter.* I had it, and read it, before it was ſeal'd up.

Mr. Serj. *Gould.* Do you remember the Contents of it ?

Capt. *Porter.* As much as I remember was, He deſired his Majeſty, by reaſon that my going away was to ſave my Lord *A,leſbury* and my Lord *Montgomery*, &c. to pardon what I have done.

Mr. Serj. *Lovel.* Who ſubſcribed it ?

Capt. *Porter.* It was not Sir *John Fenwick*'s Name ; but they told me, King *James* would know who it came from.

Mr. Serj. *Lovel.* How did you proceed after the Meeting with my Lady *Fenwick ?*

Capt. *Porter.* The next Night after that he had paid me my Money, and ſhewed me the Bill, and I was to go away the next Day after ; they ſaid, the Boat was provided.

Mr. Serj. *Lovel.* Can you tell whether the Boat was provided ?

Capt. *Porter.* They were taken up preſently after.

Mr. Serj. *Gould.* We will now produce a Record to confirm the Evidence that he hath given you : This Perſon hath been convicted for this Tampering.

(*Accordingly the Record for* Clancy'*s Conviction was produced.*)

Sir *Tho. Powys.* I deſire to know, Whether they offer this as Evidence againſt Sir *John Fenwick ?*

Mr. Speaker. They offer to prove, That this very Perſon hath been tampered with to take off his Teſtimony ; and they leave it then to the Houſe to judge, who is moſt likely to be guilty of *Goodman*'s Withdrawing. They begin to ſhew you, there hath been an Attempt to take off this Perſon's Teſtimony ; you have heard the Perſon himſelf to it already : So now they offer to read the Conviction of *Clancy* to this Matter.

(*The Record of* Clancy'*s Conviction was read.*)

Mr. Serj. *Lovel.* We will prove the like Solicitation hath been made by Mr. *Dighton*, who is the Solicitor for the Priſoner at the Bar.

Mr. Speaker. What is your Witneſs's Name ?

Mr. Serj. *Lovel. Thomas Roe :* If you pleaſe, Sir, to aſk him what Endeavours hath been uſed by Mr. *Dighton* to make uſe of him, that *Goodman* might withdraw himſelf.

Mr. Speaker. Mr. *Roe*, You are required to give this Houſe an Account of what hath paſſed between Mr. *Dighton* and you, in order to take off the Teſtimony of Mr. *Goodman.*

Mr. *Roe.* About the middle of *September* laſt I had Occaſion to go to Mr. *Dighton*, to enquire, Whether the Commiſſioners of the Land-Tax in *Surrey* ſate ; for I knew he was concerned in ſome Affairs for that County : He told me, he did not poſitively know, but would ſpeedily enquire. At the ſame Time he took Occaſion to tell me, he knew it was in my Power to do Sir *John Fenwick* Service. I aſked him, What he meant by it ? Says he, I know you know *Goodman* well, and it will be the better for you if you will tell me : I aſked him, What he meant by that Way of talking ? He deſired I would meet him ſome other Time, and I ſhould know further of his Mind. Accordingly I did meet Mr. *Dighton :* Says he, You know *Goodman* well, and if you can ſay any Thing that can diſcredit *Goodman*'s Teſtimony, you ſhall have 100*l.* a Year ſettled upon you for your Life. Says I, Sir, I do know him well : Says he, Did you never hear him talk of Poiſoning the Duke of *N.* and Robbing on the Highway, and that he is concerned with Clippers ? Says I, I have heard him talk of thoſe Matters ſeveral Times ; but you can't think I will be a Witneſs, and expoſe myſelf, and diſparage People till I know for what. Says he, For that you ſhall be ſatisfied ; you ſhall have 100*l.* a Year ſettled upon you, provided you can diſcredit *Goodman*'s Teſtimony, that Sir *John Fenwick* may come off, and it will be done by a Friend of yours.

We accordingly agreed to meet the next Day at a Coffee-Houſe in the City, and appointed a Friend to be there ; but Mr. *Dighton* did not meet at the Time ; and the Reaſon he told me was, becauſe Sir *John Fenwick* was that Day to be arraigned. As ſoon as Mr. *Dighton* had made this Propoſal, I told Mr. *Goodman* of it, and he adviſed me to go on with him, and ſee if I could get any Offer under his Hand : I told him he had appointed to meet me in the City, and a Friend to be there to hear me. I went, and told Mr. *Dighton* ; but Mr. *Goodman* would not be ſatisfied with that, but ſaid I muſt go to the Archbiſhop, and tell him what paſſed ; ſo I did go and tell the Archbiſhop what I have told you now.

Mr. Speaker. Had you any Meeting after that ?

Mr. *Roe.* Yes, on the 19th of *September* ; and then he made great Aſſeverations, that what he ſaid ſhould be performed ; and that I ſhould not only oblige Sir *John Fenwick*, but my Lord *Montgomery* ; and that *Goodman* was a loſt Man by being become a common Evidence ; and that it would not be in his Power to oblige any Man, my Lady Dutcheſs having diſcharged him of his Employ, and he would not be in a Condition to do further for me ; and, ſays he, Whatever you would have gotten by ſerving my Lady Dutcheſs in her Concerns, ſhall be made up over and above this 100*l.* a Year that I have promiſed.

Mr. Serj. *Gould.* I deſire he may be aſked, Whether *Goodman* did not acquaint him, that a Siſter of Sir *John Fenwick*'s had been with him, and upon what Occaſion ?

Mr. *Roe.* About the Time of the Preferring of the Bill againſt Sir *John Fenwick*, I ſaw *Goodman* at *Hicks*'s-*Hall* ; and a little after he told me, that a Siſter of Sir *John Fenwick*'s had come to him, and made ſome Propoſals to him ; and I acquainted the Duke of *Shrewſbury*'s Deputy, Mr. *Vernon*, with it.

Mr. Speaker. Did you purſue this Diſcourſe with Mr. *Dighton*, ſo as to come to any poſitive Agreement ?

Mr. *Roe.* No otherwiſe than what I told you ; my Deſign was to have Mr. *Dighton* to have given it me in Writing, or elſe for him to have ſaid it before ſome other Man ; but I don't know any thing whereby I could have diſcredited Mr. *Goodman*, if he would have done it.

Mr. Serj. *Gould.* You obſerve, Sir, that one of the Witneſſes, whoſe Name is ſubſcribed to the Bill of Indictment, is withdrawn : Now to give you an Account that he is withdrawn, I deſire the King's Proclamation may be read.

Members. No, no.

Mr. Serj. *Lovel.* We have Mr. *Goodman*'s Examination under the Hand of Mr. *Vernon* ; we pray it may be read.

Sir *Tho. Powys.* Mr. *Speaker*, I deſire to be ſpared a Word to this Matter : I take this to be a great Point, not only as it concerns the Life of this Perſon, but as it may be a Matter of Example in all Times hereafter ; that which they would offer is ſomething that Mr. *Goodman* hath ſworn when he was examined by Mr. *Vernon* ; Sir *John Fenwick* not being preſent or privy, and no Opportunity given to croſs-examine the Perſon ; and I conceive that cannot be offered as Evidence ; for if that ſhould be allowed for Evidence, then what is ſworn behind a Man's Back, in any Caſe whatſoever, may as well be produced as Evidence againſt him ; and they know, that in a Caſe of the Value of Five Shillings, no Depoſitions or Examinations of any Man can be made uſe of ; and I am ſure they will not ſay, that the Depoſitions taken between other Perſons, where a Man is not a Party, can be made uſe of as Evidence againſt him ; and if not admitted where Property is concerned in the loweſt Degree, I hope you will never admit it in this great Place, from whence inferior Courts (as to Juſtice) take their Meaſures.

Sir *Barth. Shower.* Mr. *Speaker*, I deſire you would ſpare me a Word of the ſame Side. I humbly oppoſe the Reading of this Examination, as not agreeable to the Rules of Practice and Evidence, and that which is wholly new ; and this in civil Cauſes can't poſſibly be done : No Depoſition of a Perſon can be read, though beyond Sea, unleſs in Caſes where the Party it is to be read againſt was privy to the Examination, and might have croſs-examined him, or examined to his Credit, if he thought fit ; it was never pretended, Depoſitions could be read upon other Circumſtances. But in Criminal Caſes, I appeal to the Gentlemen on the other Side, who know the Proceedings in the *Old-Bailey* very well, it was never admitted : Nay, in an Appeal of Murder, if Depoſitions be taken before the Coroner, and there be an Examination of Witneſſes upon the Indictment, though the Appeal be for the ſame Fact, and in order to bring the Perſon to the ſame Puniſhment ; yet, in that Caſe, thoſe Depoſitions can't be read, becauſe 'tis another Suit ; but it was never attempted in any Court of Juſtice, that the Examination of Witneſſes behind a Man's Back, could be read in any Place whatſoever. Our Law requires Perſons to appear, and give their Teſtimony *viva voce* ; and we ſee that their Teſtimony appears credible, or not, by their very Countenances, and the Manner of their Delivery : and their Falſity may ſometimes be diſcovered by Queſtions that the Party may aſk them, and by examining them to particular Circumſtances, which may lay open the Falſity of a well-laid Scheme ; which otherwiſe, as he himſelf had put it together, might have looked well at firſt ; and this we are deprived of, if this Examination ſhould be admitted to be read.

Now, though the Practice of other Courts does not oblige this Houſe, yet we know you will conſider the Rules of Juſtice ; 'tis but Juſtice in criminal Caſes, eſpecially as our Conſtitution is, that the Perſon ſhall ſee his Accuſer. A Man may ſwear a Depoſition reduced into Writing, whoſe Conſcience perhaps would not let him publickly accuſe the Priſoner Face to Face : Experience hath ſhewed it often, that ſeveral that will calumniate another privately, will not juſtify the ſame in open Court of Juſtice. What *Goodman* is, 'tis not proper for us at preſent to give an Account of ; but we oppoſe it at preſent, for that we were not preſent, nor privy, nor could have croſs-examined him ; 'tis only an Information before a private Juſtice ; for if not ſo, we know not what Authority he had to examine him : and then if ſo, Mr. *Recorder* knows, that in the *Old-Bailey*, if *Goodman* had died it had not been Evidence ; in caſe he had been ſick, or withdrawn without our Privity, they could not have read it ; nay, if he were withdrawn by our Privity, it could not be read : 'Tis true, the Inciting him to withdraw had been puniſhable in another Man, but could not have been read to have convicted the Party ; and ſince this Examination could never have been read there, and if it muſt be unjuſt, and hath not been practiſed, I hope you will not do it now.

Mr. Speaker. Mr. Serjeant *Gould*, What do you ſay to it ?

Mr. Serj. *Gould.* I obſerve this Gentleman's Objection, why this Examination ſhould not be read ; and, under Favour, we think we are regular, as this Caſe is, to have his Depoſition read. 'Tis true, as long as the Witneſſes can be produced, in all Courts, and Practice of the Law, you ſhall not read his Examination, or what is taken before a Juſtice of Peace : But that is not our Caſe ; it is now fully proved before you, that he is withdrawn ; and it is fully before you, that he hath given Evidence for the King, and hath been examined ; and this is an extraordinary Caſe, and that is the Reaſon we are in Parliament : He hath ſworn this Matter, and before a proper Officer ; why then ſhall not his Evidence be read and allowed when he is wilfully withdrawn, and we ſay, by the Contrivance of the Priſoner at the Bar ? And the Thing ſpeaks itſelf. Now, with Submiſſion, I take it to be every Day's Practice, that where an Evidence is dead, his Depoſition ſhall be read. It appears to you, that there was to have been a Trial, but the Witneſs is withdrawn ; and it appears plainly that he hath been tampering. The Evidence is full in the Caſe as to *Porter* ; and we have produced a Record of Conviction that does confirm it : Now this is ſuch a Practice, we come into Parliament to have it remedied ; for otherwiſe Men ſhall commit Treaſon, and by their Contrivance and Art the Witneſſes ſhall be drawn away, and the Priſoner ſhall not be brought to condign Puniſhment. Here is the Record in which he gave Evidence, and he is withdrawn ; and therefore I hope, in this Caſe, we ſhall be admitted to read his Depoſition: For I deny what the Gentleman ſays to be Practice; and Mr. *Recorder* can give you a better Account, who knows more of the Practice of it, That if a Witneſs is dead, they may read his Depoſitions. We are here before you in Parliament; and by the ſame Reaſons that others have been tampered with, this Witneſs may be preſumed to be tampered with; and therefore we are in your Judgment, whether in this Caſe his Depoſitions ſhall not be read?

Mr. S. *Lovel.* 'Tis objected, on the other Side, That this Evidence ought not to be offered; and for what Reaſon? Becauſe, ſay they, a Jury ought to go *ſecundùm allegata & probata*; and what is not ſtrictly Evidence by Law, you are not to take Notice of; but in criminal Caſes (which is this Caſe), where Perſons do ſtand upon their Lives, accuſed for Crimes, if it appears to the Court, that the Priſoner hath, by fraudulent and indirect Means, procured a Perſon that hath given Information againſt him to a proper Magiſtrate, to withdraw himſelf, ſo that he can't give Evidence as regularly as they uſed to do; in that Caſe his Information hath been read; which, I ſuppoſe, with humble Submiſſion, is this Caſe; but I ſuppoſe we are not here tied up to formal Evidence; but 'tis our Duty, ſince the Houſe hath commanded, to lay the whole Fact before you, and you are Judges what is material, and what is not material.

Sir *Thomas Powys.* Pleaſe, Sir, to ſpare me a little; for ſure this is no ſmall Matter. I did expect that they, if they intended to have ſupported this Evidence, would have mentioned ſome Author, ſome Caſe, or ſome Precedent, where this has been before:——But he makes ſuch a Diſtinction, I am mightily ſurprized at; for Mr. *Recorder* cites no one Inſtance, that ever he ſaw ſuch a Thing in his Life; nor cites one Book that hath ſuch Authority; but he gives you a Diſtinction, whether it be of his Side or our's, I muſt ſubmit to you; for he ſeems to agree, that in Caſes of Property, ſuch Evidence is not allowed; but in Caſes of Life, in which we ought to be more tender, he ſays, 'tis to be allowed. Sure if it be not Evidence where five Shillings only may be at Stake, I ſubmit it to you, whether it ought to be admitted in the Caſe of Life? For my Part, I know nothing of it, if it be a Rule; but I always thought the Evidence ought to be more clear and full in the Caſe of Life, than in the Caſe of Property; but Mr. *Recorder* turns it upon us, and ſays, Though it is not Evidence in Caſe where Property is concerned, yet 'tis Evidence in Caſe of Life: But I deſire he will ſhew any one Lawyer in *England*, that ever ſaid it, but himſelf.

Sir *Bartholomew Shower.* I anſwer to what Mr. Serjeant *Gould* ſays: That this is an extraordinary Caſe, I will not pretend to ſay any thing, you are the proper Judges of that; we now oppoſe it in reſpect of the Rules of Juſtice. As to Mr. *Recorder*'s Diſtinction between civil and criminal Cauſes; he hath admitted, that in civil Cauſes it would not be allowed; and I hope you will be of Opinion, that it ought not to be admitted in criminal. The Jury muſt go *ſecundùm allegata & probata.* I deſire to know what other Rules a Jury hath in criminal Caſes? But they ſay, that a Juryman hath not as much upon his Oath in trying a Priſoner for his Life, as in trying an Action of Treſpaſs. Is not the Oath, *You ſhall well and truly try*, &c. *according to the Evidence you have heard?* Now, I would know whether the Form of the Oath, which the Wiſdom of our Anceſtors hath thought fit to uſe for 1000 Years paſt, does not direct what ſhall be Evidence? Evidence of *Prima Facies* muſt be Evidence of living Perſons: I am ſpeaking for the Life of a Man, and for maintaining the Rules of Law, which I hope ſhall continue for ever: And that is, that the Examination of a Perſon that is abſent, ſhall not be read to ſupply his Teſtimony. What you ſhall think fit to do here, we muſt ſubmit to; but that 'tis allowed below, we muſt deny.

Mr. Recorder. Sir, I do, with humble Submiſſion, ſtand to what I ſaid: As to the Definition of *Allegata & Probata*, in Matter of Property, we agree with them; but as to *Allegata & Probata*, in Matters Criminal, we muſt differ with them: I did ſay it before, and do ſay it again, with Submiſſion, That in many Caſes criminal, there need no poſitive Evidence at all; and yet the Jury, according to *Allegata & Probata*, in that Caſe, may convict a Criminal. And I do ſay, with Submiſſion, that where there is no poſitive Proof at all; yet in that Caſe, many Criminals are, and ſtill will be convicted. I did inſtance before in the Caſe of Clipping and Coining, which are Matters ſo ſecretly practiſed, as 'tis very rare there can be any poſitive Witneſs to prove the Fact: What is then the Method? Why, we go by Circumſtances, by Information of other Perſons, by Tools, and other Inſtruments that are found; and tho' nobody ever ſaw them do the Thing, yet they are convicted. We do not offer this Evidence to be as concluding Evidence as if *Goodman* was here; but a corroborating Evidence of what Captain *Porter* hath ſaid. If it did wholly depend upon this Evidence, it may be it might have no great Weight; but ſince there is other Evidence *viva voce*, and ſince you have been pleaſed to order us to lay before you all the Evidence, we humbly offer it to you, and pray it may be read.

Mr. *Manley.* I humbly pray they may withdraw.

Mr. Speaker. If you pleaſe to withdraw; but firſt I am required to aſk, if on both Sides you inſiſt upon this Point?

And the Counſel for both Sides declared, they inſiſted on it.

[*And then withdrew.*]

Mr. *Manley.* I ſhould not have preſumed to have given you this Trouble of their withdrawing, but that a Thing is inſiſted on by the Counſel for the Bill, which I think is of the greateſt Conſequence to all the Freemen of *England.* 'Tis true, the Rules of *Weſtminſter-Hall* are not binding to the Legiſlative Power; but I would not have the Legiſlative Power to be governed by the private Senſe of any Man whatſoever, but by thoſe Rules that are the Rules of Juſtice and common Equity. God forbid that we ſhould, upon Suppoſitions, ſuppoſe ourſelves out of all the Rights of the Law! I never heard any Gentleman of the Long Robe, before the learned Serjeant at the Bar, aſſert, that an Examination before a Juſtice of the Peace could be read againſt a Man for his Life. 'Tis known to all that have looked into the *A B C* of the Law, that it was never practis'd. 'Tis true, in Equity, Depoſitions may be read, becauſe they are taken by the Conſent of all Parties; and 'tis as well a Depoſition of one Side, as of the other, and the Witneſſes may be croſs-examin'd: But that is nothing to this Purpoſe.

Mr. *Sloane.* I believe I may ſave you a great deal of Trouble in this Matter; for thoſe Gentlemen from the Bar that made Objections, ſpake without Book, but I ſpeak by Book; (*having my Lord Chief-Juſtice* Hales's *Pleas of the Crown in his Hand.*) No leſs a Man than my Lord Chief-Juſtice *Hales* (and I think he was paſt his *A B C* of the Law; I know not how far this Gentleman is advanced), in his Pleas of the Crown, in that Part where he ſhews what is Evidence to the Petit-Jury, he ſays:

Firſt, By the Statute 1 and 2 *Phil.* and *Mary*, c. 13. and 2 and 3 *Phil.* and *Mary*, c. 12. the Juſtice hath Power to examine the Offender, and Informer; and ſo he goes on in ſeveral Particulars: And then, 5. He ſays, theſe Examinations, if the Party be dead or abſent, may be given in Evidence. I muſt allow, ſuch an Examination not of the ſame Authority, as if the Witneſs was preſent it would be, becauſe he can't be croſs-examin'd; but ſtill it muſt be of ſome Weight, and it muſt be read: But in this Caſe, 'tis of greater Weight than in that which my Lord Chief-Juſtice puts; for he ſays, it would be Evidence, if the Party was dead; or if he was withdrawn without the Conſent of the Party againſt whom he is a Witneſs, and that comes to the Caſe in Chancery, every Day practiſed; That if any Perſon gets my Deeds and Evidences into his Hands, and he hath imbezzel'd the Deeds, they ſhall be preſumed to ſay what I alledged, becauſe 'tis his Fault he does not produce them. So this Withdrawing by the Inſtigation of Sir *John Fenwick*, is a ſtrong Preſumption that what he ſwears againſt Sir *John Fenwick* is true.

Sir *Richard Temple.* No Man can give Evidence of any Depoſitions, nor was it ever admitted to be Evidence either upon the Party's Death or Abſence; and I would not have that Doctrine paſs, that we are not tied to the Rules of Law. My Lord Chief-Juſtice *Vaughan*, when he was of this Houſe, told us, we were not bound to the Forms of Law, but we were tied to the Rules of Law; and if you are not, how will you judge of this Crime? How will you judge it to be Treaſon in the worſt of Times? In the Trial of my Lord *Mordaunt*, who was try'd before the High Court of Juſtice, they would not allow of this Piece of Evidence, though they had thrown aſide Juries. We are tied by the Rules of Law, or we are tied by nothing.

Sir *Thomas Littleton.* The worthy Member here tells us, we are tied by the Rules of Law, or we are tied by nothing. I hope he does not intend to put the Pun upon us, that was by a noble Lord, You are tied by Rules or no Rules; if you are tied by no Rules, what Rules are you tied by? I think you may act by Rules, and yet admit of this Evidence. I told you before, I ſhould not reckon myſelf ſo tied by the Rules of Law, but that I would hear all Evidence that ſhould be offered: And I do not think 'tis for our Honour to ſtifle any thing that may bring out the Truth. A worthy Lawyer ſaid, Let them produce one Evidence that is of the Recorder's Opinion; and a Member hath produced the Opinion of my Lord Chief-Juſtice *Hales:* And I hope we ſhall not be debarr'd from the Satisfaction of hearing what they might hear in the Courts below. Here are two Witneſſes that have been examin'd againſt him, which the Jury did believe that found the Bill. If we cannot have theſe two Witneſſes, let us have as much as we can. We have heard what one ſaid: We have an Opportunity of hearing what the other ſaid. No, ſays the Gentlemen, we do not deſire to be informed; but I believe it muſt come to that at laſt.

Sir *Richard Temple.* The Gentleman that ſpake laſt, inſinuated, as if I had dropped ſomething he could not underſtand. Give me leave to tell you, there was the Courts of the Preſidents of *Wales*; when they urged Rules of Law, then they were a Court of Equity; and when they argued from Points of Equity, then they were tied up by the Rules of Law; and ſo gave Judgment neither according to the one nor the other; and ſo it was taken away by Act of Parliament.

Mr. *Boſcawen.* I have ſeen it myſelf, that a Juſtice of Peace has been examined himſelf, as to Depoſitions he hath taken; and I take it to be an ordinary Examination.

Mr. *Harcourt.* Sir, I muſt ſay, if you were to pick all the Abſurdities out of the Trials in the laſt Reign, you could not pick out more than has been endeavour'd by the King's Counſel to be impos'd upon you this Day: This does in ſome Meaſure convince me of what was ſaid by another Gentleman the other Day, that it is much better to be tried by an Aſſembly of 400 Gentlemen, than at the *Old-Bailey.* There was a Quotation of a learned Author; and the Gentleman read you what was Evidence, and what was not: And the Concluſion was, That theſe Depoſitions, if the Party was dead or abſent, is Evidence. Why, Sir, if theſe Depoſitions be Evidence if the Party be abſent, then what are we doing of all this Day? If that be a certain Rule, there is no manner of need of applying to this extraordinary Way; but if you pleaſe to enter into the Conſideration of that Point (I am neither afraid, nor unwilling to be informed). If Gentlemen will take it *De bene eſſe*, for better for worſe, with all my Heart; but if you enter into that Matter, I will freely tell you my Opinion of it.

Sir *Edward Seymour.* It hath been made a Queſtion, how far you are bound to purſue the Rules of Law? I ſuppoſe it is no new Thing I am going to ſay, That Bills of Attainder, and Judgments of Attainder, have been reverſed for no other Reaſon, but becauſe the Parliament have not proceeded according to the Rules of Law: I will not ſay, you are bound by the Rules of inferior Courts, but you muſt be bound by the Rules of Parliament, and by the Proceedings and Practice of Parliaments, which is the Law of Parliament. And then I would know, whether this Houſe did admit of an Affidavit for Evidence? And the Reaſon is this, becauſe by that you make this, which is the ſuperior Court, lame, without the Aſſiſtance of an inferior Court.

Mr. *G. Rodney Bridges.* The Matter before you is, whether Sir *John Fenwick* be guilty, in your Judgments, of this Conſpiracy? And if ſo, I cannot imagine why you ſhould not take all the Information that is offer'd to you; and why not hear all the Circumſtances of it: If you do not read this

Affidavit, I do not ſay but 'tis a Kindneſs to Sir *John Fenwick*; but what Kindneſs will it be to the Country and Government?

Mr. *James Montague.* I hope you will not ſpend much more Time about this, becauſe the Law is ſo plain: If there be any thing in the Objection, 'tis this, That if it be Evidence, the other Courts below may proceed upon it: but that I take to be no Objection neither; for though it be Evidence, there are not two Witneſſes; and the Courts below require two Witneſſes, though there be other Evidence, and one Witneſs beſides; ſo that you can't try him without two Witneſſes: It would be admitted in the Caſe of Felony, and there two Witneſſes are not required expreſsly by the Law. And I can tell you, upon my Reputation, I have ſeen it done ſeveral times.

The learned Gentleman tells you, my Lord Chief-Juſtice *Hales*'s Opinion is ſo, and that is grounded upon an Act of Parliament; and I think that is of greater Authority than any Judge; and therefore I think that Objection will vaniſh. He ſays, you have no Authority to receive Affidavits; but ſure we muſt take Notice of Acts of Parliament; and if that requires Depoſitions to be taken, and to be Evidence againſt Criminals, we ought to take notice of it; ſo that what the Law makes to be Evidence will be good in this Place.

Mr. *Harley.* I look upon this Matter under your Debates to be of the greateſt Conſequence to the Lives of the Subjects of *England*, that poſſibly can come before you: Gentlemen have given you ſeveral Reaſons for reading theſe Depoſitions; one, that it was my Lord Chief-Juſtice *Hales*'s Opinion; another, that there is an Act of Parliament for it: Now, I think, it would be proper to join Iſſue in theſe two Points: If any Act of Parliament can be produced for this, then the Debate will be at an End; but if there be an Act poſitive in Fact againſt it, then I hope you will not receive it: And if my Lord Chief-Juſtice *Hales*'s Book have not one Word relating to this, then I hope that will be no Argument. He begins his Chapter of Evidence, and ſays, that the Evidence to the Jury, in Caſes of Treaſon, muſt be two Witneſſes; and then comes to the Caſes of Felony: But is that any Debate before us? And he tells you, that Informations might be taken of the Perſon himſelf, but that was not by the Common-Law, but was allowed of by particular Acts of Parliament; and then tells you, that his Information, and that Depoſitions before the Juſtice, were to be admitted (but he was to be by): But is this any thing to lead you? Have they brought any Statute that tells you, there muſt be two Witneſſes in this Caſe? If you will take notice of a Statute, you muſt take notice of a Statute that is in Point. If any Man ſuffers by one Witneſs, I believe all the World muſt ſay, he ſuffers unjuſtly: I think 'tis of the greateſt Conſequence to admit of Affidavits. Here it is, that the Boundaries are eſtabliſhed for the Lives and Liberties of Mankind: And this is an Obſervation that is found in Hiſtory, that thoſe that have broke their Bounds down, it hath returned upon them to their Prejudice.

Sir *Robert Richard.* I am ſure now we are not upon the Point of Reading, whether it be much or little, but upon the Point of Hearing, and that I ſpeak to: And, I think, the Gentleman near the Table did not miſtake what the Bar ſaid; for the Counſel on the other Side inſiſted poſitively, that neither by the Practice, nor by the Books, was a Depoſition to be read as Evidence: Againſt that the Gentleman near the Chair produced that Book. As to the Matter of Treaſon, every Parliament-Man can remember, that you have made an Act, that there ſhall be two Witneſſes in Caſes of Treaſon. Now, at the ſame time, it will be taken notice of, that you have taken Care in that Act, that the Proceedings of this Houſe ſhall not be tied up. The Gentleman tells you of a Court that wavered between Law and Equity, and ſo came to nothing; and I am afraid, if we bring the Houſe of Commons down to the Courts of *Weſtminſter-Hall*, they will make nothing of us neither. I do not ſay, that this Paper ſhall be as ſtrong Evidence as if *Goodman* was at the Bar; but to ſay, it ſhall weigh nothing, I can't agree neither: I agree alſo, to make a common Practice of reading Affidavits, will be of ill Conſequence: And if you take this to be a Matter of ſmall Conſequence, I am not for reading this Affidavit. Now I aim not at Sir *John Fenwick*'s Blood, but the Safety of the King and Government: And I would not refuſe any Evidence in this Caſe, be it never ſo ſmall. Theſe Gentlemen ſpeak againſt a Matter being Evidence before it is read; 'tis offered as Evidence; if it be ſmall, or come to nothing, it is the better for the Priſoner at the Bar.

Mr. *Pelham.* I am indifferent whether I hear that Paper read, or no; but what is ſaid by a learned Gentleman ſtartles me: Says he, in *Weſtminſter-Hall* they are bound to the Evidence of two Witneſſes, and there this Evidence would not be proper; but here we are upon another Foot. I hope we are not here upon another Foot; I hope, though here we are not to be tied by the Chicanery of the Law, we are to be tied by the Equity and ſubſtantial Reaſons of it. I deſire to know, if any one can be tried for Treaſon upon one Witneſs? And if we are not tied by the Rules of Law, we may hear any Evidence whatſoever; if the King's Counſel thinks it may ſatisfy your Fancies, it muſt be received.

Lord *Cutts.* I conceive, Gentlemen, we are out in the Way of arguing; I muſt put you in Mind that we are, at the Bottom, only arguing againſt the Juriſdiction of this Houſe; and though that Matter hath been ſettled before, we are told very often of the Law and Rules of *Weſtminſter-Hall.* In Anſwer to that, I muſt obſerve, there are ſeveral Sorts of Laws; there is the Law of Nature, the Law of Nations, the Law of God, and there is the Legiſlative; and 'tis a ſelf-evident Maxim, not to be contradicted, That no Superiour is to be circumſcribed by an Inferiour: And I would aſk, if the Courts below are not inferiour to the Parliament? There is nothing can limit us, but the Law of Nature, the Law of God, and the Law of Parliaments; and though I cannot tell you very well what is the Law of Parliaments, yet no Gentleman hath ſaid any thing upon that Subject, that is againſt the Queſtion before you: The Matter was in a Courſe of Law; but upon an extraordinary Accident, and for extraordinary Reaſons, 'tis brought before you. The Accident is the withdrawing of a Witneſs; the Reaſon is the ſecuring of the King, the Government, your Selves, and Poſterity. I don't think any Man that ſpoke againſt it is for favouring Sir *John Fenwick*; for I think this is the worſt Way: I would appeal to every Man, what Prejudice 'tis to you to hear this Paper read? And it may be a Diſadvantage to you not to hear it.

Mr. *Howe.* There have been many Arguments given for and againſt the Reading of this Paper; and if I did not take it that the Reading of this Paper could be of no uſe to the Judgment we are about to make, I ſhould be for the Reading of it: Either it amounts to a Proof of High-Treaſon againſt Sir *John Fenwick*, or it ſignifies nothing to you. If you ſuppoſe it to weigh any thing, I can never agree to the Reading of it; for 'tis only an Hearſay brought to convict a Man that is tried for his Life. But there is a greater Argument which weighs more than the Reaſon hath been urged; and that is, your Enemies will have an Advantage, and your Government is at ſtake: But I don't take that to be ſo much an Argument of their Strength, as of their Weakneſs and Neglect; however, when they prove that, I will ſee how far I can go. 'Tis ſaid, that in the worſt of Times, they would not convict a Man upon one Evidence. As to Sir *John Fenwick*, though he ſhould not be a good *Engliſhman*, yet his Cauſe may be a good *Engliſhman*'s. The Queſtion is, Whether there be more danger by the withdrawing of a Witneſs, and the eſcaping of Sir *John Fenwick*, or the withdrawing of the Witneſs, and the convicting of Sir *John Fenwick*? Here they let *Goodman* (ſuch a Rake) go about, and he is gone; and now the Fate of the Government ſeems to depend upon it. The Precedent on the other Side is not ſo much to be feared; for I ſuppoſe future Governments will take care not to let a Witneſs go about the Streets again: But it may happen that certain Men, for aſſerting the Liberties of their Country, may be run upon by ill Governments, and Attempts made upon their Lives by falſe Witneſſes. But the Bill of Treaſon provides, that no Perſon ſhall be proſecuted without two Witneſſes. Now it may happen, that they ſhall have no ſuch Witneſſes as can convince a Jury (I believe this Man to be as much guilty, in my own Thoughts, as I believe any Thing in the World, and yet I will condemn no Man upon my primate Fancies); but here are two Witneſſes brought before the Grand Jury, and nothing is ſo eaſy as to get a Bill found by them (and that is all that is done by *Goodman*). Now ſay they, if this ſhould come before a Petit Jury, one of theſe Witneſſes may not be credited; ſo they will carry him away, and urge this for a Precedent, and ſo this Man may be convicted.

Mr. *Smith.* I think we are come to the Debate of the Bill, inſtead of reading the Paper. Was the Queſtion, Whether this Paper ſhould be allowed as a ſecond Witneſs? Then it would be a great Queſtion with me, whether it ſhould be read; but the Queſtion, as to Col. *Sidney*, was not whether the Paper ſhould be read, but whether it ſhould ſupply the Place of a ſecond Witneſs? But your Debate is extraordinary; your Bill takes notice of *Goodman* being gone away, and now you won't take notice of what he hath left behind him; which I ſhould the rather be ſatisfied in, becauſe I ſaw a Gentleman ſoliciting at the Bar, that did endeavour to get him away. If *Goodman* had been brought a Priſoner to the Bar, I do not know, whether it might not have been reckoned as great a Fault, as now his having too much Liberty. It hath been cited as a great Lawyer's Opinion, that it might be given in Evidence; but he does not ſay what Weight ſhall be laid upon it.

Mr. *Pelham.* I am ſorry that honourable Gentleman miſtook me ſo much; I thought I had ſpoke very plain; I told you, I was not againſt reading of the Paper, till the learned Gentleman told you, you were not tied up as the Courts of *Weſtminſter-Hall*, to two Witneſſes. As to what I ſaid of Mr. *Sidney*'s Caſe, it was not againſt reading that Paper; but I ſaid, he did rely upon it as againſt common Juſtice, to be attainted upon one Witneſs: And that Attainder you have thought fit to reverſe; and the Reaſon he gives for it was, becauſe it was impoſſible for a Man to make any Defence againſt one ſingle Witneſs.

Mr. Att. Gen. The Matter you are now debating upon, is, Whether theſe Papers ſhould be now read? And Gentlemen have let themſelves into a Debate foreign to the Queſtion. A great many are againſt it upon this Argument, that they would not be of Opinion to condemn him, unleſs there were two Witneſſes: That is not the Queſtion, for I think no Man is ready to give his Opinion to condemn or acquit him, unleſs there were two Witneſſes: One Gentleman is againſt the reading of it, and yet believes Sir *John Fenwick* guilty. I muſt reſpite my Judgment till I have heard his Defence: I think that the Counſel for Sir *John Fenwick* at the Bar, are very much miſtaken, when they ſaid, that ſuch a Thing as an Examination in Writing was never read in any Court of Juſtice. I think that is a great Miſtake, and a good Authority hath been cited for it; and every one knows the Practice is otherwiſe; 'tis often allowed, that the Examinations before a Juſtice of Peace are read. The Queſtion is now, Whether the Examination ſhall be read? If there do not appear another Witneſs to prove him guilty, you will debate that Matter then, Whether you will condemn him without two Witneſſes? You might as well have debated before, whether *Porter* ſhould be examined, becauſe no Man will condemn him without two Witneſſes, and therefore do not examine one. Why, we know not what further Witneſſes may be produced, if Sir *John Fenwick* was upon his Trial; I think this Information might have been admitted for Proof, if *Goodman* was out of the Way; but if it was admitted, unleſs there was another Witneſs produced, I believe the Court will tell the Jury, here are not two Witneſſes, and therefore you muſt acquit him.

Sir *William Coryton.* I muſt crave leave to differ from that worthy Gentleman: I think this is the proper Time to determine, whether this Evidence is to to be admitted afterwards? Indeed you may determine how far it is available. I thought both in Law and Juſtice, before I came into the Houſe, that this ought not to be admitted for Evidence. A Gentleman grounded his Argument, upon what? My Lord Chief-Juſtice *Hales*'s Opinion; but the Fate is, that my Lord Chief-Juſtice *Hales* ſtates the Difference in Caſes of Treaſon, and in Caſes of Felony. Now in Felony, they make uſe of Depoſitions; and the Reaſon is, becauſe 'tis more for the Advantage of the Priſoner than his Diſadvantage; for if the Witneſs differ from his Examination before the Juſtice of Peace, that turns to the Advantage of the Priſoner. In the Nature of the Thing it ſeems not to be reaſonable, for it is eaſy to turn the Tables. And ſuppoſe *Goodman* in the Place of Sir *John Fenwick*, and Sir *John Fenwick* in the Place of *Goodman*; it would be hard (take the Informations to be as they are) to admit them for Evidence; which, in my Opinion, are great Reflections upon Perſons of great Honour and Worth.

Sir *Charles Muſgrave*. That which I perceive to be your Debate, is that upon which the Counſel withdrew; you hear it aſſerted, That there was no Inſtance in a criminal Caſe, where an Affidavit was allowed for Evidence: And I think the learned Counſel at the Bar did not much inſiſt upon it; and yet I don't think they were ignorant of the Caſe quoted out of my Lord Chief-Juſtice *Hales*, but they thought it was not applicable to this Buſineſs before the Houſe; but only related to Felonies, and when Depoſitions were taken in the Preſence of the Party. 'Tis ſaid, we are not tied up to the Rules of *Weſtminſter-Hall*; and that Parliaments may denominate Crimes after they are committed; but I never did hear, that the Parliament did take upon them to determine that to be Evidence which is not Evidence in any Court of the World. If you read this Paper to inform yourſelves, you admit that to be Evidence which is no where elſe to be admitted. You are told, you are not tied to the Forms of inferior Courts of Law nor Equity: If you are not bound by them, you are bound by your own Conſtitutions. You are told, you are uſed to read Affidavits in common Cauſes; but if my Memory ſerves me right, you have always had it oppoſed in this Houſe; therefore I think, according to the Rules of your own Houſe, we ſhall not read Affidavits. Will you make a new Rule in this Caſe? Pray conſider the Conſequence of it hereafter. Suppoſe there came down Affidavits upon another Perſon, againſt a great Man for High-Treaſon, Whether that may not be thought ſufficient for to govern your Judgments? I hope thoſe that hear me will have a Care of the Matter. Why, by the Parity of Reaſon, may not two Affidavits do by the Help of the Legiſlative Power? I would be glad to know, Whether in the Caſe of an Impeachment, they ever heard of Affidavits being read? And this is much in that Nature; and therefore, why ſhould you admit of an Affidavit now, when the Party charged was not preſent when that Affidavit was taken?

Sir *Joſeph Williamſon*. I am ſorry this Point coſts us ſo much Time; the Gentleman that ſpake laſt hath brought us to the Queſtion, How far you will admit this Affidavit (as they call it) to be read? I am of Opinion, notwithſtanding all that hath been ſuggeſted, that it not only may be read, but that it ought to be read. None of the Caſes that have been inſtanced, comes up to the Caſe in Queſtion; all the Caſes that are brought are from inferior Courts, and the laſt that is brought is from the Example and Uſage, in leſs conſiderable Caſes, and indeed of a different Nature.

This Bill of Attainder is indeed a Thing ſo extraordinary (as hath been ſaid) as it never ought to be uſed but upon extraordinary Occaſions; and upon that Principle, all that is feared is all anſwered and avoided. It is to be thought never to come but upon the like Occaſion; and then God forbid but they ſhould be governed by the like Precedent: and if that was proper to ſpeak now, which will be at the bottom of it, when we come to give Judgment, and we have time to conſider of it, I can't think we ſhall differ in many Voices. Whether it be Evidence, and how far it is ſo, is not now the Queſtion; but the Queſtion is only, whether it be ſuch an Evidence as ought to be read? And all the Inconveniencies that have been alledged, depend only upon this, that it ſhould not be admitted in the ordinary Proceedings in the Courts of Juſtice. Now I ſay, there was a Power lodged in the Parliament of *England* to make a Man guilty of Treaſon, that was not ſo before; and that even in a Reign when they came to determine what Treaſons were: They did not think it for the Safety of the Community of Mankind, but that there ſhould be a Power lodged in the whole, to declare that to be a Crime, that was no Crime before it was committed, giving them more than is aſked here: For here can be no Queſtion, but as to the Forms of Proceedings. The Queſtion is not upon his Crime, that is no Queſtion; and I take it, that if upon any Occaſion, 'tis to be juſtified in this, and the Law hath truſted the Parliament with a greater Power than now they are about to execute, and there are only Objections to it raiſed from another Place, which I think can never conclude in this.

Mr. Chancellor of the Exchequer. I am for reading of this Paper, though I don't think it Evidence equivalent with *viva voce*; nor do I think, that in like Caſes it ought to be admitted below; but I think, in your Proceedings in Parliament, it ought to be read, whether it be an Affidavit or not; and I am more of that Opinion, from what happened in a Caſe To-day. We had a Diſpute, whether *Porter* was to be examined, becauſe the Teſtimony of a Man's Wife was not good below. But when that came to be examined, it was not the Teſtimony of a Man's Wife, but his own Letter appeared in Evidence; and *Clancy* told *Porter* he came from *Fenwick* himſelf, and therefore the Evidence, which at firſt, for that Reaſon, was urged not to be heard, did amount to more when it came to the Proof. I would have this Paper read; not becauſe it ſhould ſupply the Place of a Witneſs; no, but becauſe you ſee he hath been indicted by the Evidence of *Goodman* and *Porter*, and the firſt is withdrawn; and by whoſe Means you have heard: And I would know, whether *Goodman*'s Evidence did amount to accuſe him of the ſame? I do ſay, in your Power of judging, you are not conſtrained to the Rules of *Weſtminſter-Hall:* And I would ſay, that for your Conſtitution, the Courts of *Weſtminſter-Hall* are to be governed by the Letter of the Law; but there is lodged in the Legiſlative a Power to judge thoſe Crimes that are ſheltered behind the Law; and I believe, if the ſeveral Attainders were examined, there was never any Attainder that went upon a more juſt Proceeding than this. I take the Crime to be a Plot with your Enemies to bring in a foreign Power; and as if that was not ſufficient, he hath made a falſe and ſcandalous Confeſſion, to bring a Diſtruſt and Jealouſy among the King and his People; and he hath dallied and gain'd ſo much Time, as he hath had Opportunity to corrupt one of the Witneſſes; and therefore it would be hard, if no Law ſhould reach him. 'Tis ſaid, Why did not you keep the Witneſs? It would be hard, after a Perſon hath made a Confeſſion for the Good of the Kingdom, that he ſhould be always kept in Irons. We are debating of the Bill, while we are now only purely to ſee what is in this Paper. I ſhould not have offered to have made uſe of this as a ſecond Witneſs; but the being an Affidavit or not, is not material in this Point; the Commons proceed upon Impeachments without Affidavits. 'Tis offered as Evidence: That *Goodman* was a Witneſs againſt him (you have had Proof of); and that he hath been tamper'd with to withdraw, by the Friends of this Gentleman. I do think we have gone more fairly and equally to work, than upon any of the Records of Attainder in your Journals.

Mr. *Brotherton*. The Queſtion is, Whether this Paper ſhall be read? Firſt, It hath not been proved before whom it was taken, nor nothing at all. It hath been objected, that there ought to be two Witneſſes by the late Statute. But I muſt put you in mind, that it was ſo by the Statute of *Edward* VI. and ſo was the Common-Law before; and my Lord *Coke* ſays, there muſt be two Witneſſes, and they brought Face to Face: And ſo goes to the Divine Law; and if it ſhould not be ſo, I will put you in mind of an Inconveniency: Eleven Witneſſes were produced before the Grand Jury; and when they came to give Evidence Face to Face, before the Petit Jury, the firſt Witneſs did not know the Criminal that he had ſworn againſt. It was in the Caſe of Sir *Rowland Stanley*.

They mention a Paper againſt *Algernoon Sidney*; but that Paper was wrote by himſelf. 'Tis ſaid, this Houſe is not bound by the Rules of other Courts; for that Reaſon they ought to give Rules for other Courts. Nothing is more common than to ſay, Judgment was ſo in the Houſe of Lords, and that ſettles the Law in other Courts below.

Sir *Godfrey Copley*. Several Gentlemen have ſpoke to the Reading this Paper; ſome have ſaid, That it ſhould be read as Evidence: Some others are for reading of this Paper; but yet at the ſame time tell us, it is not to be looked upon as Evidence, at leaſt not equivalent to a Witneſs. If the Paper be to be read at all, I would know for what Reaſon? If it be to have any Sway upon our Judgment, if it hath any Effect upon my Judgment, then in ſome meaſure it is equivalent to a Witneſs, when 'tis in the Nature of a Witneſs; and if it ſhould be read to ſupply the Defect of a Witneſs, then I would know, what the Conſequence of this might be? I do very well underſtand, that the Court of Parliament does take no Precedent from *Weſtminſter-Hall*; nor am I afraid of any Precedent they ſhould give to *Weſtminſter-Hall:* But I am afraid of a Precedent to future Parliaments. Suppoſe the Information of Sir *John Fenwick*, that hath been delivered in here, ſhould be produced as Evidence againſt any of thoſe honourable Perſons that are charged in it, though I believe they are very innocent; and ſome Knaves or Raſcals in future Reigns ſhould come in againſt them, and this Paper ſhould be brought to ſupply another Witneſs, what a Conſequence would that be!

Sir *Henry Hobart*. I muſt differ with the Gentleman that ſpake laſt; as to the Gentleman that ſpake before, I did not expect any thing to be quoted out of *Lancaſhire* againſt the Reading of it. I will tell you why I think this Paper ſhould be read; you have it ſuggeſted in the Bill, that *Goodman* was one of the Evidence againſt Sir *John Fenwick*; they are to make good the Suggeſtions, and this will ſhew, that *Goodman* was an Evidence. You are told the Danger of the Precedent, and there may come ill Reigns, and ill Parliaments; as to that, I ſhall only ſay, in a good Reign, and a good Parliament, there is no Danger; and in an ill Reign, and ill Parliament, they will make Precedents without your giving of them. Mr. *St. John* tells you in his Arguments, 'Tis true inferiour Courts, by the Statute of *Edward* VI. they are bound by two Evidences *viva voce*; but you are not preſcribed by that here, but you are to judge in your own Conſciences as the Thing appears. I may ſay as another did upon another Occaſion, let it be read; *Valeat quantum valere poteſt.*

Sir *Marmaduke Wyvell*. I deſire to take notice of one Argument that hath been made uſe of by one or two honourable Perſons; which is, that they tell us, that *Goodman* hath been tampered with by Sir *John Fenwick:* I remember no ſuch thing that hath been proved; but indeed it was ſaid, that Mr. *Dighton* offered Mr. *Roe* 100*l.* a Year, to invalidate Mr. *Goodman*'s Teſtimony.

Lord *Caſtleton*. Let me aſk you this Queſtion, Whether if you read this Affidavit, you read it as Evidence?

Mr. Sol. Gen. I deſire you would conſider what you did, before you ordered Captain *Porter* to go on with his Evidence, and did agree you would conſider of it afterwards. Some are for reading this Paper, and others are indifferent whether it be read or no; and thoſe that are againſt reading of it, are againſt reading of it becauſe 'tis no Evidence: But that is no Reaſon why you ſhould not read it; for it is at moſt but doing a vain Thing.

I think you have been told already, if it was inſiſted on below, it muſt be read; and the other Side muſt demurr. The Court might ſay, 'tis not material, but it muſt be read before they can demurr: So that the Queſtion, Whether it is Evidence? muſt come afterwards; and if you go according to the Rigour of Law, with Submiſſion, it muſt be read.

Mr. *Price*. I did not deſign to trouble you in this Matter: but the Doctrine laid down by ſome Men of our Gown, ſurprizes me: 'Tis only an Argument, that the Court below ought to admit this Paper to be read; but there is no Precedent ſhewed, nor convincing Reaſon given, why the Courts ſhould admit it. The Queſtion is, Whether an Information taken before a Juſtice of Peace, ought to be read here? If it be to introduce a new Law, and make a new Crime, then you make a new Sort of Evidence; But if this be a Crime againſt an Act of Parliament, or Law in being, then you muſt take the Evidence the Law doth afford you, in the Nature of the Crime. The Charge here is a Charge of Treaſon againſt a known Law: But the great Argument is, this is an extraordinary Offence; that Sir *John Fenwick*, or his Lady, had a Hand in ſending *Goodman* away: 'Tis a Miſtake; and offering one Thing that is not Evidence, brings us to another; the Evidence of *Clancy*'s tampering with him: Captain *Porter* does not ſay, that Sir *John Fenwick* employed him; only, that *Clancy* ſaid ſo, which is but a Hearſay, and that is no Evidence, unleſs *Clancy* was at the Bar, and would ſay it.

In the next Place, it is ſaid, That there was a tampering by a Sollicitor: What is that? Is it not natural for a Sollicitor to ſay, Is there any Objections to ſuch a Witneſs? Is it not natural for him to leſſen his Reputation if he can? Now you would have a Copy of an Information to be Evidence. 'Tis ſaid, 'tis *tantamount*: If ſo, then the Courts of *Weſtminſter* ought to intermeddle with it, and not this Houſe. A noble Lord mentioned to you the Law of Nature, the Law of Nations, and the Law of God; but he forgot one Law, which was moſt material, and that is Martial Law; which if he had ſaid, does juſtify the taking away a Man's Life upon extraordinary Evidence, he had ſaid right.

Mr. Speaker. The Queſtion is this, That the Information of *Cordel Goodman*, taken upon Oath, 24th of *April*, 1696, be read.

Which Queſtion being put, the Houſe divided.

Yeas, 218. Noes, 145.

So it paſſed in the Affirmative; and Sir *John Fenwick*, and the Counſel and Sollicitors on both Sides, were called in again.

Mr. Speaker. Gentlemen, ſince you withdrew, the Houſe have conſidered of the Matter upon which you did withdraw, and they have thought fit, that the Information of *Cordel Goodman*, taken upon Oath before Mr. *Vernon*, 24th of *April*, 1696, be read.——Clerk, read it.

Clerk of the Houſe of Commons reads——This is ſigned, *Cordel Goodman*, and ſworn 24th of *April*, 1696, before *James Vernon*.

ABOUT ſome two Years ſince, or better, I underſtood Col. *Parker* was Reſident here, in order to engage ſeveral People for the Service of King *James*; and Captain *Porter* told me, he had a Mind to ſee me, which he accordingly did; where he told me, there would be an Invaſion, and King *James* would be reſtored; and that in order to it he had Commiſſion to levy Men, and to grant out ſubordinate Commiſſions for a Regiment of Horſe, and did aſk if I would accept of one, which I accordingly did. He likewiſe ſaid, he would ſee me as often as he could; and that Captain *Porter* and I ſhould receive Directions from him, from Time to Time, upon ſeveral Meetings; and having received my Commiſſion, I underſtood what Captains were to be in the Regiment; which were Captain *Porter*, Sir *William Parkyns*, Mr. *Charnock*, Sir *Hugh Smithſon*, Mr. *Higgens*, and myſelf; and one Mr. *Witherington*, to be Lieutenant Colonel.

The Commiſſions were to be Blank when they were to be delivered, and to be filled up by the Captains, &c. I then came acquainted with Mr. *Charnock* and Sir *William Parkyns*; and by them and *Parker*, Captain *Porter* and I were informed, that there was a great Body of Horſe to be ready in the North; but though I aſked, yet they never named any Perſons to me, but ſaid, it was ſufficient, I ſhould receive Orders, and a Roll to March, to Rendezvous upon Occaſion; and indeed I did not much preſs it, becauſe I did gather there were a great many concerned; and at this Time Captain *Porter* and I took a Houſe in the *Chaſe*, with Stables and Barns, fit for holding Horſes, and as a fit Place to meet, upon Orders given us to March, which were then daily expected.

Some Time after this Colonel *Parker* was taken, and being committed to the *Tower*, he made his Eſcape; and after that I ſaw him, and then he told me, he would be ſure to correſpond with me and *Porter*; and I ſhould receive his Letters of Mr. *Charnock* or Mr. *Johnſon*, and he accordingly did; and in his Letters he ſtill gave us Hopes, and ſaid, he would certainly ſend us notice to be in readineſs Time enough, to be ſerviceable to the Deſign of the Invaſion.

The laſt Letters I received from *Parker* gave me Advice, That he doubted not, but the Cauſe would come to a Hearing at this *Eaſter* Term; and he ſhould write no more, but bring the Orders himſelf: Upon which I went to *Charnock*, and he told me he did expect him here in a ſhort time: But always, or moſt commonly, in his Letters, he told me, for a Sign, That when the *Thoulon* Fleet ſhould join the *Breſt* Fleet, I might certainly depend, that we ſhould be invaded here.

During theſe Tranſactions, Captain *Porter* complained, that ſomething he was ſending to *Lancaſhire* had miſcarried; he deſired me to ſet by two Boxes, which I looked not into, but ſuppoſed them to be Arms, and I did ſet them by for him: I had not bought any Arms, but had beſpoke ſome of one *Perry*, a Gunſmith, who ſaid, I ſhould have them at a Week's Warning.

After *Parker*'s having made his Eſcape, and getting into *France*, Mr. *Charnock* came to me, ſome Time before the King's going to *Flanders*, and ſaid, he had ſomething to propoſe to me; and deſired me to go along with him, which I did; and he brought me to one Mr. *Waugh*, who ſaid, he expected a Commiſſion from King *James* to ſeize King *William*; accordingly we went to the *Chocolate-Houſe* in St. *James*'s-*ſtreet*; and after ſome Diſcourſe about the Commiſſion he ſaid he expected, we appointed another Meeting at that Place, and adjourned from thence to my Houſe in *Brownloe-ſtreet*, where was preſent, Mr. *Charnock*, Mr. *Porter*, Mr. *Waugh*, Major *Matthews*, and Mr. *Donelagh*. The Subject of our Diſcourſe was, about the Surprizing and Seizing the King, as he came from *Richmond*; and after ſeveral Ways propoſed to that Purpoſe, I particularly aſked, Suppoſe that the King were in our Power, what then? For we ought to have regard to ſome End or other in ſuch an Undertaking; for I was not willing to offer any thing to his Perſon. Mr. *Waugh* ſaid, we might have a Coach, and convey him away; and he ſaid, he was aſſured of a Fort to be delivered to him, and put into his Hands (to the beſt of my Remembrance it was *Deal*), which might give us Shelter till we might find Opportunity to carry him into *France* by Shipping. I muſt confeſs, I did ſee very little Probability in what he ſaid; neither did I believe that he would receive any ſuch Commiſſion, as he ſaid he expected: (For about two Years ſince, I remember I ſaw Sir *George Barcley*, with Col. *Fountain*, and Mr. *Porter*; Sir *George* was then going over to *France*, and it was the only Time that ever I ſaw him; and then Captain *Porter* and I did deſire, that if King *James* deſired any ſuch thing as ſeizing King *William*, he would ſend over a Commiſſion, and a Pardon withal in Caſe of an Accident; which Meſſage Sir *George* carried over, and King *James* refuſed to ſend it.) However, we had another Meeting after that at my Houſe, by which Time, he ſaid, he would ſhew us the Commiſſion, and facilitate the Deſign; it was at a Houſe behind the *Temple*, where the aforeſaid Company met, and Mr. *Waugh* brought with him one Mr. *Hays*, who, he ſaid, could furniſh us with a Ship which would be ready to tranſport us after we had ſeized the King; but upon Diſcourſe with Mr. *Hays* we found that the Demands were ſo exorbitant, and not in poſſibility of being complied withal; and beſides, no Order nor Commiſſion being produced, we did deſiſt then; for Captain *Porter* and Major *Matthews*, and I, did declare, we would not meddle without ſight of the Commiſſion. After this, Captain *Porter* and I talked of having a Veſſel, and ſending *Le Rue* and *Charnock* about it. We met at the *Fountain* by the *Temple-Gate*, and Sir *William Parkyns* was there; and during the Time of our being there, one called Sir *William* out, and Sir *William* called out *Porter*, who came in, and ſaid, there was a Gentleman that could help us in this Affair; who he was I know not; I believe Captain *Porter* may, for I ſaw him not: But all this proved ineffectual, for the King went away ſuddenly, and no Commiſſion ever came. And by Letters from *France*, I underſtood King *James* was angry that they uſed his Name to what he had not promiſed; and *Porter* and I wrote over, by his Order, the Truth of the whole Matter.

Some Time after this, Captain *Porter*, the Earl of *Ayleſbury*, Sir *John Freind*, Sir *William Parkyns*, and Sir *John Fenwick*, and others, met about ſending over ſome Propoſals to King *James*, to expedite an Invaſion; and likewiſe Captain *Porter* ſaid, it was proper I ſhould be there, for he had engaged for me. I told him I would come; and at the *King's-Head* in *Leadenhall-ſtreet* I found the Perſons above-named, together with my Lord *Montgomery*, and one Mr. *Cook*.

The Effect of their Conſultation was, the ſending Mr. *Charnock* with a Meſſage to this Purpoſe; That if the King of *France* could ſpare ſuch a Number of Foot, and ſo many Dragoons, amounting to about 12 or 15000, or thereabouts in all, that then upon Notice given, that every particular Man there was to furniſh ſuch a Number of Horſe, ſome more, ſome leſs, to be ready to ſuccour the Forces from *France* when landed. Mr. *Charnock* went and returned with a Refuſal, that Forces could not be ſpared: Sir *John Freind* and my Lord *Ayleſbury* were of Opinion, that if King *James* would venture hither with ſome ſmall Retinue, he had Friends enough to appear for him, without any foreign Forces; but that was held in doubt.

I uſed afterwards to ſee my Lord *Ayleſbury*; I always aſked, what News he heard? He ſaid, when he received any Orders, he ſhould know; for he having been in *France* (as he did not deny) I ſuppoſed him not to be ignorant of what was intended.

And to the better facilitating an Invaſion, Sir *John Fenwick* uſed to ſend over a Liſt of the Forces, and how they were quartered, and what were in Garriſon, and what otherways diſpoſed of: He having made a Miſtake in the Account, *Parker* did by Letter deſire me to try if I could procure ſuch an Account; which I accordingly did of one *Gibſon*, a Clerk in the Office, and ſent it over frequently.

After the Eſcape of *Parker* out of the *Tower*, Sir *John Fenwick*, when I aſked him how he got away, and how much Money was given? he ſaid, 200*l.* promiſed, and 300*l.* given; for when a Perſon came in and told him he had brought him Liberty, and was to have 200*l.* he replied, You ſhall have 300*l.* and it was made good to him afterwards.

Cordel Goodman.

Much about the ſame Time, I uſed now and then, with Captain *Porter*, to be with Sir *John Fenwick*, and it was agreed, that if *Parker* ſhould not bring us timely Orders, that what Forces we could bring in, (*viz. Porter* and I) we were to take Orders from Sir *John Fenwick*; this we offered him, and he kindly accepted: And then he ſaid, That he believed moſt of my Lord *Oxford*'s Regiment would go to King *James*; when I told Mr. *Paradiſe* had promiſed to bring in 7 or 8 to me, and that Mr. *Aynſworth* was to bring in 20, and *Parker* had ſaid, if I made it 30, it was ſufficient for me.

As to keeping the Horſes, Sir *John* ſaid, it was dangerous, and they would certainly be ſeized; but the beſt Way was to have a Liſt of what Horſes were in and about the *London* Stables.

Captain *Porter* and I ſent accordingly to view the Stables. I ſent Mr. *Reyhough*, and Captain *Porter* ſent *Cranborn*, and they took an Account.

Cordel Goodman.

Jurat. 24 *April*, 1696.
coram me, Ja. Vernon.

Mr. Serj. *Gould*. Now, Mr. *Speaker*, if you pleaſe, we will call ſome of the Grand Jury that will give you an Account what Evidence they found the Bill upon.——Mr. *Gracedue*, you were one of the Grand Jury that found this Bill?

Mr. *Gracedue*. Yes, Sir.

Sir *Thomas Powys*. This is ſo far from being Evidence, that I think 'tis the Oath of the Grand Jury, That they ſhall not diſcloſe or diſcover the King's Secrets. The Bill of Indictment cannot be given in Evidence againſt a Man for the leaſt Crime ſoever. It can't be given in Evidence to be credited, becauſe 'tis but an Accuſation; and by Conſequence, whatever any Witneſs ſays at that time can go no farther. When a Perſon comes upon his Trial, they can't ſo much as reſort to any thing that is ſworn before the Grand Jury, nor make uſe of it.

Sir *Bartholomew Shower*. We humbly oppoſe this Evidence; becauſe the Gentlemen can give no Inſtance in their Reading or Obſervation, that the Teſtimony that hath been given before a Grand-Jury, hath been given in Evidence to a Petit Jury: And 'tis Part of the Oath of a Grand-Jury-Man, that it ſhould not be diſcloſed. We do not ſay, it will bind your Houſe; but I hope it will be Evidence to you, that 'tis not agreeable to the Rules of Law.

Members. Go on, go on.

Mr. Speaker. Mr. *Gracedue*, will you give the Houſe an Account, who were the Witneſſes before you upon finding the Bill?

Mr. *Gracedue.* The Witneſſes before us were Captain *Porter* and Mr. *Goodman.*

Mr. Speaker. Can you remember ſo well, as to give an Account to this Houſe of what Evidence Mr. *Goodman* gave?

Mr. *Gracedue.* Yes, I think I can. When he came before us, he told us, That he was at a Meeting at the *King*'s-*Head* in *Leadenhal-ſtreet*, where there was Sir *John Fenwick*, my Lord *Montgomery*, Captain *Porter*, Mr. *Charnock* and others; and the Buſineſs was to ſend Mr. *Charnock* over to *France*, to procure Men to invade this Kingdom; and 8000 Foot, and 2000 Horſe was propoſed. He told us, the Reſult of that Conſult was, that if *France* would ſupply 8000 Foot and 2000 Horſe, it would be a ſufficient Power to come over; and that they would ſupply 2000 Horſe among themſelves. Upon which *Charnock* replied, Gentlemen, you ſend me over upon Uncertainties; you ſay, you will ſupply 2000 Horſe; but unleſs you give me ſome Aſſurance, I can't, nor will I go. And the Queſtion was propoſed to all of them, if they would make good their Proportion; and they promiſed ſingly. Says I, Did Sir *John Fenwick* promiſe? And he ſaid, Yes. Says I, Did my Lord *Montgomery?* And he ſaid, Yes. He was aſked, Who elſe? But, ſays he, 'tis not a Queſtion for you to aſk us; and for that he referred himſelf to me: For, he ſaid, he was not bound to anſwer further, having proved the Indictment.

Mr. Serj *Lovel.* We deſire Mr. *Joſhua Meade* may be aſked to the like Purpoſe. Were you one of the Jury that found the Bill againſt Sir *John Fenwick?*—Mr. *Meade.* Yes.

Mr. Speaker. Pray, who were the Witneſſes before you upon finding of the Bill?

Mr. *Meade.* There was Captain *Porter*, and Mr. *Goodman*, Sir.

Mr. Speaker. Can you remember what Mr. *Goodman* teſtified then?

Mr. *Meade.* Mr. *Goodman* did then teſtify, That Sir *John Fenwick*, my Lord *Montgomery*, &c. were at the *King*'s-*Head* Tavern in *Leadenhall-ſtreet*; and *Charnock* and the reſt there did conſult how to bring in their old Maſter; as to *Charnock*, That they agreed to ſend him over to King *James*, to know whether the *French* King could furniſh them with 8000 Foot, and 2000 Horſe, and that they would endeavour to meet him with 2000 Horſe. Hereupon *Charnock* (*Goodman* ſaid) put it to every Man of them, to know if they were all of one Mind? And they all ſaid they were. This he did prove, and this is all I can remember.

Mr. Serj. *Lovel.* We have many more to the ſame Purpoſe, if the Houſe think fit to hear them.

Members. No, no.

Mr. Serj. *Gould.* We will go thus much further; That upon the Trial of Mr. *Cook*, wherein there was Evidence given by this Gentleman, and in that this Gentleman that is the Priſoner at the Bar was particularly named to be concerned, we will call them that were preſent there at the giving of the Evidence: But firſt, we deſire to read the Record of *Cook*'s Conviction.

Thereupon a Motion was made for the Counſel to withdraw; and being withdrawn, a Motion was made for Candles, which paſſed in the Affirmative without a Diviſion, in regard it being dark without Candles, there could be no Motion made for adjourning the Debate, or remanding the Priſoner.

Afterwards a Motion being made for adjourning the Houſe 'till To-Morrow Morning, the Houſe divided.

Ayes, 141. Noes, 163.

And ſo it paſſed in the Negative; and Sir *John Fenwick*, and the Counſel and Sollicitors, were brought in again to the Bar.

Mr. Speaker. Mr. Serjeant *Gould*, the laſt Evidence you were about to offer was, that of the Record of Mr. *Cook.*

Sir *Thomas Powys.* Mr. *Speaker*, we oppoſe that being offered as Evidence; as I underſtand it, they are going to give in Evidence againſt Sir *John Fenwick* what was ſworn againſt Mr. *Cook*; that is not admitted in the Courts below; for, according to that Method, the Trial of one in the Company would be the Trial of all the reſt. This was never allowed in any other Caſe, and I hope you will not allow it here.

Sir *Bartholomew Shower.* The Indictment is, that they did conſult together, but their Crimes are ſeveral; if they had been mentioned in one Indictment, and one had been tried at one Time, and the other at another, it would not have been allowed that they ſhould give in Evidence againſt the one, what had been ſworn againſt the other; for though their Charge is by the ſame Witneſs, and for a Fact done at the ſame time, yet the Defence of the Parties may be different; and it cannot be expected that we, on the behalf of Sir *John Fenwick*, are prepared to give an Anſwer, in regard of any thing that was ſworn againſt Mr. *Cook.*

Mr. Speaker. Mr. Serjeant *Gould*, you hear the Exception.

Mr. Serj. *Gould.* We hope in this Caſe we ſhall go on with our Evidence, as offered and propoſed to this Houſe. Theſe Gentlemen have made their Objections, as if they were below in the inferiour Courts; but we are here now before you in a parliamentary Way; and what is that which brings us here, but becauſe there is a Witneſs withdrawn by Artifice, ſo that we cannot produce him? And therefore we come, and humbly apply ourſelves to this honourable Houſe. Now, Sir, you are Judges of the Method of coming at the Truth, and ſupplying that Defect: If we could produce him, there would be an End of the Matter; but in this Caſe we are in the Judgment of this honourable Houſe, Whether we ſhall not give ſuch Evidence as he hath given upon his Oath, though in other Caſes it is not admitted?

Mr. Serj. *Lovel.* When we produced the Record of Conviction, we only produced it to ſhew you there was ſuch a Trial; and by that means to let us in, to ſhew you what was ſworn by Mr. *Goodman* at that Trial.

Then upon the Motion of Colonel *Granville* and Sir *Richard Temple*, Sir *John Fenwick*, and the Counſel and Sollicitors, withdrew.

Sir *Richard Temple.* If I did not believe what is now offered, is what was never offered before, and of dangerous Conſequence to every one here, I would not have troubled you at this time of Night. There has nothing been offered that this hath ever been done. They ſay, It hath not been done in inferiour Courts: Pray, let us ſee if ever it hath been done in Parliament, That what was given in Evidence at another Trial, ſhould be given in Evidence againſt another Perſon here, when this Perſon was not by, and had no Opportunity to defend himſelf againſt it; I am ſure it was never done yet.

Sir *Thomas Mompeſſon.* This Gentleman complains this was never done. When the Duke of *Monmouth* was impeached, the Bill was read three times in one Day, and that Gentleman moved for the Impeachment.

Sir *Richard Temple.* Here were three Witneſſes that did declare they ſaw him in actual Rebellion, at the Head of an Army; but I hope I am not to anſwer for all the Proceedings then.

Colonel *Granville.* When I ſaw them going on to make uſe of that as Evidence, which was never allowed in any Court, I thought I ought to move for them to withdraw. I ſhall not give my Conſent to have it read, 'till ſomebody ſatisfies me 'tis good Evidence againſt Sir *John Fenwick:* I can't ſee how you can admit this for Evidence: Are we to read all the Trials that are upon this Plot? Therefore I deſire you will bid them produce what is Evidence againſt Sir *John Fenwick*, and not to trifle with you.

Sir *Thomas Littleton.* If you proceed in this manner, I know not when you will have done. They do not tell you, they produce this as Evidence againſt Sir *John Fenwick*; nor do I take this to be the only Evidence to prove him guilty. If nothing but exact Proof would have ſatisfied, this Bill would not have been brought in: But this is to make as good Proof as the Nature of the Thing will bear. You have heard ſeveral Things before, in relation to *Goodman*, that poſſibly might ſtrictly be no more Evidence againſt Sir *John Fenwick* than this; as *Goodman*'s being withdrawn. Firſt, they offered to prove that he was gone; that it was ſuſpicious that Sir *John Fenwick* was privy to his going: Why did you admit the Evidence of what he ſaid to the Grand-Jury? What is this, but to give Evidence of what he ſaid to the Petit-Jury, wherein the Grand-Jury and Petit-Jury have both believed him?

Mr. *Harley.* I think if you had come to one Determination before you had entered upon this Matter, you had very much ſhortened your Buſineſs; that is, that you would not expect ſuch Proof as is neceſſary at Law; and it may be, if you would come to it now, it would ſave you Time: For I find by the Counſel, that what is ſworn againſt another Man, at another time, would not be Evidence at Law againſt the Priſoner; and I believe if he ſhould except to a Jury-Man, becauſe he was upon *Cook*'s Trial, it would not be allowed as a good Exception, and he would be told, he was no way concerned in another's Trial.

Mr. *Howe.* 'Tis a ſtrange ſort of Evidence that is offered here, and 'tis a ſtrange Way of bringing it in. The Houſe made nothing lately of Hear-ſay, and yet now Hear-ſay muſt be taken for Evidence. I have heard that the Grand-Jury take an Oath not to diſcover what was ſworn before them; this, ſince the Grand-Jury have ſubjected themſelves to (yet you have brought them here as Witneſſes to give an Account of what was ſworn before them, which I am afraid is a Breach of their, Oath), it ſhall make me give leſs Credit to what they ſay. We are here to attaint a Man, but we muſt not talk of Proof; that is a ſtrange Thing! I am ſure, if you do not find it with Proof, it would be againſt Proof. Shall I be plain with you? I queſtion, if this Houſe had heard what *Goodman* ſwore at that Trial, and what was alledged againſt it, whether this Houſe would have been of that Jury's Mind: For I have heard that two or three did ſwear, he was not at the Place at the Time he ſwore he was, as plain as a Negative could be ſworn.

Mr. *Harcourt.* If you pleaſe to let the King's Counſel go on upon this, you will ſave a great deal of Time, and prevent any Exception to any Evidence afterwards: For 'tis not in the Power of Man to offer any thing more abſurd. I don't believe that ever any Man heard of ſuch a Thing offered, That a Record ſhould be given in Evidence againſt a Man, that is no manner of Party to the Record: I am ſure never any ſuch Thing was attempted before. As for the other Things, you had ſomething offered that made it ſeem doubtful how far you ſhould give Credit to them. Upon thoſe Matters, the Counſel at the Bar for the King told you, That there was ſome Pretence that it was Law, and practiſed below, and a Book was produced to juſtify it: But in this Caſe, if there be Book, Practice, Precedent, or any thing to juſtify it, I will ſit down. The Anſwer made it ten times worſe: The Gentleman ſaid, he would not have the Record read, but upon that Record to prove what was ſworn at the Trial: Why, does that concern any Perſon in the World but *Cook?*

Lord *Cutts.* If the worthy Gentleman that ſpake laſt had made out all his Propoſitions with Clearneſs, equal to the Aſſurance with which he aſſerted them, they would have more Weight: But I will ſay, that which he hath aſſerted does not appear to me ſo. I take this to be the ſame Thing, in ſome meaſure, debated over again. It hath been told you, That this Houſe are to give their Judgment in a Matter of great Importance; and therefore I think 'tis fit that all the whole Matter ſhould be laid before them; when that is done, they only are the Judges of what Weight it is.

Mr. *Sloane.* I go along with thoſe Gentlemen, That this is no ſort of Evidence againſt Sir *John Fenwick:* But our Queſtion is about a Witneſs that is withdrawn, and to know what he ſaid, and how he was believed when he was here. How he is gone, we have ſeen already; and therefore though I think the Verdict againſt *Cook*, nor nothing of that can be given in Evidence againſt Sir *John Fenwick*; yet if he hath withdrawn the Witneſs, and the Credit of him is at Stake, as you have heard Evidence of what he ſaid upon Oath before the Trial came on, by the ſame Reaſon you may hear what he ſaid at the Trial.

Mr. *Pelham.* I think it would ſhorten our Debates, if we were truly ſatisfied about what we are a-doing, that we are trying Sir *John Fenwick*, as we are told at the Bar; he called it a Trial, and 'tis a Trial. I muſt confeſs I was in hopes I ſhould never ſit in the Houſe of Commons to try any body; I did not think it the Buſineſs of us; if I had, I would not have come hither: But ſince we are come into it, is any thing more natural, than to examine whether this Evidence be proper, or ſuch Evidence as any Court would allow of?

Sir *William Williams.* I ſuppoſe there is no Gentleman of our Profeſſion that hath ſeen any Record, will ſay, that this hath been offered in any

Court of Law: I believe, if he was upon his Trial upon the Indictment, nobody will ſay it would be read againſt him. Let us conſider how many Judgments, that have been given haſtily in the late Reigns have been reverſed. What is the Reaſon that is given for it? It is for receiving that for Evidence, which was not Evidence in the Law: Your Bill of Right takes Notice of it.

Mr. Sol. Gen. I did not think this Matter would have held you a Quarter of an Hour; but if Gentlemen will debate upon the ſame Matter that hath been over-ruled twice before, all that is to be proved by this Record is, that one *Peter Cook* was attainted for High-Treaſon: If the Counſel on the other Side would have owned *Peter Cook* to have been attainted, you had not been troubled to have the Record brought to the Table. But as to what they ſay, that Sir *John Fenwick* was no Party to the Record, and therefore it can be no Evidence againſt him, I ſuppoſe it would be Evidence for him. Suppoſe *Goodman* had ſworn he never had been at the *King*'s-*Head-Tavern*, would not the Priſoner have produced a Witneſs to prove what he had ſworn? Then I would put you in mind of a Caſe, becauſe there is a Nicety in this Matter without any Reaſon; it was in the Trial of Alderman *Corniſh*; he was indicted and tried, and the great Fact was in the Houſe of one *Shepherd*; there was a Witneſs againſt him, one *Rumſey*, who ſwore, *&c.* Says Mr. *Corniſh*, He was a Witneſs at my Lord *Ruſſel*'s Trial, and he did not name me to be one; and it went ſo far, that when *Shepherd* ſaid, I was in the Room; he ſtood up and ſaid, No, it was read before I came in. Mr. *Corniſh* would have produced a Witneſs to have proved what *Rumſey* ſaid: Says the Court, We cannot admit of that; for it does not appear to us, that my Lord *Ruſſel* was ever tried for High-Treaſon; and there, upon that Slip, was that Gentleman deſtroyed. I pray it may be read; I have given no Opinion of what Force it is, but I think it depends upon the ſame Reaſon; nay, you have more Reaſon to do it, than any thing you have read To-day.

Mr. *Price.* 'Tis very much preſſed that you ſhould read that, which, when read, they ſay, is not Evidence, but only to introduce another Matter. If it be not Evidence, upon what Account ſhall they read it? But if it introduce other Evidence, this is an Ingredient and Part of that Evidence. Now ſuppoſe the Record ſhould be produced, and they ſhould bring Witneſs to ſay what *Goodman* ſwore at that Trial: would that be Evidence? No ſure, for nobody ever pretends that this hath been admitted either at Law, or in Parliament. By what Law? By what Rule? By what Meaſure of Reaſon are we to proceed in this Houſe? If you would permit to be produced a Record of Conviction againſt a third Perſon, and this to be Evidence againſt one that is not preſent, I think you may as well admit to be produced a Record of the Conviction of any other concerned in the Aſſaſſination. But I ſtood up principally upon the Obſervation made at the Bar, and he put you that which he takes to be a ſiniſter Caſe; for, ſays he, ſuppoſe Sir *John Fenwick* had brought this Record, and made uſe of it to take off *Goodman*'s Teſtimony, ſhould it not be Evidence? Yes, no doubt of it; and there is the Diſtinction. 'Tis one thing, where you are to give in a Record to convict and attaint a Perſon, and another thing, where it is to prove a Man perjured, and to invalidate his Teſtimony; for when Evidence is brought againſt a Priſoner, he hath no way to leſſen his Evidence but what is collateral; if it be upon a Trial when another is concerned, if the Witneſs gave a contrary Evidence, or the Party was acquitted, then the Record may be made uſe of againſt the Witneſs: But it differs very much, where you bring Evidence to take off the Credit of a Witneſs, and where you bring it to convict or attaint a Perſon. The Caſe of *Corniſh*, that turns upon the ſame Reaſon, and it was only to be uſed to take off the Teſtimony of *Rumſey*; but if this Record of the Conviction of *Cook* be brought to any Purpoſe now, 'tis to ſatisfy your Conſciences, that *Goodman* gave a good Teſtimony at that Trial; and I wonder the Serjeants ſhould offer it, who are ſworn to offer nothing in Violation of the Law.

Dr. *Oxenden.* If I did not think this Queſtion had been determined before, I ſhould not trouble you in this Debate; for did not we receive what *Goodman* depoſed upon Oath before a Juſtice of Peace? Was it read becauſe it was taken in Writing, or becauſe it was his Evidence? Now they offer you an Evidence of his, that was not put into Writing, but they will prove by Witneſs; What is the Difference? If it had been taken down in Writing, it muſt have been admitted as the ſame was before.

Sir *Marmaduke Wyvell.* That worthy Gentleman deſired to know the Difference, *&c.* That Depoſition was againſt Sir *John Fenwick*, but this Evidence, that they offer now, was given againſt *Peter Cook.*

Mr. Att. Gen. You are now upon a Debate, Whether you ſhall read the Conviction of *Peter Cook:* I do agree with thoſe Gentlemen that have ſpoke of this Matter, that the Conviction of *Cook*, nor any Evidence upon his Conviction, can be Evidence againſt Sir *John Fenwick.* I don't pretend that this is; nor don't believe that this is offered upon any ſuch Conſideration; but 'tis one of the Allegations of the Bill, that ſeveral of theſe Gentlemen were preſent at this Conſult, of which Sir *John Fenwick* is accuſed; therefore, I ſuppoſe, the Counſel for the Bill did offer this Record to make good that Allegation, and ſo think it may be properly offered: Unleſs it be admitted; I don't ſee how it can be made good further; I do not think it proper to examine to what *Goodman* ſwore at *Cook*'s Trial.

Sir *William Williamſon.* I ſpeak only to ſhew my Concurrence with the Attorney-General; Mr. *Attorney* hath ſtated it right, no doubt, as to the Conviction of this Perſon; as Mr. *Attorney* offers it, it may be proper enough.

Members. Call them in, call them in.

Sir *Chriſtopher Muſgrave.* I hear Gentlemen ſay, Call them in: Do you intend when you call them in to read this Record? I think the learned Gentleman hath ſtated it, that it ought not to be read as Evidence. Now the Counſel for Sir *John Fenwick* ſaid, they hoped you would not ſuffer it to be read as Evidence againſt the Priſoner: I never heard the Counſel ſay, that *Cook* was not attainted, nor ever heard that any Man did doubt it; then if it be no Controverſy between the Counſel, to what End is it brought hither? Do you think that the Steps that are urged to be taken in this Caſe, will not be a Precedent for Poſterity? I take it that there is a great deal of Difference between the Paper you have read and this Record; and therefore, if you call in the Counſel, I hope you will not gratify them in reading of it.

Mr. *Edward Harley.* Before you call the Counſel in, I humbly propoſe it to you to conſider to what Purpoſe this Record ſhould be read; if as Evidence, you overthrow all the Courſe of Proof that is ſettled by the Common Law, and Statute Law; for it hath been in all Trials oppoſed, to give in Evidence that which is improper, becauſe it ſhould not influence the Jury. I would not have it ſaid, that under the Reign of King *William*, any thing was done contrary to the Law and Conſtitution of the Nation. There hath been an Inſtance given of the Trial of Mr. *Corniſh*, tho' that Caſe does not come up to it: But we know what was done in thoſe Reigns hath been juſtly reflected upon; and I hope you will not make a Precedent here, to encourage Judges to do what is againſt Law.

Mr. Speaker. Gentlemen, This is your Queſtion, That the Record of the Conviction of *Peter Cook* ſhall be read.

Which Queſtion being put, the Houſe divided.

Ayes, 181. Noes, 110.

So it paſſed in the Affirmative.

Mr. Speaker. Gentlemen, You have had another Queſtion that hath been the Subject of your Debate, That the Counſel for the Bill be admitted to give Evidence as to what *Goodman* ſwore againſt *Peter Cook.*

Mr. *Robert Harley.* The learned Gentleman did tell you, That what *Goodman* ſaid at that Trial, ought not to be given in Evidence; and therefore, I think, Gentlemen won't inſiſt upon that, that is carrying it too far; and, I think, he opened it, that it was only to prove that *Cook* was attainted, and to make uſe of it no farther.

Mr. Speaker. Is it then your Pleaſure, that Sir *John Fenwick* and his Counſel be called in?

[*Which Queſtion being put, it paſſed in the Affirmative, and accordingly they were called in.*]

Mr. Speaker. Sir *Thomas Powys*, the Houſe hath determined to have this Record read, not as Evidence againſt Sir *John Fenwick*, but to prove the Allegations in the Bill, and that *Cook* was attainted.

Read the Record.

[*Accordingly that Record was read by the Clerk.*]

Sir *Barth. Shower.* We are ſure the Record does not prove that he was convicted upon *Goodman*'s Evidence.

Mr. Serj. *Lovel.* Look upon the Indictment.

Sir *Thomas Powys.* It appears by that, that *Goodman* was a Witneſs upon the Indictment; but it does not prove by that, that he was a Witneſs upon the Trial.

Mr. Serj. *Gould.* May it pleaſe you then, Mr. *Speaker*, thus far it is agreed, that here is a Record of the Conviction of *Cook*; and 'tis agreed, and the Record ſpeaks it, that *Goodman* was a Witneſs, for it is indorſed upon the Indictment. Now the main Diſpute is, Whether *Goodman's* Evidence did prevail to convict *Cook* upon that Indictment? And for that we ſhall apply ourſelves. Call our Evidence, ſome of the Jury, and ſome that were then Witneſſes, and they will give you an Account upon what Evidence that Conviction was.

Sir *Thomas Powys.* In what you were pleaſed to acquaint us at our laſt coming in, you were pleaſed to give ſuch a Reaſon in relation to the reading of this Record, that if we had heard it before, we would not have troubled you to have it withdrawn; for it was proper to make out the Allegations of the Bill, and that *Cook* was convicted; but, we apprehend, they can carry it no further than what they have applied it to. But I perceive from hence, the Gentlemen of the other Side are encouraged to proceed to another Piece of Evidence, ſuch they call it; they are going to call the Witneſſes to prove what was ſworn at the Trial of *Cook*, where Sir *John Fenwick*, nor no Perſon on his behalf, was preſent, either to hear, or obſerve, or croſs-examine, or offer any thing to their Credit, which poſſibly he might be furniſhed with, tho' *Cook* was not: I hope that will be no more allowed of as Evidence here, than in any other Place.

Sir *Barth. Shower.* We humbly oppoſe their calling of Witneſſes to give this Account of the Evidence given at *Cook*'s Trial. And we ſubmit it to your Conſideration, whether you will think it juſt, that the Evidence that is given with reſpect to one Man only, ſhall conclude another Perſon that ſtands at the Bar in Defence of his Life, or that it ſhall be given againſt him. Every Man's Defence is ſeveral; and we oppoſed the reading of the Record before, and ſo do now the calling of any Witneſſes to this Purpoſe, for the ſame Reaſon.

Mr. Serj. *Lovel.* We call theſe Witneſſes for no other Purpoſe, but to prove that *Goodman*, what he did inform by that Paper, he did ſwear before a Jury.

Mr. Speaker. Gentlemen, you muſt withdraw.

[*Accordingly they withdrew.*]

Mr. *Manley.* I thank God I have that regard for the Laws of *England*, and to every *Engliſhman*'s Life, that when I ſee any thing attempted againſt it, I muſt give my Teſtimony againſt it: I did not believe they would have inſiſted on it, for there was a Gentleman that ſate near to you, who in the Cloſe of his Debate, I thought, had ſatisfied every Body, that this was a Thing that ought not to be read; if they ſhould do it, it would be a Thing of dreadful Conſequence; if you ſhould admit of every thing theſe Gentlemen that come in for the Bill offer, I know not where it will end. How will it appear that upon *Goodman*'s Evidence the Jury found *Cook* guilty? For they might find *Cook* guilty, and yet give no Credit to *Goodman*; for he was contradicted materially, and there might be other Evidence upon which they might find him guilty, and yet lay aſide the Evidence given by *Goodman*; but whether one Way or the other, we can't tell. They tell us, We are not to be guided by the Rules of *Weſtminſter-Hall*; but we are to be governed by the Rules of Juſtice; and we are not at this Time to ſeek a Way to the King's Favour, by voting againſt a Criminal for High-Treaſon.

Mr. *Sloane.* There is no manner of doubt of it, That that Gentleman is in the right, who tells you, If this Indictment and Conviction of *Peter Cook* ſtood ſingly, as to Sir *John Fenwick*, 'tis no Evidence; and if they will produce *Goodman* now, it ſhall be no Evidence againſt them; but take the Caſe as it is, here is a Witneſs, who hath given me Satisfaction, that 'tis one of Sir *John Fenwick*'s Friends or Agents (which is the ſame Thing as if done by himſelf) by whoſe Means this Witneſs is withdrawn: Now the Queſtion is, What could this Witneſs ſay, when he was here? What did he ſay? 'Tis not Concluſive, but 'tis Material for you to hear what he did ſay when he was upon his Oath.

Sir *Chriſtopher Muſgrave.* The Gentleman of the Long Robe that ſpake laſt, was pleaſed to tell you, It is very reaſonable that you ſhould hear thoſe Perſons, as to what *Goodman* ſwore at *Cook*'s Trial; I confeſs, I think this is harder than all the reſt, becauſe what you have hitherto admitted was in Writing; one was an Examination before a Juſtice of Peace, the other a Record; but for any Man to ſay, he can exactly repeat what any Man ſwore at the Trial, to me is wonderful: Why, in his Evidence, the leaſt Miſtake of a Word alters the Nature of the Thing, and therefore this would be a bold Undertaking for any Man; for if he wavers in the leaſt Circumſtance, 'tis not true that he ſwore ſo: Then this Gentleman was no ways concerned in that Trial; and to what Purpoſe is it read, if not to the Prejudice of Sir *John Fenwick?* I do not know but by the ſame Rule, you may hear Evidence of what any Man hath ſworn upon all the Trials this three Quarters of a Year.

Mr. *Sloane.* I have been called upon to know in what Caſes Teſtimony hath been given, that Witneſſes have ſworn ſo and ſo at a former Trial. 'Tis every Day's Practice between Party and Party, that where a Witneſs doth die, between the ſame Parties (I will ſtate the Caſe fairly) 'tis given in Evidence, that ſuch a Witneſs, at ſuch a Trial, did ſwear ſo and ſo; ſometimes they take it in Short-Hand, and then they can tell the Words of it; otherwiſe they repeat it upon their Memories; but I will not ſtrain it: But I put it with a further Reaſon upon it; for we do not deſire to hear it as concluſive Evidence upon the Priſoner, but only in this Senſe; here is a Witneſs ſuppoſed to be carry'd away by the Priſoner's Means; and therefore, is it not neceſſary to hear what he ſaid before he was deluded and carried away? Not that after it is heard, it is any concluſive Evidence; but it is reaſonable we would come at the Truth, *omnibus Viis & Modis, quibus Mediis ſciri poterit.*

Sir *Thomas Littleton.* A Gentleman ſays, To what Purpoſe ſhould it be read, if it be not to the Prejudice of Sir *John Fenwick?* On the other Side, we may ſay, 'tis for his Benefit; that is only ſuppoſing one Way or another: I will hear any Body to his Benefit, and any Body to his Prejudice. Says a worthy Gentleman, It is not done in criminal Caſes: Why, in this Caſe you have heard the Grand-Jury, what he ſwore before them already; and what Objection is there more againſt hearing what he ſwore in another Caſe, than againſt hearing what he ſwore upon the Indictment? The main Inducement for you to hear it is, becauſe he is gone away, and cannot be heard *viva voce*, and with Suſpicion that it was by Contrivance of the Party.

Mr. *Grey.* I would ſpeak but one Word as to what the Gentleman that ſpake laſt but one ſaid; and that is, as to the Courts below, That one Man is allow'd very often to give in Evidence what another ſwore; it hath been ſo, and 'tis at the Peril of any Perſon that ſwears, that he ſwear Truth; for he may be proſecuted, if he does not ſwear Truth; but I would aſk him, what Remedy there is here, if he do not ſay the Truth? We have no Remedy againſt him, if he takes away this Man's Life by what he ſays here.

Mr. *Smith.* Truly, Sir, if I muſt give my Opinion, I do think 'tis very reaſonable that Bills of Attainder ſhould be only upon extraordinary Occaſions; I think that, take it at beſt, if there was not a Place where the Witneſſes are to be ſworn, and more particularly examined, I know not whether I ſhould give my Conſent for the paſſing of this Bill through your Houſe; for the Witneſſes againſt the Priſoner are not ſworn, nor the Witneſſes brought againſt them; ſo that we can only give our Opinion upon the Probability of the Matter; for what that Gentleman ſays weighs with me, That 'tis a difficult Thing for any Man to charge himſelf with what was ſworn at a former Trial; for the Miſtake of a Word may alter the Senſe very much. We are told by a worthy Gentleman, That there was two or three Witneſſes that did give ſuch Evidence againſt the Teſtimony of *Goodman*, that 'tis a Wonder almoſt how *Cook* could be found guilty: It is our Misfortune that *Goodman* is not here; it would have been worth our while to have heard what *Goodman* could have ſaid in his own Defence; but ſince there are ſuch Witneſſes like to be offered againſt *Goodman*'s Teſtimony, is it not reaſonable that we ſhould hear what *Goodman* ſaid for himſelf?

Mr. *Howe.* Sir, I always thought it very reaſonable, that you ſhould hear any Evidence that might tend to your Information; but I think 'tis plain, that nothing can tend to your Information that is alledged by any Perſon that is not to be believed; that is to ſay, is not to be believ'd from the Nature of the Evidence, though from the moſt credible Perſon in the World. I know not whether theſe Witneſſes are to be brought or no; but I have heard that *Cook*, after he was condemned to die, without any Apprehenſion of his being ſaved, did, upon the Sacrament, declare, That *Goodman* was not upon the Place at that Time he ſwore himſelf to be there. I have heard ſince, that the ſame Divine that gave him the Sacrament, Dr. *Wake*, when he had confeſſed it, after he had made ſuch a Declaration, had ſuch an Abhorrence of it, that he would go to him no more; but I cannot think we can have Information from theſe Perſons, that I ſuppoſe did not think of giving Evidence in this Trial, and therefore did not take notice ſo particularly of what he ſaid; and if ſo, 'tis loſing your Time to hear it.

Mr. Speaker. Gentlemen, the Queſtion is this: That the Counſel againſt Sir *John Fenwick* be allowed to examine Witneſſes, as to what *Goodman* ſwore at the Trial of *Peter Cook.*

Sir *Godfrey Copley.* I muſt confeſs, it would weigh with me, if it had been made appear, that Sir *John Fenwick* had taken off any Evidence, and I ſhould be ready to apply it as well as I could; but I muſt needs take notice of what was ſaid in this Debate, That we had done as much as this comes to already: This makes me a little more apprehenſive, and to take care what we do now, ſince what this Houſe does hath ſo quick an Operation. We are citing Precedents of this very Day already, and make one Thing a Hand to draw on another; and ſo they may eaſily be made uſe of in after Parliaments.

Sir *Henry-Dutton Colt.* I believe no one Gentleman doubts, that *Cook* was convicted upon the Evidence of *Goodman*; if they do, I would know the Reaſon of it; for upon the laſt Act, there are to be two Evidences to the ſame Treaſon: There were but two poſitive Witneſſes againſt him for Treaſon, and they were *Porter* and *Goodman:* I think, therefore, he was convicted upon the Evidence of *Goodman*; what then needs any Perſon to remember any Particulars that paſſed at the Trial, if they remember in the whole, that he was convicted by the Evidence of *Porter* and *Goodman?*

Mr. Speaker. As many as are of Opinion, that the Counſel againſt Sir *John Fenwick* be allowed to examine Witneſſes, as to what *Goodman* ſwore at the Trial of *Cook*, ſay, Aye.

Ayes 180. Noes 102.

[*Afterwards the Queſtion of Adjournment was put, and it paſſed in the Negative; and ſeveral Gentlemen that were againſt the Bill, to about Forty, went away together in a Body; ſome of them having declared, that their Health would not give them Leave to ſtay there longer.*]

And Sir John Fenwick *and the Counſel were brought in again.*

Mr. Speaker. Mr. Serjeant *Gould*, the Houſe do allow you to examine Witneſſes as to what *Goodman* ſwore at the Trial of *Cook*; pray go on with your Evidence.

Mr. Serjeant *Lovel.* We call Mr. *Collins*, Sir.

[*Who was brought to the Bar.*]

Mr. Speaker. Was he a Juryman?

Mr. Serjeant *Lovel.* He was one of the Petit-Jury, Sir.

Mr. Speaker. Mr. *Collins*, can you give the Houſe an Account of what was ſworn by *Goodman* upon the Trial of *Cook?*

Mr. *Collins.* To the beſt of my Memory, I will give the beſt Account I can. *Goodman* did depoſe, That he came to the *King*'s-*Head* in *Leadenhall-Street*, and enquired for Captain *Porter*, according as the Captain had ordered him; and the Captain came down and carry'd him up into the Room where the Gentlemen were. There was Sir *John Freind*, Sir *William Parkyns*, Mr. *Charnock*, Mr. *Cook*, and Sir *John Fenwick*; there was two others, if you pleaſe to have me name them.

Members. Yes, yes.

Mr. *Collins.* My Lord *Ayleſbury* and my Lord *Montgomery:* This was what he depoſed.

Mr. Speaker. Go on, Sir; you have named thoſe that were at the Meeting.

Mr. Serjeant *Lovel.* Did he give you an Account of what was agreed on at that Meeting?

Mr. *Collins.* I think it was about ſending *Charnock* to *Fance.*

Mr. Speaker. Sir, you ſhould repeat all the Particulars, what *Charnock* was to do.

Mr. *Collins.* I can't remember any Thing further than what I have told you.

Mr. Serjeant *Gould.* If you pleaſe that Mr. *Cooper* may be aſked to this?

Mr. Speaker. Was you of the Petit-Jury that convicted Mr. *Cook?*

Mr. *Cooper.* Yes.

Mr. Speaker. Can you give the Houſe an Account what Evidence *Goodman* gave to you for Conviction of *Cook*, and what he ſaid in that Evidence?

Mr. *Cooper.* Mr. *Goodman* did declare upon his Evidence, That he was at the *Old King*'s-*Head* in *Leadenhall-Street*, where he did meet with divers Perſons that were in Conſultation; he named *Charnock*, Sir *John Fenwick*, Sir *John Freind*, and divers others.

Mr. Speaker. What was the Conſultation?

Mr. *Cooper.* It was about ſending *Charnock* over into *France.*

Mr. Speaker. To what Purpoſe?

Mr. *Cooper.* To bring over Forces, or encourage the Bringing over of Forces: That was the Purport of his Meſſage.

Mr. Speaker. Will you produce any other Evidence to this Point?

Mr. Serjeant *Gould.* We deſire this Gentleman may be aſked to the ſame Purpoſe.

Mr. Speaker. Was you one of the Petit-Jury?

Another Witneſs. There was Captain *Porter*, and Mr. *Goodman*, that were the two Evidences; and *Goodman* did ſay, That he had been at the *Old King*'s-*Head* in *Leadenhall-Street*, one *Coxe*'s, and Sir *John Fenwick* was there, and ſeveral other Gentlemen, conſulting of an Affair to ſend over into *France* for ſome Forces to be brought over into *England*; and that *Charnock* was the Perſon, and they all agreed he ſhould go over.

Mr. Speaker. But did he give you an Account of what *Cook* and the others did agree to, upon which you found Mr. *Cook* guilty?

The ſame. We did apprehend that *Cook* did conſent that *Charnock* ſhould go over to *France*, and acquaint King *James*, That there had been a Meeting of ſeveral Gentlemen, and that they had made ſeveral Offers of Soldiers and People that were to be raiſed here, and to acquaint King *James* with it; and he declared, That Sir *John Fenwick* was there at the ſame Time.

Mr. Speaker. Pray, can you give this Houſe an Account of what Exception was taken to *Goodman*'s Credit, and how it was anſwered?

The ſame. There was Exception taken, That he was guilty of a great many Crimes, and that he had his Pardon; and the Fines were levy'd upon him; but it was ſaid then, that he had paid his Fine, and that he was a very good Evidence in the Caſe.

Mr. Speaker. Mr. Serjeant *Gould*, have you any other Evidence to produce?

Mr. Serjeant *Lovel.* If you pleaſe, Mr. *Speaker*, here is Mr. *Tanner*, the Clerk of the Arraignments, that beſt knows the Nature of theſe Things; that as to theſe Objections that were made, it appeared to the Court to be a Contrivance, for he was never bailed, but diſcharged without any more to do. If you pleaſe that he may be aſked, What Objections were made to *Goodman*'s Reputation, and what Anſwer was made to it?

Mr. Speaker. I did aſk the Juryman that; and I ſuppoſe you need not labour this Point, unleſs the Credit of *Goodman* comes in Queſtion here.

Mr. Serj. *Gould.* Then may it pleaſe you, Mr. *Speaker*, we have one other Piece of Evidence againſt Sir *John Fenwick*, which we are humbly to offer to your Conſideration, and I think 'tis very material; and 'tis ſome of the Evidence which I did open in ſtating of the Caſe, wherein Sir *John Fenwick* hath, in a manner, given a Verdict againſt himſelf; for while Sir *John Fenwick* was working of his Eſcape to go beyond Sea, at that very Time there was a Letter written by him, directed to his Lady, and delivered into the Hands of one Mr. *Fowler*, who was to cauſe it to be delivered to his Lady by one *Webber*, who was taken up when Sir *John Fenwick* was. This Letter imports, That Sir *John Fenwick* look'd upon himſelf as having no Defence, but depended only upon a Contrivance with the Jury; they were to work with ſome Perſons of the Jury, who were to ſtand it out, and to ſtarve the reſt; and ſo by that Means to ſave him. Our Evidence of this will be, that it fell out that *Webber* (we have him not here now, but have endeavour'd it as much as poſſible, but he is gone too out of the Way), that he was taken at the ſame Time that Sir *John Fenwick* was; but by reaſon of the protracting of Sir *John*'s Trial, he comes, and is delivered, there being no Charge againſt him; and he is, ſince his Deliverance upon his *Habeas Corpus*, gone out of the Way; but we ſhall, in the Method of our Evidence, produce you Mr. *Fowler*, the Perſon to whom this Letter was handed, who will give you an Account of this Letter; and then will produce this Letter: To which End, we muſt humbly beg the Favour of a worthy Member of this Houſe, Mr. *Vernon*, who hath this Letter, that it may be produced, and ſhewed to Mr. *Fowler*.

Mr. *Vernon.* Sir, I receiv'd your Order to bring the Letter that Sir *John Fenwick* wrote, while in Cuſtody at *Rumney*, which was ſent up to me by Mr. *Maſcall*, who had it of Mr. *Fowler*; and, if you pleaſe, I am ready to deliver it.

Mr. Speaker. Who ſent it to you?

Mr. *Vernon.* One Mr. *Maſcall*, a Juſtice of Peace of *Rumney*.

Sir *Thomas Powys.* I hope now we ſhall make an Objection to this Letter with good Authority. Surely for them to produce a Letter, as Sir *John Fenwick*'s, is not to be allow'd as Evidence, unleſs it was prov'd that he wrote it, becauſe that ſort of Evidence was particularly taken Notice of by Parliament: And Judgment given upon that ſort of Evidence, by Compariſon of Hands, in the Caſe of Mr. *Sidney*, and the Act of Reverſal of his Attainder does allow it to be illegal Evidence. This is ſuch an Authority as, I hope, will bear no Diſpute: And the Courts of *Weſtminſter-Hall* have ſince thought it ſo; they did ſo in the Caſe of *Croſby*, who was tried the other Day in *Weſtminſter-Hall*.

Sir *Barth. Shower.* In this Objection we have the Opinion of inferiour Courts, and the Parliament too; for the particular Evidence Mr. *Sidney* was convicted upon, was upon a Paper which was found, and proved by ſome who pretended to know his Hand; and I am ſure that is more than they can pretend to, and more than they have yet opened. We do therefore humbly oppoſe this Evidence, it being in the Caſe of the Life of a Man; and the King, Lords and Commons, having declared, That this ſort of Evidence ought not to be allowed: And therefore, I hope, you will not allow it in this Caſe. And in *Croſby*'s Caſe, upon reading the Act of Parliament, this Evidence was not allowed, and *Croſby* was acquitted.

Sir *Thomas Powys.* I have a Copy of the Bill for reverſing the Attainder in my Hand; and it ſays, The producing a Paper found in the Cloſet of Mr. *Sidney*, which was not proved by any Witneſs to be his Hand-writing, *&c.* And, we hope, if in the Judgment of the Parliament that was not thought reaſonable Evidence to Attaint him, this will not be thought reaſonable in Parliament to Attaint this Gentleman.

Mr. Serj. *Gould.* As this Caſe is, we hope this may be a concurring Evidence: It will be plain, upon the Evidence we ſhall give, that *Webber* was with Sir *John*, and taken with him; and at that Time this Letter was handed by him over to *Fowler*, to be carried to my Lady. Now, Sir, we humbly offer it to your Conſideration, How far it is available, and what Operation it will have? Whether, in a Caſe of this Nature, theſe two being taken together, and *Webber* delivers this Letter to *Fowler* to deliver it to Sir *John Fenwick*'s Lady, and the Import of the Letter concerns Sir *John Fenwick* for his Acquittal; you will not ſuffer it to be read? 'Tis not to charge him with a Treaſon, for that is the Caſe of *Algernoon Sidney*: 'Tis not to prove a Crime upon him; but we will prove that Sir *John Fenwick* handed this Letter over, that it might come to this Lady; by which he deſired his Lady ſo far to work the Matter, that ſome Jury-man might be found to ſtarve the reſt, and ſtand out for him: If we could produce *Webber*, we would; 'tis plain, *Webber* correſponded with Sir *John*, and was with him.

Mr. Serj. *Lovel.* I humbly beg one Word in this Matter: The Counſel on the other Side do very well know, the conſtant Practice is, That in the Caſe of a Deed or Will, let the Value of the Eſtate be what it will, if the Witneſſes cannot be produced, or are gone beyond Sea, they always admit Evidence by Compariſon of Hands. But for the Caſe of *Algernoon Sidney*, there is no Doubt but his Attainder ought to be reverſed, becauſe that Attainder was upon no other Evidence; for there was no other Proof, but a Paper, that he himſelf did ſay, was only for the Exerciſing of his own Ingenuity and Parts; and it was ſaid to be written for no other Purpoſe, and proved only by the Compariſon of Hands: Had there been any other Witneſs to corroborate, it had alter'd the Caſe. But in our Caſe, we do produce the Letter, not for the convicting of the Priſoner at the Bar; but we are humbly to lay before you all the Matter of Fact. It will be worthy of your Conſideration, what you will think fit to take, and what to reject; that is a Matter for your own Judgment. We produce this Letter for this Purpoſe, to ſhew you, that after Sir *John Fenwick* was taken, he apprehended his Caſe to be ſo deſperate, that he uſed theſe indirect Means.

Mr. Speaker. What mean you by that? This Letter came from Mr. *Fowler*.

Mr. Serj. *Lovel.* Here is Mr. *Fowler* that receiv'd it from *Webber*, when Sir *John Fenwick* was by, in the Preſence of Sir *John Fenwick*.

Mr. Speaker. Shew Mr. *Fowler* the Letter.

[*Accordingly the Clerk went down to the Bar, and ſhew'd Mr.* Fowler *the Letter.*]

Mr. Speaker. Do you know that Paper?---Mr. *Fowler.* Yes, Sir.

Mr. Speaker. Where have you ſeen it before?

Mr. *Fowler.* I had it from one *Webber*, that was at *Rumney*, about the Third of *June*, as I remember.

Mr. Speaker. Was that the Time that Sir *John Fenwick* was ſeiz'd?

Mr. *Fowler.* He was then at *Rumney*. Mr. *Webber*, I was told, had ſome Acquaintance with me, and deſired to ſpeak with me. I went to him; and he was riſing; and when up, ſays he, Mr. *Fowler*, I would deſire you to put a Letter into the Poſt; ſays he, There is no Hurt in it; it is directed to Mrs. *Frances Farrer*, at the Counteſs of *Carliſle*'s in *Soho-Square*; and when I had deliver'd it, he deſired me to come to him again.

Mr. Speaker. Did you come to him again?

Mr. *Fowler.* Mr. *Maſcall*, of *Rumney*, ſent for me to his Houſe, and told me, that he had heard that I had received ſome Letter from Mr. *Webber*; and when he had opened it, and ſaw what it was, he thought fit to ſend it up to the Secretary of State; and I made my Mark upon it, that I might know it again.

Mr. Speaker. Have you made your Mark upon it?--Mr. *Fow.* Yes, Sir.

Mr. Serj. *Lovel.* I deſire he may be aſked, Whether Sir *John Fenwick* was not in the ſame Room when *Webber* delivered it?

Mr. *Fowler.* Yes: But I queſtion whether he ſaw Mr. *Webber* give it; for he deliver'd it privately, as I thought.

Mr. Speaker. Was Sir *John* in the Room then?

Mr. *Fowler.* Yes, Sir.

Mr. Speaker. Can you ſay any thing more of Sir *John Fenwick*'s Knowledge of that Paper?

Mr. *Fowler.* No, I know no more.

Mr. Serj. *Gould.* If you pleaſe then, Mr. *Speaker*, becauſe perhaps there may be ſome Objections, that we ſhould give an Account of *Webber*, we will call a Witneſs, that we have done our utmoſt to find him out.

Members. No, no.

Sir *Thomas Powys.* That which I was going to offer is, That this Proof is ſhort, if that which in the Act of Reverſal of the Attainder of Mr. *Sidney* is admitted to be no Proof againſt him; for the Act recites that Letter was found in his Cloſet, and proved by Compariſon of Hands, and yet for all that, this ſort of Evidence is condemn'd by this Act of Reverſal as illegal Evidence. This Caſe before you comes ſhort of that; for here is no Proof by Compariſon of Hands, nor that it was in the Poſſeſſion of Sir *John Fenwick*: But only that a Perſon in the Room, without the Privity of Sir *John Fenwick*, delivered it to another; and the Witneſs ſays, he did it in a private Manner.

Sir *Bartholomew Shower.* With Submiſſion, this Letter could not be read in any Place whatſoever againſt Sir *John Fenwick*, in a Civil Cauſe; for even in that Caſe, they muſt prove it to be his Hand-writing by Compariſon of Hands.

Mr. Serjeant *Gould.* I think not to inſiſt upon it *: But that we ſhall deſire is this; we have now done with our Evidence, only we ſhall deſire the worthy Member, Mr. *Vernon*, to give an Account what was the Reaſon why Sir *John* hath not been tried; for indeed, he hath very much trifled with the Government, pretending ſtill to make a free and ingenuous Confeſſion.

Sir *Thomas Powys.* I am of Counſel for this Gentleman at the Bar; for his Life, for his Fortune, for All that he hath in the World. 'Tis not only this Gentleman's Caſe, but 'tis a Caſe that may be of great Conſequence in all future Times. I have, as 'twas my Duty, attended for at leaſt theſe twelve Hours, either in opening the Matter, or by producing ſuch Evidence as, we hoped, we did fairly object to. Sir, there are ſeveral Things offer'd on their Parts, which I confeſs we little expected, and which will require ſomething to be ſaid to; and I have a great deal to offer on the Behalf of Sir *John Fenwick*, both as to this Method that is taken, and what is alledged in the Bill, and what is contained in the Indictment, upon which the Bill is founded, wherein I deſire to be heard; and ſince you have been pleaſed to allow us to be Counſel for him, I am ſure we ſhall have a fair and favourable Hearing. We have a great deal to offer to you, both as to the Matter of the Indictment, and the Manner of it: And I hope to ſhew you, That the Indictment, as it is laid, does not contain a ſufficient Charge of Treaſon. We have likewiſe a great deal to ſay, as to the Evidence they have offer'd, at leaſt what they call ſo: But I muſt make it my Requeſt, That we may have Liberty 'till To-morrow Morning to make our Obſervations, and anſwer what hath been ſaid by the Counſel on the other Side. I am not in a very good Condition by this long Attendance, and by attending my Duty in the Courts in *Weſtminſter-hall*; and I am afraid I am not now in a Condition to do my Duty, as may be expected from me. I muſt own it, I am not prepared as I ought to be; and I hope when there is ſo great a Stake, you will allow us 'till To-morrow Morning.

Sir *Bartholomew Shower.* I beg your Favour in the ſame Manner, and to the ſame Effect as Sir *Thomas Powys* hath done. It is to be acknowledg'd there are ſeveral Things offered in Evidence, which is new to us Lawyers. We do not deſire to trifle: We do not deſire it on behalf of the Priſoner by way of Delay, but on behalf of the Length of the Proceedings, that you will give us a fair Hearing, as you have allowed it to the King's Serjeants; and that we may make that Defence that is incumbent upon us in diſcharge of our Duty to the Priſoner.

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* *This Letter was wrote with a Black-Lead Pencil, and was as follows:*

'WHAT I fear'd is at laſt happen'd; had I gone alone I had done it; but the other was betray'd from *London*. It is God's Will, ſo we muſt ſubmit. I know nothing can ſave my Life, but my Lord *Carliſle*'s going over to him, [*meaning King* William] back'd by the reſt of the Family of the *Howards*, to beg it, and offering, that I will be Abroad all his Time, where I cannot hurt him; and that I will never draw Sword againſt him. I muſt leave it to you what elſe to ſay. All friends muſt be made. My Lord *Devonſhire* may perhaps, by my Lady; my Lord *Godolphin* and my Lord *Pembroke*, by my Lady *Montgomery*; Mr. *Nelſon* by the Biſhop of *Canterbury*. My Lord *Arran* might engage his Brother *Selkirk* to uſe his Intereſt with *Keppel*. I believe, if my Lord *Carliſle* would go, it were beſt before my Trial, or elſe they will cut me ſhort for want of Time; if he can prevail with him for a Pardon, he will procure it as well before my Trial as after, at leaſt he may prevail for a Reprieve, till ſome can come over to him. My Lord alſo will have an Opportunity to engage *Bentinck* [the Earl of *Portland*], and get my Lord *Eſſex* to join with him. I cannot think what elſe to ſay; but the great Care muſt be the *Jury*, if two or three could be got that would *ſtarve* the reſt; that or nothing can ſave me. Money, I know, would do it; but alas! that is not to be had, nor ſhall I get enough for Counſel. I beg of you not to think of being ſhut up with me; I know it will kill you, and beſides, I have no ſuch Friend as you to take Care of my Buſineſs: Though it would be the Comfort of my Life, the little Time it laſts, to have you with me: And I have this only Comfort now left, that my Death will make you eaſy. My deareſt Life, grieve not for me, but reſign me to God's Will. You will hear, as ſoon as they bring me to Town, where they put me, and then I would have a Servant, or ſomebody with me. I am interrupted, ſo can ſay no more now. Engage Sir *John Lowther*, the new Lord, who has more Intereſt than any body. Let my Lord *Scarſdale* engage *Jermaine* to engage *Overkirk* for me. Speak to my Lady *Arlington*. If my Trial could be put off 'till the King comes back, there would be more Opportunity to ſolicit him.

Mr. Speaker. Gentlemen, you muſt withdraw.

And being withdrawn,

Mr. *Smith.* I would not give an Opportunity to any Man to practiſe with Witneſſes, to hinder the Truth of the Matter from appearing, after they have heard the Evidence for the Bill. I would know what Liſt of theſe Witneſſes Sir *John Fenwick* hath given in?

Mr. Speaker. You did make an Order, That Sir *John Fenwick* ſhould deliver in a Liſt of his Witneſſes; but I believe he did not ſend in a Liſt to any Body upon that Account, for I have made no Order for any.

Lord *Coningſby.* I am convinc'd that you are obliged to ſit ſo long as to hear the Witneſſes on both Sides; and therefore my Motion is, to call in the Counſel, and aſk them, if they have any Evidence to produce; but I do not deſire the Counſel ſhould go on to make their Obſervations To-night.

Sir *Walter Young.* I think you are rightly moved by that noble Lord that ſpoke laſt. I think if Sir *John Fenwick* hath any Evidence to produce, he ought to produce it now; and that you ought not to give him Time till To-morrow Morning to produce that.

Mr. Speaker. Is it your Pleaſure that Sir *John Fenwick* and the Counſel be called in, and told, That the Houſe do expect, if they have any Witneſſes, that they do examine them To-night; but as to their Obſervations, the Houſe will give them Time till To-morrow Morning?

[*Which was generally conſented to, and they were brought in again.*]

Mr. Speaker. Sir *Thomas Powys*, the Houſe have conſider'd of what you ſaid, when you went out, and they are inclin'd to allow you Time for making your Obſervations; but they have commanded me to aſk you, Whether you have any Witneſſes to produce? and to let you know, That if you have any Witneſſes to produce, they expect you would produce and examine them To-night.

Sir *Thomas Powys.* Sir, I would acquaint you with all the Openneſs that becomes me on this Occaſion. I muſt confeſs we have not any Witneſſes that we propoſe to call; but when we come to ſpeak to the Matter, we hope to give you ſome Satisfaction as to that; but at preſent we have no Evidence to produce, unleſs it be a Copy of a Record.

Mr. Speaker. Sir, if you pleaſe to withdraw, you ſhall know the Senſe of the Houſe.

[*Accordingly they withdrew.*]

Mr Chancellor of the Exchequer. I ſuppoſe, ſince the Gentlemen have no living Witneſſes to produce To-night, you will not think fit to receive them at any other Time, for 'tis giving them too much Advantage; and the whole Meaning of the Chicanry of the Counſel, is only to get Time to reply, Mr. *Dighton* having heard the Evidence. And now I have mentioned him, give me leave to tell you, That I think you can't riſe without taking ſome Notice of him. I think there is as plain a Subornation prov'd in *Dighton*, as can be, by one *Roe*; and when you have heard ſuch a Character of a Man, and there is no other Evidence that he can ſolicit, I think you ought to take care that he be forth-coming; and that he ſhould be taken into Cuſtody. I think you may give the Counſel further Time as to the Record; that can't well be falſified; tho' I believe in a Matter of this Moment, where the Government is concern'd, there never was ſuch a Proceeding by the Counſel, as this has been, to entertain us ſix or eight Hours together, by Delays.

Mr. *Smith.* I ſuppoſe before you hear any Thing as to *Dighton*, you will do ſomething as to the putting this Cauſe off to another Day; I humbly propoſe that you will go on this again on *Wedneſday*.

Sir *H. Hobart.* When 'tis proper to go upon Ways and Means, I ſhall come into it: But while this is upon your Hands, I believe you will never get heartily into other Buſineſs: And therefore I humbly move you, that you will go upon this To-morrow Morning.

[*Thereupon the Houſe came to theſe Reſolutions.*]

Reſolved, *That this Houſe will proceed farther in relation to this Buſineſs of Sir* John Fenwick *To-morrow at Twelve a-Clock.*

Ordered, *That Sir* John Fenwick *be remanded to* Newgate.

Ordered, *That the Bill be read a ſecond Time To-morrow Morning.*

Mr. *Ruſſel.* I am unwilling to trouble Gentlemen at this Time of Night; But I would know, Whether, when Sir *John Fenwick* is called in, you will aſk him any Queſtions upon that Paper?

Members. No, no.

[*The Counſel were called in, and withdrawn again.*]

Reſolved, *That this Houſe, being informed that the Counſel for Sir* John Fenwick *have no living Witneſſes to produce, except to prove a Record, that this Houſe will not hear any Witneſſes, except to prove the ſaid Record.*

Ordered, *That Mr.* Dighton *do attend To-morrow Morning.*

Adjourned till To-morrow Morning at Twelve a-Clock.

[Memorandum, *It was half an Hour after Ten, at the Time of Adjournment.*]

Martis 17 *die Novembris*, 1696.

Sir John Fenwick *and the Counſel on both Sides were called in.*

Mr. Speaker. Sir *Thomas Powys*, You that are of Counſel for Sir *John Fenwick*, the Houſe agreed laſt Night, to give you Time till To-day to make your Defence, your Obſervations upon the Evidence that hath been given.

Sir *Thomas Powys.* Mr. *Speaker*, I am of Counſel for Sir *John Fenwick*, who now ſtands before you upon the greateſt Concern he can have in this World; and as you have been pleaſed to aſſign us to be of Counſel for him, and I muſt own have very favourably heard us hitherto, ſo I ſhall think myſelf very unfortunate, if I ſhould let fall any Expreſſion in his Defence, that ſhould ſeem indecent, and give Offence to this Houſe; for I am ſure I have no Intention to do it, but on the contrary, to behave myſelf with all the Deference that is poſſible, in a Caſe of this Nature.

The Thing I ſhall inſiſt upon, will be upon three Heads.

Firſt, The Manner of Proceeding, and Method that hath been taken in this Proſecution.

Secondly, I ſhall take notice of thoſe Things that are alledged againſt him in the Bill, upon which he is to make his Defence.

In the *Third* Place, I ſhall beg your Favour, to obſerve what Sort of Proofs they have offered on the other Side, and which they call Evidence.

As to the *firſt* Matter, I muſt intreat the Favour of you to be thus underſtood: That when I ſay any Thing in relation to the Manner of Proceeding, I do not ſpeak in Oppoſition to the Power of Parliaments; for I know very well, that our Lives and Eſtates, and all that we have, are ſubject to Acts of Parliament; but I hope you will permit me to offer ſome Reaſons, which (I hope) may be of Weight, in Oppoſition to the exerciſing of that Power in the Way you are now going. Nobody can ſay, but when an Act of Parliament is paſſed, though the Party concerned may think it was upon hard Terms; yet when it is become a Law, it is not to be oppoſed. I can't ſay but thoſe Perſons, who in the laſt Seſſions of Parliament were impriſoned by an Act *ex poſt facto*, and ſubſequent to the Fact complained of; yet when it was paſſed into a Law, they were legally detained: But, I hope, I may ſo far take notice of their Caſe, as ſome kind of Reaſon againſt this, to the End that thoſe Laws may not grow familiar, that they may not eaſily be obtained; becauſe Precedents generally grow; and as that Law *ex poſt facto*, extended to Liberty, ſo this extends to Life: One Precedent is apt to beget another; and therefore, ſure, you will be careful how you give Precedents, eſpecially in Caſe of Life.

The firſt Thing I obſerve, is obvious; that is, the Perſon who is to be ſentenced by this Bill is forth-coming, in order to be tried in the ordinary Method of Juſtice. He is not only indicted, and actually under Proceſs; but he hath pleaded, and he is ready, when his Majeſty, in the Courſe of Juſtice, ſhall call upon him, to undergo his Trial; and either there is ſufficient Evidence, legal Evidence againſt him, as the King's Serjeant inſiſted there was; and if there be ſo, then, under Favour, there is no Reaſon but he ſhould have the Benefit of an ordinary Trial, which is the Birthright of all the King's Subjects: Or there is not ſufficient Evidence againſt him; and if there be not, it will be a good Reaſon againſt making a particular Law for taking away his Life: For, we think, nothing can be ſaid for this Law, but want of Evidence; and that, to my Underſtanding, is a very odd Reaſon.

Sir, I would not ſpend Time in taking notice, That the meaneſt Subject in the Kingdom is entitled, by being born in this Kingdom, to be tried by a Jury, where there are thoſe juſt Advantages that can't be had in another Caſe: There is a Liberty of challenging 35, without ſhewing any Reaſon, and as many more as he can any way object to with Reaſon. The Witneſſes are upon Oath, and all the Proceedings are by certain known Rules and Methods, and not only by the Statute of *Magna Charta*, but by the Common Law of *England*, much more ancient than that Statute; and though the Proceedings therein are ſuch as a Criminal may ſometimes eſcape, yet the juſt Advantages are ſo much beyond any Thing of that Nature, that I hope we ſhall never complain of that ancient Courſe of Proceeding by Jury: I am ſure it is the Honour of our Government, the Mark of our Freedom, and Envy of our Neighbours; and I hope, that Method of Trial ſhall never be laid aſide, though ſometimes it may not have the Effect that is deſired by it.

I would take notice to you, that in a Caſe of the greateſt Crime, and moſt Notoriety of Fact, yet the Perſons concerned in it were brought to their Trial. The Regicides, who did not fly, but were found upon the Reſtauration of K. *Charles* II. though their Treaſon had the worſt Effect, even in the Murder of the King; yet, notwithſtanding, though the Fact was ſo notorious, thoſe that were found upon the Place were admitted to their Trials in the ordinary Courſe of Juſtice; although at the ſame time there was a Bill of Attainder againſt ſome that fled, and ſome that were dead, and ſo could not be tried.

I would, with your Favour, likewiſe obſerve, That the Parliaments of *England* have been ſo far from depriving Perſons from their ordinary Trials, that whereas the Common Law of *England* ſays, that Perſons Outlaw'd for Treaſon and Felony, if taken, ſhall be put to Death without Trial; yet the Parliament, in the Reign of *Edward* VI. made a Law, providing, That Criminals that returned within a Year, according to that Law, ſhould be admitted to their ordinary Trials.

Sir, all along the Statutes run in favour of Trials; there are no leſs than two Acts of Parliament in the Reign of *Edward* VI. in the firſt and fifth Year of his Reign, that ſay, there ſhall not be leſs than two Witneſſes againſt any Perſon for Treaſon: And I hope I ſhall never ſee a Law made ſo much in Oppoſition to thoſe Acts, as that a Perſon ſhall be ſentenced to Death without ſo much as one Witneſs, as I ſhall ſhew by and bye.

Perhaps it might be thought extraordinary, That in the ſame Parliament that paſſed a Bill for regulating Trials in Caſes of High-Treaſon, requiring two Witneſſes with great Strictneſs, and giving further Advantages to the Criminal than ever were before allowed, an Act ſhould paſs, to put a Perſon to Death, without any Trial at all. And let any one compare the Preamble of that Act with this Bill.

Sir, I take it, with humble Submiſſion, that the preſent Caſe is not at all to be likened to moſt of thoſe Bills of Attainder that may be cited; thoſe, when they come to be looked into, will be found either to have paſſed againſt ſuch Perſons as fled from Juſtice; and therein they only purſued the Rules of the Common Law, which allowed them to be Out-lawed, and by Conſequence to be attainted: And the Parliament, therefore, in attainting them, did but the ſame Thing; and therein, there was nothing done extraordinary. True it is, that where Perſons have been forthcoming, there have been ſome few Bills of Attainder: But I will preſume to ſay, they are never mentioned without heavy Cenſures, and a great Complaint againſt them.

This Cauſe is not like the late Inſtance of the Bill of Attainder againſt the Duke of *Monmouth*; for he was preſent in the Kingdom: yet he was in direct Oppoſition to any Method of Trial; he was in Defiance to all Courts of Juſtice: But here is a Perſon who ſubmits himſelf, and hath pleaded, and ſtands ready to be tried; and I hope, I may take Notice, to take off all Prejudice that may be raiſed, That this Gentleman, though he was of the Parliament that paſſed that Bill, yet he was not in Town, 'till at leaſt a Month after the Bill was paſſed.

I do agree, there are ſome Caſes where Perſons have been attainted without being admitted to be tried. In the Beginning of the Reign of *Edward* III. *Roger Mortimer* was attainted and executed, without being tried; but 28 *Ed.* III. it was reverſed, becauſe he was not brought to Judgment according to the Law of the Land, 1 *Ed.* III. The like in the Caſe of *Edmund* Earl of *Arundel:* But 4 *Ed.* III. *Richard* his Son petitioned in Parliament, ſetting forth the Proceedings to be againſt the *Great Charter*, and inſiſting, that there ought to have been due Proceſs of Law, and he was then reſtored in Part; but 28 *Ed.* III. there was an Act of Reverſal, declaring, That it clearly appeared, that the ſaid *Edmund* was unduly put to Death; and that the Statute by which he was attainted, was void, erroneous, and null. There is an Inſtance in 32 *H.* VIII. *Col.* 4. *Inſt. fol.* 37. of *Thomas Cromwell* Earl of *Eſſex*, who, though he was in Cuſtody in the *Tower*, yet he was attainted without being tried: But the Words of my Lord *Coke* are as follow, *Auferat oblivio, ſi poteſt, ſi non utrumq; ſilentium tegat:* For the more high and abſolute the Juriſdiction of the Court is, the more juſt and honourable ought it to be in its Proceedings, and to give Examples of Juſtice to inferior Courts. And he adds further, to the End, as I apprehend, that the Reverſal of this Attainder may be of no ill Uſe: I am, ſays he, confidently perſwaded, ſuch worthy and honourable Members ſhall from Time to Time be of both Houſes of Parliament, as never any Attainder, when the Perſon is forth-coming, ſhall be had hereafter, without hearing of him; which I underſtand to be, without trying of him: And 'tis memorable, what my Lord *Coke* recites, That he who thus died, attempted the like againſt another.

There is another Caſe, of *Thomas Seymour*, Admiral of *England*, who likewiſe was attainted by Act of Parliament; and as it appears, without Execution: You have an Account thereof in the Second Part of the *Hiſtory of the Reformation*, Fol. 98, 99, 100, whither I will refer you, only to read the Sentence of the learned Author, there pronounced againſt him. That latter Caſe is, that of my Lord *Strafford*, which every Body knows. I ſhall, as the beſt Account of that Matter, crave leave to read the Words of the Parliament in the Act of the Reverſal. I will not trouble you with reciting the Whole, but only read the Beginning, and ſome Part thereof in another Place. *Whereas* Thomas, *late Earl of* Strafford, *was impeached of High-Treaſon, upon Pretence of endeavouring to ſubvert the fundamental Laws, and called to a publick and ſolemn Arraignment and Trial before the Peers in Parliament, where he made a particular Defence to every Article objected againſt him; inſomuch, that the Turbulent Party then ſeeing no Hopes to effect their unjuſt Deſigns, by an ordinary Way and Method of Proceedings, did at laſt reſolve to attempt the Deſtruction and Attainder of the Earl, by an Act of Parliament, to be therefore purpoſely made to condemn him upon* Accumulative *Treaſon*—— And then it goes on to ſhew, it was carry'd by the Tumult of the People; and then follows——*And to the End that Right be done to the Memory of the deceaſed Earl of* Strafford *aforeſaid:* Be it further enacted, *That all Records and Proceedings of Parliament relating to the ſaid Attainder, be wholly cancelled and taken off the File, or otherwiſe defaced and obliterated, to the Intent the ſame may not be viſible in after Ages, or brought into Example to the Prejudice of any Perſon whatſoever.* So that the Parliament that enacted that Reverſal, did conſider thoſe Proceedings as very evil and unjuſt, and was not willing there ſhould be any Remains of ſuch an Example to future Ages.

Sir, having made theſe Obſervations as to the Manner of Proceeding, I come now to that which is the ſubject Matter of the Bill at preſent before you, and which we take to be the Charge againſt Sir *John Fenwick:* I muſt crave Leave to obſerve, that in all Courts of Juſtice, where any Perſon is accuſed, he is to make his Defence *ſecundum allegata & probata:* 'Tis not enough that a Matter is proved, if it be not alledged; nor that it is alledged, if it be not proved; but if it be both alledged and proved, then it is a full Charge, and requires an Anſwer. It is not only the Law of *England*, but I believe all Nations, and wherever any Perſon is to make his Defence, eſpecially in Capital Crimes; that to which he is to anſwer muſt be alledged againſt him; from whence I ſhall obſerve what is alledged againſt Sir *John Fenwick*; for, I hope, we are not concerned to defend him further than as to what at this Time he is charged with. This Bill of Attainder, as it is drawn, and now ſtands before you, doth not ſo much as alledge, or ſay, That Sir *John Fenwick* is guilty of the Treaſon whereof he was indicted; and that hath prevented us from producing Witneſſes to that, and ſeveral Matters which the King's Counſel have enter'd upon: For though you have permitted them to examine Witneſſes to ſeveral Things quite out of the Bill: yet, I hope, you are not come to any Reſolution, That theſe Matters ſhall be thought fatal to Sir *John Fenwick*, that are not ſo much as alledged againſt him. We do not therefore think we are bound, or ought to follow them in thoſe Things that are totally out of the Bill; and therefore his being guilty, is not now the Queſtion, becauſe 'tis not a Charge upon him.

The firſt Thing that is alledged in the Bill is, That Sir *John Fenwick* was indicted at the Seſſions, for that which is laid in the Indictment to be Treaſon (which by and bye I ſhall crave leave to be heard to); and, I think, nobody will ſay this alone does require any Anſwer, further than to own the Fact or to deny it: And we do admit that he was ſo indicted. I need not labour much to clear him of the Conſequence of that alone; for very often innocent Perſons have been indicted and accuſed (for an Indictment is no more than an Accuſation); and this Bill, as I have obſerved, doth not ſay he is guilty. When the Bill hath recited that Matter, it proceeds to take Notice, That they by ſome unfair Prevarications (for ſo I agree they were, if the Facts alledged in the Bill are true, which by the way hath not been yet proved, by producing any one Witneſs) did obtain the King's Clemency to put off his Trial, in Expectation of an ingenuous Confeſſion, which the Bill takes for granted he hath prevaricated in, by charging ſeveral Perſons of Honour and Fidelity with Matters of a high Nature, only by Hearſay; and by uſing other unfair Artifices to put off his Trial. How far it is made out, that I muſt ſubmit to you; we think at preſent there is no Proof of it, and by Conſequence we are not concerned to anſwer it: But had they proved it as fully as it is laid (though far be it from me to excuſe ſuch a Behaviour); yet when a Criminal is to be tried for that which will be of fatal Conſequence to him if he be convicted, nobody can ſay it comes near Treaſon, by unfair Means, to contrive to put off his Trial.

The next thing the Bill recites is, That one of the Witneſſes, who might have been produced againſt him upon his Trial, if it had proceeded as was intended, is ſince withdrawn. I cannot ſay, but *Goodman* is withdrawn: But as the Bill does not ſo much as alledge, that it was by the Means or Procurement, no nor Privity, of Sir *John Fenwick*; ſo from thence that Part of the Bill charges no Offence home to Sir *John Fenwick:* For in caſe the ſame Witneſs had happen'd to have died by the Act of God, it would not have been ſaid to have been a good Reaſon for this Bill of Attainder againſt Sir *John Fenwick*, unleſs he had contributed to it.

From theſe Premiſes follows the enacting Part, That Sir *John Fenwick* be attainted of High-Treaſon; and in future Times the Act muſt be ſuppoſed to be grounded upon the Inducement to it. And I humbly ſubmit it to you, Whether this Bill, condemning him for High-Treaſon upon ſuch Recitals, will be thought to be reaſonable?

Theſe being the Allegations of the Bill, I will now, with your Favour, come to that, which they on the other Side do call Proofs; and I muſt humbly obſerve to you, and ſubmit it to your Judgment, Whether in the Caſe where a Man's Life is to be taken away, by a ſubſequent Law made on Purpoſe for him, the Proofs in that Caſe ought not to be much more evident, than if he were to be tried by a Law already in being? In my poor Apprehenſion (I ſpeak it with all Submiſſion to you, Sir,) it would be too much at once, to make a ſubſequent Law to condemn a Man to Death, and to do it upon doubtful and uncertain Evidence, or rather upon no Proof at all. Nothing could excuſe ſuch a Law, but an undeniable Proof of the Fact. And therefore, ſurely, the Poſition we find of Mr. *St. John*'s, in my Lord *Strafford*'s Caſe, is of moſt dangerous Conſequence. I am afraid none are ſafe, if that be admitted, That a ſubſequent Law may take away a Man's Life without any Evidence, other than the private Opinion or Conſcience of every particular Law-maker. He is pleaſed ſo to aſſert, That it may be done, as in *Ruſhworth*'s Hiſtory of that Trial, *fol.* 677. I am ſure if this be ſo, no Man knows how long his Life is his own: I hope this Doctrine ſhall never be followed or approved. Sir, we have the Happineſs to live under an Eſtabliſhment that every Man does, or may know the Law he is to go by: Every one is bound at his Peril to take Notice of the Laws, and to act accordingly, becauſe they may be known: But at this Rate none but Prophets can live amongſt us.

In the next Place, I would obſerve what Courſe they have taken in their Evidence who are the King's Counſel.

Firſt, They have betaken themſelves to that which is not alledged in the Bill; and we think that this is not agreeable to a Courſe of Juſtice.

In the next Place, to make out what they inſiſt on, they have produced but one Perſon that comes hither *viva voce* to ſpeak to it; and I muſt take Notice to you, That he is not upon Oath. I know very well it is not your Courſe in this Houſe to adminiſter an Oath; but I know very well, though it is not your Courſe in this Houſe to adminiſter an Oath, yet, I hope, that is ſo far from being a Reaſon why this Bill ſhould paſs here without an Oath, that it is a good Reaſon why ſuch a Bill ſhould not begin here: There is no Place in the World where a Perſon is ſentenced to Death without an Oath. In the Caſe of my Lord *Strafford*, the Proceeding firſt was by way of Impeachment, and the Witneſſes had been firſt examined upon Oath in the Houſe of Peers; and that Bill of Attainder takes notice of it, reciting that it had been fully proved; and, by Conſequence, we may ſuppoſe, that they would not otherwiſe have paſſed it, that being the Ground of their Proceeding upon that Bill of Attainder: But for the Bill to begin originally in this Place, to form ſuch a Judgment, the heavieſt that can be pronounced againſt a Man, a Judgment of Death, corrupting of his Blood, and forfeiting all he has in the World; and this upon bare Allegations, without ſo much as the Sanction of an Oath, is extremely hard. Mr. *Porter* is ſuch a Perſon, that I know not how he hath gained ſo much Credit, that this Act ſhould paſs upon his Parole to take away the Life of a Man. He was lately of that horrid Conſpiracy of the Aſſaſſination of the King; and ſhall that Man, who was ſo lately of that villainous Diſpoſition, to be engaged in a Crime of that black Nature, and not convicted by his own Conſcience, but by the Danger he had run himſelf into, not ſo much as pardoned his Crime, but at this time, if I may without Offence uſe that Expreſſion, Drudging for his Pardon; I ſay, ſhall this Perſon's Life be taken away by his Parole?

Sir, The next Thing I would go to, is that (which likewiſe they call Evidence), which is an Examination, as they term it, of *Goodman*, taken before a Juſtice of Peace: But he was not examined, and I muſt inſiſt upon it, that though you permitted it to be read, yet I did obſerve you did not declare it to be Evidence; but you were, I preſume, willing to hear all Things, and then judge what would be the Evidence. And, I think, the King's Counſel did not preſs it further. Sir, as this is not Evidence that would be allowed in an inferiour Court, ſo, I hope, you will not allow it to be Evidence here; for then it is like to be followed by other Courts, who obſerve the Proceedings here as their great Rule. 'Tis only what Mr. *Goodman* thought fit to write down without being examined.

Sir, the next Thing they reſort to is, What *Goodman* ſwore upon his Examination in another Cauſe, where Sir *John Fenwick* was neither Party nor preſent. Sir, there are, I ſuppoſe, ſuch Reaſons againſt that ſort of Evidence from natural Juſtice, that it is not admitted in any Court; becauſe there may be a weak Defence, or the Perſon that ſwears it againſt one, perhaps may not, when Face to Face, have the Confidence to perſiſt in it, in Caſe it be falſe, againſt another; or at leaſt that Perſon, who was not a Party before, when he comes upon his Trial, may think of ſuch Queſtions as may go a great way to diſcover the Truth, may produce ſuch Evidence againſt his Credit as may overthrow it.

But if what is ſworn at one Time againſt one Man muſt be always taken for Truth againſt all others, the Trial of one of the Company is the Trial and Condemnation of all the reſt: And how contrary is this to a fundamental Rule in our Law, That no Evidence ſhall be given againſt a Man, when he is upon Trial for his Life, but in the Preſence of the Priſoner; becauſe he may croſs-examine him who gives ſuch Evidence; and that is due to every Man in juſtice.

But I would with Submiſſion inquire, how they are ſure that *Goodman* would have ſwore this Matter again, if he was now forth-coming? Becauſe he did ſwear ſo in *Cook*'s Cauſe, is it neceſſary that he would ſwear ſo again now, if Face to Face with Sir *John Fenwick?* Nobody can ſay ſo poſitively and abſolutely; they only can imagine it, becauſe he once ſwore it, therefore it is poſſible that he would do ſo again: Whereas we may as well ſay, he did then ſwear to ſave his own Life; and having done that, and found an Opportunity to get out of the Way, his own Conſcience might put him upon Flight, to prevent his doing of it again; and that might be the Reaſon for the withdrawing of himſelf. However, I inſiſt upon it, That there is no Proof that it was by the Procurement of Sir *John Fenwick:* The Bill does not alledge it, and the Proofs do not come up to it: Nay, there is nothing offered to ſuch Purpoſe, ſave only that Mr. *Porter* was pleaſed to ſay, That another Man told him, that the 300 Guineas he was offered, and 300 more he was to have received, were to have come from Sir *John Fenwick:* But Hearſay Evidence is to be rejected, eſpecially againſt a Man for his Life; becauſe every Man is at liberty to talk at large: But God forbid that that ſhould be allowed for Evidence!

The next Thing they went upon was what Mr. *Roe* ſaid; That Mr. *Dighton*, who by your Permiſſion is Solicitor for Sir *John Fenwick*, was inquiring of him what he could ſay to take off *Goodman*'s Evidence: The Words I think he uſed were, What he could ſay to diſcredit *Goodman*'s Evidence; and, I hope, that does no way affect Sir *John Fenwick:* For it does not appear that he had any Authority from him; but it is only ſuſpected, becauſe he is now Solicitor for him, which he was admitted to after the Time ſpoken of. But I take the Words to be nothing relating to *Goodman*'s withdrawing of himſelf; but to inquire what he could ſay to diſcredit his Teſtimony, which ſuppoſeth he would appear; and imports the quite contrary of withdrawing himſelf: And if he had gone no farther, I think, there had been no Fault in that; for any Solicitor may enquire up and down for the Advantage of his Client; and the Word *Solicitor* imports his Employment. As to the Offer Mr. *Roe* ſays he made him of a very great Recompence, how far he is guilty of that, I ſuppoſe he can give ſome Account, if you ſhould pleaſe to enter into an Examination of it; and as I find he does not doubt to clear himſelf: So that Sir *John Fenwick* is in no ſort proved to be privy to Mr. *Goodman*'s withdrawing himſelf, much leſs to be proved to have had a Hand in it.

There is one Thing more I would offer, and that is grounded upon the Bill of Indictment preferred at the *Old-Bailey* againſt Sir *John Fenwick*; That the Matter in the very Indictment that they have read on the other Side, as it is there laid, and as far as it hath been offered to be here proved, does not amount to Treaſon; or, at leaſt, it hath been made a very great Doubt, and by ſome within theſe Walls: But this I offer, with all Submiſſion; I have the Author in my Hand, who is a Perſon of Note of the King's Counſel; he hath furniſhed me with ſuch Arguments as, I hope, I may be admitted to put you in mind of without Offence.

The Indictment lays, That there was a Conſpiracy and Agreement to call in Foreign Power, and to that Purpoſe to ſend *Charnock* to *France*; but the Indictment does not ſay, That *Charnock* was ſent, only that there was a Meeting, and an Agreement, and a Conſpiracy, to ſend him: So the Indictment does not lay it as a Thing done, nor does the Bill charge it ſo; but only takes Notice, That he, I mean Sir *John Fenwick*, was indicted for Conſpiring and Agreeing to call in a foreign Force; ſo that this Bill does not ſay that *Charnock* was ſent. And I appeal to you, Whether it be proved that he was ſent: For Mr. *Porter* ſays no more, but that there was a Meeting at the *King*'s *Head*, and he named Sir *John Fenwick* to be one who was preſent; and there it was, he ſays, agreed, That *Charnock* ſhould be ſent into *France*. Now, if there was nothing more than an Agreement and Conſpiracy to do it, and no further Act, but ſuch a Meeting to do it, but the Perſon was not actually ſent, or, at leaſt, not proved to be ſent; then, from this learned Author's Opinion, I inſiſt upon it, that this is not a ſufficient Overt-Act of Treaſon. In the late Caſe of my Lord *Ruſſel*, whoſe Innocency is vindicated by this Author, he takes notice, That a Conſpiracy or Agreement to levy War is not Treaſon, without actual levying War; and of that Opinion was my Lord *Coke*, and my Lord Chief-Juſtice *Hales*. A Conſpiracy or Agreement to call in foreign Forces, unleſs actually done, or a Perſon, at leaſt, actually ſent, or ſomething more than a bare Agreement for that Purpoſe, is the ſame as a Conſpiracy to levy War. And in the Caſe of my Lord *Ruſſel*, the Proof being only, That he and others met together, and agreed to ſeize upon the Guards, and levy War, which he never actually did, it is inſiſted upon by this Author, that that was not Treaſon; for that Indictment went no further. And therefore my Author ſays, 'Show me where ſuch an Accuſation was ever agreed to be more than a 'Conſpiracy to levy War; and that ſuch a Conſpiracy was ever agreed to 'be Treaſon within the Statute of *Edward* III. till within theſe few 'Years.'

Sir, now I muſt humbly ſubmit it to you, whether this be any thing more: And for the Purpoſe you will pleaſe to conſider, What this preſent Bill, and what that Bill of Indictment is: For it is not, for that *Charnock* was ſent into *France* to ſolicite Forces; but only that Sir *John Fenwick* was at a Meeting, where they did agree ſo to do. Calling in foreign Forces is levying War, but Conſpiracy to levy War is not Treaſon, unleſs it be actually done: A Conſpiracy to call in foreign Forces is nothing more. And therefore I humbly inſiſt upon it, That neither by this Bill, or by the Indictment recited in it, or the Proofs offered before you, any thing is charged, but only an Agreement at that Meeting mentioned by Captain *Porter*, a ſingle Perſon, and he not upon Oath, to call in foreign Forces. For he only ſays, That *Charnock* told him he had been in *France*. I ſhall not trouble you any further; we have not thought fit to produce Witneſſes, for the Reaſons I have offered: For that we do not find, that Sir *John Fenwick* throughout the Bill is charged with being guilty of Treaſon; and we are not willing to enter upon the Defence of a Matter not charged upon him. I hope, Sir, you will not make a Precedent, That where a Perſon is indicted, and ready to abide his Trial, in the ordinary Courſe of Juſtice, as Sir *John Fenwick* now is, that he might be taken out of the Hands of the ordinary Judges, and be brought to this Bar, to receive his Trial here.

A Matter of this Nature may be of very great Conſequence: We know at preſent upon what Ground we ſtand; for by the Statute of *Edward* III. we know what is Treaſon; by the two Statutes of *Edward* VI. and the late Act of Treaſon, we know what is Proof; by the Statute of *Magna Charta*, we know we are to be tried, *per legem terræ & per judicium parium*; that is, a Peer by his Peers, and a Commoner by a Jury: But if Bills of Attainder come into Faſhion, we ſhall neither know what is Treaſon, what is Evidence, nor how, nor where we are to be tried. Sir, I ſubmit it to you, and hope this Bill ſhall not paſs.

Sir *Bartholomew Shower*. Mr. *Speaker*, I am of Counſel for Sir *John Fenwick*, the Priſoner at the Bar; and firſt, I am humbly for to thank you for your Candour, of which I have had frequent Experience; and humbly beg for myſelf, That if I offer any Words that are indecent, or unfit for me, that you will interrupt me; for it is furtheſt from my Intention ſo to do.

The Bill that is brought into this Houſe againſt Sir *John Fenwick*, is that whereby every one of you (with Submiſſion) are to declare and pronounce, *That he ſhall be drawn, hanged, and quartered, as a Traitor*. And the Queſtion before you is, Whether you will do this in this Caſe?

Sir, I ſhall not pretend to queſtion, nor enter into any Debate or Argument in this Thing concerning the Power of Parliaments: No queſtion, but in all Governments, there is ſome ſupreme Power; and by our Conſtitution it is lodged in the King, Lords and Commons.

There are Precedents of Attainders, and that many; but can they ſhew me, where there hath been any Attainder by Parliament, for High-Treaſon, upon one ſingle Act, which if Treaſon, was determinable at Common Law? There have been Bills of Attainder for flagrant Treaſons, and for great Miniſters of State; ſome topping Sinners, who have been above Judges and Jury, and whom inferiour Courts could not tell what to ſay to: But I believe I may ſay this, That for a ſingle Conſult or Agreement between four or five private Gentlemen, in a private Room, in which there was no Danger, but by the Conſequence of the Reſolution, if it was put in Practice, no Man can ſhew any Precedent for attainting any Perſon in Parliament.

If you pleaſe to obſerve, the 25 *Edw.* III. reſerves the Power to Parliament, to proceed in Treaſon not expreſſed within the Statute; but as to the Compaſſing the King's Death, Adhering to the King's Enemies, and thoſe Things that are there particularly ſpecified, it ſeems the Senſe of the Parliament to leave them to the Rules of the Common Law. So 1 *Hen.* IV. *No.* 144. upon the Roll it is at large complained of Accuſations in Parliament for Treaſons and Felonies, and declares for the future, they ſhould be determined in the inferiour Courts.

1. This was occaſioned by Sir *Raw. Harray*; *Cotton*'s Abridgment, 189.

There is a melancholy Precedent or two of ſingle Acts of Attainder; but they are moſt of them reverſed. Sir *Thomas Haxey* in *Richard* the IId.'s Time, was Attainted for bringing in a Bill into the Commons Houſe againſt the Prerogative; but 1 *Hen.* IV. it was reverſed with great Cenſure, *Cott. Abridg.* 362, 363. There are others in *Hen.* VIII. Time, but they were for Acts in that Reign, which were queſtionable, whether or no within the Statute of *Edw.* III. and were for ſuch Actions, as perhaps were not for the Honour of the Prince, or Good of the Government, to diſcloſe by publick Trial, as the Attainder of the Queen, and others concerned.

I beg leave to repeat the Words of a great Author, the Biſhop of *Saliſbury*, in the *Hiſtory of the Reformation*, which I crave leave rather to do, becauſe it hath been approved of by this Houſe, for he had Thanks of the Parliament for it; *Fol.* 359, 360. where ſpeaking of theſe ſort of Attainders, he ſays, *After theſe Executions, followed the Parliament in* 1439, *in which theſe Attainders were not only confirmed, but divers others were made of Perſons in Cuſtody, without bringing them to Trial*; (and he ſays) *which can't be enough condemned as a Breach of the moſt ſacred and unalterable Rules of Juſtice.*

That of the Marchioneſs of *Exeter*, &c. I ſhall make no Paraphraſe upon it: There is no queſtion but you will agree, and I muſt admit, *Salus Populi* to be *Suprema Lex*; but for an Act, not the laſt of *May*, but laſt *May* was twelve Months, the Danger paſſed, the Perſons executed that were concerned in the great Treaſon, and all Danger that might have been from that Act gone, and no Fear now concerning it; I hope you will not uſe the extraordinary Power of the Legiſlative, to puniſh for that Fact which may be puniſhed by the ordinary Rules of Law.

The Reaſon ſuggeſted in the Bill is, That 'tis impoſſible to have this Gentleman tried by the Rules of the Common Law; for otherwiſe there is none: For you will not waſte your Time; and if the Doctrine that was broached here Yeſterday be true, there is no Occaſion to trouble you now; for according to their Doctrine, there is legal Evidence, and there is no need of a Bill of Attainder; but taking that for granted, that we muſt do; otherwiſe there is no Reaſon for this Bill. Then the Bill ſays, That *Goodman* was an Evidence, and that he is withdrawn; which I muſt obſerve, is neither laid, nor proved to be by the Privity, Conſent, or Procurement of Sir *John Fenwick.* There is no Pretence of it in the Bill; no Inſinuation of it, nor any Evidence to that Purpoſe. Then ſuppoſe *Goodman* is withdrawn, we may preſume you will not paſs a Bill to put Sir *John Fenwick* in a worſe Condition than if *Goodman* was preſent, if he had been ready to have ſworn the ſame Thing.

In caſe you do paſs this Bill, you do put Sir *John Fenwick* in a worſe Condition than he would have been if *Goodman* were here: Perhaps it might have been reaſonable to have an Act paſſed, that *Goodman*'s Depoſitions ſhould be read at the Trial, if *Goodman* was withdrawn; but we hope it can't be a Reaſon to condemn Sir *John Fenwick* of High-Treaſon without Trial; for the Conſequence of this is (if it were by his Means), that he is puniſhed greater than the Thing requires. For if *Goodman* was here, Sir *John Fenwick* would have had his Trial by a Jury, the Benefit of Challenges, Exceptions to the Array, might have challenged upon Account of Favour, if any of the Grand-Jury had been impanelled; had his legal Exceptions to the Teſtimony of the Witneſſes; might have theſe Witneſſes examined upon Oath; might give Evidence upon Oath to it; and all this he is deprived of: So that now he is in a worſe Condition, by *Goodman*'s Abſence, than if he was preſent. We inſiſt upon it, therefore, and ſubmit it to you, whether any Puniſhment can be impoſed by the Legiſlative Power, but only to ſupply that Defect, and put the Caſe in the ſame Circumſtances it would have been, if ſuch a Miſcarriage had not been committed. But this Bill is to condemn him to Death upon the Oath of one Witneſs, though there was your Act of Parliament laſt Year requires two. With Submiſſion to their Judgment, it was the Law of the Land before that; and in all Caſes, where Trials are *per Teſtes*; and 'tis the Law of God, and the Law of the whole World; and no Law allows a Man to be condemned but by two Witneſſes; and the Reaſon that here one Witneſs is admitted, is, becauſe he hath the Benefit of a Jury, and Challenges to them, who the Law ſuppoſes are privy to the Fact, and therefore are to come from the *Vicinage*, from the Neighbourhood of the Place where the Party dwells; and for that Reaſon, in Caſes of Felony, where no Statute interpoſes, the Law allows but one Witneſs. Natural Reaſon requires two Witneſſes in caſe of ſo great Crimes, becauſe that one Witneſs can be no Rule to guide your Judgments; one affirms, the other denies; this is equal; and Preſumption ought to be on the Side of Innocency, rather than otherwiſe; but we hope, in this Caſe, it will not be thought reaſonable to paſs the Bill to condemn Sir *John Fenwick* for Treaſon, and to condemn him to the baſeſt of Executions, upon the Teſtimony, nay, upon the Parole of one Witneſs. And 'tis no more than if *Goodman* had been dead, then you would not have done it. If *Goodman* and *Porter* had both come to this Bar, you would not have done it, but have referred him to his Trial at the Common Law. Now what is there pretended by them to induce you to judge the contrary, or at leaſt without ſo much as an Allegation in the Bill, that Sir *John Fenwick* procured his withdrawing? I propoſe it to your Conſideration, Whether there be any Proof that *Goodman* is withdrawn? He was once in Cuſtody, let out upon Bail, the Proſecutors approved the Bail, he never yet called upon his Recognizance; nay, there is not one tittle of Evidence, but that *Goodman* may be in the ſame Lodging where he was: And then ſuppoſe, when you have paſſed this Bill, *Goodman* ſhould appear again, and contradict his Teſtimony he has given before; then it may be too late for you to do Right to Sir *John Fenwick.* 'Tis not ſo much as offered that *Goodman* could not be found; they offered a printed Proclamation, which I am ſure the King's Serjeant will not allow to be any Evidence. Whether it paſſed the Great-Seal before it was printed, or whether it paſſed it at all, *non conſtat*; for it was not read; they waved it. It does not appear Sir *John Fenwick* conſented, or procured *Goodman*'s withdrawing; he could not procure it, for he was a Priſoner, and ſo not likely to affect it, being a Priſoner, eſpecially for his Life.

As for my Lady *Fenwick*, whether ſhe did ſo or not, I am ſure you'll be of Opinion, it ought not to affect Sir *John Fenwick:* Suppoſe *Clancy* a Stranger to Sir *John Fenwick*, and in Truth he never ſaw him: Or ſuppoſe him a Friend, and he officiouſly did what he did; he ought to anſwer for it; and I think he hath undergone the Puniſhment the Law thought fit to inflict in that Caſe; 'tis his own Crime, and by the Rules of Juſtice, no Man's Crime ought to tend to the Puniſhment or Misfortune of another Man: The Act of one Criminal, thought to be a Party, or Acquaintance, or a Friend of Sir *John Fenwick*'s, ought not to affect him, nor nobody but the Actor; 'tis he that hath ſuffered for it.

And what hath been ſaid in that Matter ought not to influence your Judgments; for 'tis not improbable, but what *Clancy* told *Porter* is falſe; you will never allow Hear-ſay, nor permit your Judgment to be governed by any Thing but what is certain, and hath all the moral Rules of Perſuaſion: Hear-ſay was never, by any Law, in any Court of the World, allowed, nor indeed believed in private Converſation.

As to my Lady *Fenwick*, there is this further, That Huſband and Wife, in reſpect of Crimes, are diſtinct Perſons; and what one does cannot affect the other, no more than ſhe deſerves to be executed for what Sir *John Fenwick* did: And as to what *Porter* ſays concerning it, it only relates to himſelf; it proves no Suggeſtion of the Bill, which is, That *Goodman* is withdrawn, becauſe a Stranger to Sir *John Fenwick* (and it muſt be ſo in Conſtruction of Law) made an Attempt upon Captain *Porter*; therefore *Goodman* being withdrawn, there was an Attempt upon him, and by the ſame Perſon, and by the ſame Means: This is no Evidence; it carries no Logick in it, and won't prevail upon your Judgment.

We offer another Thing to your Conſideration: 'Tis ſaid, that one *Roe* was ſpoke to by a Solicitor of Sir *John Fenwick*'s, Whether or no he could ſay any Thing to the Diſcredit of *Goodman*, as to his Robbing or Clipping? The aſking of that Queſtion was lawful; and to deſire him to teſtify it was lawful: I muſt agree, to offer too great a Sum of Money, may ſubject him to an Information in the *King's Bench*; (but Mr. *Attorney* knows that beſt) but God forbid it ſhould affect Sir *John Fenwick!* Mr. *Dighton* was not his Solicitor at that Time, not appointed, nor had any Liberty to come to him; beſides, it can't be an Evidence, nor can't induce you to believe, That the ſame Perſon was inſtrumental to get away *Goodman*, becauſe he aſked *Roe*, if he knew *Goodman* to be guilty of thoſe Crimes; for there is no Evidence, that he aſked him to perſuade him to withdraw himſelf.

There's another Thing we could offer to you: There's no Proof of that, which, upon the firſt Reading of this Bill, was aimed at, to be puniſhed with greater Pains than the Common Law inflicts, and that is, the giving of falſe Papers and Accuſations againſt Great Perſons; they have not attempted any Thing like it; ſo that That is to be taken as if there was no ſuch Thing. Neither is there any Proof of protracting his Trial, by any Promiſes of Confeſſion or Diſcovery; they opened it, but did not attempt the Proof of it, but waved it.

But take it to be ſo; I hope you will not paſs an Act to attaint a Man for making a falſe Accuſation, which only incurs an Action of *Scandalum Magnatum*, or Fine and Impriſonment upon an Indictment; and, I hope, you'll not condemn him to a greater Puniſhment, when, at the Time he did it, he had no Notice of that Puniſhment. The Deſign of the Law, is to influence Men by Fear of Penalty; and how can that be, when Penalties are not known at the Time the Fact was committed? I ſpeak with Submiſſion ſtill; it ſeems not juſt, that I ſhould forbear with ſo much Caution, from an Action that expoſes me to the Penalty of 20 *l.* as from an Action for which the Law ſays, I ſhall forfeit my Life: Now, Sir, in this Caſe it might be expected that he ſhould incur the Penalty of Fine, Pillory, and Impriſonment; but not that he could incur the Penalty of Death.

Then, Sir, as to the protracting of his Trial by ſuch Promiſes of Confeſſion: Certainly the putting off his Trial, in itſelf, is ſo far from being a Crime, that it can't be thought but lawful: 'tis every Man's Duty, upon the Principle of Self-preſervation; and it was at the Liberty of the Government and Miniſters, to do as they thought fit in it.

In the next place, we do inſiſt, That there is no Treaſon alledged nor proved in this Caſe: There is no Pretence of Truth nor Charge, in reſpect of the Aſſaſſination; nor of buying of Arms or Horſes, though mentioned in the Indictment: And if Sir *John Fenwick* had been to have been tried upon this Indictment, and they had had both theſe Witneſſes there, all that could have been proved, muſt be of the Conſult; as to the reſt, he muſt have been found not guilty: And I believe 'tis moſt notorious, that the whole Company there could not have raiſed what was talked of. Now, as to this ſingle Act, it hath been ſaid, that a Conſpiracy to levy War is not Treaſon: My Lord *Ruſſel* was attainted for it, and that Attainder was reverſed upon this very Account, and the Act declares the Reaſon of it, he being deny'd his lawful Challenges, and by ſtrained Conſtruction of Treaſons he was unlawfully convicted of Treaſon. Now the Overt-Act in the Indictment was this, That my Lord *Ruſſel*, and others, did conſult and conſpire to ſeize the King's Guards: The Proof of it went further, That they ſent Sir *Thomas Armſtrong* to view them and ſeize them: But then the Queſtion is, Whether the Conſulting to ſend a Man to invite foreign Forces, is any more than a Conſult to ſeize the King's Guards? We ſay each are levying of War, and 'tis not within the Clauſe of adhering to the King's Enemies; for they muſt be either preſent aiding and abetting of them, or ſending them Money, Arms, and Ammunition, and the like; and I think, for that, I may appeal to your Act made againſt correſponding with the King's Enemies; which, I ſuppoſe, if the Law before was otherwiſe, it needed not to have been made. Now here is only a Conſult and Agreement to do this Act.

It hath been queſtioned, Whether *Scribere eſt agere?* But here it is only *mittere*; nay, it is not ſo much, 'tis only *agreare mittere*; ſix Men had between them a little private Diſcourſe, and at laſt one of them did agree to ſend *Charnock* to *France:* The Queſtion is, Whether the Law of the Land will warrant this to be Treaſon? And if not, then you muſt not paſs this Act upon ſuch a ſingle Point. Dr. *Story*'s Caſe is deny'd to be Law; this Caſe is no more than that in my Lord *Dyer*, for writing a Letter to invite the *Spaniſh* King to invade *England*; and it was a Time of great Fear of them, as it is of the *French* King now; and he was attainted upon that, but that Judgment hath been queſtioned and deny'd to be Law. My Lord *Hales* expreſsly, in his Pleas of the Crown, ſays, That a Conſpiracy to levy War, is not an Overt-Act of the King's Death; and that attempting to levy War, is not Treaſon. Now the Sorts of Treaſons are theſe Three; Compaſſing the King's Death; Levying War; or, Adhering to the King's Enemies. Now for compaſſing or agreeing to levy War, to apply that to be an Overt-Act of compaſſing the King's Death, hath been always complained of as a Strain of the Law.

Upon theſe Reaſons, we think this would not have been an Act of compaſſing the King's Death, as laid in the Indictment; and then if it be but a Queſtion, Whether it be or no? we hope you will not proceed in your Legiſlative, eſpecially when he is deprived of the Advantage of inſiſting on this at his Trial at Common Law: Witneſſes are there upon their Oaths; he might have had a Challenge to the Jury; he might move in Arreſt of Judgment. Now the Queſtion is, Whether you will pronounce Sentence of Death upon him for High-Treaſon, upon one ſingle Act, a Year and a half ago, juſt after the Act of Parliament for regulating Trials in Caſes of High-Treaſon; and if we had had a Trial at Law, we ſhould have canvaſſed theſe Things, if we had Witneſſes upon their Oaths; for the Pardon reached the 29th of *April*, they could ſwear no new Diſcourſe but juſt in *May*; and now they ſay it was in the Middle of *May*; if it had been before, the King's Grace would have exempted Sir *John Fenwick* from Puniſhment; and theſe Things we ſhould have had the Advantage of, if we had had the Liberty of a Trial.

There's another Conſideration; Sir *John Fenwick* hath pleaded, and hath ſo pleaded to Iſſue, and Iſſue is joined, and a *Venire Facias* is awarded. Now we ſubmit it to you, whether you will think fit to take it out of the Hands of the Common Law, when there is no extraordinary Neceſſity? And the Conſideration we have to offer to you, if you do not caſt out this Bill, if we ſhould have the good Fortune, as we hope for in another Place, Sir *John Fenwick* ſtands ſtill liable, and muſt ſubmit to his Trial, if the King's Counſel think fit to proſecute him, and we think it hard to undergo your Cenſure, to be condemned in this Place; and if (perhaps) he be acquitted here, to undergo the like Danger in another, and then to be tried in a Third: And for theſe Reaſons, we hope, you will reject this Bill.

Mr. Serj. *Gould.* May it pleaſe you, Mr. *Speaker*, I have hearkened to what theſe Gentlemen have objected, and could not be aware of all they have ſaid: They have enlarged upon ſeveral Topicks; I ſhall recollect them as well as I can, and anſwer them in the Method they have taken. I never did think, that the Parliament would take Things out of the ordinary Courſe of Juſtice, nor attaint any of Treaſon, unleſs in Caſes extraordinary; and theſe Gentlemen have agreed, That in Caſes extraordinary they have done it. They likewiſe have agreed, and Sir *Bartholomew Shower* has told you, That there are ſome Treaſons, by the Statute of 25 *Edw.* III. reſerved by that Act, to be declared by Parliament. Sir *Thomas Powis* ſays, This is taken out of the ordinary Courſe of Juſtice: So ſays Sir *Bartholomew Shower*; ſays he, Here is an Indictment before you, the Party hath pleaded Not Guilty; and they ſay he may be tried in the ordinary Courſe of the Law; and therefore they look upon it as improper to bring it here.

The Gentlemen are miſtaken very much, to think that I did ſay, That the Examination that I ſaid was Evidence here, would be allowed below. If I had thought ſo, I ſhould have thought at the ſame Time, this Houſe would not have meddled with it: But I do diſagree with them in this; and take it, That where a Caſe is extraordinary, you will come and meddle with the Matter. Here is an abominable Treaſon, that is agreed on all Hands. Here is Plot upon Plot; here hath been a Plot now to take away the King's Evidence; there was two Witneſſes in the Beginning, and 'tis very plain that one of them is not here; for that here was a Proclamation produced, and I did look upon that Matter as taken for granted, That *Goodman* was withdrawn, and for that Matter they may be eaſily ſatisfied. They ſay, we have not proved the Suggeſtions of the Bill; but we think we have: For firſt of all, Captain *Porter* hath here ſworn it expreſly; it is not a Thing of looſe, bare Talking, but he hath proved a deliberate and formed Conſpiracy; he hath proved, that it was actually agreed upon a firſt, and at a ſecond Time; and that *Charnock* was ſent in order to the Execution of it: And what was it for? It was plainly to depoſe the King. He tells you, for that Purpoſe they had deſired 8000 Foot, 1000 Horſe, and 1000 Dragoons from the *French* King; and theſe Gentlemen agreed to join them. Now, can there be a greater Evidence of depoſing the King, and conſequently of imagining his Death? 'Tis an Evidence of the Imagination of the Death of the King, as well as of the Rebellion; it being ſo in the neceſſary Conſequence of it. Now, I think he hath fully proved that. Then we offer to you, how far you will allow of this Examination: Why? Becauſe upon a ſecond Contrivance here is a Witneſs withdrawn; and can we give you greater Evidence of that than we have given? We have proved that there was Tampering, let the Thing run as far as it will. Captain *Porter* was dealt with, had 300 Guineas in Hand, and 300 more he was to have remitted to him; and was to have 300*l.* a Year, whereof Sir *John Fenwick* was to pay one. It does follow after, that he is withdrawn: We muſt leave it to this honourable Houſe, what Conſtruction you will make of that; Whether here is not a ſecond Plot?

Now this Matter is brought before this honourable Houſe, we have gone ſo far in it, as to produce *Goodman*'s Examination that was taken before a Juſtice of Peace: We have ſhewed you the Evidence that he hath given upon a former Trial; and now he is gone, ſure Nobody but muſt juſtly infer, 'tis by Sir *John Fenwick*'s Means: So that here they have taken away the Evidence that is neceſſary in the ordinary Courſe of Proceedings. In ſuch an extraordinary Caſe I think it hath been uſual for the Parliament to interpoſe: Therefore, what they pretended, under Favour, that this ſhould not be Evidence, is all taken off. For now we are in Parliament, you will make uſe of ſuch Informations as can give you any Light into the Matter, and may obviate and cure the Diſtemper that is upon us; and you are Judges of your own Methods, and how far Sir *John Fenwick* hath been concerned upon the Inſtances we have given you, that is in your Judgments. As for what Sir *Thomas Powis* tells you; ſays he, This Power hath not been executed by Parliaments very frequently, but it hath generally been done where Perſons are withdrawn from Juſtice, and can't be come at in the ordinary Courſe. Why, we are in the like Caſe; if ſo be we can't come at Juſtice in the ordinary Courſe, and that by our Evidence having been tampered with, and drawn away; then, Sir, under Favour, by their own Arguments, 'tis proper to come before this honourable Houſe; ſo that notwithſtanding what hath been ſaid, we do think we have given you Evidence.

And as for what they ſaid, That we have not given any Account that Sir *John Fenwick*, by giving Aſſurance of his Confeſſion, had protracted his Trial; for that I did apply myſelf, That Mr. *Vernon* might give you an Account of it: So that upon the whole Matter, we muſt leave it to your Conſideration, and hope we have given you good Satisfaction, that there hath been a great Plot againſt the Government; and there was no Evidence of any other Matter before the Judges, and they allowed it to be High-Treaſon. Here is the ſame Evidence, only we have not one of them *viva voce*.

Mr. Serj. *Lovel.* Mr. *Speaker*, I ſhall not trouble you nor the Houſe very long; but I humbly hope, with a little Pains, to ſatisfy the Houſe, that moſt that hath been ſaid on the other Side is not much to the Purpoſe. Sir, I will conſider, with the Leave of this Houſe, what the Common Law was before 25 *Edw.* III. and how the Law does now ſtand; and draw ſome Conſequences from thence, and the Neceſſity of this Caſe.

The Statute of 25 *Edw.* III. I muſt obſerve it, is not an enacting Law, it is only a Law declaratory; for all thoſe particular Inſtances of Treaſons that are mentioned there, were Treaſons before that Law was made; and ſo, by the Preamble of it, plainly appears: But the Judges had a greater Liberty upon conſtructive Treaſon, and upon accumulative Treaſons; and that was left too much at the Diſcretion and Liberty of the Judges below, and the executive Power of the Law. Then that Statute comes and reſtrains the Judges in that Point; and ſays, That they ſhall not give Judgment in any Caſes of Treaſon, but only in theſe Caſes particularly mentioned there: And that Statute ſays, That if any other Matter which ſhall be thought Treaſon ſhould come before them, they ſhall not proceed to Judgment, but acquaint the King in Parliament with it. I only make uſe of it, to prove how Treaſons ſtood before that Act, and how it comes to be altered from the Common Law: And I am ſure it is not to be denied, but that one Witneſs was ſufficient at the Common Law: But then comes 1 *Edw.* VI. *c.* 12. and that, for the Security of the Subject, does ordain, That in Caſes of High-Treaſon there ſhall be two Witneſſes of the Fact: But that Statute does not alter, but was made for the Security of the Subject in point of Proof. But in that Statute of 1 *Edw.* VI. *c.* 12. that does provide there ſhall be two Witneſſes in Caſes of High-Treaſon, there is an Exception of Treaſon for counterfeiting and forging of the Coin; and that is the Reaſon that the Law is taken now, that though there muſt be two Witneſſes in the Caſes of other Treaſons, yet in the Caſe of Coining there needs but one. The Offence or Crime is never the greater, becauſe there are to be two Witneſſes to prove it. In this Caſe that is here before you, we come to deſire your Help, becauſe one of the Witneſſes is by Art and fraudulent Means withdrawn: Does that purge the Crime at all, or leſſen it? No Man will ſay the Crime is leſs, but it does prevent a regular Trial before the Courts below; and that is the Reaſon why we did come here; and we hope this Defect ſhall be ſupplied by a ſpecial Law. But, ſay they, 'tis very hard a Law ſhould be made *ex poſt facto* to take away a Man's Life. It would be very hard, if the Caſe was as they have ſtated it, to make a Crime *ex poſt facto* that was not ſo before: But I do not take it to be hard for a Law to be made to repeal another, to make a Matter triable that was not triable before.

Suppoſe a Law ſhould be made, That all Treaſons from and after ſuch a Time, ſuppoſe from a Time before the Fact is here ſuppoſed to be committed, as *May* was twelve Months, ſhould be triable as at the Common Law; no doubt the Parliament may repeal a Law in Part, or in all. No Man can ſay but Sir *John Fenwick* might be tried at the Common Law by one Witneſs, before the Statute of 1 *Edw.* VI. So that I do obſerve, and humbly ſubmit it to you, That this Law, by the Act, is not changed as to the Crime; the Crime is as it was before, it is only changed as to the Number of Witneſſes. The Inſtances that have been obſerved on the other Side, with humble Submiſſion, I think, do not reach our Caſe. We do not inſiſt that there are two legal Witneſſes; we do confeſs the Information that hath been read is not a legal Proof; but this Houſe, in their legiſlative Capacity, is not to be confined to the Evidence that a Jury muſt have below. This Houſe may take what Ways and Methods they pleaſe to ſatisfy themſelves. Say they, Here is the Life of a Gentleman that is concerned. I know all good Men will be tender of the Life of a Man; but here is the Life of the King, and the Safety of the Kingdom, the Peace and Safety of us all, that is concerned in the ſame Caſe; and let them put theſe Things into the Balance, and conſider which ought to weigh moſt.

You have a Record before you, of the Conviction of *Peter Cook*, who was indicted by the ſame Witneſs.

A learned Gentleman, that is of Counſel for the Priſoner at the Bar, did make the ſame Objections as are made now, at the *Old-Bailey* (it may be, there are ſome other Particulars now); and after all the Debates and Arguments that could be uſed at that Time, it was unanimouſly reſolved, That the Crime was High-Treaſon: And if it was High-Treaſon in *Peter Cook*, 'tis no leſs in Sir *John Fenwick*, who was preſent at the ſame Time, and engaged in the ſame Buſineſs: For what was a Crime in one, was the ſame in both.

I think 'tis too diminutive an Expreſſion, to ſay, This was nothing but a little Twittle-Twattle. They did there meet upon a ſolemn Conſultation; and not only once, but they did meet a ſecond Time; and what was it to do? It was to invite a foreign Power to invade this Land, and to make War with the King and Kingdom; and they did promiſe and ſolemnly engage to aſſiſt them with armed Forces; and it was proved, That they did agree with *Charnock* to go into *France*; and *Charnock* was not willing to go the firſt Time he was deſired, till he found they were ſtaunch and ſteady in their Reſolutions; and upon a ſecond Meeting they were all found ſo, and then he would go: I think that is an Overt-Act of Treaſon, if there be any. And when he came back, he ſaid, he had been in *France*, and brought an Anſwer to the Meſſage he went about: This is all now laid before you. But, ſay they, this is an extraordinary Caſe: I do agree it; but becauſe it is an extraordinary Caſe, and for the Safety of the King and Kingdom, it is fit there ſhould be an extraordinary Remedy.

They aſk, What Miſchief it would be if this Gentleman ſhould be left to the ordinary Courſe of Law? It hath been the Wiſdom of all Ages to make a Law, to puniſh ſuch as by their Artifice would evade the Law. Here is this Gentleman, as we ſay, guilty of High-Treaſon; but that we ſubmit to you.

This Gentleman was in the Proſecution of the Law, and might have been tried in the regular Way, and had the Witneſſes upon their Oaths; (the Grand Jury have found *Billa Vera* upon their Oaths) but we muſt appeal to a worthy Member of the Houſe (who becauſe he was a Member we did not call upon him) to give you an Account how he did delay and protract his Trial; and now they know he can't be tried at all, they pretend he is willing to be tried: And becauſe he can't be tried, they would have it as an Argument that he ſhould not be puniſhed by any other Means.

Sir, If ſo notorious a Crime as this is, ſhould be committed againſt the Body of a Nation, and go unpuniſhed, either in the common Courſe, or by ſome extraordinary Methods, the Nation would be in a doubtful and dangerous Caſe.

When this Houſe hath paſſed their Judgments in this Matter, it will go to another Place, where it will have another Examination; and it will have that regular Conſideration that all other Acts have. We are in an extraordinary Caſe, and do think, That this extraordinary Caſe does deſerve an extraordinary Puniſhment.

Sir *Barth. Shower.* I beg Pardon but for one Word: No Man does abhor ſuch Conſults more than myſelf; but I do not think, that Diſcourſes are ſuch an Overt-Act of High-Treaſon, as deſerves the Puniſhment of Death.

Sir John Fenwick *and the Counſel withdrew. And being withdrawn,*

Admiral *Ruſſel.* I think this may be a proper Time to aſk Queſtions: If ſo, I think myſelf enough concerned to trouble you with one or two. I think, in the Paper that hath been read, I am mentioned twice. Theſe are the Queſtions

Meaning Fenwick'*s Informations.*

I deſire to have aſked, What Proof he hath of this? Whether ever he ſaw — — ? And, what Proof he has that I ſent Captain *Lloyd* over, and that I gave him a Liſt of the Ships? And that I ſaid, we could not fit out thirty Ships in *May?* And whether or no, ſince this Revolution, he hath had any Converſation with me?

Colonel *Crawford.* What that honourable Perſon ſays, calls me up; my Name is mentioned in Sir *John Fenwick*'s Paper; I deſire you would aſk him, Why he mentioned me in his Paper, as he hath done? And that you would require him to make Proof of what he ſays in relation to me.

Colonel *Godfrey.* I deſire ſome Queſtions may be aſked him in relation to a noble Lord, my Lord *Marlborough:* If he be guilty, I would have it known, and I would as willingly have it known if he be innocent, as I believe it will ſo appear. I would have him aſked, Whether, ſince the Beginning of this War, or from the Time of this King's Landing, Sir *John Fenwick* did ever ſpeak to him, in publick or private? Or ever did write to him, or receive any Meſſage by Word of Mouth, or Letter, from my Lord *Marlborough?* He ſays, That ſome Service he had promiſed King *James*, inclined him to promiſe him his Pardon: I would know what that Service was? And in relation to his ſending *Lloyd* into *France*, Whether he can, by any Body elſe, make that appear?

Colonel *Crawford.* That Gentleman hath put me in mind of one ſhort Queſtion; Whether ever he converſed or ſpake with me in his Life?

Mr. *Bridges.* Whether Sir *John Fenwick* hath any Body but himſelf to ſupport the Hearſay he hath given an Account of? And I deſire a Queſtion may be aſked him on behalf of the Duke of *Shrewſbury*; What Proof he has that the Duke of *Shrewſbury* came into the Office of Secretary of State again, by the Operation and Conſent of King *James?*

Mr. *Vernon.* I deſire a Queſtion may be aſked previous to that, becauſe 'tis ſo in Time; How he knows that noble Lord was in Treaty with King *James*, before he went out of the Secretary's Office, when he firſt came there?

Colonel *Granvil.* I deſire he may be aſked, What Proof he can give, that my Lord *Bath* was to betray *Plymouth* into the Hands of King *James*, or the King of *France*; and whatever elſe my Father is accuſed of in that Paper?

Mr. *Harley.* I humbly propoſe it to you for the Method of your Proceedings, ſince you take this Method, Whether it will ſave you Time for you to look upon that Paper, and aſk him as to the ſeveral Parts of it, what Proof he can make of it.

A Vote made a little before, by which that Paper was condemned.

Mr. *Howe.* I do not oppoſe Sir *John Fenwick*'s being examined to this Paper; but it might have been more to your Credit, if you had examined him before your Vote: But here are a great many Gentlemen riſe, to aſk a Man to that which he does not pretend to any Proof of. The beſt Way for ſaving your Time is, I conceive, to have the ſeveral Parts of the Paper that does concern theſe Gentlemen read to him: and to aſk him upon what Grounds he gave the King that Information. This will lead him into all that he knows of the Matter.

Mr. *Boſcawen.* I am not againſt the Queſtion that is propoſed laſt; but you may aſk him that at laſt. But there is a noble Lord that is reflected on in that Paper, and that is my Lord *Godolphin*; I deſire you would pleaſe to aſk the ſame Queſtions as to him.

Lord *Coningsby.* I did intend to take care of my Lord *Godolphin*; there is a hard Reflection upon that noble Perſon; but under favour, you muſt, I think, let him know you have ſuch a Paper; and then aſk him in general, What Proof he has to the Particulars of that Paper? And then you will do Injuſtice to nobody.

Mr. *Norris.* There have been ſeveral Queſtions moved by ſeveral worthy Members; and, I think, the Queſtions ought to be aſked: But, I think, there is one previous Queſtion to all theſe; and that is, when you tell him that you have ſuch a Paper, I think the firſt Queſtion ſhould be, Whether ever he delivered thoſe Papers to the King?

Sir *R. Delavul.* I find I am named in that Paper that Sir *John Fenwick* hath given; I deſire that Part that relates to me may be read to him; and that he may give a Reaſon why he hath ſaid ſo of me and Mr. *Killigrew.*

Lord *Walden.* There is another mentioned, and that is Commiſſary *Crawford*; I deſire he may be aſked, What Proof he hath, that he gave Mr. —— a Liſt of the Army?

Mr. Chanc. of the Exchequer. I can't blame Gentlemen for aſking Queſtions that concern them or their Friends: Some are for reading of it to him, I am againſt that: But yet I would have you to enquire into this Paper. And being you intended to do it, it might have been as well enquired into before Mr. *Dighton* came laſt to him. I think you may put yourſelf into an eaſy Method, and avoid all leading Queſtions; and aſk him upon every Name in that Paper, as you come to it, What he knows of that Gentleman? And aſk him no other Queſtion.

Mr. *Smith.* I was ſtanding up to the ſame Purpoſe: I would not have you to put Words into his Mouth, nor let him know by any Queſtion what Anſwer he is to make.

Mr. Speaker. Gentlemen, I am willing to do you any Service I can: but here are long Informations, and I never read them, nor know the Contents of them, but as they were read at the Table.

Mr. Att. Gen. I think the Method lately propoſed will ſave you a great deal of Time, and is proper for the Diſcovery of the Truth; that you will name the Perſons to him in order as they are in the Paper, and aſk him in general, What he knows of thoſe Perſons? But when you call him in, I am not for aſking him to the particular Things he hath ſaid againſt them in that Paper; becauſe that Paper, though it is under his own Hand, is not his own; and if he knew it then, he knows it ſtill.

Colonel *Mordaunt.* I won't pretend to propoſe any Thing, only for the ſhortning of your Time: If after you have informed him there is ſuch a Paper, that you ſhould aſk him, Whether he will own it? And then, What Sort of Proof he will bring to prove it? You will find he will either tell you, he will adviſe with Counſel, or whether he will give any Anſwer at all.

Lord *Cutts.* I have only one Queſtion to be aſk'd Sir *John Fenwick*; 'tis not a Queſtion that relates to any Perſon named in that Paper. I think there is no one Perſon that he hath named, but is eminently known or believed to be in the Intereſt of this Government; and none but what are in ſome Poſt of Truſt, and Employment in it. Then, I think it highly neceſſary to know, How it comes to paſs that he hath had ſo much Converſation with Perſons of that Character, and none with thoſe People that he hath been ſeen daily to converſe with? And if he hath, Why he hath not diſcovered them, as he hath done the reſt?

Mr. Speaker. Is it your Pleaſure I inform him we have the Informations?

Mr. *Palmer.* If I am not miſtaken, when you firſt called Sir *John Fenwick* before you, he referred himſelf to what he had informed the King; and referred himſelf to that Paper, as often as you aſked him any Queſtions. And if you aſk him general Queſtions, I preſume he will give you the ſame Anſwer: Therefore, I think, it may be proper to aſk him, Whether this is the Paper that he delivered in, or not? Or otherwiſe, I doubt, he will tell you, He knows nothing but what is in that Paper. Now, if he refers to that Paper, you may ask him, if he knows it again, if it be ſhewed to him?

Mr. *Sloane.* What this Gentleman has ſaid, has partly interrupted what I was going to offer; but as to what he ſays, That when he was here before, he referred to his Confeſſion delivered in to the King; we did not tell him we knew of that: But he put it further, That he was not bound to accuſe himſelf, and that what he ſaid might be given in Evidence againſt him; and ſo far he was in the Right: For if he knew of any Body that was concerned in a Conſpiracy againſt the Government, that was Miſpriſion of Treaſon at leaſt in him. I don't queſtion but it was a very miſchievous Contrivance; but if he ſhould confeſs it, without ſome Aſſurance of being indemnified, he proves himſelf to be guilty of it.

Mr. Vice-Chamberlain. You are now upon the Method of your Proceedings. There is great Suſpicion whether this Paper be Sir *John Fenwick*'s own or no. If you will tell Sir *John Fenwick*, that in the Paper in your Hand he hath laid Things to the Charge of Perſons of Truſt, whom this Houſe hath a good Opinion of; and that this Houſe deſires to know, What Ground he hath for it? If he does not think fit to give you an Account of it, there is an End of your Enquiry.

Mr. *James Montague.* The Houſe ſeems to agree, that they will have Sir *John Fenwick* ſent for in: I ſuppoſe you will not have the Counſel, nor Sollicitor by; and when he withdraws, I deſire he may be kept private from his Counſel and Sollicitor.

Lord *Cutts.* By Sir *John Fenwick*'s Behaviour, when he firſt appeared at the Bar, and by what he ſaid then, I believe Sir *John Fenwick* did tell you to this Senſe, That he had Aſſurance from a noble Perſon, that what he then ſaid, ſhould not riſe againſt him in Judgment; and I think he was told, If he dealt ingenuouſly, he might expect Favour, or to that Effect. I do, for the ſaving of Time, mention it to you, to conſider how far the Houſe may give him Security, that what he here ſays ſhall not riſe up in Judgment againſt him; and that if he dealt ingenuouſly he might expect ſome Favour from this Houſe.

Mr. *Harley.* You are upon the niceſt Thing, in its Nature, that poſſibly can come before you. I think before you call him in, it ought to be underſtood that the Queſtions be very plain.

Mr. *Manley.* I think you have been well moved from the other Side, That we ſhould not read this Paper to Sir *John Fenwick:* And I am of that Opinion from this Conſideration, beſides what hath been mentioned: We are here in a Judicial Capacity as well as a Legiſlative; and this Paper I take to be an Examination made upon Sir *John Fenwick*; and as my Memory ſerves me, ſome Things he ſpeaks of as Matters of Fact, which he does poſitively aſſert; which being contained in the ſame Paper with other Matters of Hearſay, if you ſhould read that Paper to him, and ask him a Queſtion, Whether that be his Paper? That, I doubt will be contrary to the Rules of Law: For it will be asking, Whether this Information againſt himſelf be true or falſe? And I think it does not become the Dignity and Honour of this great Aſſembly, to ask him any Queſtions that may make him accuſe himſelf.

Mr. *Vernon.* I would obſerve to you, that he has not conſidered theſe two Papers: The firſt of theſe Papers I think the Bill refers to, and that is under Sir *John Fenwick*'s Hand; and there he does charge nothing at all upon himſelf, but it is an Accuſation upon the Perſons named. In the firſt Paper he does ſay, There was a ſelect Number to manage the Affairs of King *James*, and ---- was ſent over, but they are not named; and afterwards he went about to explain it in the ſecond; and the Bill referring only to the firſt, I ſuppoſe you will confine yourſelves only to the firſt Paper.

Mr. Chancellor of the Exchequer. I would think of ſome Way to reconcile theſe Things you are going upon: For though Gentlemen are in the Right to preſs for theſe Queſtions, yet I do not think it the Buſineſs before you. Therefore I think you ſhould acquaint Sir *John Fenwick*, that this Paper hath been preſented to you, which this Houſe hath thought falſe and ſcandalous: But before he goes away, this Houſe has a Mind to hear what he would ſay to it; and let him ſay what he would upon that, then you would not lead him by any Queſtion. The firſt Perſon that is named I have a great Reſpect for, and am as willing he ſhould be vindicated as any. The firſt Queſtion that you aſk him is, What he knows of my Lord *Godolphin?* But that you ſhould literally aſk him Queſtions, as the Paper ſtates it, I don't think it proper for this Aſſembly to aſk; for there are Facts beyond the Act of Indemnity, many of them. After you have done with the Paper, I have ſome Queſtions to aſk him: I take theſe Matters to be falſe; but I ſhall have ſome Queſtions to aſk him which I believe will prove true.

Mr. *Bridges.* Before you call in Sir *John Fenwick*, I would offer one Thing to your Conſideration: I think that Paper you are upon is written with Sir *John Fenwick*'s own Hand. Why may it not be fit for you to ask Sir *John Fenwick*, if that be his Hand?

Members. No, no.

Mr. Speaker. Is it your Pleaſure that Sir *John Fenwick* be called in?

[*Which Queſtion being put, it paſſed in the Affirmative. And he was brought in without his Counſel.*]

Mr. Speaker. Sir *John Fenwick*, this Houſe does underſtand, that you have given in Informations againſt ſeveral Perſons of great Quality, that have been in the Government; and they do expect from you, that you ſhould deal clearly and candidly with them, and give them an Account of what you know in relation to thoſe Perſons. I am commanded in the firſt Place to aſk you, What you know of my Lord *Godolphin*, in relation to this Matter?

Sir *John Fenwick*. I am under a double Proſecution for my Life: I know not but what I ſay may turn to my own Prejudice: I hope the Houſe will not think it an Obſtinacy in me; and ſince this Houſe have done me the Favour to hear me by my Counſel, I hope they will pleaſe to conſider what they have ſaid.

Mr. Speaker. No doubt the Houſe will conſider what you have ſaid by your Counſel, that is, in reference to your own Defence; but they do expect from you, as I told you before, That you do deal candidly with them in what you know of this Matter.

Sir *John Fenwick*. Sir, I am under Proſecution for my Life: and, I hope, the Houſe will pleaſe to conſider, That I know not what Inconveniency may come upon me by it; and I hope, the Houſe will excuſe me, for I do it not out of Obſtinacy, but for my own Perſervation.

Mr. Speaker. You would do well to adviſe yourſelf well in this Matter; 'tis of great Concernment; the Favour of this Houſe, if you deſerve it, may be of great kindneſs to you. I have only in Command to tell you, what the Houſe expect, and you are to conſider how to anſwer it.

Sir *John Fenwick*. I hope the Houſe will not put me upon any thing that will hurt myſelf: I ſhould be ſorry to incur the Diſpleaſure of this Houſe, but I hope they will conſider my Condition; and I am ſure the Juſtice and Honour of the Houſe is ſuch, That they will not preſs any Man to do any Thing that may hurt himſelf.

Mr. Speaker. Sir, if you pleaſe to withdraw.

[*Accordingly Sir* John Fenwick *withdrew.*]

Lord *Cutts*. I would humbly propoſe ſomething to you to ſave your Time, and remove this Inconveniency. The Houſe have heard what Sir *John Fenwick* ſays; I can't but ſay, that in Matters of Blood we can't be too tender; but that I would propoſe to you, if this Houſe approve of it, is this: Suppoſe you wave the whole Matter to the laſt Moment of paſſing your Bill, and then I ſhall have ſomething more to ſay to you in the Matter.

Mr. *Clerk*. Now I think it may be very proper for you to proceed in your legiſlative Capacity. I am glad the Houſe have taken ſo much Pains in the Examination of the Matter; and it is no ſmall Satisfaction to me, That the Gentleman was brought to the Bar upon this Enquiry; very probable, another Time may induce him more to comply than he does at preſent; though, if I may ſpeak my Opinion, there is little hope of the Gentleman's anſwering your Expectation here: And I think the firſt thing you are to do now, is to read your Bill.

Mr *Pultney*. One of the Allegations of the Bill is, That his Trial was put off upon ſeveral repeated Pretences of making a Confeſſion. The Counſel for the Priſoner took Notice that that Allegation was not proved: The Counſel for the Bill told you, they muſt refer to a worthy Member of this Houſe, who could prove it; the worthy Member is Mr. *Vernon*. I ſuppoſe, before you enter into a Debate, as there will be after the ſecond Reading of the Bill, Gentlemen will deſire to have all the Evidence. And I find your Order is, That Mr. *Vernon* do give in his Evidence while Sir *John Fenwick* is at the Bar; and therefore I humbly move, That Sir *John Fenwick* may be called in while Mr. *Vernon* gives his Evidence.

Mr. Speaker. I ſuppoſe if Mr. *Vernon* gives Evidence, you will call in the Counſel.

Members. Yes, yes.

Mr. Speaker. Pray, then, hear the Motion that hath been made. Shall I put the Queſtion, That Sir *John Fenwick* and the Counſel be called in, while Mr. *Vernon* does give his Evidence?

[*Which Queſtion paſſed in the Affirmative; and Sir* John Fenwick *and the Counſel on both Sides were brought in.*]

Mr. Speaker. Gentlemen, you that are of Counſel of both Sides, the Houſe, before they proceed any further, was willing to hear the Teſtimony of a worthy Member of this Houſe, which has not yet been given; and they are willing that Sir *John Fenwick* and you ſhould be preſent while it is given. Mr. *Vernon*, will you pleaſe to acquaint the Houſe, *&c.*

Mr. *Vernon*. If I underſtand the Counſel for the Bill aright, that which they did appeal to me for, was about the protracting of Sir *John Fenwick*'s Trial, and upon what Pretence it was. The Account, Sir, that I can give of it, is this: That Sir *John Fenwick*'s Trial was put off, will appear beſt from the frequent Adjournments of the Seſſions at the *Old-Bailey* for ſix or ſeven Weeks together. For when Sir *John Fenwick* was committed to the *Tower* (which was, as I take it) on the 19th of *June*, there was, I believe, a Seſſions to be held ſoon after; for, as I remember it, the firſt Application that Lady *Mary Fenwick* made for putting off Sir *John Fenwick*'s Trial was upon the 30th of *June*; and the Petition was, That he might have ſome Friends come to him to adviſe him how to make his Application to the King: On the 30th of *June*, or about that time, my Lady *Mary Fenwick* did firſt propoſe, That ſome Body ſhould be ſent over from Sir *John Fenwick* to the King upon ſome Matters of Importance, but did not declare what they were; but only that ſhe was told there was ſuch Matters, and ſhe had a proper Perſon to ſend, and would acquaint the Lords Juſtices with the Man, if he might have Leave to go to: But afterwards my Lady *Mary Fenwick* ſaid ſhe could not provide a Perſon ſo ſoon; and, I think, the 2d of *July*, ſhe came and offered to go herſelf; and ſaid, if it was not as much for the King's Service, as Sir *John Fenwick*'s Benefit, ſhe would not undertake the Journey. She had leave to go, and would have capitulated, that the Trial ſhould be put off till ſhe returned; but the Lords ſaid, when ſhe ſhould return, would depend upon her Pleaſure; but they would write to the King at the ſame time, and give notice of her Intention, and that the Trial ſhould not go on till they had an Anſwer of their own Letter.

There was a Paſſage in the Tranſport-Ship going to *Holland*, and my Lady *Mary Fenwick* deſired to ſpeak with Sir *John* in private, in Order to her Journey; the ſame Night ſhe came back again, and ſaid, ſhe had conſidered of it, and ſaid, ſhe would not go; and ſeveral Reaſons ſhe gave. Upon the 7th of *July* there was a noble Lord that was in the Commiſſion for the Adminiſtration of the Government, ſaid, he had had an Application made to him from another noble Peer, my Lord *Carliſle*, who deſired that he would go to Sir *John Fenwick*, for that he had been very earneſt to ſpeak with him. That noble Lord did acquaint the Lords Juſtices with it, who acquieſced in what he thought fit to do in the Matter.

He went the ſame Day to Sir *John Fenwick*, and the next Day the Lords Juſtices met again; he then told he had been with Sir *John Fenwick*, and that Sir *John Fenwick* had told him, he had ſent to the King; for he did not allow it ſhould be otherwiſe communicated. My Lords then thought it was fit to ſtay for the King's Anſwer. This was the 7th of *July*; and by what Accident I know not, but no manner of Account came till the 7th of *Auguſt*, that the Letter was received; but the 7th of *Auguſt* the Letter was acknowledged to be received; and the Anſwer that then came to it was, That the King had not received any great Satisfaction by the Meſſage; (I know not what it was) but that Sir *John Fenwick* ſhould be tried; but withal, that noble Lord acquainted my Lords Juſtices, That the King was pleaſed to write to him, That what Sir *John Fenwick* had to ſay, ſhould be ſent him in Writing. It happened at that time, that the Judges were upon their Circuit; and there being the King's Directions to receive what Sir *John Fenwick* had to ſay in Writing, that noble Lord did undertake to go again to Sir *John Fenwick*; and, I ſuppoſe, he did receive ſomething from Sir *John Fenwick*, which he ſent to the King: When the Anſwer to that came it was in *September*, and that noble Lord was at the *Bath*; and ſo it required a little time —— Why then it appeared, That the King's Direction was, That what Sir *John Fenwick* had ſent to the King, he ſhould prove it; and he ſhould likewiſe ſhew his Ingenuity in Confeſſing what he knew of any other Deſigns againſt the Government: And the 10th of *September*, as I take it, I was directed to go to Sir *John Fenwick*, who was then in the *Tower*, and to acquaint him with this Meſſage from my Lords Juſtices. Sir *John Fenwick*'s Anſwer was, That he had no more to ſay, or ſome Words to that effect; and then he muſt prepare for his Defence as well as he could; but if he could ſpeak with that noble Lord, he ſhould be glad to do it; but he was not come from the *Bath*, and Direction was then given for his Trial. Again, in the mean time, that noble Lord did come, and he did go to Sir *John Fenwick*, and he brought an Account from him, That Sir *John Fenwick* would prove to the King, and make out what he had ſaid; and was ready to give the Lords Juſtices Satisfaction: And upon that, I was ſent to Sir *John Fenwick*; I carry'd the Meſſage in Writing, which you may ſee when you pleaſe; and it was to aſk him, Whether he was willing to make out by Proof, what he had already ſaid to the King; and whether he was ready, in Compliance with the King's Directions, to give the Lords an Account of what he knew of any Deſign againſt the Government? I carry'd Sir *John Fenwick* this Meſſage, and he returned an Anſwer in Writing, That he was ready to make out to the King what he ſaid, and would acquaint the Lords with all the Matter that he had not obſerved to the King; (his Arraignment was then to have come on the 17th) but he did dictate a Paper which was brought to the Lords, which they thought fit to be ſent to the King; and the Trial was put off as to that time; And before an Anſwer from the King came, it was (I believe) the beginning of *October*: And this is the Account I have to give you.

Mr. Speaker. Gentlemen, you conſider that this Evidence is given, with Relation to that part of the Bill, that ſets forth, how Sir *John Fenwick* had delay'd his Trial by Offers of Confeſſion. You have heard what the Evidence is; if you have any thing to obſerve as to that Point, you may ſpeak before you withdraw.

Sir *Tho. Powys*. As to this Matter, I can only ſay, That in itſelf at leaſt, according to our Rules of Law, it is not, in any degree, Treaſon: What you will conſtrue it to be, I can't tell. We think it is only what is very uſual when Perſons are under an Accuſation; they will put off their Trial as long as they can: Perhaps their Witneſſes may be out of the way, or ſomething elſe may be the Reaſon of it, and it does not carry any Crime in itſelf; at leaſt, not of the Nature that this Bill is of.

Sir *Barth. Shower*. We do think, with Submiſſion, that, conſidering the Nature of the Bill, and the particular Caſe of Sir *John Fenwick*, will (in ſome meaſure) anſwer this Fact: I take this ſingly in itſelf, as it hath been obſerved, not to conſiſt with Honour; but it does not import a Crime, for any Man to uſe little Inſinuations to put off his Trial. But, ſuppoſe it was unlawful, or that which they call prevaricating: I hope it is far from making him guilty of High-Treaſon, which is the greateſt Crime this Bill deſigns to paſs Sentence for; and, I hope, you will conſider, if it be an Offence, 'tis ſo at Common Law; and the ſame Evidence will prevail to bring Sir *John Fenwick* to condign Puniſhment by the common Methods. And if it be no Offence, I hope you will not by Law make it an Offence, ſo as to inflict the greateſt Puniſhment for this Artifice.

Mr. Speaker. Mr. Serjeant *Gould*, Have you any thing to ſay?

Mr. Serj. *Gould*. No, Mr. *Speaker*.

Mr. Speaker. Then withdraw.

And being withdrawn,

Mr. *Sloane*. I propoſe it to you, Whether, if the Paper be Evidence, it ſhould not be read in the Preſence of the Priſoner?

Members. No, no.

[*Then the Queſtion was put for Candles; which paſſed in the Affirmative, and they were brought in.*]

Ordered, *That the Counſel be diſcharged any further Attendance at this time.*

Mr. *Methwen*. There can be no Debate previous to the reading of your Bill. I deſire the Order of the Day may be read.

[*Accordingly the Order of the Day for reading of the Bill a ſecond Time, was read by the Clerk.*]

[*Then the Bill was read a ſecond Time by the Clerk.*]

And being afterwards opened by Mr. Speaker, *and Mr.* Speaker *having expected for ſome Time, and no Member riſing up to ſpeak:*

Mr. Speaker. Shall I put you the Queſtion of Commitment?

Sir *Tho. Dyke.* Sir, I hope you will not put the Queſtion of Commitment 'till ſome Exception is made to the Bill; I am ſure it is as liable to Exceptions as any Bill that hath been brought in a great while: 'Tis a tender Subject to ſpeak of, the Pretence of the Bill being for the Preſervation of the King and Government: And if I thought it was really ſo, I ſhould be heartily for it; for I think there is no Compariſon between the Value of the King's Life, and that of private Perſons: But that hath been often ſaid, but not proved; therefore, I think, I may tell you my Reaſons why I am againſt the Bill. That the Parliament hath a Power to make ſuch a Law, is agreed; but I think it ought not to be uſed but upon extraordinary Occaſions, when Great Perſons are concerned, that can't be otherwiſe brought to Juſtice, and when Crimes do not fall under the Denomination of the Law, which is not the preſent Caſe. This Caſe is, That a Gentleman is charged with Treaſon; and 'tis proved but by one Witneſs; though the Counſel did ſay, That a Conſult to levy War was not Treaſon. Now either it will not be the Crime that is alledged, or it is not proved. Here you are Judges, Proſecutors, Witneſſes and Jury: I would know in what Country it is ſo? Beſides, the Witneſſes are produced here, and not ſworn; and upon the whole, there is but one Witneſs. Sir, I am againſt the Bill, and againſt it, as being of dangerous Conſequence.

Mr. *Pultney.* This Matter before you is of ſuch a Nature, that as a Debate is riſing upon it, I hope all Gentlemen will hear one another with the greateſt Attention that may be.

The worthy Member admits you have a Power to paſs the Bill, and I do not find that conteſted by any body; though (with Submiſſion) the latter Part of what he ſaid, contradicted what he admitted at firſt; but ſince that is ſo much agreed, I ſhall ſay but little to it, and that is this: That without ſuch a Power as this, any Government would be imperfect, and would want a ſufficient Power for its own Preſervation, upon extraordinary Occaſions. You have been told, this hath been an untrodden Path; but, I believe, Gentlemen are pretty well ſatisfied it hath not been ſo untrodden, and many Precedents of that kind have been quoted; and the Counſel againſt the Bill have admitted, That there have been frequent Precedents. An Objection hath been made to ſome of them, That they were made in ill Reigns; but I take it to be no Objection, That the Precedent was made at one Time or another, ſince 'tis agreed, that we have ſuch a Power, and that that Power hath been executed.

The chief Matter before you is, Whether in the preſent Caſe, there is ſufficient Ground for you to exert that Power? And upon that, give me leave to obſerve the Nature of the Crime of this Gentleman, and the Evidence that hath been brought to prove him guilty of that Crime. His Crime is High-Treaſon, the higheſt Crime in the Law: 'Tis for conſpiring the Deſtruction of the King, and the Overthrowing of the Government. The Overt-Act which the Bill tells you (and which is mentioned in the Indictment) is his inviting in a *French* Force, in order to accompliſh his Deſign. If this Crime would admit of Aggravation, ſome other Parts of the Bill would aggravate it; but I think it will admit of none. The Counſel at the Bar made a Doubt, Whether or no, that which was laid in the Indictment did amount to a ſufficient Overt-Act of High-Treaſon; and his Argument he drew from a Book that hath been put out by a learned Gentleman of the Houſe; but the Gentleman could eaſily have anſwered himſelf; and, I preſume, did not ſpeak his own Opinion. For that Gentleman did write a Book, called, *His Majeſty and Government vindicated:* By which he endeavoured to overthrow the Arguments in the other Book of the other Gentleman.

As to the Proof before you, you have had the Teſtimony of Mr. *Porter*, whoſe Evidence hath been juſtified by the ſeveral Convictions grounded upon it; and by the Confeſſion of ſeveral Gentlemen, that have owned the Fact at the very Time when they have been going out of the World: And there hath been no Evidence brought by the Priſoner at the Bar, that ſhould invalidate the Teſtimony of this Gentleman. And ſo (with Submiſſion) you have one undoubted Evidence, that does charge the Priſoner with the Fact mentioned in the Bill: You have other Proof that does not come up within the Letter of the Law; but you have ſtrong circumſtantial Proof, that every Gentleman will apply to his Conſcience in the Judgment he ſhall give in this Matter. One of the Allegations in the Bill is, That he did, by repeated Promiſes of making a Confeſſion, from Time to Time, gain a Delay of his Trial. It is a great Preſumption, that That was in order to a Deſign that he had of ſeducing Mr. *Goodman*, that was one of the Witneſſes; for it was obſerved to you, what Practice there was in the Caſe, with the other Evidence, Mr. *Porter*.

Sir, Gentlemen have objected the Conſequences of making a Precedent: You were very well told by a worthy Gentleman that ſpoke the other Day, near the Place where I am, That in the Caſe of a good Parliament, 'tis not to be imagined that they will make uſe of this Precedent, but upon as good a Ground as you have now; and an ill Parliament, they will have the ſame Reaſon, for they will copy after the ſame Precedents that have been made before, and will not ſtick at doing of it.

Beſides, let Gentlemen conſider the Way of Arguing: I have a Power to do ſuch a Thing, and yet if I have ſuch a Ground as is ſufficient, I ſhall not make uſe of it: To ſay you have a Power, but ſhall not exert it, is as good as to ſay, you have no Power at all.

There were ſome Precedents cited by a learned Gentleman that ſpoke againſt the Bill, and he particularly quoted that of my Lord *Strafford*; and the Act of Parliament that repeals that Attainder, was in Part read to you: But, Sir, the Reaſons given in that Bill of Repeal of my Lord *Strafford*'s Attainder, are, That it was obtained in a tumultuous Manner, which influenced the Parliament in doing of it; and that it paſſed in the Houſe of Lords, when moſt of the Lords were abſent: And at laſt, the King, when he gave his Conſent, by Commiſſion, to the Paſſing of the Bill, it was with great Reluctancy. 'Tis certain, all theſe are Reaſons that are given; but there is not One that queſtions the Parliament's Power of doing it; though upon the Trial, Gentlemen may remember there was a Doubt in the Law, Whether the Evidence was ſufficient.

Sir, It hath been urged to you, of what ill Conſequence it would be, and how much Injuſtice, to make a Law to puniſh a Man *ex poſt facto*; but that the Parliament may declare That to be a Crime, which was not ſo before, nobody doubts; and without that, the Clauſe in the 25th of *Edw.* III. ſignifies nothing; and I don't imagine it is a greater Injuſtice to ſupply in Point of Form, as to Matter of Evidence, when the Fact committed by the Priſoner was againſt a known Law, at the Time when it was committed: And the rather, if I think that Defect of Form in the Courts below, was occaſioned by the Priſoner. 'Tis a Matter of Blood, 'tis true; but I do not aim at this Gentleman's Life in it; but any Man muſt believe he muſt be concerned in great Matters, to bring to paſs this great Deſign; therefore, all I propoſe by it is, to get his Confeſſion, which in all Probability we might have had, if the other Witneſs had remained here.

Sir, upon the whole Matter, I do think we have Power to do this: I do think here is good Evidence (I ſpeak with reſpect to myſelf) to think him guilty of this Crime. I do think, if this Bill does miſcarry, there is the greateſt Blow that can be given to your Conſtitution. And give me leave to uſe this Expreſſion; I think, if this Bill miſcarry, it not only turns this Plot upon you, but makes it impoſſible ever to come to the Depth of any other; and for theſe Reaſons, I am for committing of this Bill.

Mr. *Newport.* Sir, I am unwilling to trouble you at any Time, but more eſpecially at this Time, when I am afraid I am like to ſpeak againſt the Opinion of the Majority of the Houſe; for I ſee Gentlemen are in great haſte for the Commitment of this Bill.

Sir, in this Matter I look upon myſelf, as every Gentleman here, to be a Judge; and therefore, I will in this Caſe, as in all others, go according to the Dictates of my own Conſcience: I muſt be ſaved by my own Faith, and never will pin my Faith upon another Man's Sleeve: Perhaps it may be a Weakneſs in my Nature, that I am very tender in the Matter of Blood; but I hope Gentlemen will not be in ſo much haſte to commit the Bill; for *De morte hominis, nulla eſt cunctatio longa.* A Gentleman below ſaid, the other Day, it was poſſible in his own private Opinion, he might believe the Priſoner guilty; and ſome notice was taken of thoſe Words: But, Sir, I would put a Caſe for Argument's ſake, and would have it taken no otherwiſe; and I would go a little farther than that honourable Gentleman; and ſuppoſe that I knew, of my own private Knowledge, that Sir *John Fenwick* was guilty; yet, Sir, with humble Submiſſion, as a Judge, I do not think it ought to weigh one Way or another with me; and will give you my Reaſon for it; for as a Judge, I am to go according to my judicial Knowledge, and not according to my private Knowledge. 'Tis a Maxim, *Nil refert quid notat Judex, ſi non nota forma judicii*; and it puts me in mind of a Caſe in *Hen.* IV's Reign: Two Men travelled together, and one killed the other, and the Judge ſaw it: Afterwards that Judge went the ſame Circuit, and an innocent Man came to be tried before him for it; and yet the Judge, in that Caſe, was obliged to go according to his judicial Knowledge; all the Judge could do (the Man being found guilty) in that Caſe, ſays the Book, was, to reſpite the Judgment and Execution, and to make Application to the King for the poor Man's Pardon.

The Evidence that is produced, is firſt a living Witneſs; the next Evidence was the Confeſſion of *Goodman*, taken before a Juſtice of Peace; for that, truly I did not think Yeſterday it was a legal Evidence: I am ſure in a Court of Law, it would not be admitted; but the Houſe was pleaſed to read it, and Gentlemen, when they preſſed it, told us, Read it, *valeat quantum valere poteſt.* Then if you ſtrike this Paper out of the Caſe, with humble Submiſſion, there is nothing left but the Teſtimony of Captain *Porter*; and ſo then, in that Caſe, you have but one Witneſs. It would ſeem a little ſtrange, that the Commons of *England*, that lately were ſo very careful of the Lives of the Subject, and were ſo deſirous of paſſing a Bill, that did provide, That where there were two Species of Treaſon in one Indictment, and one Witneſs to one Species, and another Witneſs to another Species, that That ſhould not be good Evidence to convict a Perſon of High-Treaſon; that they ſhould be attainting a Man for Treaſon upon one ſingle Evidence! Surely they will ſay, we have mightily changed our Opinions ſince laſt Seſſions. I ſpeak not this upon the Account of Sir *John Fenwick*; I know him not, though I am not a Stranger to his Character, and I hear that is none of the beſt: I ſpeak it as it may be my Caſe, or any Man's whatſoever. God knows, we live in an unſettled Time, and how ſoon a Precedent of this Nature may turn upon any Man whatſoever!

Amongſt the great Irregularities committed in the late Reign, I thought that of Mr. *Algernoon Sidney* one of the greateſt Strains I ſaw in *Weſtminſter-Hall*; for there was my Lord *Howard* a Witneſs againſt him, and the next Evidence was a Book that he had wrote againſt Sir *Robert Filmore*, which, I think, is printed ſince this Revolution, and I have it in my Study; and I hope, I ſhall not be hanged for it. That was conſtrued to be calculated for a Treaſon that hath not been committed above two Months, and was the ſecond Witneſs to convict him; but that Attainder was reverſed, and it was fit it ſhould be ſo; for I thought it a hard Strain to convict him upon that Evidence.

I am very ſorry this Bill is brought into this Houſe; nor can I imagine, after all that hath been ſaid by the learned Gentleman, why this Man was not tried when there were two poſitive Witneſſes againſt him. All the Reaſon this Gentleman has told you, is, That he promiſed to make an ingenuous Confeſſion: But any Man might have eaſily ſeen through this Confeſſion, That it was only an Artifice to abuſe the King's beſt Friends; nay, the rather, when this Gentleman's Brother had ſerved this very Government, but two or three Years ago, the ſame Trick. We know my Lord *Preſton* was attainted of High-Treaſon, and then he muſt do ſomething for his Pardon; and he made an ingenuous Confeſſion, as he called it, whereby he accuſed moſt of the Great Men; and when he had a Pardon, tho' his Confeſſion was under his own Hand, and delivered to the King, he denied every Word of it; and what he told, was to ſave his own Life. My Neighbour cited you ſeveral Precedents; I have looked into a great many of them they are mentioned in *Ruſhworth*'s *Collections*, in the great Argument that Mr. *St. John* made for paſſing the Bill againſt my Lord *Strafford*; and as to thoſe Precedents, all I can ſay is, I could not have come up to them, if I had lived in thoſe Times. The laſt Precedent was of a

Cook that put Poiſon into the Pot of the Biſhop of *Rocheſter:* And what did they do? They did enact, that he ſhould be boiled alive. I have a great Honour for the preſent Biſhop; but if it had happened in his Family, I ſhould hardly have conſented to the like. *Judicandum eſt Legibus, non Exemplis.* I ſhould be glad this Gentleman might ſuffer his due Puniſhment; but I am not, by any Means, ſatisfied in the paſſing of this Bill: And as to what Gentlemen ſay is the Reaſon why this Man was not tried, becauſe it was thought he would have made an ingenuous Confeſſion: Sir, if they have made any Miſtake, I will not help it by the paſſing this Bill of Attainder. I aſk your Pardon for troubling you ſo long: I am a Judge in this Matter, and ought to deliver my Opinion. I hope no Man doubts but I am as zealous for this Government as any Man whatſoever; but let what will come of it, I can't give my Vote for paſſing of this Bill.

Mr. Sol. Gen. This is a Bill for Attainting Sir *John Fenwick* of High-Treaſon: 'Tis the greateſt Crime we know in the Law; and, I think, the greateſt Crime known in a Government. It is much greater than Murder, or any Thing elſe; becauſe it ſubverts the Government, and the Law whereby theſe Crimes are puniſhed; and Perſons ſhould be deterred from committing theſe Crimes.

It hath been made a Queſtion by the Gentlemen at the Bar (I think Two of them), Whether this Matter that Sir *John Fenwick* is indicted and accuſed of, is High-Treaſon or not? I muſt confeſs I heard ſomething of it without Doors; and that they would make it out, That if he was guilty of the Matter charged, it was not High-Treaſon. I thought it ſomewhat a bold Matter, but did not think they would have undertaken it in this Place, though they might have pretended ſome Flaw in the Indictment: But it ſeems they have the Authority of a good Lawyer in it; and they have quoted one learned Author, as they pleaſe to call him, tho' I take that for a great Compliment: I believe they may mean myſelf; and they have done me ſome Honour; for they ſay, my Lord Chief Juſtice *Hales* was of the ſame Opinion; and then ſaid ſomething of *Dyer*. Now he hath read ſomething at large out of that Author he ſpeaks of, and challenges any one to ſhew any Opinion, That ever a Conſpiracy to levy War was High-Treaſon within the Statute of 25 *Edw.* III. Now, I would give a Challenge on the other Side, That he would ſhew me any Opinion before that Time, or ſince, That a Deſign to depoſe the King is not High-Treaſon within that Statute. The Author that he ſpeaks of ſays that expreſly in the Matter of my Lord *Ruſſel*, and tells you particularly; and in *The Government Vindicated*, which was only an Anſwer as to the Proſecution of my Lord *Ruſſel*, there are ſeveral Caſes cited, That a Deſign to depoſe the King was High-Treaſon, and agreed to by that very Perſon; and it always was agreed to be High-Treaſon. Then take the State of this Caſe, and that of my Lord *Ruſſel:* The great Matter was, That he ſent ſome Perſons to view the Guards (it was ſaid, in order to ſeize the King); this was Evidence againſt my Lord *Ruſſel*, for a Conſpiracy to levy War: But it was ſaid, That this was not ſo much a Conſpiracy to levy War againſt the King, as againſt the Guards. But this is of a quite different Nature: Captain *Porter* hath given you an Account of it (and I think *Goodman*'s Examination is to the ſame Purpoſe), That they met in *Leadenhall-Street*, and conſulted how to bring King *James* back again; and the only Method they could think of, was to ſend *Charnock* over to King *James*, that he might prevail with the *French* King to ſend them 10,000 Men, and they would meet him here with 2000 Horſe: And for what Purpoſe was this? It was to bring back King *James* again. I would be glad to hear if thoſe Gentlemen that were at the Bar, or any Body elſe, could ſay this was any Thing elſe but a Deſign to depoſe King *William:* And they can't ſhew me one Lawyer's Opinion, but that deſigning to depoſe the King, was ever called imagining the Death of the King, within the Statute of 25 *Edw.* III. The firſt Reſolution of this Matter was pretty early; I think it was *Hen.* IVth's Time, and that was pretending *Richard* II. was alive, and that he was the lawful King: So that the Matter is Treaſon, as it is charged in the Indictment.

Then, as to the Precedent, That 'tis an ill Precedent: I muſt confeſs, I am not afraid of a Precedent of this Kind: I ſhould be glad if theſe Gentlemen ſhould turn back, and ſee how many Attainders have been by Act of Parliament. But I dare ſay, there have been more Men deſtroyed by the irregular Judgment of a Commiſſion of *Oyer* and *Terminer*, than by all the Acts of Parliament, whether legal or illegal.

As to what they ſay of my Lord *Coke*, who mentions the Attainder of my Lord *Cromwell* and Sir *J. Mortimer*; the Gentleman pretends to repeat my Lord *Coke*'s Words at large; but he did not deal ſo well as he ought to do by you; for he ſhould have told you all my Lord *Coke* tells you; That *Cromwell* was never brought to anſwer, never permitted to ſay any Thing for himſelf, neither in Parliament, nor where he was. Now, pray, Sir, is this the preſent Caſe? Hath not Sir *John Fenwick* been heard by you? I would be glad that Gentleman, or any Body could ſhew me, that any Perſon hath ſo fair an Hearing before Commiſſioners of *Oyer* and *Terminer*, as Sir *John Fenwick* hath had before you. As to Sir *John Mortimer*, 'tis much of the ſame Nature: My Lord *Coke* ſays, there was a Jealouſy of Sir *John Mortimer*'s pretending to the Crown; and becauſe they ſuſpected him, they did give out, that he ſaid, That the Earl of *March* was Heir to the Crown; and if he did not, he would pretend to it himſelf, *&c.* Now, ſays my Lord *Coke*, this was but a bare Pretence, and nothing elſe: He ſpeaks as if he did not ever think him guilty of thoſe Words, and ſays, having indicted him, they not being able to proceed that Way, they made it good by Act of Parliament, and he was condemned: So that what my Lord *Coke* complains of, is, That theſe Perſons ſo condemned were never heard; and if this be the Truth of the Matter, theſe Precedents (with Submiſſion) have no Affinity with yours. But I believe this may be ſaid in this Caſe, Sir *John Fenwick* hath been heard, and that more than ever any one in Parliament was before, in a capital Matter.

As to the Caſe of my Lord *Strafford*, he had Counſel aſſigned him to ſtand by and hear, but not to prompt him. If there aroſe any Point of Law, he was to propoſe the Matter to the Lords, and the Counſel was to aſſiſt him by their Direction. And in the Caſe here before you, you have allowed Sir *John Fenwick* Counſel, not only to aſſiſt him in point of Law, but to aſſiſt him in point of Fact too. They have made Anſwer for him; ſo that I ſay, he hath been tried fairer than any Man ever was in Parliament, be it upon Bill or upon Impeachment, that is, as to the Matter of Precedent. Then it hath been ſaid, This would not be good before the Judges: I muſt confeſs it; but the Evidence Captain *Porter* gave of his own Knowledge of Sir *John Fenwick*, every Body will agree is what the Law will allow. But he is but a ſingle Witneſs, and you ought not to proceed upon the Evidence of a ſingle Witneſs. Let us ſee how the Law ſtands upon the whole Matter: You have made an Act of Parliament laſt Seſſions, and I own the Law was before that, That there ſhould be two Witneſſes in Caſe of Treaſon; but all that goes no farther than to Trials in the *King*'s-*Bench*, and Commiſſions of *Oyer* and *Terminer*, and Gaol-Delivery. And if you look upon thoſe Acts, 'tis very plain; for they refer moſtly unto the Judges, what they ſhall do in ſuch and ſuch Caſes: But then you will ſee what is the Reaſon of making thoſe Rules; I think there was good Reaſon that you ſhould not put that Power in Perſons below, that you have in yourſelves: You give them Rules to proceed by, and they are to keep up ſtrictly to them; you may act by other Rules. 'Tis one Thing when I command my Servant to do ſuch a Thing, and another Thing when I act myſelf. And there is a Difference when a Judicature is by few, and when 'tis by many; the Law puts a greater Confidence in many than in a few. The ordinary Trial is by twelve Jurors; but if it be a Matter of an high Nature, as an Attaint, then it ſhall be by Twenty-four; and you do prefer a greater Number in every Thing to a few. 'Tis ſaid, Though a Judge do think in his Conſcience a Perſon guilty, yet he ought not to make uſe of that private Knowledge; and a Caſe was quoted out of *Hen.* IV. But I think that Judge might have behaved himſelf ſomething better than he did; and ſure I am, now he would be blamed. I do not ſay, that a Judge upon his private Knowledge ought to judge; he ought not; but if a Judge upon the Bench knows any Thing, whereby the Priſoner might be acquitted or convicted (not generally known) then I do ſay, he ought to be called from the Place where he ſate, and go to the Bar and give Evidence of his Knowledge; and ſo the Judge in *Hen.* IV.'s Time ought to have done, and not to have ſuffered the Priſoner to have been convicted, and then get a Pardon for him; for a Pardon will not always do the Buſineſs; for there may be a Forfeiture that the King's Pardon doth not reſtore. But though we act as Judges here, do we act only as Judges? I thought we were as well Triers of the Fact as Judges. There is this Difference between the Judicature of *Weſtminſter-Hall* and this Court: They are to judge upon a Fact found by a Jury; but we act both the Part of a Jury in trying, and alſo of Judges in judging what the Fact amounts to: So that if a Juryman may make uſe of his private Knowledge to acquit a Priſoner, as (I think) Nobody doubts but 'tis his Duty to do, then every Gentleman in this Houſe may make uſe of his private Knowledge to acquit the Priſoner, or convict him.

I confeſs, for my Part, I am ſatisfied, that Sir *John Fenwick* is guilty of this Crime for which he ſtands accuſed. I do think this Crime is High-Treaſon; I think there is no Danger of a Precedent in this Caſe, if you convict him, being convinced upon the Evidence you have heard, that he is guilty: I do own, if any Gentleman think he is not guilty of meeting at the *King*'s-*Head* in *Leadenhall-Street*, or at Mrs. *Mountjoy*'s, for the Purpoſe given in Evidence, he ought to be againſt the Bill; but I think, every Man that is of that Opinion ought to be for the Bill. I am one of thoſe that think he is guilty, and therefore am for committing the Bill.

Mr. *Harcourt.* I can readily agree with the Gentleman that ſpoke laſt, that High-Treaſon is the higheſt Crime in the Law; and further, that the Matter of the Indictment that is mentioned in the Recital of the Act is undoubtedly High-Treaſon; and I am ſure he will agree with me in one Thing alſo, That the greater the Crime is that any Perſon is accuſed of, the clearer the Proof ought to be by which he is convicted.

Some Gentlemen have begun their Diſcourſe in relation to the Power; but ſure 'tis no Argument, becauſe I can do a Thing, therefore I will do it; becauſe we have Power to repeal *Magna Charta*, and all other ſubſequent Laws, which have been made in favour of Life and Liberty, and Property, by the ſame Conſequence we ought to do it: A better Reaſon muſt be given me, before I conſent to this Bill.

Then for the Precedents, 'tis ſaid, there have been many, and many have been mentioned; and if I thought it worth while, I would mention many more you have not heard of. As for Precedents in general, they are ſo far imitable as they are grounded upon true Reaſon, and agreeable to Juſtice; but I don't remember any one Precedent of this Nature, for a Perſon in Cuſtody, forthcoming, to be tried, yet to be Attainted without a Trial at Law, but what has been univerſally branded; and they all ſeem to be Reproaches even to thoſe ill Reigns in which they were uſually made; and rather to be marked out as Rocks for us to avoid, than Patterns for our Imitation.

Before I particularly mention the Facts how they ſtand before you, I would beg leave to obſerve upon the general Method of your Proceedings, and tell you what ſtaggers me in it.

I have often heard this called a Trial, and that we are the Judges; the Gentleman that ſpoke laſt gave us another Title, and told us we were the Jury alſo. I know no Trial for Treaſon but what is confirmed by *Magna Charta, per Judicium Parium*, by a Jury, which is every *Engliſhman*'s Birth-right, and is always eſteemed one of our darling Privileges; or *per Legem Terræ*, which includes Impeachments in Parliament; but if it be a Trial, 'tis a pretty ſtrange one, where the Perſon that ſtands upon his Trial hath a Chance to be hanged, but none to be ſaved. I can't tell under what Character to conſider ourſelves, whether we are Judges or Jurymen: I never heard of a Judge, I am ſure not of a Juryman, before, but he was always upon his Oath: I never heard yet of a Judge, but had Power to examine Witneſſes upon Oath, to come to a clear Sight and Knowledge of the Fact: I never heard of a Judge, but if a Priſoner came before him, the Priſoner was always told, he ſtood upon his Deliverance, and had not only a Power to condemn the Guilty, but to ſave the Innocent. Have we this Power? Suppoſe upon ſuch a Trial as this (if it muſt be called ſo) it may ſo happen, that a Perſon that comes before us, ſhould be the innocenteſt Man in the World; what Judgment is it that we can give, for ſo much as ſuch a Perſon hath made his Innocency fully appear? Is the Speaker, by his Warrant, to ſend him back again to *Newgate?* You can't diſpoſe of him otherwiſe, though you were ſatisfied of his Innocency: But in ſuch a Caſe, the Party muſt undergo a double Trial, which is contrary to all the Rules I have heard of. If I am a Judge in the Caſe, I beg leave to tell you, for my own Juſtification only, what a Definition I have met with of a Judge's Diſcretion: My Lord Chief-Juſtice *Coke* ſays, 'tis *diſcernere per Legem*; and by that Diſcretion I beg leave to conſider this Caſe: If Judges make the Law their Rule, they can never err; but if the uncertain, arbitrary Dictates of their own Fancies, which my Lord *Coke* calls the crooked Cord of Diſcretion, be the Rules they go by, endleſs Errors muſt be the Effect of ſuch Judgments.

As to this particular Caſe, I did expect from the Gentleman that ſpoke laſt, that he would have told you there was a plain Evidence, why you ſhould go on to the Paſſing of this Bill; but inſtead of that, I am ſurprized to hear a Thing mentioned, That in Parliamentary Proceedings a Man may be hanged by one Witneſs; certainly that is not to be taken for granted.

As to this particular Caſe, I would take Captain *Porter* as upon his Oath, for Suppoſition: You have one Witneſs againſt Sir *John Fenwick* of High-Treaſon; and, with your leave, I deſire to examine what you have more in this Caſe.

Yeſterday you voted a Paper to be read, *Goodman*'s Narrative or Examination; 'tis a different Caſe now you have it before you to determine upon. Yeſterday the Queſtion was only for hearing; but Gentlemen now conſider how far they ought to believe it, and the other Evidence we heard. And firſt, there is ſome Evidence that *Clancy* tampered with *Porter*, and gave him a Sum of 300 *l.* and ſo they would infer, becauſe *Porter* was tampered with to be gone, therefore *Goodman* was. It was told us further (and I deſire I may be informed if I am miſtaken), That *Clancy* ſaid, he came from Sir *John Fenwick*; and afterwards my Lady *Mary Fenwick* ſaid, ſhe would make good what *Clancy* had ſaid; and from theſe Arguments they preſume, that Sir *John Fenwick* knew of it. Give me leave to tell you a Rule I never heard contradicted, That Preſumption is to be made in favour of Life; but to preſume a Man guilty becauſe *Porter* was tampered with by another, becauſe he ſaid it was by Sir *John Fenwick*'s Order; ſhall we preſume Sir *John Fenwick* did it? Is Hear-ſay to be Evidence? Or is a Man to be had to the Gallows upon Preſumption? How often, and with how much Reaſon have we heard Exclamations againſt Judgments upon Preſumptions, Innuendoes, conſtructive and accumulative Treaſon? &c.

Gentlemen, there is ſome further Evidence, and that is, of what was ſworn at *Cook*'s Trial; and ſome Gentlemen thought fit to have the Record read, and an Examination of what was ſworn there. I can never go ſo far as to think it reaſonable, That what Evidence hath been given in one Caſe ſhould affect another Man; but all this is to be anſwer'd, by calling it Parliamentary Proceedings. We doubt 'tis no Evidence in the Courts below, but they are mentioned with ſome kind of Diſdain, as very inconſiderable. In this Caſe, I beg leave to ſay this in their Vindication, That whatever the Rules in *Weſtminſter-Hall* are, 'tis not therefore Reaſon becauſe 'tis a Rule; but becauſe 'tis Reaſon, and Reaſon approved of by long Experience, therefore 'tis a Rule; and if they make their Rules for that Cauſe, I hope that is a Cauſe why we ſhould imitate them: But I would not have thoſe Rules thought Matters of Form, but Subſtance, or more properly Part of the Law itſelf.

Upon the whole Matter; if no Gentleman will give us a Reaſon why this is Evidence, but one Witneſs, and that not upon Oath; and if we are to come to our Parliamentary Diſcretion to ſupply that Defect, the Want of the other, 'tis a Diſcretion I will diſclaim all the Days of my Life. And I hope you will reject the Bill.

Lord *Cutts*. If, Sir, the Gentleman that ſpake laſt had been ſpeaking to *Weſtminſter-Hall*, I ſhould think that he had ſhewed a great deal of Reaſon, and ſpoke with a great deal of Judgment; but ſince I think you are here upon a quite different Foot; I ſhall not follow him (becauſe I will not unneceſſarily detain you) to anſwer every Particular.

I remember, when the Counſel for the Priſoner firſt ſpake, they took notice to you, That Precedents were procreative, and one begat another, and they are apt to multiply; therefore I do think, 'tis of the higheſt Moment to you, what Precedent you make To-night: And if any Gentleman can be ſatisfied, That the Precedent of paſſing this Bill, will be of worſe Conſequence than the Precedent of not paſſing it, I ſhall humbly ſubmit. I do think, Sir, the Matter before you is of the higheſt Importance; and I muſt confeſs, 'tis with a great deal of Satisfaction to myſelf, that I do ſee Gentlemen ſeem to apply themſelves with a great deal of Seriouſneſs to this Debate. Sir, I ſhall not pretend to make a particular Anſwer to what the Counſel for the Priſoner did ſay; as to the Precedents of Acts of Parliament, I think this Anſwer is ſufficient at preſent for that, That if we have no Precedent we are under a Neceſſity, of making one. It is told us, That of all the Precedents none will juſtify us in this Proceeding; but at the ſame Time it muſt be conſidered, That we are in a Caſe, the like to which never yet happened in *England.*

The firſt Thing I ſhall apply myſelf to, is the Juriſdiction of Parliaments; and truly, I think, it will be very neceſſary to ſay a little upon that. I have heard none call this Power in queſtion, the Thing ſpeaks itſelf; 'tis the Legiſlative Power, and the Etymology of the Word tells you what it is: 'Tis a Power that can make Laws, and aboliſh them; a Power that is ſuperiour to all other Powers whatſoever, and we are Part of that Legiſlative Power; and therefore I ſhall ſay no more to that, it being a Matter agreed, That we have a Power to proceed in this Matter. Now I will take leave to obſerve ſomething as to the particular Caſe before you.

Though a Gentleman that ſpoke ſome Time ſince, did ſpeak to you of the Nature of the Crime; yet, with Submiſſion, I think there remains ſomething to be added to what he ſaid. The Conſpiracy of which Sir *John Fenwick* to me appears guilty, is not only againſt the Life of the King, not only to depoſe the King, not only a Conſpiracy to raiſe a Rebellion, but at the ſame Time to contrive an Invaſion from *France*, and bring in a foreign Power. I know not what better Expreſſion to tell my Thoughts in, than by uſing a Term which Phyſicians uſe in ſome deſperate Caſes; they tell you, there is a Complication of Diſtempers; and I think this is a Complication of Treaſons: This is the higheſt Crime, and it is attended with all the aggravating Circumſtances this Crime can admit of. Now, in giving our Opinion, and paſſing our Judgment upon this Matter, I think there are two Conſiderations ought to guide us: There is a Conſideration we owe to the Priſoner that is brought before us; and another Conſideration which we owe to the common Security. As to the Firſt of theſe, it being a Matter of Blood, wherein the Life of an *Engliſhman*, the Life of a Man of his Quality and Figure is at ſtake, we ought to proceed with all the Calmneſs that is poſſible; and I do agree, if there was nothing but Preſumption, that ought to be in favour of Life. But pray let us conſider how this Matter ſtands: Let me deſire thoſe Gentlemen that are of Opinion we ought to have ſo much Tenderneſs for the Priſoner, to lay before them another Scene, and Sort of Conſideration, at the ſame Time. I do conſider the Hardſhip (if I may uſe that Expreſſion) of paſſing this Sentence; I do conſider what a Condition we had been in, if the Contrivance that was laid had taken Effect; that is the weightieſt Part of the Matter before you: And tho' it was diſappointed then, I know not how far off 'tis at preſent; this ought really to weigh with you. And I hope I may take leave, upon this Occaſion, to obſerve to you, what one of the wiſeſt and beſt of the *Romans* ſaid upon an Occaſion of this Nature: he tells you, That a Man that would conſider his Duty aright, muſt conſider the Matter in all its Parts and Circumſtances; and when that is done, muſt act adequate, as well to the Community, as to himſelf and his Neighbour. I would apply that to the preſent Caſe; and would deſire thoſe Gentlemen that expreſs ſo much Tenderneſs in this Caſe, to have ſome for the Government, and themſelves.

It was told you, That the Priſoner before you does not ſtand convicted of any Crime: It was told you at the Bar, That the moſt we ought to pretend to, is no further than to leave him in the Condition we found him: I think, with Submiſſion, the Priſoner ſtands Convicted of High-Treaſon, with the higheſt Conviction upon Earth, and that is, the general Conſent of all Mankind; for I will be bold to ſay, I do verily believe, that there is not one Gentleman within theſe Walls, nor that walks the Streets, not a living Soul, that doubts of his Crime. But, Sir, I would put this Matter yet further; I am not only ſatisfied in my own Conſcience and Reaſon, of the Juſtice of your Proceedings, which ought indeed to be the Foundation of every Man's Opinion; but I am ſatisfied, that in this Way, there is no Hardſhip impoſed upon Sir *John Fenwick*, if he will be his own Friend: For I doubt not, upon what hath paſſed in this Proceeding, that before Things are brought to the laſt Extremity, if Sir *John Fenwick* be his own Friend, if he be ſo much a Penitent and Friend to the Government, and to Poſterity, to tell Truth, and leave off his Diſſembling, and be plain; I doubt not but he will find Favour. Now, Sir, I would beg leave only to anſwer one or two Objections; for ſome Things that have been ſaid againſt the Paſſing of this Bill, I do not think material.

One Objection that ſeems to me to carry the greateſt Appearance of Weight, was made by one of the Counſel for the Priſoner: He ſaid, It would look ſtrange in after Ages, that the ſame Parliament ſhould paſs the Bill for regulating of Trials in Treaſon, and this Bill of Attainder. Sir, I deſire you will pleaſe to obſerve how this Matter ſtands; and in the firſt Place, as previous to that, I take leave to obſerve a few Things: 'Tis a Propoſition generally agreed to, and not to be denied, that That which is deſigned for the Preſervation of any Creature, ought not to be made uſe of to their Deſtruction. Now this Treaſon-Bill was deſigned for your Preſervation, to ſkreen you againſt the Danger of arbitrary Power, and the Malice of Falſe Witneſſes; and this Bill of Attainder is brought to ſkreen both you and the Government from your Enemies, both abroad and at home. And I think the Treaſon-Bill is no Objection upon theſe Conſiderations: Beſides, the Treaſon-Bill was only made to be a Rule to inferiour Courts. The learned Gentleman that ſpake laſt, told you, The Rules of *Weſtminſter-Hall* were not Rules, becauſe they were obſerved there, but becauſe they were grounded upon Reaſon. Why, Sir, in anſwer to that, I will only take leave to tell him, that That which is Reaſon in *Weſtminſter-Hall*, does not carry the ſame Weight here. I think that Matter was ſo well explained by the learned Gentleman at the Bar, that there need nothing be added to it. He told you very well, 'Tis one Thing what I truſt to do by my Servant, and another Thing what I do by myſelf. It is very obvious to any Man's Underſtanding, if this Power were lodged in the Judges, what Uſe they might make of this unlimited Power; but no Gentleman can miſtruſt any Thing that ſhall be done by this Houſe.

Another Objection that was made by the Counſel for the Priſoner, was; ſays he, This is Evidence, or it is no Evidence; if it be Evidence, then, ſays he, Why do you not try him at Law? If it be no Evidence, Why do you admit it here? Now, Sir, with Submiſſion, this carries the Face and Form of an Argument; but if you take it to pieces, I think there is no convincing Weight in it: For, Sir, the Reaſon why this Matter comes before you, is, becauſe by the Abſence of one of the Witneſſes, according to the formal Part of the Law, Sir *John Fenwick* will be acquitted; but it is generally agreed, that the Conſequence of ſo great a Crime going unpuniſhed, may be dangerous to your Poſterity. This Bill of Attainder is brought into the Houſe, that you may ſupply that Want of Form, you being convinced of the Reality of his Crime.

Another Objection made by the Counſel at the Bar, was as to Captain *Porter*, whom he reflected upon; ſays he, ſhall a Man that hath owned himſelf guilty of ſuch a Villainy as the Murder of the King, of a ſudden have ſuch Credit as to ſway with you? I would take leave upon this Occaſion, to repeat to you what my Lord Chief-Juſtice upon the Bench did obſerve at *Charnock*'s Trial: This ſame Thing was urged and preſſed home by *Charnock*; and my Lord Chief-Juſtice was pleaſed to take notice, That it conſiſted with the Wiſdom and Juſtice of all States and Governments to allow of ſuch Evidence, becauſe without it they could never come to the Knowledge of any Treaſon or Conſpiracy: For he added, Whom will you have an Account of theſe Things from, but the Actors of them?

And therefore, when they are penitent, and willing to attone for their

Crime, by doing all the Service they can to the State, and Juſtice to Mankind, we ought not only to receive, but encourage them.

When the Danger the Government would be in, if you did not paſs this Bill, was urged; it was anſwered, But what Danger will you and your Poſterity run in not paſſing of it? I think the Matter appears ſo plain and clear before you, that when all the other Parts of the Queſtion are paſſed over, I ſhould think it a Reflection upon the Houſe, to enter upon a particular Anſwer to it. I had not ſaid what I have ſaid, that I think any Part deciſive, but to clear myſelf to the World for the Opinion I am going to give; and perhaps what I have ſaid, may give occaſion to ſome others to ſay ſomething that may be much more to the purpoſe; but for the Reaſons I have given, I am for the Bill.

Mr. *Sloane.* Sir, I as little care for meddling in Matters of Blood, as any Man, and ſhould be glad to avoid giving my Opinion in this Caſe; but I think 'tis incumbent upon every Gentleman that hath the Honour to ſit here, in Point of Truſt; I think 'tis his Duty to them whom he repreſents, to the King and Kingdom in general, to give his Opinion when he is clear and ſatisfied in it; and if I was in the leaſt diſſatisfied, I ſhould venture the Diſpleaſure of the Houſe to abſent; but upon the whole Caſe, and the Proof that hath been given, I am very clear that Sir *John Fenwick* is guilty of this Treaſon that he is accuſed of; and that it is Treaſon without any ſtrain, and well warranted by Precedents.

I would firſt take notice of what is ſaid to your Juriſdiction in general; I remember it was ſaid this was an Incroachment upon *Magna Charta*; for by that, no Perſon is to be tried for his Life, but by the Judgment of his Peers. Thoſe Gentlemen that have made that Objection, have intirely forgot the other part, which is the next Sentence; *Nec ſuper ibimus, nec ſuper eum mittimus, niſi per regulare Judicium parium ſuorum vel per Legem Terræ.* What do they make that to be? 'Tis true, in the ordinary Courſe of Juſtice, Perſons muſt be tried, a Commoner by a Commoner, and a Peer by a Peer; but there are ſeveral ſorts of Trials and Laws in the Land: And when you come to conſider what is meant by *per Legem Terræ*, you have the Commons *Lex Terræ*; you have the Statute Law, and *Lex Loci*, the Laws of particular Manors: And there are ſeveral ſorts of Trials beſides that by Jury; there are Trials by Battle: The Defendant in Caſe of Appeal may try it by Battle, and he that is killed loſes the Cauſe. Then there is a Law above all theſe Laws, and that is the Law of Parliament, which my Lord *Coke* calls *Lex Parliamenti*, and *Lex Parliamentaria* in another Place, which he ſays is, *ab omnibus inquirenda*, but *a paucis nota*; and tis not fit it ſhould be known how far they can go (and ſo 'tis in *Chancery*), and that is a Law that is unlimited, and that is one of the Laws ſaved by *Magna Charta.* I ſay, therefore, that without any Incroachment upon *Magna Charta*, or any Law whatſoever, you enter regularly upon his Trial.

I would anſwer another Thing that was ſaid againſt a Trial in Parliament; and I muſt confeſs, I did wonder to hear it from that Honourable ancient Member, That if he was to be tried, he ſhould rather chuſe to be tried in *Weſtminſter-Hall.* Why, Sir, before I ſhould have given ſo ſudden a Judgment as that, I would have conſidered what my Caſe was: If I had had ſuch a Caſe as Count *Coningſmark*, a bad Cauſe and a great deal of Money, I would rather be tried there; or if I could be tried as Sir *George Wakeman* was; but if I had a good Cauſe, and would uſe no Corruption, inſtead of twelve Men that might be corrupted, I had rather be tried by four or five hundred Gentlemen that are beyond it. You ſee how Trials went below, the Trial of my Lady *Liſle*, that could neither ſee nor hear; and there came a Perſon to her Houſe that was proved to be in *Monmouth*'s Rebellion, and ſhe was burned for it.

Then as to the Caſe before you, I would offer my Reaſons why I believe this Gentleman to be guilty; here is Capt. *Porter*, he hath poſitively ſworn, that he had another Meeting at Mrs. *Mountjoy*'s, and there they did conſult, and agree to ſend *Charnock* over to *France*; and *Charnock* was directed to go with a Meſſage to invite a foreign Power over here. Now the Queſtion is, Whether he is to be believed? And I would go upon the ſame Reaſons for believing a Witneſs, as they do in *Weſtminſter-Hall*; and will go as far along with thoſe Gentlemen, as to the Credibility of a Witneſs: But if he be to be credited in *Weſtminſter-Hall*, why is he not ſo here? And therefore, if they had brought any Teſtimony againſt his Credit, as made him guilty of Perjury, or Forgery, it had been an Objection againſt his Teſtimony; but it was ſo far from that, That they did not offer to prove one Word of that; but what was ſaid was ſaid from the Counſel, and that is to go for no Evidence. The Counſel did indeed alledge againſt his Credit ſeveral Things, but did not prove any; and if they had, they would not have taken away his Teſtimony in *Weſtminſter-Hall*; That is, that he was concerned in the late intended Aſſaſſination, and Treaſon: This was the ſame Objection that was made below; and they brought Witneſſes to prove that and ſome other Things, but they did not weigh any Thing; for if it ſhould be an Objectio that he was in the Conſpiracy, then you can have no Evidence of any Villainy, for they will never truſt honeſt Men with it. Therefore I do take it, that *Porter* ſtands before you as a very credible good Witneſs, without any Imputation whatſoever. Then, Sir, ſay they, he is not upon his Oath; that is an Objection to your Juriſdiction, and though they ſay they own your Juriſdiction yet when they ſay ſo, they ſpeak againſt your Juriſdiction; and by the ſame Reaſon you can go upon no Impeachment whatſoever; for you can in no Caſe give an Oath. Then, Sir, they tell you, he is but one Witneſs, and that 'tis in the Caſe of Treaſon, and there ought to be two Witneſſes; and therefore tho' you have Juriſdiction to do any Thing whatſoever, yet you have no Juriſdiction to go upon this Cauſe. Now, Sir, becauſe this ſeems to be the moſt formidable Objection that is inſiſted on againſt the Proceedings in this Caſe, I beg your leave that I may fully anſwer it.

And taking it to be true, that the Fact is proved by one Witneſs, I conceive we may proceed in this Cauſe, though they can't in *Weſtminſter-Hall*; and I do take it, that there is a great deal of difference between one and the other; and I do not take your Proceedings upon this Bill, being there is but one Witneſs, to be any Strain, but what you may extend the Legiſlative to, without going beyond what hath been done. I therefore beg you to conſider what the Law originally was as to Treaſon, and how it came to be altered. Before the Statute of 25 *Ed.* III. it was certain what was Treaſon, and what was not; then the Statute came and reduced it, that as to all inferior Courts, theſe are your Treaſons, and no other ſhall be adjudged ſo; but the Parliament reſerved to themſelves a Power, that if any Caſe ſhould happen like them, they were to determine it themſelves So, Sir, that at that Time, and after that Time, one Witneſs was good in Caſe of Treaſon; as now 'tis at this Day for Robbery, Felony, or any other Fact but Treaſon. And till 1 *Edw.* VI. one Witneſs was good in all Treaſons: Then comes two Statutes in *Ed.* VI's Time, and the firſt takes notice, That ſince the 25 *Ed.* III. by ſeveral Statutes Treaſons had been made which were unſeaſonable, and therefore repeals them, and makes ſeveral new Treaſons: Then comes a *Proviſo* at the end of it; *Provided* always, that no Perſon whatſoever, after the Firſt of *February* then next coming, ſhall be indicted, arraigned, condemned or convicted for any Offence of Treaſon, *&c.* unleſs the Offender be accuſed by two ſufficient and lawful Witneſſes, or ſhall willingly, without Violence, confeſs the ſame. Now that *Proviſo* relates only to the Treaſons particularly mentioned in that Statute. Then comes the next Statute 5 *Ed.* VI. and purſues the ſame Words: But now this did not mean any Facts whatſoever that were left to the Judgment of the Parliament, becauſe theſe Facts were not within their Cognizance. They are not parliamentary Words; indicted, arraigned, convicted, but only uſed by the Courts below. Why, Sir, if it be ſo that one Witneſs is ſufficient, here you have not only one credible Witneſs, but he is propt up extremely well by collateral Circumſtances; and though I do not allow that below they can proceed upon one Witneſs with pregnant Circumſtances; yet for the Reaſons given, conſidering how this Evidence is propt up, I think it is ſufficient before you: For there was another Witneſs againſt him, and it hath been proved what that Witneſs could have ſaid if he was here; and 'tis plain that Men have died upon the ſame Teſtimony. I muſt confeſs, when I was for reading of *Goodman*'s Examination, *&c.* I was not for reading them as concluſive Evidence, nor do I think them ſo in any ſort, either the Conviction of *Cook*, or *Goodman*'s Examination before a Juſtice of Peace; but it is a ſtronger Evidence in this Caſe than any other, becauſe the Witneſs is not dead, nor is he withdrawn by the means of any Body but the Priſoner, or his Friends; which, as I take it, appears upon the Evidence: and if ſo, I think it comes to the Caſe, That if any one gets my Deeds, if he will not produce them, they ſhall be preſumed to be what I ſay they are. I muſt confeſs, the Acting of his Wife or any Agent might not be Evidence, if it appeared they did it officiouſly without his Knowledge; but being *Clancy* ſaid he came from Sir *John Fenwick*, and it was for Sir *John Fenwick*'s Advantage, I will believe it was by his Privity: And for myſelf, I think it no Strain, if in this Caſe we take him to be a good Second to Captain *Porter*, though it ought not to be admitted in *Weſtminſter-Hall.*

Then 'tis ſaid, That you have no Juriſdiction to proceed by Attainder in this Caſe, where the Perſon does appear, and he is in the Hands of the Law, and ready to take his Trial: I quoted you an Inſtance the other Day, 12 *Car.* II. where they attainted Perſons that were dead, without examining one Witneſs; and I have viewed all the Books ſince, and there's nothing appears, but the Bill ordered to be brought in, one Reading, and another, and ſome Petitions for making of Savings: There is one Rank of People that were dead; a ſecond Rank, which, as you were told from the Bar, were the King's Judges: ſome of which, it is true, were tried by the Law: But how? Not by the Direction of the Parliament: It was before they came into the Hands of the Parliament; and the Parliament takes notice they had been tried. There was another Sort that was never tried, but abſented; and though they might have come into the Hands of the Law and been Out-law'd, the Parliament took cognizance of them, and attainted them of Treaſon. Sir, I do take notice, that there was a fourth Sort of People convicted at that Time (for if we were confined to the Rules of *Weſtminſter-Hall*, no doubt we could not give a leſſer Judgment than that for Treaſon); there were the Lord *Mounſon*, Sir *John D'Anvers*, and others; and the Statute recites, that they were concerned in the Murder of the King; yet in regard ſo many had actually ſuffered, they did not give them the Judgment of Treaſon, but to forfeit their Eſtates, *&c.*

This is to ſhew you the Juriſdiction the Parliament have over Offences, and how they can alleviate the Puniſhment according to the Circumſtances as they appear before them; therefore I think this is a plain Proof that we have a Juriſdiction to go on with the Bill; and at the ſame Time, I ſay this, I would put it out of the Caſe, whether the Priſoner be a little Man or a great Man, that is now in Judgment before us; and I would put it out of the Caſe, what a good Thing his Diſcovery would be; I do not think that a good Argument; neither do I think it any Argument if this Man eſcape, what Danger we ſhall be in: But I do give my Judgment from the Argument of his Guilt, and our Juriſdiction.

Mr. *Pelham.* Sir, the learned Gentleman that ſpake laſt, ſeemed ſo very clear in his Opinion, when he began to ſpeak, that I was in hopes he would have given me and every Body Satisfaction in this great Point, eſpecially when he began with *Magna Charta*, which ſays, That every Man ſhall be tried by his Peers, or by the Law of the Land: I do take it to be Part of the Law of the Land, that no Man ſhould be condemned for Treaſon without two Witneſſes; but after that he did lay his Finger upon the Sore, he told you, the great Objection was, That the Courts of *Weſtminſter-Hall* are ſo govern'd and ty'd down, that they can't paſs any Sentence for Treaſon, but upon two Witneſſes; and he told you, they ought to be ty'd ſo: Indeed he did ſay we were not ty'd ſo: But I own to you, he did not give me any ſatisfactory Reaſon why he ſhould not be ty'd ſo. 'Tis ſaid, we are not ty'd, and 'tis impoſſible we ſhould, for no Act can tie the Legiſlative Power; and ſeveral Gentlemen have ſaid, That though there are ſeveral Statutes that declare there ſhall be two Witneſſes in Caſes of Treaſon, yet they do ſay, that in Caſe of Attainder by Parliament, one Witneſs may be ſufficient. Why may it not be thought, that theſe Acts extend to the Legiſlative, as well as the Statutes of *Edw.* III. by which it is preſumed, That the Parliament may proceed upon one Witneſs? And I take it, That there being no ſuch Hint, 'tis a Preſumption that the *Lex Terræ* does crâve an Obſervation of it by the legiſlative Power.

I did preſume Yeſterday to tell you, That Mr. *Algernoon Sidney* did ſtand upon it as his natural Right, that they could not proceed againſt him, there being but one Witneſs: I did not bring his Caſe as parallel to this, or think that his Authority ſhould influence you; but he was a Man that had that Love to Liberty, and the Good of his Country, that he would not have ſaid ſo, even to ſave his Life, if he had thought it inconſiſtent with either of them: But I have looked upon his Trial ſince, and there he does declare, That the being condemned by two Witneſſes, is the Law of God, and the Law of Man; the juſt Law that is obſerved by all Men, and in all Places; 'tis certain he reached even by theſe Words, the Power of Parliament: When I do ſay Power, I do not mean, but that when ſuch a Law is paſſed, all are bound by it; but in ſome Senſe we may ſay, you cannot do what is not juſt for you to do; You can do but what is juſt and agreeable to the Truſt repoſed in you.

The Gentleman ſays, he thinks it a ſtrange Opinion of him that ſaid, He had rather be try'd by a Jury than the Houſe of Commons: Indeed, if he could be ſure of ſuch a Houſe of Commons as this, he might retract what he had ſaid: But I have ſeen that done in the Houſe of Commons, which hath not made me extremely fond of that Trial. I have ſat here when ſix or ſeven Noblemen have been declared Enemies to the Kingdom without any Evidence at all, and the Reaſon was ſomewhat like what it is now. The Power of Parliaments was brought in as an Argument then; and it was ſaid, it was only in order to an Impeachment, but no Impeachment followed; yet theſe Noblemen went with that Brand in their Foreheads; and if any Diſturbance had been, they had been expoſed to the Fury of the People: And though we are ſure of this Houſe of Commons, and may be of all in this Reign, yet I know not how Facts may ariſe, and what Parliaments we may have; and upon that Account I am very unwilling a Precedent ſhould be made, at leaſt contrary to the Uſage in all manner of Courts whatſoever.

Sir *Thomas Littleton.* Sir, I ſhall not trouble you long in this Debate, that hath taken up ſo much of your Time already, in the Conſideration of ſome Matters we have been upon; though I did think your Time not very regularly ſpent, till this Occaſion offered itſelf: I hope, therefore, now it will take up leſs of your Time. I ſee the great Matter that was inſiſted on before, is inſiſted upon ſtill; and I do think we may ſay it among ourſelves, though we would not let the Counſel, That we are ty'd up in this Caſe by the Rules of *Weſtminſter-Hall*; but I believe if that was the Caſe, and the Queſtion was no otherwiſe, than, Whether or no we are ty'd up by the Rules of *Weſtminſter-Hall?* I believe it would receive a Determination, that we are not bound up to thoſe Rules.

But I will take leave to tell you what I think is proper for us to ground our Judgment on: I think the great Reaſon, even of thoſe who are againſt the Precedent, why they did admit Sir *John Fenwick* to have Counſel, and to examine Witneſſes, if he had any, and to croſs-examine the Witneſſes, and why they were willing to hear Evidence on both Sides in the Nature of a Trial; the great Reaſon was, becauſe that in a Caſe of ſo great Conſequence as this is, they would have the beſt Information they could obtain. Why did they deſire to be informed, but that afterwards they could lay their Hands upon their Hearts, and give their Judgment upon their private Opinion, Whether he was guilty or no? They ſay, we are not to give our Judgment upon our private Opinion; I always will. (It was not long ago we were not to have our Religion upon our private Opinion neither:) And when I am juſtified in that, I will rely upon it. Whether this be ſtrictly legal Evidence, I do not lay ſo much Weight upon it, as whether it hath ſatisfied my Conſcience; and I believe there is not a Man in the Houſe but is ſo (upon what he hath heard), and doth believe that Sir *John Fenwick* is guilty; and if we believe he is guilty, I would be glad to know by what Rules in the World any Man can give his Vote againſt this Bill, being of that Belief. And I tell you why I think every Man believes ſo; becauſe every Man in the Kingdom that hath not heard ſo much as we have heard, does believe him to be ſo; and I can't think that their Repreſentatives only ſhould be of another Opinion.

What Evidence have you had? You have had Captain *Porter*'s Evidence, and that would be good even in inferior Courts; and beſides that, you have the Evidence of what *Goodman* did ſwear before the Grand-Jury; you have heard what he did ſwear, and the Grand-Jury did believe him; you have heard likewiſe what he did ſwear in another Cauſe to the Petit-Jury, and they believed him, and convicted the Priſoner upon it: And though this be not legal Proof, ſtrictly ſpeaking, will any Body ſay that I have Reaſon to diſbelieve this Man, and think he had ſworn falſe?

Ay, but here is but one Witneſs, Gentlemen tell you. I will put you a Caſe where I believe this Houſe would attaint a Man without any Witneſs. Suppoſe two Perſons had ſeen Sir *John Fenwick* kill the King; (I believe we ſhould not have pulled him in Pieces in a barbarous Manner, but he would have had a Trial) and ſuppoſe before his Trial they had been conveyed away, if before they had ſworn this to a Grand-Jury, and they had found the Bill, I believe this Houſe would have attainted him for it.

Sir, I do not think that we ſhould ſtand upon theſe little Niceties, nor be bound by the little formal Proceedings of other Courts, when the Government is at Stake. We are ſent hither to take care that the publick Safety do not ſuffer any Miſchief from the Enemies of it: We have had Plot upon Plot; and I have heard ſo much ſaid on behalf of the *Lancaſhire* Plot without Doors, that I wiſh we do not get an ill Name upon ourſelves before we have done. We have this Power to exert upon extraordinary Occaſions; and here is a Man that hath endeavoured to ſubvert the Government, and Well-being of them that ſent you hither. I hope you will uſe it now; and if they knew who were not of that Opinion, I believe thoſe that ſent them would hardly ſend them any more.

Mr. *Howe.* Sir, as to the Argument, that if it was known how we gave our Opinion, thoſe that are againſt this Bill, the People would not chuſe them again: I am not afraid of that; I have been told ſo often, and yet I find the People I live amongſt, uſe me better and better every Day; and I believe, Sir, they will deſire to uſe me, when they will lay other Men aſide. I muſt in ſome meaſure ſupport what ſeemed to be reflected on an honourable Gentleman, in that he ſaid, he had rather be tried by 12 than 400. I am of his Opinion, and this is my Reaſon for it; I have my lawful Challenge in caſe of the 12; and if there be any on the Pannel I have offended, I can deſire they may be withdrawn, and that can't be done in any Caſe here.

But Gentlemen put the Streſs of their Argument upon that which nobody denies, and prove it handſomely; and well they may; for it is ſelf-evident, the Power of Parliament they inſiſt on, when nobody pretends but we have a Power to do what we pleaſe: But I muſt ſay of their Power, what *Bracton* ſays of the King's Power, *Hoc tamen non poteſt facere, quod non poteſt juſté facere.* It is ſaid, We are not ty'd up to the Rules of *Weſtminſter-Hall*; we are not ſo; but I beg leave to tell them, That what is Reaſon and Juſtice in *Weſtminſter-Hall*, is ſo every where. And I do take theſe particular Points we ſpeak of, to be grounded upon Reaſon and Juſtice, and ſo far we are to purſue them.

Two Evidences was not given as a Reſtraint upon *Weſtminſter-Hall*, for fear they ſhould do ſomething that is ill, for they are anſwerable for every thing they do ill; but they were allowed to the People of *England*, that they might have a fair Trial; and it was thought conformable to the Laws of God, the Law of Reaſon, and the Law of all Countries, That no Man's Life ſhall be taken away upon any particular Occaſion. And for to ſay, That a Man's Life may be taken away by two Witneſſes in one Place, and by one in another, is to ſay, That there is no certain Rule to prove a Man guilty of a Crime that may forfeit his Life, which is not admitted in any Country whatever.

But truly, Sir, we are going a little further; for the Gentlemen before told you, there was no need of two Witneſſes, one would ſerve; but now they go a little further, for they tell you, there needs never a one at all: For I do ſay, if every Gentleman here is to be guided by his private Opinion, there is no Man but before he heard this Cauſe did conceive in their Opinion ſome Judgment of his Guilt. And, Sir, I think no Man but would have told you, that would have been an unjuſt Judgment.

But they do ſay, That the Bill of Treaſon that was made laſt Seſſions of Parliament was to limit *Weſtminſter-Hall*; and that I will truſt that with myſelf, which I will not truſt with my Servant. Why truly, if I, or my Servant, was to commit an Error, or a great Crime, I had rather my Servant did it, than myſelf: But I do not think that my Servant ſhould be bound up from doing an unjuſt Thing, and myſelf ſhould have the Liberty to do it. Another Thing that Law provided againſt was, that People ſhould not be hanged without ſufficient Evidence, and theſe Things have been long complained of: But I never thought that the Evidence of one Witneſs, and no Witneſs would be ſupported in theſe Days.

But, Sir, what have you done? We have prevented People being executed by an arbitrary Power, and in an unlawful Way in *Weſtminſter-Hall:* but if you give this Example, you have brought the ſame Proceedings into this Houſe, and that they may be perpetually executed here, and ſo the Subject will be never the ſafer for the Bill of Treaſon.

And I do believe likewiſe, That it is better that a very heinous Fault, or a Miſtake, ſhould be committed in *Weſtminſter-Hall* for ten Years together, than once perpetrated in this Houſe: And my Reaſon is this, Becauſe *Weſtminſter-Hall* have a Law to be tried by, if they tranſgreſs that Law; and there is a Way by turning out of Judges, and other Things; and this Houſe hath no ſuperior Power; and when they do a Thing, they make it a Law: So that this Houſe (as it hath often been obſerved) can make this Nation unhappy, becauſe this Houſe can only eſtabliſh arbitrary Power and Miſery upon this Nation by a Law.

Sir, as to the Evidence, to ſay ſomething to it, ſince every Body hath ſpoke to it; for my Part, I do confeſs to you, the longer I ſit here, and the more I have heard of this Trial, the leſs I have been convinced within myſelf, that theſe Witneſſes can know any thing of Sir *John Fenwick*'s Guilt. I have heard Captain *Porter* give his Evidence; but that is no ſufficient Proof to me: I have heard what Evidence *Goodman* did give to the Grand-Jury; but whether they did aſk ſuch Queſtions as I ſhould, if I had been of the Grand-Jury; or whether they did confront him with Evidence, I can't tell. Therefore tho' the Grand-Jury was convinced by it, it is no Reaſon to convince us; becauſe we might not be convinced by the ſame Evidence.

But to go further: There is very great Reaſon to believe that *Goodman* was not then at this Place, and that not one Word that *Goodman* ſays is true. I have ſuch Reaſon for what I ſay, that if *Cook*'s Trial had been before this Houſe (not to arraign *Weſtminſter-Hall*, though I think we are a ſuperior Power, and I may ſay what I pleaſe of that Trial); I ſay, if *Cook*'s Trial had been before this Houſe, and what I have heard be true, I do think they would hardly have found *Cook* guilty upon *Goodman*'s Evidence: For there were three as poſitive Evidence as could be, that he was not at the Place when he ſwore he was. And I obſerve a little Failure in Captain *Porter*'s Evidence in that Point; for I don't think it proved by Captain *Porter*, that *Goodman* was by when this Diſcourſe was: For he ſays, he ſpake of this Thing at Mrs. *Mountjoy*'s, and dined there.

Members. No, no; It was at the *King*'s *Head.*

Mr. *Howe.* Well, there was but one Place where it was. Now whether Captain *Porter* heard them talk of it before *Goodman* came in, or whether *Goodman* be a good Witneſs, he having been there but the latter Part of the Time, which ſeemed to me to be the Time they ſhould have given over their Talk of the Buſineſs, they having been ſo long together before: But it does not appear to me that *Goodman* can be a good Witneſs.

But I take it, That it is not juſt nor reaſonable to find a Man guilty upon one Witneſs, and circumſtantial Evidence. I did mention a Caſe where there was a poſitive Witneſs, and a circumſtantial Witneſs, it was in my Lord *Delamere*'s Trial; and yet that was not thought a convincing Argument by the Lords to find him guilty; and I hope no Conſideration will oblige us to do that, which I am ſure we ſhould blame them for doing.

The Conſequence of this, Gentlemen ſay they do not fear. I believe, if Sir *John Fenwick* had been told, when he was Major General of King

James's Army, that I ſhould come here to ſit upon his Life, he would have laughed at it, and thought it impoſſible; but the contrary has happened: And I have ſeen Parties hang one another with ſuch Violence, I pray God we may keep from it: I do not know; we are all concerned in ſome meaſure, it having been the Unhappineſs of this Nation, that at one Time or another every Body hath been concerned, that they may have a Proceeding of this Sort againſt them; and this ſurmounts all that at preſent Gentlemen can do; for it extends beyond all Pardons, and will reach beyond the Act of Indemnity. God knows who may be ſerved ſo, notwithſtanding all the Act of Indemnity.

Sir, there is one Thing that is ſaid further, which the Gentlemen at the Bar conclude with as a ſubſtantial Argument, that we do not aim at Sir *John Fenwick*'s Blood (God forbid we ſhould), but at his Confeſſion: You will here read the Bill once, and twice, will commit and paſs the Bill (Sir *John Fenwick* not confeſſing), and ſtill this is not to aim at his Blood: But it happens, perhaps, that this Man knows no more of this Matter; and this Man is racked in a manner to Death, from Reading to Reading, becauſe he does not confeſs; and at laſt he comes to be hanged, drawn and quartered (inſtead of High-Treaſon) for not confeſſing it.

This I take to be the dangerouſeſt Part of all the Arguments that have been urged: For this I muſt tell you, That according to my private Opinion, I do believe that Sir *John Fenwick* does know of no more Perſons concerned (nor do I believe he knows all that he ſays) than he tells you. He hath not been a Man that hath kept Company with Great Men: He hath generally relieved the poor *Jacobite* Officers: There are Five People, as I take it, he hath told you he did converſe with: I would fain know in what Plot any Man converſes with above Five of the Plotters? There may be a Plot that may be moſt dangerous, and yet a Perſon that knows of this Plot, may not know above two or three others that are concerned in it.

But the great Argument is, Take care of your Government. In the firſt Place, they muſt ſuppoſe the Safety of the Government depends upon his Execution, or why do they uſe it as an Argument? But I wiſh they would ſhew me the Government would be one Penny the worſe, if this Bill does not paſs. Do you want Examples of Puniſhment to deter Men? No; you had lawful Proof againſt four or five Perſons, and they have been executed: Here are Examples made, that nobody for the future may preſume to plot together, and not be executed.

What is the Reaſon of this Bill then? Why, there is a Plot going on; Sir *John Fenwick* hath been impriſoned this ſix Months or more; and will you hang him becauſe there is a Plot now going on? What Conſequence is that? Do you think that he knows any thing of it, or that he can diſcover it? It hath been ſtarted ſince his Confinement, it may be, and he knows nothing of it: So that as to what is preſſed of his Confeſſion, I know no one Thing would be gained by it, that could be uſeful to the Government; for I believe all hath been diſcovered already that he knows, and that Plot hath been utterly diſappointed, and they have been fain to make a new one. Will you proceed in a Bill of Attainder, unleſs the Matter be of the greateſt Conſequence? The Preamble of the Bill for Attainting the Duke of *Monmouth*, gave a ſubſtantial Reaſon for it; That he was in Arms, and could not be brought to Juſtice. That implied, That if he could have been brought to Juſtice, they would not have Attainted him.

I think I need not give you more Arguments in this Matter; I wiſh I could hear thoſe that have been given, well anſwered. I ſhall ſay no more; but I know this, that my private Opinion ſhall never guide me in this Caſe. 'Tis not the ſame Thing with the Caſe my worthy Countryman put: In the Caſe of Religion, my private Opinion does not affect other Perſons; indeed it does the Papiſts, where they will murder others that are not of that Religion.

Mr. *Norris*. This is a very ſolemn Debate, and 'tis upon a very ſolemn Occaſion. 'Tis a Caſe of Blood; 'tis a Caſe that in my Life-time, I thank God, I never had to do with yet; and in this Matter wherein I am now to be Judge, I will uſe as much Caution as any Gentleman within theſe Walls.

I am ſo conſcious to my own Inability in what I have to ſay, that I can't expect to convince any Body; but what I ſay, is to diſcharge my own Duty, and ſatisfy my Conſcience in that.

I doubt not but every Gentleman conſiders the Station that he is in, and the Truſt repoſed in him by thoſe that ſent him hither: We are intruſted with the Lives, Liberties, and Properties of every Man in *England*; and we are anſwerable for them to thoſe that ſent us hither, to our Poſterity, and to ourſelves.

In this Matter, many Things of great Weight and Importance are before you; here is the Life of a Man, the Preſervation of the King and Government, and the Power of Parliaments to be conſidered. Sir, as I ſhall be cautious of taking away the Life of a Man, ſo I ſhall be careful of the Preſervation of the King and Government, and the Power of Parliaments; and though I do not think it requiſite, nor never will give my Conſent to ſupport the Government or Honour of this Houſe at the Expence of innocent Blood; yet I ſhall not be afraid of giving my Opinion in this Matter, to bring a Criminal to Puniſhment: Beſides the Treaſon he hath committed, he hath Crimes of a Nature almoſt equal to Treaſon; and for which, becauſe he hath evaded the Cognizance of *Weſtminſter-Hall*, he is now brought before you; and there are ſeveral Inſtances, where this Houſe hath taken notice of Offences of a leſs Nature, and for a leſs Reaſon than this is brought before you.

To quote Precedents, is a little dry Subject; but however, I will inſtance in one, that (I think) does aſſert the Power of Parliaments in this Caſe, which has not been mentioned yet; and that was (as I remember) in the 3 *Rich.* II. of an Agent that came from *Genoua*, who was, by a Misfortune, killed upon a Quarrel that happened in the Streets; he that killed him was brought to his Trial; it could not be brought within the Statute of 25 *Ed.* III. but he was brought to his Trial, and it was found only *ſe defendendo*; but he being a Publick Miniſter, it was thought fit that the Nation ſhould take more Notice of it; and he was Attainted afterwards by Parliament, and there is a Record of it: They did not think fit to make a general Law, but they made an Example of the Man that committed this Fact.

A great many Gentlemen have ſuppoſed this, and ſuppoſed that, and what ought not to be ſuppoſed; but I will make an eaſy Suppoſition; I will ſuppoſe that we are the Commons of *England* in Parliament aſſembled; and if ſo, Sir, we have a diſcretionary Power to do whatſoever we ſee is for the Good of the Kingdom; and if we are to be circumſcribed by the Rules of *Weſtminſter-Hall*, and we are to do nothing but what they would do, to what Purpoſe do we ſit here? If we are intruſted with this Power, and may exert it, I think here is a fit Occaſion for you to exert this Authority.

Sir, give me leave to take notice, That the Strain of Argument that was uſed ſome Years ago, is very much altered by the ſame Gentlemen; (I will mention it) I think it was in 78, when the Bill of Excluſion was brought within theſe Walls; the Arguments ran then (for I have ſeen them in Print) thoſe that were againſt that Bill; What will you do? ſay they; Will you do this Thing? Paſs a Judgment againſt a Man without hearing of him? Hath he been brought to your Bar, to anſwer what you have to ſay againſt him? How do you underſtand that he is guilty of the Crimes you accuſe him of? And they did not uſe thoſe Arguments againſt them that were for diſinheriting the Duke of *York*: But the Anſwer then was, Do you diſpute the Power of Parliaments? Is there not a diſcretionary Power in the Parliament? I do take notice, That thoſe Gentlemen that uſed that Argument for the Bill of Excluſion, now uſe it a quite contrary Way. Sir, I think the Power of Parliament is not to be trifled with.

It hath been urged, and ſaid a little while ago by a Gentleman, That he does not believe Captain *Porter* is a good Witneſs. I will give you a good Reaſon why I do think he is a very good one, and they at the Bar think ſo too, becauſe they would have given a great Reward to have taken him off; and for the ſame Reaſon, I believe *Goodman* to be a good Witneſs too: Sir *John Fenwick* was ſatisfied, that *Goodman* did know how far he was concerned, and he hath been prevailed with to be out of the Way.

Sir, here are a great many Circumſtances that agree ſo well together, that (I think) no Perſon can doubt of Sir *John Fenwick*'s Guilt; and (I think) 'tis in this Caſe in the Body politick, as in the Body natural, when a Man is almoſt paſt the Cure of Phyſicians, when a Man hath a Gangrene, a rotten Member, which the Phyſicians by the ordinary Means can't cure, the Remedy the College of Phyſicians themſelves in that Caſe would uſe is, they would ſay, *Immedicabile vulnus enſe recidendum eſt.*

I am of Opinion, that the Legiſlative hath this Power, and that this is proper Occaſion to exert it; and to compare ſmall Things with great, 'tis like Thunder and Vengeance in the Hands of Providence, that is not uſed but upon extraordinary Occaſions; and then it ought not to fail, for that makes a Man trifle with, and deſpiſe that Power that is not effectually able to exert itſelf; and if the Sword of Juſtice be drawn, if they find it ruſty, and will not cut, they will have a mean Opinion of your Power for the future.

Gentlemen are afraid of Precedents in this Caſe; for that Reaſon I am for committing this Bill, becauſe I would make this a Precedent; and I will tell you why; Becauſe it may happen in future Ages, that Miniſters of State, and Perſons concerned in the Government, may be faulty (I think I may ſuppoſe that); and as the Law ſtands now, he is but a bungling Politician that can't ruin the Government, and yet not come within the Bill of Treaſon to be hanged for it: And therefore for the keeping an Awe upon Miniſters of State, and becauſe I would have this Houſe always have it in their Power to puniſh future Offenders, as they ſhall ſee Cauſe, as well as this unfortunate Gentleman at the Bar, I am for committing this Bill.

Mr. *Finch*. Sir, the Queſtion now before you, ariſes upon a Caſe wherein you have a Man accuſed of High-Treaſon, and for that there is but one Witneſs, which by the Rules of *Weſtminſter-Hall*, is confeſſed by every Gentleman, is not legal Evidence.

I remember the other Day, when this Evidence was offered, and an Objection made to it, the Anſwer was, That we ought to hear it (though in *Weſtminſter-Hall* they could not do it), becauſe we ſit here as Judges, and we can diſtinguiſh what is legal Evidence, and what is not legal Evidence, and can give its juſt Weight to every Part of it. I do obſerve now, in this Debate, ſome Part of the Evidence, which no Man can ſay could have been given according to the Rules of Law, is inſiſted upon, and Weight laid upon it.

And here they have taken into Conſideration the Power of Parliaments; and the Method of Parliaments has been inſiſted upon. As to the Power of Parliament, Whether the Parliament can do it? And whether, if the Parliament pleaſes to do it, they are tied up (as Gentlemen are pleaſed to expreſs it) to the Rules of *Weſtminſter-Hall?* That the Parliament can do it, 'tis a hard Matter to gain-ſay, That any thing is out of the reach of the ſupreme Power of a Nation; the Legiſlative Authority can do every thing: Yet, though Gentlemen have ſaid this, and others have obſerved, That there wanted no Authority to prove this, being ſelf-evident; yet give me leave to inſtance in ſome Particulars in this Caſe, with the Authority of the Judges upon it, where the Parliament have proceeded according to the Rules of *Weſtminſter-Hall.*

We read in *Hen.* VIIIth's Time, That the Lord *Cromwell*, Earl of *Eſſex*, was Attainted in Parliament; and Hiſtory tells us, That he was Attainted by a Law of his own making. Now, ſays my Lord *Coke*, That ſeems ſtrange; but enquiring of an ancient Perſon that lived in thoſe Days, he told him the Meaning of it; That Lord had conſulted with the Judges, Whether or no, if a Man was Attainted by Parliament, and was not brought to be heard, ſuch Attainder would be good in Law? The Judges ſtarted at the Queſtion, but could give no other Anſwer than this; Truly, if ſuch Attainder be made, we know no Law to find Fault with it, for it is done by the Legiſlative Authority. It fell out, That the Inſtance of condemning a Perſon in Parliament (not according to the Rules in *Weſtminſter-Hall)* fell out to be the Nobleman's Caſe; for he himſelf was ſo Attainted immediately after.

Give me leave to inſtance in another Kind of Authority, the Authority of Parliament touching theſe Attainders, and what has been the Conſequence of them: If you will look into the Record of *Rich.* II.'s Time, I do not mean the Record that hath been quoted, nor the Caſe of *John Imperiall*, for killing the *Genoua* Ambaſſador, which was declared Treaſon in Parliament ten Years after the Man had been tried in *Weſtminſter-Hall* for it; but I mean the 11 *Rich.* II. how many were attainted by the Proceedings of thoſe Times; I do not mean by Acts of Parliament, but thoſe Attainders were in an extraordinary Manner, not according to the Rules of *Weſtminſter-Hall:* And 21 *Rich.* II. the whole Parliament, and its whole Proceedings were reverſed, and the Parliament annulled: In that Year were the Proſecutors of the 11th Year themſelves attainted: And 21ſt Year of *Rich.* II. the Act that repealed that Parliament repealed the Pardon too; but in order to come to the Attainder of thoſe Perſons: That being done, was not enough; for the Lord *Arundel* had a Pardon the 17th of *Rich.* II. Upon that they made a Law to repeal his Pardon by Patent, that they might come to the Attainder of that Lord; and that Lord was attainted by Act of Parliament. But I muſt obſerve one Thing a little further, That that very Parliament, that doubtleſs knew their own Power well enough, and that their Attainders were firm, being made by the Legiſlative Power, yet they had a little Jealouſy themſelves of their Proceedings; for they paſſed an Act to make it capital to go about to reverſe any of thoſe Laws; and another Act, that all the Lords and Biſhops ſhould be ſworn. Now ſee what fell out after: *Rich.* II. was depoſed, for conſenting to thoſe Laws; and *Henry* IVth, in the firſt Year of his Reign, abrogated the whole Parliament, and repealed all thoſe Laws. Theſe Turns have been upon theſe extraordinary Proceedings of Parliaments.

Give me leave to give you another Inſtance, and that in another Caſe, as odious as poſſible could be. In the Murder of *Edw.* II. there was *Roger Mortimer* attainted in the firſt Year of *Edward* III. and the Record ſays, That it was notorious to them all: And what then? They adjudged him to be attainted in Parliament. When Time had a little worn off that extraordinary Zeal (which truly was commendable, though it had tranſported them a little too far beyond the Rules of Juſtice), and they came to conſider what Precedent they had made for Poſterity, it had another Face; for in 28 *Edw.* III. was that Attainder reverſed, becauſe he was not brought to anſwer as he ought to have been. There was alſo an Act for attainting the Earl of *Arundel*, which in the ſame 28 *Edw.* III. was reverſed, becauſe he was not brought to Judgment by due Proceſs of Law.

But now we are told, we are not tied here to the Rules of *Weſtminſter-Hall.* Gentlemen do not enough diſtinguiſh in this Matter; the Forms of *Weſtminſter-Hall*, ſay ſome; the Rules, ſay others; and others ſay, there is no Difference between the Form of Proceedings, and the Rules, of *Weſtminſter-Hall:* But I hope no Gentlemen do think but the Parliament, though they have a Power to act as they think fit (as Inſtances have been given), yet the Parliament itſelf are tied by the Rules of common Juſtice. Now I would have Gentlemen that ſay we are not tied by the Rules of *Weſtminſter-Hall*, a little to conſider the Matter. Are the Rules of *Weſtminſter-Hall* no other than what are neceſſary for the executing of Juſtice? If they are no other, how can we be ſaid to go according to Juſtice, when we go beſide thoſe Rules? I deſire them to conſider of the Conſequence of this Proceeding; there is no Danger, I hope, of this Parliament: But if we ſhall ſay, that the Rules of *Weſtminſter-Hall* are not ſuch as are neceſſary for the Proceedings in a Courſe of Juſtice, we ſhall ſhake thoſe Barriers of our Liberty and Property, I am afraid, a little more than Gentlemen think of at preſent: And ſhall we declare they are not neceſſary, when our Anceſtors have thought them ſo, and their Wiſdom hath derived them to us, and the Wiſdom of the Nation in Parliament hath eſtabliſhed theſe Rules?

I can't ſay what Conſequence may follow upon this. This Parliament can never do any Thing to endanger the Lives of the People of *England*; but heretofore Parliaments have been damned with ſeveral Brands, ſet upon them by ſucceeding Parliaments: As for Inſtance; one, I think, in the 38 *H.* VI. 39. That Parliament was wholly repealed, as packed, and paſſing Laws through Rancour and Malice, and having paſſed no good ones. Now, ſuppoſe a Parliament ſhould come, that ſhould not be ſo tender of the Liberties of the People as this; and they ſhould be ſo bold as to ſhake thoſe Laws that are made for the Rules of Juſtice, if they have ſo good a Parliament to guide them in it: Will not this be an Inducement to ſuch a Parliament as that, to ſhake all our Laws and Liberties? But I can't trouble you any longer, my Head will not give me leave. I am againſt the Bill, and have offered you my Reaſons.

Col. *Wharton.* I hope Gentlemen, in a Matter of this Moment, will have Patience to hear one another; and ſince every Gentleman is to give his Vote in this Matter, I deſire to give my Reaſons for my Vote: I am of the Opinion of another Gentleman, That we have not touched the Sore yet; yet I do not think, that the Rules for *Weſtminſter-Hall* are Rules for us. The Gentleman that ſpake laſt, as he always does, made a very florid and elegant Speech, and brought you ſeveral Examples of Attainders that have been condemned from one Parliament to another, in ſeveral Reigns: But I do not wonder at that, when the Crown went from one to another. An Inſtance was given in the Caſe of the Lord *Cromwell*, which was ſpoke to from the Bar; and Sir *Thomas Powys* laid a great Streſs upon it, That this was condemned as a wrong Judgment, becauſe he was not heard: I believe that may be a Reaſon why many of thoſe Attainders were condemned; perhaps it might be a Cuſtom of our Anceſtors to paſs Bills of Attainder without hearing the Party. This Perſon hath been heard, and fully heard; and I believe no Perſon, that hath been attainted, hath had ſo fair a Trial; and therefore Parliaments having condemned Bills of Attainder, becauſe the Perſons have not been heard, that will be no Reaſon why any Parliament ſhould condemn us. A Gentleman told you, That the Law of God and Man was not to condemn a Man but upon two Witneſſes; but there are many Inſtances to the contrary.

It is told you, That *Porter*, here before you, is not a good Evidence, becauſe he is not ſworn; and that you are to go by the Rules of *Weſtminſter-Hall.* Says the Gentleman that ſpake laſt, You are to go by their Rules, but not by their Forms: I muſt confeſs there is a great Difference between them two; for a Form is only the Manner and Method by which we proceed in doing of any Thing; but the Rule is the Foundation we are not to err from; but I can't agree we are upon the ſame Rules as *Weſtminſter-Hall* is: The Rules of *Weſtminſter-Hall* are, When a Man is brought upon his Trial, the Jury are all to be upon their Oaths; by which Oath they are to make a true Judgment according to Law. This is not the Caſe here; if I was a Juryman, and was to try a Man, and one Witneſs ſwore againſt this Man, and no other Witneſs; though I did in my Conſcience believe him to be guilty, yet in that Caſe my Conſcience is diſcharged, and I muſt find him Not Guilty: But no Man can ſay this is the Caſe here.

What are we now a-doing? Here is a Bill to attaint Sir *John Fenwick* of High-Treaſon: If I reject the Bill, I do declare him not guilty; and if I do think him guilty, I do declare againſt my own Judgment; for my Judgment here is not bound up as a Man's Judgment upon a Jury; for his Judgment is bound up to Proof, according to Law; and my Judgment is bound up by my own Belief: This is the Proof I muſt go by; and I think every Man is bound in Juſtice and Duty to his Country, as he believes Sir *John Fenwick* to be guilty, to be for the Commitment of this Bill; and till any Gentleman will convince me, that this is not a Rule I am to go by, I muſt continue in this Opinion.

Mr. *Boyle.* The Diſorder that worthy Gentleman was in, makes me the more concerned for fear of falling into it myſelf.

I hope, in this Debate, Gentlemen will be very cautious of uſing it as an Argument, what Application our Votes ſhall have without Doors, and with thoſe we repreſent, when we are to give Judgment, as far as in us lies, for the Life and Death of a Man: And therefore I muſt obſerve, that the Eagerneſs that is juſtifiable upon Impeachments, may not look ſo well now we are Judges upon a Bill of Attainder. You have gone over the whole Courſe of the Evidence, and I believe that this Debate will ſhew you pretty plainly, what is to be the Fate of this Bill; for I believe all the Arguments will now be uſed that can be: As to what hath been ſaid of extorting a Confeſſion, I take it to be quite out of the Caſe.

I am ſorry to be engaged one way or another: I would not, if I could help it, out of the Houſe, be upon a Jury of Life and Death; yet in that Caſe, I ſhould know the Law, or be told it by the Judges: But in this Caſe, we are both Jurymen and Judges, and know not what Rules we are to go by; but ſet up a Court of Equity, which hath no Bounds but our own Conſciences.

As to Sir *John Fenwick*, I know him not; as to his Cauſe, I am ſure I am againſt it; but how far I think him guilty or not, I think is not the ſingle Point to be conſidered: I muſt confeſs, there have been ſeveral People accuſed of this Conſpiracy, and have been named by the Evidence at the Trials; and I believe they are much alike guilty, being upon the ſame Evidence; but as to all that hath been opened before you, and proved, it can amount to no more than this: There is but one Evidence, which by the Law would not be a good Evidence to convict him in another Place; and therefore I do agree with the Gentleman that ſpake under the Gallery, that this is a very extraordinary Caſe; for one Witneſs is not ſufficient at Law to convict him, and the Law would be very different hereof. I am to judge according to my own Opinion, and not by the Rules preſcribed by the Law; but though this Proceeding is not ſtrictly according to the Law of the Land, yet if it was ſuch an extraordinary Caſe that required you to diſpenſe with thoſe Forms, and come to this extraordinary Manner of Proceeding; I think, for my own Part, it might be ſupported by the Neceſſity of it; for 'tis impoſſible that it ſhould be otherwiſe in Practice: Thus, when the Government is at Stake, and nothing will preſerve it, but the breaking through the ſettled Forms, then the Government will break through them; and whatever Rule you preſcribe, it will always happen ſo.

There is a very extraordinary Caſe, and that was in the Conſpiracy of the State of *Venice*, above a hundred Years ago, I think, ſet on Foot by the *Spaniards:* Then the State, to get the whole Matter out, promiſed a Pardon to as many as were concerned in it; and after they had promiſed it, and treated with them about it, they thought it neceſſary, for the Preſervation of the Whole, to break their Faith, and they were all put to Death. This was upon point of Preſervation of the Government.

But, Sir, as to Precedents, give me leave to ſay, I do not give that Authority to them, unleſs I know all the Springs and ſecret Hiſtories and Tranſactions that were their Guide in making thoſe Precedents; and as to Precedents that have been quoted, when the Parliament has declared what was Treaſon, and what was not Treaſon, or have declared Conſtructive Treaſon, they may be grounded upon the Statute of 25 *Ed.* III. But I think there is no Statute upon which they can ground the Condemnation of a Man upon one Witneſs.

In the Caſe of my Lord *Strafford*, upon conſtructive Treaſons, it was there ſaid, That it was a Fire that had lain hid for 240 Years, and that it never broke out before, but to conſume him and his Poſterity. It was anſwered by *Pym*, If that was the Caſe, it was not for want of Law to juſtify ſuch a Proceeding, but all that Time had not produced ſuch an Offender.

I do not doubt, but if any one will conſider the late Conſpiracy; and if that was the Queſtion, but it was as extraordinary as any Thing can happen; for it was to ſubject their Country to a foreign Power, which is very extraordinary, and ſeveral Perſons were concerned in it: But there is one extraordinary Part which I do not remember this Gentleman is accuſed of; and that is, the Aſſaſſination. Treaſon itſelf is a very extraordinary Crime; but give me leave to ſay, that extraordinary Part is not alledged againſt this Gentleman; and this Bill does not ſeem to be brought in for that, wherein he is concerned in common with ſome others, but for the ſubſequent Matter alledged in the Bill. This Bill is grounded not ſo much upon that he is guilty, as a great many more are, as upon ſeveral Circumſtances which have happened to Nobody elſe. Give me leave to inſtance in a Caſe, now in my Head (I beg your Pardon that I ramble, 'tis from the Awe I have upon me from this Aſſembly), in *Cataline*'s Conſpiracy; and if that was our Caſe, no doubt there would be another ſort of Argument for it; there they conſulted what to do with *Cathegus*, and the other Conſpirators; he was at the Head of an Army, which only expected his Orders to lay *Rome* in Aſhes; the Queſtion was, Whether they ſhould break the *Porcian* Law; and for the Safety of the Senate they were put to Death before the Aſſembly roſe.

Now to come to this part of it: Though Sir *John Fenwick* is a great Offender, yet I think his Caſe is not ſo extraordinary, as to make you proceed upon this Bill. I do take his living or dying not to be of that Conſequence as this Bill of Attainder. I know not how he comes to be ſo conſiderable when in Hold; for when he walked about Town, I never heard he was feared or regarded at that Time.

But to come to the Allegations in your Bill, upon which they are to ground your Judgment: The firſt Part is a new Conſpiracy, that is, for intending to create a Jealouſy between the King and theſe noble Perſons. As to them, you have already paſſed a Vote in their Juſtification; and I think their Actions may juſtify them to the World, as much as any Vote of the Houſe of Commons; but whatever that may be, I think it was a fooliſh piece of Conſpiracy, as well as an ill one, for one, when he was in danger of being hang'd for one Plot, to venture upon another; and I think, there was at that Time two Witneſſes to bring him to his Trial, and that is an Allegation in the Bill. And as to the Protracting of his Trial, 'tis natural, and ſo juſtifiable, whether innocent or no, and what every Body attempts; and nobody can wonder at it; but in one Caſe or the other it can be no ſufficient Ground to attaint him.

The next Thing that is ſaid is, That he hath been the Occaſion of the withdrawing of the Evidence. Now I muſt obſerve, that is not alledged in the Bill, and is proved but by Hear-ſay: But ſuppoſe it was true, and alledged; if any Man concerned in Treaſon ſhall endeavour, by Friends, or otherwiſe, to get off an Evidence, can that amount to that which is deſigned to be puniſhed by this Bill, to High-Treaſon? 'Tis the Part of thoſe that are intruſted with thoſe Matters, to be in Expectation of ſuch Practices. What are Gaols for, but to keep them in Cuſtody? And the People employed in thoſe Buſineſſes are to take care of it. Are we to ſupply a Defect of what ought to have been done in another Place?

So that I do ſay, That a Precedent in an extraordinary Caſe is no Precedent to be uſed in a little Caſe. It may be urged, but 'tis but a Pretence, when you have paſſed this Bill, which is the Record, the Matter will appear no otherwiſe than are the Suggeſtions of your Bill. A Man hath aſperſed great Perſons, which is a great Fault indeed, (for he is not charged with the withdrawing of the Evidence) therefore attaint him upon one Evidence. I think by this Bill you will open a Door for a Precedent of all Treaſons of the ſame Nature. Sir, there have been many Precedents mentioned; I will trouble you with none, becauſe moſt Gentlemen have read the Argument of Mr. *St. John*'s in this Caſe. I muſt confeſs, unleſs there was that Neceſſity as is pretended, which I do not ſee, I do not ſee how you can juſtify paſſing this Bill of Attainder, either by the Law of God or Man, in any Nation allowed.

I muſt confeſs, I have no manner of Concern how this Queſtion goes; what I have ſaid is more to ſatisfy my own Judgment, than work upon other People. I am not ſatisfied there is that Neceſſity that is pretended; and therefore as my Judgment is now informed, I can't give my Vote for Committing of this Bill.

Mr. *Smith.* Sir, I own myſelf to be very unfit to ſpeak in this Argument; but ſince I am to give my Vote in a Matter of this Conſequence, I beg leave to give my Reaſon why I give my Vote, as I intend to do. I know the Matter before us, both in the Nature of the Crime and Puniſhment, as well as the Conſequence of it, requires a very deliberate Conſideration; but, at the ſame Time, I do take the Hazard and Danger of this Government to be a Matter of great Conſequence too.

Though there have been ſeveral Precedents inſtanced in relation to Attainders; and though I have obſerved, that moſt have acknowledged, That they might be juſtified upon extraordinary Occaſions; yet when they have aſſerted that, they have told you, they were upon a wrong Foundation, and ſo were laid aſide. Now, I think it no great Matter to ſay, That thoſe Attainders that were made in Rancour upon contended Titles, were reverſed when the oppoſite Party got the Power, no more than if any Action, be it never ſo juſtifiable, ſhould be reverſed when King *James* comes again, which I hope will never be. Is it any Argument, that when *Hen.* IV. came to the Crown, and depoſed King *Richard*, that he reverſed all the Attainders in his Time? There might be Reaſons might ſway with Perſons for reverſing particular Acts of Parliament, which might be very good, or might be not ſo, there was ſuch a Change of Government at that Time; but they take notice, it was made a particular Article againſt *Richard* II. as if when the Power was come to other Hands, they would not have depoſed him if they had not had that Argument: Neither do I take that Argument to be of any Weight, That Attainders have been reverſed, becauſe the People have not been heard; when this Gentleman hath had as full a Hearing as ever any Perſon had upon any Bill of Attainder, or Impeachment whatſoever; and he hath had the Advantage of Counſel in this Caſe (which, as has been told you, was excepted out of the late Act of Parliament) and of the moſt able Counſel too.

'Tis ſaid this is a Matter of no great Conſequence, becauſe it concerns Sir *John Fenwick*'s Life ſingly; and he is not thought to be ſo conſiderable, as by his Eſcape to bring the Publick in danger. Now it hath been always one Principle I have laid down, That if a Plot be diſcovered, and not thoroughly proſecuted, it ſtrengthens and grows upon you, and ten to one if it does not ſubvert the Government.

Now, God be thanked, that we have prevented the Deſign upon the King's Perſon, and ſeveral have been puniſhed for it; but I think we are not got to the Bottom of it, and that we ought to provide againſt it in a much other Manner. Can any one think that Sir *William Parkyns*, or Sir *John Freind*, and the reſt that are diſcovered, were the only Perſons concerned in this Conſpiracy? I take it, that there have been much greater Men in it; and when I ſee ſuch a Struggle both to get People out of Gaol, and ſend People out of the Way, and all Arts uſed that can be, I muſt ſuppoſe, when ſuch extraordinary Courſes are taken, that there is ſomething extraordinary ſtill to be done; and I would not have Men by bribing of Witneſſes think to ſecure themſelves: It hath been uſed as an Argument to leſſen the Matter, That this was a little after the Act of Indemnity. Can any Thing aggravate a thing more? Sir, theſe very Arguments turn againſt them.

We are told here, that we muſt not conſult our own private Judgments in the Matter; and we are told, at the ſame Time, if there were two Witneſſes that we did not believe, we muſt not find him guilty. We are told of a Judge, that though he knew a Perſon to be not guilty, yet it was a commendable Action in him, that he condemned the Man: But that hath been very well anſwered already, and I ſhall not meddle with it further; only this I will ſay, that I never will in any Caſe be a Jury-Man or a Judge, where the Convictions of my own Conſcience ſhall not govern me, but an Evidence that I do not believe. And becauſe that Story was told you, I will tell you another, that I think more commendable: And that was; a Man was try'd for a Murder, and there was poſitive Evidence againſt him. The Jury went out, and ſtay'd a great while: There was Eleven againſt One for finding him guilty; but at laſt the One almoſt ſtarved them, and they brought the Man in Not Guilty. The Judge ſent for the Gentleman, and deſired to know his Reaſons for differing with the reſt: And, at laſt, upon Aſſurance that nothing ſhould be done to him, Why, ſays he, Would you have me find the Man guilty, when I was he that killed the Man, and he was innocent?

Then, Sir, if you take the Evidence as it is; I think, firſt, here is Capt. *Porter*; I do not find any Body excepts to him; and his Evidence hath been approved of by ſeveral Juries, and ſeveral Perſons executed upon it, and nothing material hath been objected againſt it. I will not ſay, That Sir *John Fenwick* hath owned a great deal of this himſelf; he hath given every body Satisfaction how far he ſtands guilty in his Opinion; but it is brought ſo far home, that there was Sir *John Fenwick*'s own Letter was to convey him abroad. Here hath been Attempts upon other Perſons; you hear what hath been done by the Solicitor. They ſay, he was not his Solicitor at that Time. Here are very pregnant Circumſtances. One Gentleman ſaid, you ought not to make uſe of *Goodman*'s Evidence here; and yet he could make uſe of every Thing to diſparage him; for he could ſay, there were three poſitive Witneſſes againſt him.

Now when 'tis ſo notorious what Parties there are for King *James*, and we find Perſons plotting in every Part of the Kingdom: When you have an open Invaſion before you, and when Deſigns are laid againſt the King's Life every Day; if this be not a Time to exert an extraordinary Power, I ſubmit it to you.

Sir *Rich. Temple.* Sir, I ſhall not trouble you with any Thing that hath been offered To-day. That which calls me up, is the Danger of the Precedent you are about to make, and the Arguments that have been uſed to ſupport it; which, I think, are more dangerous than that. I muſt confeſs 'tis a new Doctrine to me, That the Laws that are made by the Parliament, are to be no Rule and Guide to this Houſe. Sir, the Birthright we have is in our Laws; and I did ever think till now, that the Laws were not only made for *Weſtminſter-Hall*, but for all the Subjects of *England*; and eſpecially, that they were to be a Rule to the Parliament that made them, till they ſhould think fit to alter them.

Here have been great Miſtakes between the Power of Parliament and the Juriſdiction of it; the Power of Parliament is to make any Law, but the Juriſdiction of Parliament is to govern itſelf by the Law; and this, give me leave to ſay it to you, hath been the Opinion of all your Anceſtors, and the Method they ever uſed. Shall we make a Law here in a particular Caſe againſt all the Laws of *England?* 'Tis *ultimum remedium & peſſimum*; you may uſe it in a Caſe of abſolute Neceſſity, but otherwiſe it may be a Precedent to overturn all.

There are ſeveral Things in making this Precedent, that overthrow all the Laws and Liberties of *England:* Firſt, you are paſſing Judgment upon a Man upon one Witneſs. I have heard a ſtrange Debate To-day, That there was but one Witneſs in Treaſon, before the Statute of *Edw.* VI. You know, that in Caſe of Treaſon, there was by the Common Law required two Witneſſes; for if there was but one, the Party might demand Trial by Battle, and that was the Common Law of *England*.

There is another Thing that is extraordinary: Here you are going to paſs an Act without any Trial at all: For to ſay this is a Trial before you, the Commons, is a Miſtake; you never did aſſume a Juriſdiction of trying any Perſon, nor can you: You may for your own Information hear what can be offered, but 'tis not a Trial, where Witneſſes are not upon their Oaths. There is no manner of Power or Juriſdiction can be pretended for you to try; in that is a ſecond Thing. All the Bills of Attainder you have had, have been in three Caſes, where the Perſons have been either dead, or fled, or have been without the Compaſs of the Law, and could not be brought to anſwer: And you have had ſome Bills of Attainder after Trials had in *Weſtminſter-Hall*; but never a one of thoſe have been called Trials, but they have been generally reverſed; and for what? They tell you, That they have been reverſed by one Party and another Party: It was in the ſame King's Reign, in *Rich.* IId's Reign, they were forward and backward, as the Court Party or the Country Party were uppermoſt.

There is another Thing in this, that I think of a moſt dangerous Conſequence; and that is, that you are for making way, for what I know, by this Precedent, for a Rack, for ſo 'tis ſaid; this is to force a Man to be an Evidence. Why, give me leave to ſay to you, 'tis a new Way not known in *England*, that you will hang a Man unleſs he will confeſs or give Evidence; but I think 'tis ſomething more than a Rack, for here is hanging, drawing and quartering in the Caſe; and I do not think this Proceeding will make him an Evidence with any Credit or Reputation to this Houſe, nor am I of Opinion, that he can diſcover any Thing worth ſuch a Precedent.

Now give me leave to ſay one Thing as to the Juriſdiction of Parliament. It hath paſſed here for current, That the Parliament hath a Power to declare what they will Treaſon, though ſo by no other Law; 'Tis the greateſt Miſtake in the World: I heard a great Debate upon this, upon my Lord *Clarendon*'s Caſe; and 'tis plain, that Statute relates only to Caſes brought from inferiour Courts to Parliament; for it ſays, That if any other Caſe ſuppoſed Treaſon, which is not in that Statute ſpecified, doth happen before any Juſtices, the Juſtices ſhall tarry, without going to Judgment of the Treaſon, 'till the Cauſe be ſhewed and declared before the King and his Parliament, Whether it ought to be judged Treaſon, or other Felony? I ſpeak to the Juriſdiction that the Parliament has by that Statute: 'Tis, that if the like Treaſon (for at Common Law there was a great many Treaſons) ſhould fall out, and be brought before inferiour Courts, of which they doubted, whether they were Treaſons or no; then they ſhould be brought before the Parliament, to judge whether they were Treaſons or Felony: But how ſhall they judge? By the Laws in being. And who is this Judgment in? Not in the Parliament by Bill, but only in the Houſe of Lords: Much leſs is it, That you may judge that to be Treaſon in this Houſe, that was not ſo by the Common Law before. So that, give me leave to ſay, therefore there is no ſuch Power reſerved to the Parliament, to declare any thing Treaſon that is not Treaſon before.

I muſt ſay, 'tis of the laſt Conſequence, that we ſhould make a Law in a particular Caſe, to take away from him all the Liberty that belongs to a Subject. Some Gentlemen talk of the great Favour he hath had at this Bar: I know not what to think of it; I am ſure you allowed the King's Counſel ſuch Privileges as I never ſaw before, and that was, to offer that for Evidence that every body acknowledged was not ſo; and I do not think any body would think it a great Favour to be heard in this manner, eſpecially to Things not in the Bill.

'Tis ſaid, every Man muſt go according to his private Opinion, 'tis not ſaid Judgment neither; the Inſtances that have been given are of a quite different Nature: A Man is not to give his Judgment againſt his Knowledge: I think that Judge ought rather not to have try'd the Cauſe at all; but if we ſit here to judge, we ſit to judge him according to the Law of *England*, and then we muſt judge him according to legal Proof. Will you ſit upon a Judgment that is not only not tied to the Rules of *Weſtminſter-Hall*, but is not tied to the Laws of the Land; and Attaint a Man without a legal Trial, without legal Evidence, and upon one Witneſs, when the Law ſays, you ſhall have Two; and after all, ſay 'tis a reaſonable Proceeding? I know not how it came about, that the Act of Grace was paſſed; it did not riſe from this Houſe: If it hath any ill Conſequence, let them anſwer for it that were the Cauſe of it.

They ſay the Government is at ſtake, becauſe the Plot hath not been found out to the Bottom. That is not our Fault: This Man hath been long enough in Cuſtody; if he hath trifled with the Government, I am ſorry he hath impoſed upon them; but if it be ſo, I think there is nothing in this Caſe, of that Conſequence, as to make you make this Precedent.

Sir *Will. Strickland.* Mr. *Speaker*, I would not make uſe of any ill Precedent: And yet if the preſent Occaſion, and the Neceſſity of the Kingdom required it, I would make a Precedent: I am glad the ſeveral ill Precedents are avoided in this Caſe, and I would be bold to ſay, whether this Gentleman ſuffers or no, no Man can ſay that he hath been hared to Death by Counſel.

Sir, I ſhould be as tender in Point of Blood as any Man; but I do think, if the Safety of the King and Kingdom is concerned, 'tis not one private Man that we muſt have reſpect for, ſo as to let the Publick ſuffer by it. I do think, that upon this Occaſion there have ſo extraordinary Things happened as have hardly happened in former Ages; that one who is known to be in a Conſpiracy to bring over a *French* Power with a *Popiſh* Army, to deſtroy our Lives and Liberties, after his Trial has been deferred by his Equivocations and Pretences to make a great Diſcovery; when he comes to make it out, he accuſes the beſt of your Friends; and this is only an Artifice to get time 'till they could get the Evidence out of the Way; I think, if you do not take notice of it, and let the Legiſlative ſupply that Defect, it may be of ill Conſequence, and may encourage any one to commit the worſt of Miſchiefs, upon hopes, that if they can get the Evidence out of the Way, they ſhall go unpuniſhed.

Sir *Francis Winnington.* I ſhall trouble you but a little while, it being late; but Gentlemen ſaying 'tis an extraordinary Caſe, I ſhall give my Reaſons why this Bill ought not to be committed; for every Member here now is a Judge, and he muſt take the Blood of this Gentleman upon him in Judgment, either to condemn or acquit him; and I muſt confeſs, I have very much admired, to hear that Doctrine preach'd, That every Man, as he is ſatisfied in his private Conſcience, ought to judge this Man guilty. I deſire to know by what Authority we ſit here? We ſit here and have a Legiſlative Authority, and 'tis by the King's Command we come together; but at this Time we are judicially trying this Man for his Life; and therefore I humbly conceive, That we ought to proceed *ſecundum allegata & probata*; and for any Man in his private Opinion to ſay he is guilty, he does not act by the Commiſſion he ſits here. For to tell you of the *Lancaſhire* Plot, or that a Man ſhall not be choſen hereafter, ſeems to be Argument to enflame, but nothing to the Queſtion.

Now, Sir, I will humbly offer to your Conſideration, and the Judgment of the Houſe, why I think we cannot judicially condemn this Man; for I think the Queſtion of Commitment to be the ſame as of his Life and Death.

I do agree upon all the Precedents good and bad that have been cited, and doubt not but in extraordinary Caſes, 'tis in the Legiſlative Power of the Parliament to look after the Safety of the Kingdom; but I ſhall offer why this does not come to that Caſe.

I humbly conceive in this Caſe, for I will not ſpeak to the Rules of *Weſtminſter-Hall*, but upon the right Reaſon of the Thing; for if it be Reaſon in *Weſtminſter-Hall*, it may be ſo here, and that ought to overcome every thing: But whereas Gentlemen ſay you have one Witneſs, I do not apprehend you have one good Witneſs, and I will give you my Reaſon for it; for you muſt take Capt. *Porter* upon his Parole, and conſider what he ſays upon his Word; and then I do appeal, if you take what he ſays upon his Word, whether ever they did know that a Bill of Attainder proceeded againſt any Man upon bare Affirmation? No; in that Caſe you ſhould have turned it into an Impeachment, if the Thing looked probable, and then you had the Witneſs upon Oath; and the ancient Method of Bills of Attainder uſed to be firſt by the Impeachment of the Perſon, and then to urn it into a Bill of Attainder.

Then ſee what it is that is inſiſted on by the King's Counſel, and recited in the Bill, That there was a Bill of Indictment found by the Oath of two Witneſſes, that is, *Porter* and *Goodman*: Under Favour, I think they are not to be counted as Witneſſes in the Point; and I offer this as a Reaſon; and, I think, 'tis natural Juſtice in all Courts of the World, That if a Man be accuſed as a Malefactor, he hath the Liberty to croſs-examine the Perſon that accuſes him. Now we very well know, that in Caſe of Bills of Indictment, when they are found by the Grand-Jury, they never admit the Priſoner to put Croſs-Queſtions, becauſe the Bill of Indictment is but the Accuſation; and if an Accuſation be enough, who can be Innocent? Why, then if it be ſo, then this Oath that was given to the Grand-Jury, is not ſuch an Oath upon which you can put ſuch a Value.

Then, Sir, go to the Paper of *Goodman*, which you would read, and conſider the Validity of that; *Goodman* being now abſent, the Priſoner hath no Opportunity to croſs-examine him; and I beſeech the Houſe to conſider the ill Conſequence of it: Any Miniſter of State may come and get an Examination before a Juſtice of Peace, or Secretary of State, and the Man is conveyed away, and a Bill of Attainder is clapp'd upon his Back, and this ſhall be read as Evidence againſt him: He is but half a Witneſs, and a Witneſs upon an Accuſation, not upon a Trial.

Then come to Sir *John Fenwick*'s particular Caſe; Sir *John Fenwick* is indicted, Iſſue is joined, and he hath Notice of his Trial; and one of the Witneſſes goes away, no Man can tell upon what Account he went; I may believe why, in my private Opinion, but that is not our judicial Knowledge: Then if that be ſo, was it ever known, that when any Man was indicted, and Iſſue joined, becauſe his Trial was deferred, therefore a Bill of Attainder muſt be brought againſt him? Here are Plots againſt the Government, and it may be Forty may be taken up for it; and as to Twenty, there may be two Witneſſes, and the others may have the good luck to have but a ſingle Witneſs againſt them; will you have Acts of Attainder againſt all the reſt? If this had been an extraordinary Caſe, wherein the Government had been particularly concerned, it might have weighed with you; for no Man can ſhew me any Precedent of a Bill of Attainder, but where there was open Act of Hoſtility, or Men of great Relation and Power were concerned to ſubvert the Government. But what is Sir *John Fenwick*'s Caſe? He is in Cuſtody, and the Plot is detected; if he was run away, you might ſtill ſuppoſe he was plotting againſt the Government, becauſe he was fled from Juſtice. Gentlemen ſay the Government is concerned; ſo it is in every Felony and particular Treaſon; but muſt there therefore be a Bill of Attainder to puniſh it? When there is a Bill of Attainder, it muſt be from an immediate Danger that threatens the Government eſtabliſhed, that ſuch a Man is Attainted. But I do not ſee that Sir *John Fenwick* hath any of theſe Circumſtances. All Men agree, That this is an extraordinary Way of Proceeding: Then the Queſtion is, Whether Sir *John Fenwick*'s Caſe be extraordinary? or, Whether he be more than a common Malefactor that is in a wicked Conſpiracy? I do not ſee that this Caſe of Sir *John Fenwick*'s is ſo extraordinary, that if he be not hanged, the Government muſt fail.

And, under Favour, a Precedent, when 'tis once made, I know not what Time may produce from it: It may be, after the Death of his Majeſty, that came to reſtore our Liberties, we may have wicked Members, and Members choſen as in *Hen.* VIth's Time. It may be the Condition of every Subject in *England.* The Power of Parliament we muſt govern by Reaſon and common Juſtice; and if there be not ſo urgent Neceſſity to uſe this extraordinary Remedy, becauſe it may be dangerous to Poſterity, therefore I am againſt this Bill.

Sir *Tho. Littleton.* The worthy Gentleman took notice, That the *Lancaſhire* Plot, and ſome Words I uſed, were uſed only to inflame; I can't ſo well gueſs at his Thoughts, but I have heard him ſeveral Times bring his Wife and Children into his Speeches, to no Purpoſe at all.

Sir *Francis Winnington.* I have a Wife and Children, and that Gentleman none; therefore I think I may make uſe of that Expreſſion.

Sir *Tho. Seymour.* Mr. *Speaker*, I have attended your Debate with the beſt Attention I can; and I have heard a great many Arguments, and ſome very wild ones too. I hope, how frightful ſoever Things have been opened, they will not lead your Underſtanding out of the Methods and Rules of Juſtice. I will not take upon me to tell you, what is nothing to the Queſtion, as, that Treaſon is a very great Crime, or, that the Parliament hath an unbounded or unlimited Power, and are not tied to the Rules of *Weſtminſter-Hall*; I think that is no Part of the Subject Matter before you.

That nothing bounds or can limit the Parliament, is what every Body does admit; but 'tis the right Application of that Power which is now to be conſidered of: For you may judge the Priſoner, and others will judge you. The World will judge you, if you do not apply that Power aright.

For my part, I ſhall avoid as much as can be, the ſaying of any thing that hath been ſaid; and therefore I hope you will believe that my Diſcourſe muſt be very ſhort: But that which does move me in this Queſtion, is in ſhort this, That I do not give my Judgment to condemn any Man otherwiſe than the Law directs how, and upon what Terms I muſt give it. If the Law hath ſaid, That Treaſon is not to be Treaſon, unleſs it be proved by two Witneſſes, I am never to give my Judgment in that Caſe, when there appears but one.

And this I take to be the State of the Caſe, not to enter into Matters of Precedent of Attainders; for thoſe are only Inſtances of ſo many Facts that have been done. And in all thoſe Inſtances that have been urged and quoted, when Times have been ſedate and quiet, Marks have been put upon them, as was hinted by a Gentleman that ſpake very ingeniouſly upon this Subject at the Beginning of this Debate; I ſay, Marks have been put upon them for you to avoid, but not to imitate. I take it, that the Law hath determined that there ſhall be two Witneſſes to the Proof of Treaſon, and there is no Treaſon that hath not two Witneſſes to it. There is but one Attainder that we meet withal in ſacred Hiſtory, and that is the Attainder of *Naboth*; he was Attainted, and we know what induced that Attainder; he had nothing to object as to the Formality of the Proceedings there was ſet up againſt him: And though *Jezabel*'s Letter had had diſpoſed the Rulers to deal by him as they did, yet there were two Witneſſes that did appear againſt him.

I take it, that two Witneſſes are requiſite for the Knowledge of the Truth, that you may make a right Judgment whether they ſwear right or no. I will give you but one ſmall Inſtance more; I muſt tell you, *Suſannah* had been but in a bad Condition, if one Witneſs or circumſtantial Evidence would have made her guilty.

A Gentleman here ſays, 'Tis Apocrypha: But that which weighs with me is, that there may be Inconveniencies on one Side, and there are no Inconveniencies on the other. I know not what may be the Conſequence of this Precedent, nor where it may bring you: I know the Conſequence, if Sir *John Fenwick* be not executed upon a Bill of Attainder; for nobody will believe there is a Neceſſity for this extraordinary Remedy to be applied for an Offence, a Year and half after he hath been indicted and arraigned for it, and they might have proceeded to his Trial; and I know not whether 'tis his Fault that they did not; for it was not in his Power to prevent it: And if you, upon every Occaſion, come to ſupply the Defects of them that are remiſs in the Government, it will make them more ſo.

As to the Matter of Precedents; Why, it may fall out, that by this Precedent an innocent Man may be puniſhed, and then we that make this Precedent are guilty of his Blood; and if he ſuffer never ſo remotely, it will be required of us, if they proceed from this Precedent. Now, if Sir *John Fenwick* be not executed, unleſs in a legal Way, what is the Conſequence of that? Is it that Sir *John Fenwick* ſhall go unpuniſhed? Though they are deprived of one Evidence, that would make it Treaſon, he may be puniſhed for a Miſdemeanour, and impriſoned for his Life; and I had much rather he did languiſh in that Condition, and I am ſure it is much ſafer for you, for no Inconveniency can ariſe that Way; and I take it, that when thoſe that are our Guides diſpute which is the Way, we are to take that which is the ſafeſt.

The Learned have diſputed, Whether this Matter, as now it is charged upon Sir *John Fenwick*, be Treaſon; I will not take upon me to determine it; they differ about it; and when they can't determine it, will you by a Queſtion determine it abſolutely?

Upon the whole, there hath been ſo much ſaid by the Counſel for the Priſoner, and ſo little ſaid by the Counſel againſt him, and ſo few Arguments urged againſt him, that I muſt ſtill retain the Opinion I had, That there is not Evidence enough for you to proceed upon this Bill of Attainder.

Mr. *Boſcawen*. Sir, I deſire to give my Reaſons for my Opinion in this Matter. I have no perſonal Diſguſt againſt Sir *John Fenwick*. The great Argument for Sir *John Fenwick* againſt this Bill is, That this is an extraordinary Proceeding, and therefore ſhould be againſt an extraordinary Perſon; and in the next Place, that it is againſt the Rules of Law. The Rule of the Law is, That there muſt be two living Witneſſes: As to that Matter, Gentlemen generally agree, that 'tis within the Law of Parliament to attaint People by Bill of Attainder; but they ſay they have been often miſapplied; which I do eaſily believe, becauſe ſome have been attainted, and have not been heard; and ſome have been in tumultuous Times: But this Gentleman hath had a fair Trial, and a Debate in this Houſe: But I would fain know, though they confeſs Bills of Attainder may be, how it can poſſibly be, if the Lawyers at the Bar ſay true, That it muſt be upon Oath, and you give no Oath?

To ſay it may begin in the Houſe of Lords: Under Favour, I take it, that a Bill againſt a Commoner can't begin in the Houſe of Lords. And if you can't have Witneſſes upon Oath, you muſt have as much Evidence as the Nature of the Thing will afford; that is, you muſt have Witneſſes to convince your Conſciences in the Thing; for if all this great Aſſembly are ſatisfied in their Conſciences, that he is guilty of inviting an Army of *French* to come into *England*, I am aſtoniſhed to think, that you ſhould not paſs this Bill againſt him. I think, as to this Witneſs, *Porter*, they have not endeavoured to blemiſh him; but their Argument ſeems to run more upon *Goodman*'s not being preſent. I would know, if there are two Witneſſes, and I do not believe them in my Conſcience, whether I can paſs this Bill? But I appeal in this Caſe, *res ipſa loquitur*; the Thing is ſo plain. How many have been attainted and ſuffered for the ſame Crime, that have acknowledged Sir *John Fenwick* to have been preſent! There were ſeveral Members of the Houſe ſent to examine Sir *John Freind* and Sir *William Parkyns* in *Newgate*; and they were ſent with this Intention, That the Houſe would intercede with the King for a Pardon for them, if they diſcovered the full of the Plot (it was not the Death of Sir *William Parkyns* and Sir *John Freind* that was aimed at, but the Preſervation of the Publick); and when they were examined, they did acknowledge, that they were privy to the calling in of the *French*, and that Sir *William Parkyns* was to have a Troop of Horſe; there was to be 2000 Horſe; but he would not redeem his own Life with the Blood of others. Now I do take it, that there is Evidence againſt Sir *John Fenwick* ſufficient, in a Parliamentary Way, to attaint him.

The Gentleman ſays, the Conſequence of throwing out this Bill would be nothing, and that Sir *John Fenwick* is a little Man: I agree he is, but 'tis the Conſequence of bringing in a *French* Army that is to be conſidered. Would you pave the Way for them to come over, and make their Entrance eaſy? I hope the People of *England* are concerned in the Caſe, as well as their Wives and Children. If you let him go, what will be ſaid? I have not heard one ſay, that he believes he is not guilty; there is none but think him guilty; and yet will you let him eſcape? What Encouragement will this be to your Enemies? He hath not denied the Matter himſelf: Nay, he hath not brought one Gentleman to vindicate him, that he is a Man of a Behaviour not to be believed to be guilty of ſuch a Thing, which was done in other Trials.

I deſire you would conſider what the *French* King ſaid of his Brother King *James*; How could he think to bring in Popery with a Proteſtant Army? I am ſure the bringing in of a *French* Army muſt be for the Deſtruction of the People of *England*, and the Proteſtant Religion, and will bring your People to go in Wooden Shoes. 'Tis the Example of this Thing you are to conſider. It was ſaid at the Deſtruction of *Carthage*, That the Commonwealth was always to be minded. I think you ought always to be mindful for the Preſervation of *England*; and I believe he is guilty, and I am therefore for the Bill.

Lord *Digby*. I ſhall trouble you but with a Word or two. I ſuppoſe, as long as we act by the known Rules of Juſtice, and the Laws of our Land, we ſhall not need to fear any Cenſure in our own Kingdom, or any where elſe; but 'tis a very uncertain Thing for Gentlemen to be Judges in the Caſe of Life and Death, without any Rule to walk by; a great many will not allow us any Rule at all: I always took our Rule to be the Law of the Land, and that even ourſelves are bound by the Laws our Anceſtors have made, 'till we think fit to repeal them; and I am confirmed in this Caſe by one particular Argument from the Bill of Treaſon that paſſed laſt Seſſions, in which there is a Clauſe, That it ſhould not extend to future Parliaments. The only Argument for exerciſing of this Power, is the extraordinary Caſe of this Gentleman. When a Gentleman ſpeaks of the Power of Parliament, I take it to be the juſt Power of Parliament: I think a Man may ſay, a Parliament can't do what they can't juſtly do. But all Gentlemen allow, that this Power ought not to be exerciſed but in an extraordinary Caſe, wherein the Government is nearly concerned. I believe very few but think, that if it had not been for the Vindication of ſome particular Gentlemen, we never had had this Matter before us; and then I will leave it to Gentlemen to conſider, if the Government can be in ſo much Danger if Sir *John Fenwick* does eſcape?

Mr. *Brotherton*. Mr. *Speaker*, I perceive the Queſtion, Whether this Bill ſhall be committed, ariſes very much upon a Suppoſition that ſeems to be granted, That there is no other Law to try this Perſon by; and it hath been hinted, That before the Statute of *Edw* VI. one Witneſs was ſufficient: Now, if I ſhew you that here is a Law in being, and hath continued for ſeveral hundred Years, whereby a Man may be tried, and that by one Witneſs, I think it is ſomething that hath not been ſpoke to yet.

Sir, I ground my Reaſon and Opinion upon the Authority of the Law, and upon the Hiſtorians of all Times, who agree in the Thing, and come down to my Lord *Coke*, which is printed by Authority; and he is expreſs, That where there is but one Witneſs (he treats of what Witneſſes are neceſſary, and he tells you two Witneſſes were required by the Common Law of Treaſon, if the Perſon was tried by a Jury); but, ſays he, if there be but one Witneſs in caſe of Treaſon, he ſhall be tried before the Conſtable and Marſhal. And in treating of the Statute of *Hen.* VIII. which does appoint how Treaſon beyond Sea ſhall be tried; ſays he, that is only where there are only two Witneſſes; but if there is but one Witneſs, he ſhall be tried before the Conſtable and Marſhal; becauſe, ſays he, the Statute of *Hen.* VIII. does not take away that Trial before the Conſtable and Marſhal; and for that, Sir, there are ſeveral Precedents in this Caſe, of Perſons that have been Attainted by a Court-Marſhal; and if the Accuſer was vanquiſhed, he was to ſuffer the ſame Judgment the Defendant was, if he was found guilty. I am upon a Gentleman's Life, and never was ſo before, and deſire to be never ſo again; there have been ſeveral Precedents, I ſay, in this Caſe, and my Lord *Coke* is expreſs in the Point; and I deſire any Gentleman to ſhew me any Law that hath repealed this.

In caſe of Murder; ſuppoſe a Man be wounded upon the Land, and die upon the Sea, and I could ſhew ſeveral Caſes where the Common Law can't try a Man by Jury, but he ſhall be tried by the Cuſtom of Merchants before the Statute of *Ed.* VI. If a Man was wounded in one Country, and died in another, he could not be tried. That which I aim at, is to ſhew you, that though the Common Law ſhould fail, yet they need not come with a Bill in this Caſe. If two *Engliſhmen* beyond Sea fight, and one kill the other, it can't be try'd by the Common Law; How then ſhall it be tried? It muſt be tried by the Court-Marſhal. It was Sir *John Ameſley*'s Caſe in *Rich.* IId's Time; and *Wells*'s Caſe, and Lord *Herbert*'s Caſe, in *H.* VIth's Time, who (there being but one Witneſs) was accuſed before the Conſtable and Marſhal.

Memorandum, [*Mr.* Brotherton *was here interrupted by the great Noiſe the Houſe made upon the Novelty of the Argument, and did not go on further with it.*]

Mr. *Paget*. Sir, I attended to the Debate of this Day, and have not hitherto troubled you myſelf, becauſe I did expect to be better informed by this Debate.

I think the Subſtance of the Debate of this Day hath been, not ſo much to ſhew us by what Rule we are to go, as to ſhew us that we have no Rule to go by but our Judgments. Sir, I never had the Honour to ſit in Parliament before this Time, and therefore can't quote Precedents of what hath been done in former Parliaments; others have taken a great deal of Pains to ſhew you, that it is in the Diſcretion of Gentlemen, and they are only to be ſatisfied in their Conſciences. I am not fond to hear myſelf ſpeak, and therefore I hope I ſhall be favourably heard at this Time; and I do think I have the more Reaſon to ſpeak at this Time, from ſomething that fell from a very honourable Gentleman at the Bar: If I do miſrepeat him, I hope he will excuſe me, for I do not do it with an ill Deſign: But I think his Words were to this Effect; That he did not know, but if it was known in the Country, that Gentlemen did give their Judgment againſt paſſing of this Bill, it might hinder the Election in future Parliaments. Sir, ſince there ſeems to be ſo great Streſs upon our Determination in this Matter, I hope I may at this Time ſhew you my Reaſons why I can't come up to agree in this Bill; and I ſhall ſubmit it to them, whether they will do me the Honour to chuſe me again? I muſt confeſs, I do think this is as nice a Caſe as I can pretend to give my Opinion in; and as it is ſo, I ſhall deſire the beſt Aſſurance of the Truth of this Matter, before I give my Opinion for the Paſſing of this Bill.

Sir, you have had before you one Evidence: I will admit him to be as much as a ſingle Evidence can be: As to the Paper of *Goodman*'s Examination, I have heard that and other Matters too, which I ſhall not repeat. But I do remember, that, in the Debate of Yeſterday, it was not inſiſted on to be Evidence: And if not ſo, I ſhall only take the Matter as depending before you upon one Evidence only.

Sir, it is true, I believe this Houſe, as to its Legiſlative Proceeding, is not tied by the Methods of inferior Courts: But I hope I ſhall be excuſed, if in the Methods of Proſecution and Conviction of Offenders, after they have been preſcribed by the Wiſdom of the Parliament, I hope I ſhall be excuſed, if I believe this Houſe can't take away any Perſon's Life upon leſs Evidence than inferior Courts could do.

And, Sir, I ſhall not enter into any very long Vindication of myſelf, and my Zeal and Willingneſs to ſerve the Government; I never was employed in any other Government; and I think my Actions have been ſuch, that nobody can inſtance in any one Thing that hath looked otherwiſe; and when I have ſaid this, I ſhall trouble you no further about that: But there hath been ſo much ſtreſs laid upon this Bill, that whoſoever ſpeaks againſt it, ſeems to ſpeak againſt the Government; becauſe it is ſaid, the paſſing of it is ſo neceſſary for the Support of the Government. And I was the more willing to offer you my Reaſons, becauſe, as the Nature of this Debate has been, I can't ſatisfy myſelf where my Judgment and Opinion ſhall reſt: For if it be ſo, that you are not tied to have as much Evidence as inferior Courts, and, as they ſay, one Evidence is enough, and my Judgment is to be guided by Papers; then they, without any Evidence, may be enough to ſatisfy: And if you take up with leſs Evidence than inferior Courts, I can't come to declare how little Evidence may take away a Man's Life.

As to the Priſoner, I know him not; but I think this Bill is for all that he hath to loſe, and is for all the beſt *Engliſhman* can loſe upon the like Occaſion.

Sir, I ſhall be very tender in giving my Opinion for the Bill, unleſs it was very clear to me that it was reaſonable. Truly, I have heard very little of the whole Plot, or of this Matter that hath been examined, or for which others have been executed; my Life has been generally in the Country, and I have not had the Curioſity to buy the Trials; and as this is the firſt Perſon that hath been called before me, to give my Judgment on, I hope I may be excuſed for taking this liberty, upon ſuch Evidence as appears before us, to tell you, I can't give my Conſent to this Bill.

Sir *William Lowther*. Sir, you have had a very long Debate in this Houſe, and long Diſcourſe from the Bar; and though the Counſel was directed that they ſhould not diſpute the Privileges and Authority of this Houſe, yet, as far as my Judgment carries me, their whole Diſcourſe was againſt it: And moſt of the Gentlemen that have ſpoke againſt the Bill, it hath been, becauſe it hath not been adequate to the Proceedings in *Weſtminſter-Hall*, becauſe there hath been but one Witneſs. Sir, if there had been two Witneſſes, this Houſe had not been troubled with it: It is a Caſe of a very extraordinary Nature, and ſo required an extraordinary Proceeding.

It hath been queſtioned by ſome Gentlemen, Whether one Witneſs be ſufficient in this Caſe, or no? Which I wonder at, ſince a great many have been convicted upon his Evidence, and every one of them has confeſſed; which ſhews it to be a notorious Truth.

There is another Inference they draw from the Proceedings here: Becauſe a great many of thoſe Precedents of Attainders have been reverſed, and thoſe with Notes of Ignominy. If they did conſider the Times they were made in, and the Times they were reverſed in, there might be a great deal of Cauſe for it: We find, that it was contrary Factions that reverſed them, and that makes it never the worſe. And truly, Sir, I do not know but where Circumſtances are ſo notorious, but they are *tantamount* to a ſecond Witneſs, as I have heard in *Weſtminſter-Hall*, and in Caſes of Life too. If a Man be murdered, and two in a Room, and one comes out with a bloody Sword, the Law does preſume that Man murdered him, tho' there is no particular Evidence that he murdered him, but only this Circumſtance; and yet the Man's Life is concerned in that Caſe. So that upon the whole, it appears to me that he is guilty, and, I think, nothing can be plainer.

There is another Circumſtance, That he fled for it; and that is a Preſumption of a Man's Guilt: For a Man loſes his Goods, if he flies for Felony.

Mr. *Harley*. It would be very unreaſonable and impertinent to trouble you long after ſuch a Debate; I ſhall avoid Repetition of what hath been ſuggeſted to you much better from other Perſons, than would have been from me.

I own 'tis a Caſe of great Concern, and 'tis my Misfortune that I ſhould ever ſit upon a Thing of this Nature; but I will diſcharge my Conſcience always, and give what Arguments occur to me, why I am againſt this Bill.

Gentlemen have been pleaſed in their Arguments to enter upon the Debate of your Power and Authority, and have made that a Part of their Argument; but I think, with Submiſſion, we need not diſpute that at all: It is admitted, that there have been Bills of Attainder paſſed formerly, and your Authority is not under diſpute; for the Legiſlative in all Nations have a Power lodged in them, for the Safety of the Whole.

But your proper Enquiry is, Whether this is ſuch a Caſe as you ought to exerciſe this extraordinary Power; *omne regnum ſub graviore regno:* Though you have this abſolute Authority, yet 'tis to be executed by the Rules of Reaſon, and by the Rules (for ſuch there are) of eternal Juſtice; and I look upon this as one that is inviolable, That no Man can forfeit his Life, in ſuch a Caſe as this is, without two Witneſſes. I muſt adhere to that, becauſe I have heard nothing in this Debate that can make me quit that Maxim: And 'tis ſuch an ancient Land-mark, that I will never draw a Curſe upon me, and my Poſterity, for removing of it. I beg leave that I ſpeak with this Earneſtneſs to you.

Gentlemen have been pleaſed to make it part of their Arguments, The great Danger the Government is in if this Bill does not ſucceed. I will not uſe many Words; but I think that Argument ought not to be taken in the groſs, but to be examined, Whether this Argument, of the Hazard of the Government, is of equal Poize for you to break the eternal Rules of Juſtice? I won't quote the Caſe before; every Gentleman knows it, (though there was two Witneſſes in that Caſe to put an innocent Perſon to Death) where it is urged, the *Romans* will come and take our State and Nation: But with how much Reaſon that was urged, every Body knows; and how far the Government is now in Danger. Let us conſider, Is this Gentleman out of your Power? Is the Government in Danger of a Man that is your Priſoner? Is he in open Rebellion againſt you? If this Law does not paſs, if you have not your Hands in his Blood, is he not under the Power of the Law? Did not he tell you ſo himſelf?

Every Gentleman ought to have a Zeal for the Government, and I wiſh it was viſible in every Thing elſe; but if that be ſo, give us leave alſo to ſpeak with Zeal for our Liberty, and ancient Conſtitution. The Argument is turned two Ways: On one Side you are told, That this probably may make him confeſs ſomething; and by others, he is to be made an Example of Puniſhment. This is the firſt Beginning of a Bill of this Nature: But the ſame Reaſon that leads you to this, muſt lead you to all the reſt: The ſame Reaſon that is urged for this Bill to make him confeſs, will lead you to bring in a Bill to make him a good Evidence: This every Body muſt allow to be the Conſequence of it.

How does this Bill come before you? It comes before you upon a villainous, ſcandalous Aſperſion of ſome great Men; though I know them not all, yet I have a great Value for them, and I would make their Caſe my own: But if they were the neareſt Relations I had, I would be againſt this Bill upon their Account; and let any one examine the Reaſon of it.

Sir, I won't run into Precedents; but, only becauſe it hath been told you, That the Precedents were made in one Reign by one Faction, and then the Attainders were reverſed in another Reign by another Faction: There is one occurs to my Mind, which hath been touched at, and is at leaſt of Inſtruction to me. There was a Caſe in *Ed.* IIId's Time; there was the Depoſition of a King, a King barbarouſly murdered, and his Son upon the Throne; and there was the Notoriety of the Fact, for which a great Man was attainted in his Son's Reign, and no different Title: and four Years after, a Bill was brought in againſt the Earl of *March:* And one of the Articles againſt him was, That he had procured that Attainder of that noble Lord, under Pretence of ſome Letter, or Paper, that was ſigned by him; which, if it was ſo, ſays the Record, was no Evidence.

I ſay this before Gentlemen, to ſhew them how Things have turned, and Precedents that have been made very unanimouſly; but in bad Times have been turned to ſhed the beſt Blood in *England*. It grieves me to my Soul to hear of Mr. *Corniſh*, whoſe Attainder you have reverſed, to hear that quoted as a Precedent in this Houſe: 'Tis not whether two Witneſſes be the Rule of *Weſtminſter-hall*, 'tis the Rule of right Reaſon; and 'tis a Maxim in your Law, Make what Law you will againſt the Law of God, 'tis void: And this is the Law of God, and right Reaſon.

You muſt provide for the Government; and when you can't do it by Courſe of Law, then Armies muſt do it, when the Courts are ſhut. I hope Gentlemen will not put a hard Conſtruction upon what I have ſaid; I have done it to diſcharge a good Conſcience.

Mr. Chancellor of the Exchequer. Sir, I am for the Commitment of this Bill, becauſe in my Conſcience I think Sir *John Fenwick* is guilty; and becauſe I think the Power of Parliaments may interpoſe in this Matter: And if they have ſuch a Power, I think they may juſtly exerciſe it in this Caſe.

Gentlemen ſay, they will not diſpute the Power of Parliament; and yet in their Arguments they tell us, we are not to proceed otherwiſe than according to the Forms of inferior Courts. And if the Parliament is not to proceed without two Witneſſes in the Caſe of Treaſon, give me leave to ſay, there is no room left for a Bill of Attainder, unleſs you will take the Buſineſs of inferior Courts upon yourſelves: And I am confident, ſeveral Gentlemen, if there were two Witneſſes, would uſe it as an Argument, What have you to do with it? Refer it to the ordinary Courts of Juſtice; and I am ſure that would be very reaſonable. But I do think that Parliaments have that Power, and they have always uſed it; and I believe 'tis for the Advantage of your Conſtitution. The inferior Courts are to go by the Letter of the Law; and whoever can avoid that, is to eſcape Puniſhment there; but the Legiſlative is not to be dallied with: And if the Offence be of that Nature, that inferior Courts can't reach it, they can go beyond all Forms to preſerve the Government. This they have done, and upon that Principle you ſit here. Was it by the Forms of common Juſtice below, that you declared the Throne to be vacant, and King *William* to be lawful King? Is it upon the ordinary Rules of *Weſtminſter-hall*, that his Title does depend? No, it depends upon this Maxim, That the Parliament of *England* are intruſted for the Whole, and may conſtitute a Government for the Preſervation of the Whole. And upon the ſame right Principle that I gave my Vote to declare him rightful and lawful King, by the ſame Principles I declare his Enemies to be Traitors.

You are told here, 'tis according to the Law of God and Nature, that there muſt be two Witneſſes in Caſes of Treaſon: I do not pretend much Skill in other Parts of the World, I think 'tis our particular Happineſs to have this Way of Trial: I think in any other Part of the World, if he had dealt thus with the Government, he would have had another manner of Proceeding againſt him, than to be condemned by King, Lords, and Commons: But that is your Conſtitution, but it does not hold in other Parts of the World.

Some Gentlemen lay the Streſs of their Argument upon the ill Conſequence it may have in another Reign: I would avoid ill Conſequences in another Reign as much as I could, but our immediate Care is the preſerving of the preſent Conſtitution.

But if Gentlemen are apprehenſive, that by ſuch an Example, if King *James* ſhould return, others may be puniſhed; if we may judge what he would do, by what he hath done, he would go another Way to work; if he came to *London*, he would proceed as his Party did at *Dublin*, and attaint all the Proteſtants in one common Bill; that is the Precedent he hath ſet, and he will follow. And therefore, in order to prevent that, and in order to puniſh our Enemies, and to preſerve our Conſtitution and Prerogative of Parliament in all Points; and becauſe I am convinced in my Conſcience he is guilty, I ſhall give my Concurrence for Commitment of this Bill.

Col. *Granvile*. Sir, I would not preſume to trouble you at this Time of Night, was the Debate upon a leſs Subject than it is; but ſince you are going to pronounce Judgment in a Caſe of Life and Death, and that this Houſe is above any Rules, and we have no Precedent for it, but every Gentleman is to find out private Rules to walk by; the Rule that I ſhall take to is, That I would deal with Sir *John Fenwick* as I would have Mankind to deal with me, if I was in Sir *John Fenwick*'s Place, and were indicted of High-Treaſon, and were not allowed any Trial, nor the Benefit of making my Defence, according to the known Laws of the Land; I ſhould think my Blood unjuſtly ſpilt, let me be never ſo guilty.

The Laws are what are ſet up for the Defence of every Man; and when once we break through them, whatever our End may be at that Time, and tho' it may in ſome manner ſeem to juſtify us, becauſe 'tis to come at an ill Man; yet pray conſider, the beſt of Men may be come at as eaſily as the worſt of Men. And what makes me cautious is, That my Hands are guiltleſs of Blood yet, and I will take care how I begin to dip them in it. And that which will make me cautious in any Caſe of this Nature is, what I read in the Story of the late Time, That when once a Sett of People had begun to dip their Hands in the Blood of my Lord *Strafford*, nothing would quiet them till they had ſtained their Hands with Royal Blood. The Laws are the common Defence between the King and the People; but the King is ſafeſt when the Laws are moſt ſtrictly obſerved.

I ſhall not pretend to talk of your Power, which hath no other Bounds but your Juſtice and Diſcretion; and what you think ſo, will, I hope, meet with Approbation abroad. And in this Caſe I ſhall always be againſt what is called a Trial To-day: But I do not think it any; for I do think we are an unfit Court to determine this Matter. We ſit in ſo many Capacities, 'tis hard to diſtinguiſh in what Capacity we are here: Some are accuſed; 'tis hard to be accuſed, and to be a Judge at the ſame Time. I am ſure I am as much concerned as if I was accuſed myſelf; and 'tis for my Innocence and Honour that I think myſelf bound to ſpeak againſt this Bill. For as no Reſentment ſhall make me do any Thing that is unjuſt, ſo I fear nothing that he can ſay; and I will never go about to ſtop his Evidence, by cramming a Bill of Attainder down his Throat.

Beſides, tis an unfit Thing for any Gentleman who is obliged to be of Counſel for the King; 'tis hard for him to be ſo, and ſit here as a Judge: I think alſo to proceed in this Manner, is a diſreſpectful Thing to the King himſelf; for in this Caſe you turn the Throne of Mercy into the Seat of Judgment. The King, who ſhould have all the Ways to ingratiate himſelf with his Subjects; you make him, by this Proceeding, to pronounce the Sentence himſelf upon the Life of a Subject; and 'tis hard to offer a Bill to the King in ſuch a Manner, by which you oblige him either to reject it (which was always look'd upon as an Hardſhip) or to paſs Sentence upon this Gentleman, which perhaps his gracious Temper and his Mercy make him averſe to.

Sir, 'tis too late to give you other Arguments; you have heard a great many better than I can give: But I think this Bill is unjuſt in itſelf, and dangerous in its Conſequence; and therefore I hope you will not commit it.

Sir *Herbert Crofts*. Sir, I did not think to trouble you in this Debate, but only for the Arguments that have been uſed by ſome that ſpake lately, who ſeem to lay a great Load upon Men, according as they give their Vote in this Matter, becauſe 'tis in relation to the Blood of a Man. I have conſidered the Point, I hope, with as much Caution as any Man within theſe Walls, and hope to act with as ſtrict a Conſcience as any Man whatſoever; and ſhall be glad to be informed from thoſe Gentlemen, that have laid the Streſs ſo hard upon Religion, how they can ſhew me, that I do not as ſtrictly, as to all Points of Religion, give my Vote for paſſing of this Bill, as they would excuſe themſelves from it. I muſt agree with thoſe Gentlemen, That you are no ways bound or limited to the Rules of *Weſtminſter-Hall*; and therefore what was ſaid upon that, I did not think worth taking notice of; but when we are told, we are bound up by the Laws of Nature and Religion, and the Law of God, in this Matter, this touches me ſo nearly, that I muſt deſire thoſe Gentlemen to ſhew me in Scripture the Law that they quote.

If it be the Law of Nature, and the Law of God, that every Man that dies muſt be convicted by two Witneſſes, as an honourable Perſon obſerved, I wonder it is not obſerved by all Chriſtian Nations and Governments, That they are not all governed by this Law; if there be any Direction from the Law of God, that no Man is to die for Treaſon without two Witneſſes, but he may ſuffer for Murder and Felony with one Witneſs. Now, I ſay, I muſt deſire the Gentleman that aſſerts it, that he would be pleaſed to ſhew me it in Scripture, and I will be entirely of his Opinion: But till I hear that very plainly proved, 'tis not within my Reading or Remembrance, and therefore I deſire it may have no Weight. And now I am up, I ſhall give my Reaſons, why I ſhall give my Vote for this Bill.

The Reaſon that governs me, is the Preſervation of the Government, and the Common-wealth under which I live; and which I think I am in the Station wherein I ſtand bound to preſerve, by all the Rules of Juſtice imaginable. Now if your Law hath bounded inferior Courts, but hath not bounded you in this Matter, though you have ſaid inferior Courts ſhall not determine and give Judgment in ſuch a Caſe; yet, I think, you are not bound up ſo here: But if the Matter be proved to my Satisfaction, I may give my Judgment according to the Evidence that comes before me, without that Reſtriction.

But, Sir, this ought not to be done, 'tis ſaid, but upon extraordinary Occaſions. You were told, ſome Time ſince, of the Caſe of the Duke of *Monmouth*; but it was ſaid, that he was attainted becauſe he was in Arms, and could not be come at otherwiſe: But I think this is a parallel Caſe to that, if not much ſtronger: for here is a Perſon that hath been accuſed, and fully proved to have been in Rebellion, and in treaſonable Practices with your Enemies, to bring an Invaſion upon you, and to ſubvert your Government; and tho' he hath not been proved to have been in that ſingle Act of the Aſſaſſination, yet there is ſuch a Correſpondency between one and the other, that I do look upon him as equally guilty of both. Therefore this having been ſo fully proved, and the Perſon that ſtands accuſed being out of the reach of the common Courſe of the Law; what Remedy have you, but to fly to your Legiſlative Power, to attaint him upon the Grounds and Allegations of your Bill, that one Witneſs is withdrawn? And I am very well ſatisfied, and I think we may preſume 'tis by his own, or his Friends Encouragement and Procurement. And I do take this to be as reaſonable a Ground for your Bill, as any Thing in the other Caſe; and I know not what is an extraordinary Caſe, if this be not one: Is it not an extraordinary Caſe, for a Plot to be laid for the total Subverſion of this Conſtitution, and our Religion for ever, and we can't come at it to puniſh it another Way? But it hath been ſaid, the Safety of the Government does not depend upon him: If we acquit him, we are to acquit every one alike: I hope the Government does not depend upon him alone; but if you clear him, there is the ſame Right to clear any Criminal whatſoever. Sir, ſince I am brought up upon giving my Judgment in this Matter, (though I come as unwillingly as any body to it) I muſt go according to my Conſcience; and till I can ſee ſomething of the Law of God, that has been hinted at, made out, I muſt go according to the Law of my Reaſon; and that is, that I muſt be for the Bill.

Lord *Norreys*. I will not pretend to tell you what the Authority of this Houſe is, 'tis what they pleaſe to make it; but I am ſure they will ground it upon good Reaſon; but I think the Reaſon chiefly given for the Commitment of this Bill, leaves you a Latitude to do what you pleaſe, and give no Reaſon at all; for it is only to ſay, I am convinced in my Conſcience this Man is guilty; no matter upon what Proof, no matter whether any Proof or not; you may believe it from his Life and Converſation, and the Company he keeps, or from his Intereſt; and that may be Argument enough to find a Man guilty. But till I know a Reaſon better grounded than this, I cannot be for the Commitment of this Bill.

Sir *Chriſtopher Muſgrave*. I am ſure at this Time of Night I am unfit to ſpeak in ſo great a Matter: I muſt confeſs I ſhould not have troubled you, if it had not been in the Caſe of Blood.

You have had a great Debate before you of the Power of Parliaments, and that hath been ſufficiently argued; and I have not Learning enough to give you any Precedents that have not been already quoted: But every body does agree in this, That what Power you have of this kind, is not to be exerciſed but upon extraordinary Occaſions. Now I would be glad to know, What this extraordinary Occaſion is?

Every body allows, That Treaſon is the greateſt Crime a Man can be guilty of; and the Charge of this Gentleman is High-Treaſon: But therefore, in this Caſe, muſt you exerciſe this Authority? Pray, wherein does this Caſe differ from any other Caſe of High-Treaſon, that any other Perſon will be practiſing againſt the Government? All the Difference I can make of it, conſiſts in two Points; the one is, That he hath prevaricated with the Government; and the other, That Gentlemen ſay he hath been a Means of *Procraſtinating* his Trial, in which Time an Evidence hath made his Eſcape. I will allow you, that 'tis a very great Crime for any one to aſperſe ſo great Men as he hath done; but I would be glad to know, whether there being ſuch an Ingredient, it be ſufficient to attaint him upon High-Treaſon upon that Account.

Then as to that of a Witneſs being gone, Gentlemen have ſaid, They are apt to believe, and there is great Preſumption that he hath been the Occaſion of this Witneſs being gone. Is that an Ingredient ſufficient, though at preſent it hath not been proved to you? But if it had been proved, I ſhould not however think that is Treaſon. Then if this be the only Difference between this Gentleman and any other Perſon that ſhall be practiſing to ſubvert the Government, I would know, if there be but one Witneſs againſt any Man, for Conſpiring againſt the King, if they may not have recourſe to this Precedent, to proceed againſt him by a Bill of Attainder? For the Argument is, Whoſoever is endeavouring to ſubvert the Government, provided there be but one Witneſs, you are obliged, by virtue of your Legiſlative Power, to bring a Bill of Attainder againſt him. And what then? Of what Uſe is the great Care and Wiſdom of your Anceſtors, and yourſelves, that where a Crime is ſo great, and the Puniſhment ſo great, there ſhould be two Witneſſes?

I was mightily ſurprized to hear Gentlemen tell you, That two Witneſſes is a Form in your Law, and a Form in inferior Courts. I never could believe that was a Form; for according to your Law, no Man ſhall be declared guilty of Treaſon, unleſs there be two Witneſſes againſt him; ſo that it gives, in a manner, a Determination to the Crime; that I take to be the Caſe.

A Gentleman told you, That he was fully ſatisfied by the Proof, that this Gentleman is guilty: But how can a Man ſatisfy his own Conſcience, to condemn any Man by a Law that is ſubſequent to the Fact? For that is the Caſe; and pray ſee the Danger of Precedents: It now will appear upon your Journals, that you have cauſed to be read a Depoſition of a Perſon that was abſent, taken before a Juſtice of Peace, when the Perſon accuſed had no Opportunity to interrogate him; and likewiſe, that you have heard a Witneſs as to what a Man ſwore in the Trial of another Man: All this will appear upon your Books.

And truly, I would be glad to know, if another Age may not be apt to think, that you took theſe to make good the Defect of another Witneſs; and then I muſt appeal to you, if you have not admitted of a Teſtimony, which according to no Law is admitted.

They ſay you are not tied to the Rules of *Weſtminſter-Hall*, nor their Forms. Is there any Law in being, that ſays, a Judge may hear a Witneſs as to what was ſworn upon the Trial of another Perſon, to condemn him that was not Party to that Trial? If there be no ſuch Law, then the Rule is founded upon Juſtice and common Right, that nothing ſhall be brought againſt a Man when a Man was not a Party when the Oath was made, and he had no Opportunity to examine him.

I thought it my Duty to tell you, That when you have made this Precedent, if any Perſon ſhall be accuſed of Treaſon but by one Witneſs, there will be the ſame Reaſon to proceed thus againſt him.

Then (being a little before Eleven a-Clock at Night) the Queſtion was put, Whether the Bill ſhould be Committed? And the Houſe divided:

Ayes, 182. Noes, 128.

So it paſſed in the Affirmative, and the Bill was committed to a Committee of the whole Houſe.

Veneris 20 *die* Novembris, 1696.

The Houſe reſolved into a Committee of the whole Houſe upon the ſaid Bill, and ſeveral Words being offered as an Amendment to the ſaid Bill, to import Sir John Fenwick*'s being Guilty; at laſt the Words that were agreed on, were theſe* [Of which Treaſon the ſaid Sir *John Fenwick* is guilty) : *It was alſo propoſed to the Conſideration of the ſaid Committee, Whether the Lords Spiritual ſhould ſtand in the enacting Part? But upon looking into the ſeveral Acts of Attainder, it appeared they were unconcerned in all thoſe Acts of Attainder, in the enacting Part; and ſo the Committee was ſatisfied in that Point, and they were left to ſtand in the Bill by general Conſent; and the Bill was ordered to be reported to the Houſe; and afterwards, upon the Report, the Houſe agreed with the Committee in the aforeſaid Amendment of the Words, importing Sir* John Fenwick'*s being guilty.*

Mercurii 25 *Die* Novembris, 1696.

The ſaid Bill againſt Sir John Fenwick *was read the third Time.*

Mr. *Methwen.* Mr. *Speaker*, I have not troubled you in any of this long Debate, and do it unwillingly now: but I do think it every Man's Duty, in a Caſe of this great Importance, freely to own his Opinion, and give his Reaſons for it.

The greateſt Part of the Debate hath run upon two Things; the Inconveniency of Bills of Attainder, and the having them too frequent; that it is neceſſary to have them ſometimes, that any Perſon might not think they are not out of Reach, if they could evade the Laws that were made to protect the People.

I think, in general, that this Bill, as every other, ought to have its Fate upon the particular Circumſtances before you; and whoever gives his Affirmative to this Bill, ought to be convinced, that Sir *John Fenwick* is guilty of High-Treaſon; and alſo, that there are extraordinary Reaſons why the Nation does proſecute him in ſo extraordinary Manner; and I do think one of theſe is not ſufficient alone.

If between the Indictment and Arraignment, or Trial, *Goodman* ſhould have died, and there had been no other Reaſon for attainting Sir *John Fenwick*, only the Defect of his Evidence, I ſhould not have thought it a ſufficient Reaſon, though we ſhould have had an Opportunity of being informed of his particular Evidence, and believed him guilty; and if Sir *John Fenwick* does not appear guilty, I do not think any Reaſon of State, though he hath prevaricated, and behaved himſelf to the Diſſatisfaction of every Body; therefore, I think, there muſt be both theſe.

You have heard the Evidence; I ſhall not repeat it, but rather come to theſe Things that diſtinguiſh Sir *John Fenwick*'s Caſe; only thus, you have received the Evidence againſt Sir *John Fenwick*, and given him Liberty to make his Defence, and have fully heard him; which I think hath altered the Reaſon of a great many Precedents cited from my Lord *Coke*, and other Authors.

That which diſtinguiſhes this Caſe is, the great Danger the Nation was in from this Conſpiracy, and the Senſe the Nation hath had of it; and I find, by the general Opinion of all Perſons, this Danger is not at an End.

There ſeems likewiſe to be an Opinion as general, That Sir *John Fenwick* could have contributed to your Safety by a Diſcovery.

The next Circumſtance, That Sir *John Fenwick* knowing of this, and the Expectation the Nation had from him, for that he could have contributed to your Safety, hath made uſe of that to put off his Trial; and at laſt, has made ſuch a Paper, as does ſhew an Inclination to do you all the Prejudice he can, and tended to the creating of new Dangers; and by this means Sir *John Fenwick*, againſt whom there was two Witneſſes when he was indicted, hath delayed his Trial, ſo that now there is but one; and there is a violent Preſumption, that this Perſon is withdrawn by the Practice of Sir *John Fenwick*'s Friends.

There remains yet with me as great a Conſideration as any of theſe; the publick Reſentment of the Nation for ſuch his Behaviour, is the only Means his Practice has left you; and it ſeems neceſſary for your Safety, to come the next beſt Way to what he could have done.

Againſt the Evidence that hath been given, there have been great Doubts raiſed; not ſo much whether it be ſuch Evidence as may incline us to believe him to be guilty; but whether it be ſuch as you ſhould hear in the Capacity you are in; and whether, after it is found, ſuch as it is, that is not ſuch as would convict him upon another Trial. Whether you ought to credit it, and that ſhould influence you to give your Vote for this Bill of Attainder; this is a Doubt that I find weighs generally with them that differ from me in Opinion about this Bill; and therefore I deſire leave to ſpeak to that Particular.

'Tis ſaid, That you are trying of Sir *John Fenwick*; that you are Judges; and that you are both Judges and Jury; and that you are obliged to proceed according to the ſame Rule, though not the Methods, of *Weſtminſter-Hall*; *ſecundum allegata & probata.*

But the State of the Matter, as it appears to me, is, That you are here in your Legiſlative Power, making a new Law for the attainting of Sir *John Fenwick*; and for exempting his particular Caſe, and trying of it (if you will uſe that Word, though improperly); in which Caſe the Methods differ from what the Law requires in other Caſes; for this is never to be a Law for any other afterwards.

Methinks this being the State of the Caſe, it quite puts us out of the Method of Trials, and all the Laws that are for limiting Rules for Evidence at Trials in *Weſtminſter-Hall*, and other Judicatures; for it muſt be agreed, the ſame Rule of Evidence muſt be obſerved in other Places as well as *Weſtminſter-Hall*, I mean in Impeachments, and it has always been ſo taken.

This Notion of two Witneſſes has ſo much gained upon ſome Gentlemen, that we have had ſome Gentlemen ſay, That this is required by the Law of Nature, the univerſal Law of Nature, nay, by the Law of God: And I think, if it was ſo, there would be no doubt but it will oblige us.

But therefore I go to the Bottom of the Matter: That any Man deſerves to be puniſhed, is becauſe he is Criminal: That this or that Man deſerves it, is becauſe he is guilty of a Crime, let his Crime be made evident any Way whatſoever; for whatſoever makes the Truth evident, is, and is accounted in all Laws to be Evidence.

Now as to the Rules for examining any Perſon, whether he is guilty or not, and the Evidence that is allowed in all Nations, no two Nations agree in the ſame Evidence for the Trial of Criminals, nor in the Manner of giving the Evidence againſt them.

Your Trials differ from all other Nations; not only that you are tried by a Jury, which is particular to you; but that the Witneſſes are to be produced Face to Face before the Offender; and you have made Laws, that there ſhall be two Witneſſes in Caſes of High-Treaſon; and herein you are the Envy of all other Nations.

Sir, the Evidence that is to be given againſt Criminals, differs in the ſame Nation where the Offences differ; there is a Difference between the Evidence that will convict a Man of Felony, and the Evidence that is to convict a Man of Treaſon; and the Evidence to convict a Man of the ſame Crime, hath been different in the ſame Nation, according to the Reaſon of the Law. No doubt, by the Common Law of *England*, that Evidence was ſufficient, which was ſufficient to incline the Jury to believe the Perſon guilty. This before the Statute of *Edward* VI though that was made upon great Reaſon, and appears to be for the publick Good, by the general Approbation it hath received; but I don't think in your Proceedings here, you are bound by it.

But, Sir, it is ſaid, Shall we that are the Supreme Authority (as we are Part of it) go upon leſs Evidence to ſatisfy ourſelves of Sir *John Fenwick*'s Guilt, than the other Courts? And ſhall we reſort to this extraordinary Way in this Caſe?

Truly, if it did ſhake the Manner of Trials below, I ſhould be very unwilling to do it; but I do take it clearly, that it cannot; but on the contrary, I think there is no ſtronger Argument for your reſorting to this extraordinary Way, like to that of the Caution which your Law hath provided for the Innocency of all Perſons. For if we conſider all thoſe Laws that have been made, 'tis plain it muſt be in the View of our Anceſtors, that Criminals might not eſcape; and the Laws are made for your ordinary Trials, and for thoſe Things that happen uſually; and your Government hath this Advantage, That they can keep to that which others cannot: For in a very wiſe Government (as was obſerved by a Perſon that ſat in this Houſe the laſt Time this was debated) the Ways of puniſhing Crimes of this Nature are extraordinary, when Perſons are condemned: They are not only unheard, but they are condemned before they are accuſed; and that is thought neceſſary there, which will not be endured here; and yet that Government hath continued ſo long, and no Endeavours have been to alter it, though ſo many noble Families have ſuffered by it, becauſe they are convinced, as to their Conſtitution, 'tis neceſſary.

The next Argument is from the Precedent we are about to make; and whatever the other Precedents have been, what you do now will be a Precedent for you and your Poſterity: and whilſt that is uſed to make you cautious, and tends to make you conſider well, whether it is according to the Duty to your Country to paſs this Vote (which no doubt is the only Queſtion before you), 'tis a good Argument.

Sir, if this Precedent ſhall appear to Poſterity to be a Precedent concerning an innocent Man, or a Perſon whoſe Guilt was doubted of, or one whoſe Guilt did not appear, and this Bill ſhould be carried by a prevailing Party, I do agree it was a very ill Precedent: But if the Caſe be, that this Precedent will appear to Poſterity, upon the Truth of the Thing, to be a Precedent made of a Man notoriouſly guilty; of a Man that had deſerved this extraordinary Way of Proceeding, this extraordinary Reſentment of the Nation; and that nothing could have hindered this Man from the common Juſtice of the Nation, but his having endeavoured to elude it in this Matter; and if it appears that you would not be put off ſo, but made an Example of this Man, I ſhall not be ſorry it ſhould appear to Poſterity; but I believe Poſterity will (as I think they ought) thank you for it.

Sir, I do ſay for my own Particular, while I am innocent, I ſhould not think my Life in Danger to be judged by 400 *Engliſh* Gentlemen, and the Peerage of *England*, with the Royal Aſſent; and when I reflect, I can't be of Opinion, that the Government could have procured a Parliament to have paſſed a Bill of Attainder againſt my Lord *Ruſſel*, or Mr. *Corniſh*, or Mr. *Colledge*, I don't think all the Power of the Government could have prevailed with the Parliament to have done it; and here I ſee that a great many Gentlemen have oppoſed every Step of this Bill, for fear of making an ill Precedent; yet thoſe Gentlemen do believe in their own Conſciences, that he is guilty; and I can't think that any Perſon can be in Danger by ſuch a Bill, when Gentlemen oppoſe this Bill only upon the prudential Part, though they ſtill confeſs him to be guilty.

All the Concluſion I make to myſelf is, That I do believe, I am convinced in my Conſcience (which I think is ſufficient, when I act in the Capacity I now do) that Sir *John Fenwick* is guilty: But there are Reaſons ſo extraordinary to ſupport this Bill of Attainder, that I do not ſee how any Perſon, that is ſo convinced, can refuſe to give his Affirmative to this Bill.

Sir *Godfrey Copley.* Sir, I am very ſenſible a great deal hath been ſaid upon this Subject; but I think there is ſomething in Duty incumbent upon every Man, eſpecially upon me, who can't concur with the general Senſe of the Houſe, to give my Reaſons for my Diſagreement; and I will make no uſe of Arguments but ſuch as I can't anſwer myſelf. A great deal hath been ſaid upon this Debate by Gentlemen learned in the Law; and many of theſe, though they have ſaid they would not ſpeak as to the Power of Parliaments, yet the greateſt Part of their Arguments have touched upon your Method of Proceedings, and to ſhew you how they interfere with the Rules of *Weſtminſter-Hall*; ſo great is the Force of Cuſtom and Education: But I acknowledge ſome have brought us Arguments quite of another Strain.

This is a Matter of ſo extraordinary Importance, that I think it proper to conſider what Rules we have to go by; but I take the Puniſhment of Offenders and Criminals, to be the neceſſary Support of all Governments whatſoever, without which no Government can continue; but all Societies of Men have ſuppoſed to themſelves ſome Rules, whereby it may be known, whether Offenders are guilty or no.

It is the Cuſtom of our Nation, to have two poſitive Witneſſes to prove Treaſon. Now it may be imagined, that I make uſe of this as an Argument, that we are tied up to theſe Rules: No, I am not of that Opinion, that we are bound by the Rules of any Society whatſoever. The Parliament have a Power to abrogate all Laws that they have paſſed, if they think good; and ſo certainly cannot be tied up by any Rules now in being. But, Sir, there are the eternal Rules of Equity, and Juſtice, and Right Reaſon, and Conſcience; and theſe, I think, are unalterable, and never to be ſwerv'd from; and therefore I ſhall take the Liberty to ſee how far agreeable our Proceedings are to theſe Rules.

Sir, I do look upon it, that 'tis a Rule agreeable to what I ſpeak of, That no Man ſhall be accuſed by he knows not whom; and that no Man ſhall be accuſed, but that the Evidence againſt him, and he, ſhould be confronted, and brought Face to Face.

I am one of thoſe that believe Sir *John Fenwick* to be guilty; and there is clear Proof of it by one Witneſs; and you have added to this an Indictment that is found: But I muſt needs own, that I think that to be ſo far from giving any Addition or Strength to the Evidence, that when that is brought in, I look upon the Scales to be lighter than they were before; for if any Record or Writing that is ſworn to behind a Man's back, ſhall be brought here to ſupply another Part of the Evidence; (and if not ſo, why is it brought here?) and if that be to be interpreted to make up a Part of the Evidence, I do, by parallel Reaſon, argue, that the like may make up the Whole at one Time or another; and may be ſo far made uſe of, that any profligate Knave, that gives Information before a Juſtice of Peace, or a Secretary of State, this may riſe againſt any Man whatſoever when he is obnoxious to the Government; or a Perſon may be accuſed for his good Service in this Reign, and this may be ſet up againſt him, and he run the Hazard of his Life.

Then, Sir, as to the Neceſſity of this Matter, I muſt confeſs, that thoſe that brought this Matter before us, are much wiſer than I; and therefore I will not examine what Reaſon they had to do it: But it is ſo little agreeable to me, I wiſh it had not come here. But is it to be ſuppoſed, that your Government is in hazard of any Man that is faſt in *Newgate?* Can any Man think, that Sir *John Fenwick* can do any Thing in his Condition to hazard it? Can you expect that a Man that hath been Six Months in Priſon, and nobody came at him, that he may make ſuch a Diſcovery as may be worth your while? But ſuppoſe you had a Man of Invention and Practice, what a Spur do you put to it? May not a Man of Parts, when he hath no other Way to ſave himſelf, may not he frame ſuch a Plot, as may make the beſt Subjects in *England* tremble?

Why then, Sir, I do ſay, by this you are in a very dangerous Way to ſuffer by the Invention of any Man: And ſuppoſe he ſhould be ſo ignorant, as to know nothing; or ſo great a Blockhead, to be able to invent nothing, would you hang him either for Ignorance or Inſufficiency? I muſt confeſs, I dread the Conſequence of this for the Nation in general, and for our Poſterity. 'Tis not Sir *John Fenwick*'s Life I argue for; I do not think it worth a Debate in this Houſe, nor the Conſideration of ſo great an Aſſembly; but I do ſay, if this Method of Proceeding be warranted by an *Engliſh* Parliament, there is an End to the Defence of any Man living, be he never ſo innocent.

Sir, I remember I heard it mentioned on the other Side of the Way, by an honourable Perſon, who never lets any Argument want its Weight, That King *James* attainted a great Number of Perſons in a Catalogue, in a Lump. Sir, I am not afraid of what arbitrary Princes do, nor an *Iriſh* Parliament; but I am afraid of what ſhall be done here: I am concerned for the Honour of your Proceedings, that it may not be a Precedent to a future Parliament in an ill Reign, which I am ſatisfied you would not do. I had ſome other Thoughts, which I cannot recollect, *&c.*

Mr. *Foley, the Speaker's Son.* Sir, the worthy Gentleman that ſpake firſt upon this Debate, calls me up: He ſaid, that he thought in this Matter, every one ought to give the Reaſons of his Opinion: And in giving the Reaſons of my Opinion, I do ſolemnly proteſt, I do it with the ſame Sincerity as I would do, if I was upon my Oath, and of a Jury.

The worthy Gentleman ſaid, That if there could be any Danger from this Precedent, that an innocent Man might loſe his Life, he would not be for it. I deſire that he would conſider, whether there be almoſt any Inſtances of any innocent Men that have loſt their Lives, but what has proceeded from Precedents that have begun upon guilty Men. The ſame Gentleman told you, that if we did not believe Sir *John Fenwick* to be guilty, no other Conſideration ought to move us to be for this Bill.

Now the Reaſon I am againſt this Bill is, becauſe it does not appear to me, from the Evidence that hath been given at the Bar, that Sir *John Fenwick* is guilty. And I do think, that which is not legal Evidence is no Evidence; and I do think, that all the Lawyers that have ſpoke in this Matter, have allowed it to be no legal Evidence. And I deſire Gentlemen will conſider, if it has not been thought reaſonable, that Men ſhould be convicted upon ſuch Evidence, why now it ſhould be ſaid to be neceſſary? I think the Saying of my Lord *Strafford* upon his Trial was this: If the Pilot was to direct a Ship in a dangerous Sea, and there was no Buoy to direct his Courſe, if he there ſplit his Ship, it was excuſable; but if there was a Buoy up, then he was accountable for it.

Now, comparing our Government to the Sea, there hath been many Rocks and Sands, and many Men have loſt their Lives by them; but the Treaſon Bill ſeems to be ſet as a Buoy to avoid that Miſchief for the future. Now if we ſplit upon theſe Rocks, I ſhall think we are but ill Pilots.

Upon a former Debate we were told, we are not tied up to the Rules of *Weſtminſter-Hall*, and it was ſufficient to juſtify a Man in giving his Vote for this Bill, that he was ſatisfied that Sir *John Fenwick* was guilty: See the Conſequence of that, in Things that I have as much believed as I do this, I have found myſelf miſtaken.

When a Jury acts according to legal Evidence, that they have no Reaſon to miſtruſt: When a Jury finds according to legal Evidence, they are in no manner of blame: And if this Man be innocent, when you have taken away his Life, and his Eſtate, and ruined his Family, all that you have to ſay for it is, That you have acted according to the beſt of your own Underſtandings, guided by your own private Opinion.

Were this the Caſe of Sir *John Fenwick* only, and I not to give my Vote, I reckon him ſo deſpicable, and becauſe I believe him to be a Traitor, and I think the worſe of him for the Part he hath acted ſince he was in Cuſtody, I ſhould not concern myſelf about it. But when I ſpeak againſt this Bill, I ſpeak on the Behalf of all thoſe that may hereafter ſuffer by ſuch a Precedent as this. Thoſe Precedents that have been urged, don't come near this Point. And though the Power of the Parliament is above that of other Courts, yet there hath been no Precedent that comes up to this, That we ſhould paſs a Bill to attaint Sir *John Fenwick*, becauſe he will not give Evidence, or there is no Evidence againſt him. If Sir *John Fenwick* be to be hanged, becauſe there is but one Evidence againſt him, any Man in the World may; and then I think every Man's Life depends upon it, whether this Houſe do like him or not. Conſider what a Reverſe of Opinion this will be, to what former Parliaments have given in Caſes of the like Nature. I think if this Bill does paſs, every Man's Life will be as precarious as his Election.

We have been told, how much Danger the Government will be in, if this Bill does not paſs. I have as much Zeal for this Government as any Man; but all the Government is concerned, is, That a Man that you think a Traitor ſhould live. And I do think the Government is no more concerned in this Life, than in the Living of any *Jacobite* in *England.* But on the other hand, I think the Lives and Liberties of the Subjects of *England* are concerned; and, by this Bill, you will make all their Lives and Liberties precarious.

I am not for bringing the Blood of Sir *John Fenwick* upon me, or my Poſterity; nor can I conſent for to make a Precedent, that a Man may be hanged without Evidence.

Lord *Cutts.* The worthy Member that ſpake laſt but one, told you, That he thought the Life of Sir *John Fenwick* was not worth the Conſideration of this Aſſembly: I do differ from him in that. If the Scripture tells us, That the moſt inſignificant Creature does not fall without God Almighty's Conſideration, I think the Life of a Gentleman may be thought worth ours.

The worthy Gentleman that ſpake laſt, told us, That he did believe in his Conſcience Sir *John Fenwick* to be guilty: But becauſe he hath found himſelf miſtaken formerly, when he believed Things with the ſame appearing Certainty, therefore he may be miſtaken now. I hope Gentlemen will not preſs an Argument upon our Judgments, from Precedents that are only Miſtakes: I do agree, That any Man may be miſtaken in a Thing which at that Time he thinks himſelf moſt certain of; but till that Miſtake appears, I ſay, it ought not to make him doubt of any Thing that he does clearly and diſtinctly perceive: If otherwiſe, there is an End of all Religion and Law; and it ſhakes the Foundation of the moſt certain Belief a Man can entertain.

As it appears to me, ſome Gentlemen ſeem to lay a greater Streſs on ſome Things than they deſerve, and are not pleaſed to anſwer ſome Arguments; and therefore I deſire leave to ſpeak to two or three Points in ſhort. I ſhall not ſay any Thing of the Authority of Parliaments, it ſpeaks itſelf; nor of the different Conſideration of our Proceedings, and that of inferior Courts; that ſeems to be agreed: But I ſhall apply myſelf particularly to mention ſome Things upon Sir *John Fenwick*'s Caſe, and in that take Care, as near as I can, not to trouble you with any Thing I have ſaid upon this Subject.

I can't but obſerve, That every Gentleman that ſpeaks againſt this Bill, begins with an Introduction, that he believes him Criminal; which does ſomewhat aſtoniſh me: I hope they will explain themſelves a little. But to the Point: As to Sir *John Fenwick*'s Caſe, I did take the Liberty in a former Debate to obſerve, That it was not only a Conſpiracy againſt the lawful King of *England*, and had ſuch Parts in it, but alſo in bringing in a tyrannical and foreign Power upon you. But there is one Conſideration I did not mention then, becauſe I thought what I ſaid carried ſo great weight, it needed it not; I do ſay, not only as a Chriſtian, as an *Engliſhman*, and as a Subject of this Government, againſt which he hath committed a Crime of the higheſt Nature; but I will ſay, as a Man of Honour, that he hath acted contrary to the Rules of Honour. I think Sir *John Fenwick* had made a much better Figure, if he had appeared in Arms in *Flanders*, where he might have charged this Prince at the Head of his Troops, than baſely have contrived his Death in this Manner.

Sir, I have only one Thing more that I deſire to ſpeak to; for what I ſay is more for my own Information than to deſire any Man's Opinion further than he agrees with it: I ſay, moſt Gentlemen have likewiſe owned, That if they thought this an extraordinary Caſe, they would be for this Bill. I do ſay, as it appears to me, I do think, if ever there was an extraordinary Caſe, this is one; and if ever any Government was in Danger, this is, or may be, upon your Reſolution To-day. A great deal of Streſs hath been laid upon this Argument, That Sir *John Fenwick* is in Hold: I take that to be nothing, for they keep a Combination together ſtill. 'Tis by Rewards and Puniſhments that all Governments are ſupported. Robberies, that were ſo common in *France*, that you could not walk after it was dark, by Puniſhments they have been brought to that, that you may ride from one end of it to another with a Purſe of Gold in your Hand. And if you think it a trifling Matter, that wicked Men that have ſuch Inclinations ſhould eſcape, I don't doubt but you may have Plots every Day.

I don't doubt but this Gentleman knows a great deal that he hath never laid before you. I would not be thought to preſs it as an Argument that he ſhould be condemned, becauſe he won't confeſs; but I will be bold to ſay, if he does know of a great many Perſons that have been concerned in this Buſineſs; if he knows of a Riſing that was deſigned, when this Conſpiracy was to be executed (and it may be executed ſtill, if Things ſhall be ripe for it); I ſay, though you keep him in Hold, it will be an Encouragement to them to go in the Cabals, in buying of Arms, *&c.* I think the Matter before you is no leſs than the Fate of *England*, and the Fate of *Europe*, and of all your Poſterity; I am ſure it is: And give me leave to ſay to you one Thing that is Matter of Fact, There are thoſe Stories inſinuated abroad, and thoſe Matters of Fact aſſerted, with relation to a Conſpiracy, and reviling this Houſe, that are not fit for me to repeat. But your Enemies laſt Year, before the breaking out of this Conſpiracy, had the ſame ſort of Meetings, and the ſame ſort of Diſcourſe, as they have now. I will end with proteſting to you, That I deal with Sir *John Fenwick* with the ſame Candour and Honour, as I ſhall always deſire to be dealt with myſelf.

Sir *Godfrey Copley*. That noble Lord miſunderſtood what I ſaid, as to the ſmall Value I put upon Sir *John Fenwick:* I did ſay, That Sir *John Fenwick*, conſidered in his ſingle Capacity, I did not think it was worth the while of this Houſe to act in their Legiſlative Capacity upon him.

Sir *Charles Cartwright*. I think this Bill is of very great Moment, and ought well to be conſidered before it paſſes; for when it is paſſed, it will be too late to retrieve the ill Conſequence which may attend it: There is ſo much Roguery in the World, I think it hard Matter to arrive at the Truth. 'Tis not long ago there was a Plot contrived by one *Young*, and others, againſt the Biſhop of *Rocheſter*; and ſo cunningly contrived, That if a Bill of Attainder had been brought in againſt the Biſhop of *Rocheſter*, before the Truth had been diſcovered, I do not know what might have been the Conſequence of it. I ſuppoſe nobody queſtions the Truth of this Plot; but God forbid that every body that hath been named for it ſhould be guilty. It may be true, That there was ſuch a Meeting that Sir *John Fenwick* is accuſed of being at, and yet Sir *John Fenwick* might not be there; and I do not think it ſufficiently proved, and therefore I can't give my Conſent to this Bill.

Mr. *Manley*. Sir, I have, as well as I could, attended to this Debate in this Matter; and I did not trouble you in the laſt Debate, becauſe I was willing to take all the Opportunities I could to inform myſelf.

'Tis to me an extraordinary Thing, not only for the Matter, but Manner of your Proceedings; which, conſidering all Circumſtances, appears to me to be not only not common, but unprecedented; and as we are all in this Matter Judges, ſo I hope we ſhall apply ourſelves to conſider of it with that Temper, as may lead us to give a right Judgment. And if I had never ſo great Obligations upon me, and Dependencies, though from the Crown, I would lay them by, at leaſt they ſhould not influence my Judgment in this Matter. We are to paſs Judgment in a Matter of Life and Death upon this Perſon; and 'tis urged we ſhould do it, becauſe the common Courſe of Juſtice will not reach him for the Crime objected againſt him, which is High-Treaſon; and the Species of that Treaſon, as it is laid in the Indictment, is, *&c.*

Sir, the Evidence that hath been given to ſupport it, hath been the Affirmation of a ſingle Witneſs at the Bar: Indeed other things have been alledged in the Bill; but, as hath been ſaid in *Weſtminſter-Hall* upon another Occaſion, They look like Pepper and Salt to me; for in themſelves they are not Crimes (I ſpeak with Submiſſion to your Judgments), at leaſt to bear Company with an Accuſation of High-Treaſon.

As to the Evidence; firſt, Captain *Porter* tells you, That Sir *John Fenwick* was at a Meeting at the *King*'s-*Head*, and at Mrs. *Mountjoy*'s afterwards, when there were treaſonable Diſcourſes amongſt them, and *Charnock* was directed to go into *France*; but the End of that is not proved; for the Witneſs that told you of thoſe Meetings, did not tell you, as I obſerved, that *Charnock* did go to *France*; and what he ſaid upon other Occaſions, is no Evidence to me. And though we are not tied up to the Rules of *Weſtminſter-Hall*, I am ſo young a Member, I know not what Methods are obſerved in Parliament, that I may in ſome meaſure make them a Rule to me.

The Law of *England* requires two Witneſſes upon the greateſt Reaſon; and 'tis not only the Policy of *England*, but the general Conſent (in this Caſe) of the whole World, and it is grounded upon the Law of God. It was objected by an honourable Gentleman the other Day, to a Gentleman, that he ſaid the Law of God required two Witneſſes. A Gentleman who is very near allied to one, from whom he might have early informed himſelf, made us a Challenge, to ſhew him where it was to be found: If he will look into *Numbers* and *Deuteronomy*, there are three particulars Texts very plain in it. The Reaſon of this is illuſtrated in the Story of *Suſannah*; her Safety depended upon it: And the *Jews*, when they proſecuted our Saviour, though they wanted no Malice, nor nothing to animate them to put him to Death, yet St. *Matthew* tell us, at laſt there was two Witneſſes found againſt him: And this being the Law of the Land, and the Law of God, muſt be my Rule; I muſt have this Matter proved againſt Sir *John Fenwick*, as full as the Law of the Land, and the Law of God requires. The other Evidence brought to maintain this Bill, is what is ſworn by *Goodman* before a Juſtice of Peace, and the Account of the Evidence given by *Goodman* to the Grand-Jury, which, I muſt confeſs, I declare I am very far from being convinced ought to have Weight with us: But, I think, they muſt lay a great Weight upon it, who give their Vote for this Bill; or otherwiſe they muſt give their Vote upon the Teſtimony of one Witneſs.

The Reaſon for this extraordinary Proceeding is, 'tis urged, There is a Neceſſity for it; the Plot will be loſt elſe, ſay ſome; Sir *John Fenwick*, ſays others, will eſcape elſe. As for the Plot, I wiſh to God there was no ſuch Thing; but 'tis probable the beſt Way of ending this Plot would be, if his Majeſty in his Wiſdom thought fit to interpoſe with his Mercy and Grace at this Time; and better than for the Legiſlative Power, in an extraordinary Manner, to take off a Perſon againſt whom there is not a legal Evidence. Gentlemen ſay, they are convinced in their Conſciences; but I will appeal to their Conſciences, whether there be legal Proof againſt him; and ſhall we then interpoſe, in an extraordinary Manner, to take away his Life?

No Man pretends to anſwer, but that this Proceeding may be dangerous to Poſterity: If he had any Security this might be done without that Danger, it might be ſome Encouragement to Gentlemen to come into it; but ſince it may be dangerous, are not we, who are entruſted by the People, to have an equal Care for the Liberty of the People? We are to take Care of his Majeſty's Life and Government; and the Reaſon is, becauſe upon him, and his Government, the publick Safety does depend. 'Tis *Salus Populi*, is the great Reaſon that the Law takes ſuch Care of the King; and as we are to do nothing to the Detriment of the King, ſo we are to do nothing for the King that may be of Detriment to the People.

An honourable Lord hath been pleaſed to ſay, We are not yet out of Danger: I am ſorry to hear it, and could not think it, when ſo noble a Lord is ſo near the King, and hath ſo great a Share in taking Care of the public Safety. But ſure, nothing can happen from this Perſon; there hath been Care taken he ſhould have no Converſation with any Body: If I thought there was a Hazard to the Government, or to the King, and no Way to ſecure us, but taking away this Gentleman's Life; ſuch a Reaſon as that would make me go counter to my own Reaſon and Judgment. But I can't be of Opinion, that a Man of Sir *John Fenwick*'s Size, who in his beſt Circumſtances, indeed, is a Gentleman by Birth, and hath a Gentleman's Fortune, but is now in a great Meaſure without his Eſtate; ſo his Fortune can't do any hurt, and his Alliance, I ſuppoſe, is not conſiderable enough to do any neither.

Then, as his Circumſtances do not make him ſo conſiderable as to do us any hurt, let us take care, that we do not in any caſe, by his Blood, wound ourſelves.

Gentlemen lay but little Streſs upon the Dangerouſneſs of the Precedent; I do lay more; and 'tis chiefly upon that Reaſon I can't come up to be for this Bill. I would not that ſo good a Parliament ſhould lay the Foundation of any, by which, in After-ages, the beſt Men in *England* may ſuffer. 'Tis ſaid, an ill Parliament will not want a Precedent, but will make uſe of their Power; but they will fall ſooner into, if led by a good Parliament.

Sir, This is a Matter I would not have preſumed to have troubled you in; for I can't think any thing I can ſay, will have any Weight with any one that is not of my Opinion: But as an *Engliſhman*, and as I have the Honour to be of this Houſe, when a Thing of this Nature comes before us, and I am to give my Opinion as a Judge in it, I was willing to give my Reaſons for my Opinion. I think this Bill is unprecedented; and you will give me leave to ſay, it appears to me to be unreaſonable; I think it contrary to the fundamental Rules of Reaſon and Juſtice; I doubt it may be dangerous to our Conſtitution; and I fear future Ages may have Reaſon to repent what we do; and therefore I am againſt this Bill, and hope it will not paſs.

Sir *William Strickland*. Sir, I do aſſure you, I ſhall not in any Thing of this Bill, or any Thing elſe, run counter to my Conſcience or Judgment; but I do think, and I think few deny it, I do think in my Conſcience that Sir *John Fenwick* is guilty; and thinking ſo, I ought to condemn him. I do think, if we ſhould ſpare this Gentleman for want of Form, as they call it, now we are in our Legiſlative Capacity, and there ſhould be any ill Effects of it; and other People, by thinking they might avoid Puniſhment by the Forms of *Weſtminſter-Hall*, ſhould have the like Imaginations againſt his Majeſty, and they ſhould take Effect; I ſhould think myſelf in a great meaſure guilty of that Miſfortune. I think the Kingdom is concerned, and the King's Preſervation, in this Bill; and I hope you will paſs it.

Mr. *Dolben*. Mr. *Speaker*, I am againſt paſſing of this Bill; and I ſhall, with as much Brevity as I can, lay before you my Reaſons why I am againſt it; and probably I ſhould not have troubled the Houſe with them, but that I think it neceſſary to juſtify my Opinion in a Caſe of this Importance.

I do admit that the Fact that is charged upon Sir *John Fenwick* is an Overt-Act of High-Treaſon, within the 25th of *Edw.* III. though I muſt take leave to ſay, That a Judgment upon a Caſe, at leaſt as ſtrong as this, has lately been very much arraigned and controverted: But 'tis not my Intent to diſpute the Nature of this Fact; for I am perſuaded, That to conſult how to procure an Invaſion of this Kingdom with foreign Forces, is an Overt-Act of Compaſſing the Death of the King; and I do think this Charge does amount to ſuch an Overt-Act. But I beg leave to reflect, how far Overt-Acts of this Nature, which fall directly within any Species of Treaſon mentioned in the 25th of *Edw.* III. how far ſuch Treaſons are cognizable in Parliament, and within the Intention of that Statute: Indeed, that they are cognizable by the abſolute Power of Parliament, there is no doubt.

Sir, That the Statute doth firſt enumerate ſeveral Species or Branches of Facts, which it ſays ſhall be adjudged Treaſon, that is, in the Courts of Judicature; and then afterwards it goes on, and ſays, *If any other Caſe, ſuppoſed Treaſon, not ſpecified in that Act, doth happen before any Juſtice, the Juſtices ſhall tarry without any going to Judgment of the Treaſon till the Cauſe be ſhewed and declared before the King and his Parliament, whether it ought to be judged Treaſon or Felony.* Now, Sir, with Submiſſion, this is a great Argument, that the Intention of thoſe that made this Law was, That theſe Treaſons, which were directly under any of theſe Particulars enumerated by the Statute, that they ſhould be left and be appropriated to the Deciſion of the inferior Courts; but that Facts of another Nature, which did not come under the Particulars enumerated in the Act, as extraordinary Offences, and Miſbehaviour of Magiſtrates and great Men, and the like; theſe indeed ſhould be reſerved for the Conſideration and Judgment of the Parliament, who are only a Match for powerful Offenders, whom the common Juſtice of the Kingdom can't grapple with. And as this ſeems to be the Intention of the Makers of the Act, ſo I think the Inſtances generally have been purſuant to that Inſtitution; for I know of but one ſingle Inſtance of any one that ever was attainted by Bill for any Treaſon that is contained under any Species enumerated in the 25th *Edw.* III. 'Tis true, where Perſons have been out of the reach of the Law, in open Rebellion, or fled from Juſtice; in theſe Caſes the Parliament have thought fit to attaint them; as in the Caſe of Sir *John Mortimer*, and others who made an Eſcape out of the *Tower*; and the Caſe of the Regicides, and likewiſe the Caſe of the Duke of *Monmouth*, who was in open Rebellion: But I ſay, that I have not found in my Reading, upon the beſt Search I could make, where any that were in Cuſtody were attainted by Bill for any Treaſon within 25 *Edw.* III. and that was the Caſe of *Ferham*; but I think there is no Precedent of any Man, who is not only in Cuſtody, but hath been indicted, arraigned, and Iſſue joined, and he hath put himſelf upon his Country for his Trial; and the Perſon accuſed was to be convicted, or acquitted, by the Verdict of Twelve Men; I never heard of any Inſtance, when after all this Proceeding a Perſon was taken off from his Trial, and debarr'd the Benefit of the Judgment of his Peers, and the Benefit of his Challengers, and deſtroyed, and cut off extrajudicially by an Act made on purpoſe, *ex poſt facto:* I never met with any Inſtance like it, unleſs it be that of my Lord *Strafford*; and I believe nobody will cite that, if they reflect upon the Preamble of the Act for reverſing his Attainder: For in the Preamble, 'tis ſaid, That the turbulent Party did attempt the procuring of that Act, on purpoſe to condemn him. This ſhews the Opinion of our

Predeceſſors in relation to Proceedings of this ſort; they eſteem it contrary to the fundamental Rules of Juſtice and Right, which Parliaments, as well as other Courts, muſt be governed by.

Roger Mortimer was attainted, and afterwards his Attainder was reverſed; and the Reaſon declared, becauſe he was attainted againſt the good Laws and Cuſtoms of the Kingdom.

Ferham's, that I mentioned before; and declared for the future, That it ſhould be, *&c.*

Another Attainder there was of Sir *Thomas Haxey*; but that was reverſed, and declared to be againſt all Law. Then there are the Attainders of *H.* VIII.'s Time; I ſhall not particularize them; but beſides that, all the Hiſtory of thoſe Times, and Law-Books, condemned them, as Proceedings againſt all Law and Juſtice. There is the Statute of 1 *Edw.* VI. *c.* 12. ſeems directly levelled againſt thoſe Attainders in the preceding Reign; for it ſays, That the Proceedings in King *H.* VIII.'s Time, were grounded upon Laws that were extreme and terrible; and therefore, that there might be no Proceedings of that kind for the future, it reduces all Treaſons to the ancient Standard of 25 *Edw.* III. and goes on, and enacts, That no Man ſhall be convicted or condemned for Treaſon, but upon the Teſtimony of two lawful Witneſſes.

Now I take that to be a general Law, and to extend to all Convictions and Condemnations for Treaſon; and can't but declare my Opinion of it, That it muſt extend to Bills of Attainder, ſince theſe are the principal and moſt powerful Convictions and Condemnations; and if that Statute does extend to Bills of Attainder, then pray conſider, whether this Bill of Attainder now be ſupported by ſuch Evidence as the Statute requires? There was indeed one lawful Witneſs produced; but inſtead of the other, they have only produced a Record between Parties not concerned in this Bill, and the Depoſitions of a Perſon, whether living or dead, *non conſtat*; and I believe nobody will ſay theſe Depoſitions will be equivalent to a ſecond Witneſs.

I do believe a great many Gentlemen are of Opinion, That thoſe Rules of Evidence are not to guide you here: But I beg Pardon that I can't poſſibly be of that Opinion; I rather incline to my Lord Chief-Juſtice *Vaughan*'s Notion, That though we are not bound by the Forms of Law, yet we are bound by the Rules of Law; every Body allows we are bound as to the Nature of the Fact; every Body will take himſelf bound by the Statute of 25 *Edw.* III. to form his Judgment as to the Fact: Why are not we then bound by theſe Acts? Likewiſe as to the Evidence, and the Proof of the Fact; if 25 *Edw.* III. be binding to us, ſo as to preſcribe us a Rule to judge the Fact by, Why are not the Statutes of *Edw.* VI. binding to us as to the Evidence of that Fact?

But ſay ſome Gentlemen, if there be not two Witneſſes, that is from Sir *John Fenwick* or his Agents. Sir, no Gentlemen will ſay, that there hath been any Proof of that; the very Bill does not charge him with it: But taking it for granted, what ſhall follow upon that? Shall it therefore follow, that Sir *John Fenwick* ſhall immediately be put to Death? No, God forbid! I think there is no Parity between the Crime of ſeducing away a Witneſs, and the Judgment of Death: But I think this a more reaſonable and natural Inference to be made, That becauſe Sir *John Fenwick* hath ſeduced away a Witneſs, therefore it is juſt to make a Law, that the Depoſitions of that Witneſs ſhould be of as good Force and Effect as if *Goodman* was here to give it *viva voce*: for then you will not take from him the Benefit of his Trial, nor the Benefit of his Challenges, which is the Birth-right of every *Engliſhman*.

And one Thing I will ſay further: Theſe Bills of Attainder are like *Siſiphus*'s Stone, they have rolled back upon thoſe that have been the Promoters of them. 'Tis known, that my Lord *Cromwell* was the firſt Man that promoted them in *H.* VIII.'s Time; and the Advice that he gave his Maſter for the Ruin of others, proved fatal to himſelf.

Sir, this is the laſt Time we ſhall have the Opportunity of conſidering this Matter: I muſt take leave to declare, that my Opinion is, That if I conſent to the paſſing of this Bill againſt Sir *John Fenwick*'s Life, upon any other Grounds than ſuch as are entirely agreeable, and juſtifiable by the Laws of God and Man, I am guilty of the Death of Sir *John Fenwick*. I am not ſatisfied that I can give my Conſent to this Bill upon thoſe Grounds, and therefore I beg leave to be againſt it.

Sir *Edward Seymour*. Mr. *Speaker*, you all know I have borne my Teſtimony againſt this Bill, being not perſuaded that it is juſt: Now we are come to the finiſhing Part of it; and I ſhall lay before you thoſe Reaſons that prevail with me, and ſubmit them to the Judgment of the Houſe; and if I am more tedious than I uſed to be, I hope the Occaſion is ſuch, that you will pardon me; for I will endeavour to contract myſelf into as near a Compaſs as I can.

I ſhall not trouble you with any Arguments that have been laid before you already; nor ſhall I enter into the Examination of Precedents; a great many have been laid before you, and a great many of them have been reverſed, moſt of them; and the Reaſons why they have been reverſed, becauſe the Perſons condemned have not had the due Benefit of the Law: And if that be a good Reaſon for reverſing of ſuch an Attainder, 'tis a good Reaſon why you ſhould not do it.

I can't but take Notice, That the Beginning of this Bill in the Houſe of Commons, is the firſt Step of this kind that hath been made in Parliament, except that of the Duke of *Monmouth*; and the Reaſon of it I take to be this, becauſe you hear not upon Oath; you condemn not upon Oath: You, nor the Party under Accuſation have that Advantage againſt a forſworn Evidence, as there is in the other Houſe; the Method has been to paſs ſuch Bills in the Houſe of Lords, and tranſmit them hither, upon which you then judge.

I think, in this Caſe you have no Evidence; and inſtead of two Witneſſes, you have no Witneſs at all; for as to *Goodman*, *De non apparentibus & non exiſtentibus eadem eſt ratio.* As to *Porter*, he hath been examined: But when you conſider, that he was a Perſon engaged in this Conſpiracy, and that he had no Repentance of his Crime till he was diſcovered, and then he comes to be an Evidence; how far that ſhall ſway, every Man muſt allow; that I muſt ſubmit to you: But thus much I may ſay, every Man muſt allow me, that in far leſs Caſes no Man that does ſwear for himſelf, or upon his own Account, is to be admitted as an Evidence. If a Robbery be committed in an Hundred, though a Man be but to pay a Groat towards it, he ſhall not be an Evidence; how much more then in a Caſe, when a Man comes to ſwear to take away another Man's Life to ſave his own? for he is not in the Condition of a Freeman, who gives his Evidence without check or controul, but he is drudging on for his Pardon, as the Counſel told you, which depends according to the Evidence he does give or not give.

For my Part, I can't go ſo far as ſome Gentlemen have done, to ſay Sir *John Fenwick* is guilty: For where there is no Law, there is no Tranſgreſſion; a Man that is guilty, muſt be guilty according to the Law: And the Law hath required and ſaid, That there ſhall be no Treaſon but what is proved by two Witneſſes; and here it appears that you have not one. The ſame Law that calls it Treaſon, ſays it ſhall be ſo proved: Then if you paſs this Bill, you make that Treaſon which before was not Treaſon.

Sir, the Law does require two Witneſſes, and there is divine Authority for it too: It hath been hinted at, the Place in *Numbers*, *No Man is to die upon ſingle Evidence*; and it ſays, *Theſe are the Statutes you ſhall obſerve throughout your Generations and Dwellings.* But I will go a little further, becauſe a worthy Gentleman declared, there was no ſuch Law of God. He will find, in the 19th of *Deuteronomy*, a Caſe juſt as 'tis here; for the Caſe of High-Treaſon was Idolatry at that Time: and the Law ſays, *Whoſoever ſhall ſet up Idols, ſhall be ſtoned to Death*; but it ſays, *No Man ſhall be condemned to die by the Mouth of one Witneſs, but by two or three Witneſſes he ſhall ſuffer*: I think this is poſitive enough. I ſhall not trouble you with more Inſtances, though I could repeat ſeveral.

Sir, the Law enjoins Forms ſtrictly, even to the leaſt Circumſtance: If a Man be condemned to die, and after he is condemned to die, another take away the Life of that Man, 'tis Murder. I will go further: If the Officer that is to do Execution, if a Man be condemned to be hanged, drawn and quartered; if the Officer ſhot him, it is Murder in him; ſo that Men are not left to a diſcretionary Power to act according to their Conſciences.

I take the Reaſon by which this Bill is ſupported, to be deſtructive to all human Society; for if that be admitted, that a Man ſhall act according to his Conſcience, and not according to the Rules that are preſcribed him, I know not who is ſafe; for how can an innocent Man make his Defence upon that Principle? It is a ſafe Conſideration for them that take upon them that Way of judging, becauſe they are bound by no Rules; but what hath not that done almoſt within Memory! *Felton*, that killed the Duke of *Buckingham*, what was his Juſtification, but he was perſuaded in Conſcience he did well in ſo doing? *Ravillac*, that killed *H.* IV. in *France*, he juſtified the ſame by his Conſcience, and ſaid he had done a good Thing; and I may ſay this Argument of Conſcience hath acted all the Villainy of the laſt Age, and I am afraid hath gone a great Way to diſturb the Happineſs of this.

For if this be a Rule to this Houſe, How is the King bound? I thought he had been bound by Law; but if this ſhall be admitted as an Argument, 'tis enough to ſay, if this Houſe be arbitrary, the King is. I do not reflect upon this Reign; but it will be enough to ſay, tho' he act againſt Law, and turn twenty Colleges out of Doors, his Conſcience perſuades him to it. We ſee how unbounded Liberty the Lords take, is, they are become Maſters of all our Eſtates; and I would be very loth for my Eſtate to depend upon the feeble Tenure of a Lord's Conſcience.

If then this be the Caſe, as it is, according to this Method, I deſire to know into what Condition we ſhall bring ourſelves?

You have been told, it is expected from you by your Country, that you ſhould exert this Authority and Power: Sir, I would have been glad that in Caſes more reaſonable we had exerted this Authority and Power of Parliament; I wiſh it had gone to the preventing the debaſing and abuſing your Coin; I wiſh it could be exerted, that we might not ſee ourſelves cheated under Countenance of an Act of Parliament; but contrary to that, you are fond of being ſprinkled with the Blood of Sir *John Fenwick*. As long as the Government is not in danger, I believe the Country would be glad that their Blood might run ſecure in their Veins, and not be tapt upon every Occaſion to ſerve a Turn; for if you break the Laws, what Man can promiſe himſelf Security?

We know the Conſequence, if this Bill does not paſs; Sir *John Fenwick* may live in Miſery all his Time.

But what this Precedent may make, no Man can foreſee. This Bill is againſt the Law of God; againſt the Law of the Land; it does contribute to the Subverſion of the Conſtitution, and to the Subverſion of all Government; for if there be Rules to be obſerved in all Governments, and no Government can be without them, if you ſubvert thoſe Rules, you deſtroy the Government; and therefore, for theſe Conſiderations, nobody will think it ſtrange, if I give my Negative to this Bill.

Mr. Chanc. of the Excheq. Sir, the Gentleman that ſpake laſt, hath carried the Reaſon againſt this Bill a little further than ſome others; for it ſeems now, we are not to reject the Bill for want of one Witneſs that is legal in *Weſtminſter-Hall*, but it ſeems there is no Evidence at all; and by Capt. *Porter*'s not being pardoned, and yet drudging for his Pardon; as to all that have been condemned upon his Teſtimony, he hath arraigned the Evidence as not ſufficient, and hopes that will be the Judgment of the Houſe upon this Bill. I think if the Houſe reject this Bill upon that Argument, it will go further than many mean that oppoſe it.

Another Thing he ſays, He compares the Convictions that I have upon my Judgment, and of every Body elſe that ſpeaks from the Proofs that are made, that he is guilty, to the Whimſey of two or three mad Men; whereas we go according to the Evidence brought at the Bar; we don't go upon the Whimſies of *Ravillac* and *Felton*, but upon the Proofs that have been made here; and though there are not two Witneſſes, yet upon what appears in Proof, I am convinced that he is guilty; and upon that Conviction, I think, according to the Duty I owe my Country, and the Conſtitution of *England*, when a Bill does come to puniſh the Man whom I think guilty, I think I ought to be for the Bill. As to what is ſaid out of *Deuteronomy*, That the Law of God was againſt it, if you will argue *a Fortiori*, 'tis literally true in the Caſe of Murder; but whether Murder or Treaſon, there is the Life of a Man concerned; and 'tis not the Puniſhment, whether to be hanged, or hanged, drawn, and quartered, that makes any great Difference; and give me leave to ſay, if you go to make Precedents from the *Jewiſh* Law, then, I ſay, the Law of *England* is againſt that Law, in Caſe of Murder; and by the ſame Reaſon you may deſire leave to bring in a Bill to repeal all thoſe Laws.

Sir, if this was the eternal Law of God and Man, where was this eternal Law in *England* before *Edward* VIth's Time? If it be the eternal Law, that there muſt be two Witneſſes, why does it not hold in *England* even in ſome Caſes of Treaſon to this Day; I mean the Treaſon of Clipping and Coining? So that if Gentlemen will argue, the Nature of theſe Faults are what the Law of every Country ordains, and that is the Law.

And the way of Evidence and Proof too differs in every Country; and I may affirm, That there never was any Government in which there was not a Power lodged ſomewhere to be exerted upon extraordinary Occaſions, beyond the legal Way of Proſecution.

I don't care to travel into the ſeveral Countries to ſee how their Conſtitution is; but I believe there is not one Place in *Europe* in which it is ſtrictly neceſſary there ſhould be two Witneſſes to take away the Life of a Man; but it is generally ſo as it is here in all ordinary Caſes, but in this very Law; this laſt Law does not go upon two Witneſſes, but you have a Proviſo in it does abſolutely exempt Proceedings in Parliament: I do not infer from thence, that you ſhould not have two Witneſſes, if you proceed by way of Impeachment, I think you ought; and ſo for having Witneſſes upon Oath, &c. When theſe Proceedings are in Parliament, there is a direct Proviſo, by which the Parliament is exempted from thoſe Rules. Upon the whole Matter, I think this Man is guilty; I think the Precedent would be more fatal, to ſay, that a Parliament can't proceed in ſuch a Caſe, than that a guilty Man ſhould ſuffer. I think this Bill comes before you with more Circumſtances and Reaſon to juſtify it, than any that hath been brought here before; here is a Bill found againſt him by his Country, the Evidence of his Friends having tampered with one of the Witneſſes, confirmed by a Jury, &c.

A learned Gentleman ſays, He would come up to make this Paper Evidence; but can't come up to make ſuch a Law, by which every Man that is concerned in that Depoſition would be affected: But here is ſomething particular in this Caſe, a Man that hath been abroad, and hath not uſed the like Artifice, I think you ought not to uſe the like Power to puniſh him, that is not guilty of the like Crime. And therefore I ſhall conclude; but I muſt take notice of one thing: It was ſaid, That this was the firſt Precedent of this kind begun in this Houſe, but that of the Duke of *Monmouth*: But I believe, if this Bill of Attainder is not to be begun in this Houſe, 'tis not to be brought in at all; for I believe there is a Statute, That the Life of a Commoner is never to be meddled with by the Lords originally. I will not trouble you any further: I do in my Conſcience think that Sir *John Fenwick* is guilty, and therefore I am for this Bill.

Mr. *Pelham*. I did not think to have troubled you this Day: I did rather intend to have left it to others that can ſpeak better, or have not ſpoken upon this Subject; but that which hath been mentioned by ſeveral, as if they did think that we who mentioned the Law of God upon this Occaſion, did it as if we did think the Law of God was binding to you at this Day: I never thought any ſuch Thing, otherwiſe than as to the Morality of it, ſo far forth as it is grounded upon Reaſon and Juſtice, and tends to the clearing of an innocent Man; and ſo far we and all Mankind are bound by it; and that Law having been afterwards confirmed in the *New-Teſtament* by our Saviour and his Apoſtles, at leaſt approved of by them; and this having been confirmed by the Law of *England* likewiſe; I do not think this a fit Occaſion for you to paſs by ſo fundamental a Law as that is: And I conclude with this, That I can't ſatisfy myſelf in my Conſcience, and ſhould think ſome Misfortune might follow me and my Poſterity, if I paſſed Sentence upon Sir *John Fenwick*'s Life, upon leſs Evidence than the Law of *England* requires.

Sir *H. Crofts*. I ſhall endeavour, as much as I can, to give you little trouble in this Matter. But becauſe it hath been hinted and remarked ſo particularly upon me, I muſt beg leave to diſcharge my Duty, as well as my Conſcience, as to what I ſaid here the other Day.

Sir, I do very much forget myſelf, if I did aſſert, That there was no ſuch Place in Scripture that required two Witneſſes: The Thing that I ſaid, was this, That if any Gentleman could ſhew me any Rule from Scripture that required two Witneſſes, more in the Caſe of Treaſon than in the Caſe of Murder and Felony, I ſhould be glad to ſee it. I do ſay, that the Scripture ſhall be a Rule to me, as far as the Scripture requires; but I do take the *Jewiſh* Law not to be ſo abſolutely literally binding upon us here. And as to the Text out of *Numbers*, that very Text of Scripture is particularly and literally applicable to Murder; and if that be binding now, we have been very much miſguided by our Predeceſſors, and I think we are bound to take it in hand, to repeal all Laws that are againſt it.

Sir, he is pleaſed to deny us, in ſome meaſure, the Liberty of being guided by our Conſciences; truly, I don't know what he would have Gentlemen go by; truly, let him go by what Rule he pleaſes, I will go by the Rule of my Conſcience, and will not do any thing againſt it upon any Conſideration or Conſequence whatſoever; nor will I part from the Liberty and Power of Parliaments, for any Rule or Law of inferior Courts whatſoever.

Sir, you are told, you ought to be guided by the Rules of Law, that is, not the Forms of Law, but the Rules of Law. Sir, I ſay, if theſe Rules were made to bind Parliaments, it was reaſonable they ſhould be bound by them; but if they were made only to bind inferiour Courts, they were far enough from being intended to put a Cramp upon the Proceedings of Parliament; and if you ſhall ſubject yourſelves to them, you give the Lawyers ſuch a Power, that I don't doubt, but their Books will be of greater Authority than your Journals; therefore, in Conſideration of that, and becauſe I would leave that which is the Right of Parliaments to my Succeſſors, I ſhall not ſubmit to that.

Therefore, I ſay, I come clear to the Point, Whether Sir *John Fenwick* be guilty or not; only I muſt obſerve a little back, That as to thoſe Inſtances that the worthy Member was pleaſed to make uſe of, of *Ravillac* and of *Felton*; ſhall thoſe extraordinary Caſes, that which Men did in heat of Blood and private Malice; ſhall theſe be brought to bear a Parallel with what is done in Parliament for the Juſtice of the Nation? I don't doubt but there are Men enough, in their Conſciences, at leaſt with pretence of it, will juſtify the Deſtruction of your Government and Religion, and every Thing elſe: All thoſe Men that deny the Right of your Government, have Conſcience and Juſtice enough to ſubvert it, if they could; and therefore I do not ſo much wonder, that many Men without Doors have argued in that Nature.

But I ſay, my Conſcience is the Rule I muſt go by; and to me the Queſtion is only, Whether Sir *John Fenwick* be guilty or not guilty, and am called to give my Judgment in it; and I think I am bound by the Law of Nature, by the Law of the Nation, and I ſee nothing in the Law of God that prohibits me, to give my Judgment according to the Evidence, and the Opinion I have in my Conſcience of the Truth of it.

If there be no ſuch Rule that requires two Witneſſes binding upon me; if I may go upon one Witneſs; if I believe he ſpeaks true, and that the Perſon is guilty; then I am bound to act for the Preſervation of the Nation, and all our Poſterity: They that made this Attempt, made it upon you and your Poſterity for ever: 'Tis not ſo ſmall a Matter as ſome repreſent it; 'tis not the Perſon, ſo much as the Nature of the Fact we are to conſider; and we are not to let Men eſcape Puniſhment according to their Greatneſs or their Smallneſs, but according to the Nature of the Fact, and their Guilt. I think I have that Freedom, and I am ſo little bound by thoſe Rules that have been urged, that if both Witneſſes were here, and gave Teſtimony againſt him, if I did not believe him to be guilty, I would loſe my Life rather than vote him ſo; but, on the contrary, if here be ſufficient Evidence to convince me, though not according to the Rules of inferior Courts, I will not ſubject the Freedom of Parliaments to thoſe Rules.

Sir, you have been told formerly, and I think it a Matter of that Weight, I beg Leave to urge it again, becauſe 'tis a great Reaſon that guides me in this Matter; if you lay it down for a Doctrine in this Houſe (for a Reſolution here taken is as much a Rule as a Law, for it ſhall be brought as a Precedent); and therefore, if it ſhall be laid down as a Rule here, that you will never attaint any Man, or find him guilty, but upon two Witneſſes, I think the Government, and all you have, ſtands upon a tottering Foundation: He muſt be a very ordinary Stateſman, that can't lay his Plot ſo, as you ſhan't reach him by two Witneſſes.

Therefore, I ſay, I think it becomes the Wiſdom of Parliament, not to declare themſelves bound in that reſpect; I would have them bound by Juſtice, but not by the common Rule of the Law.

Sir *Robert Cotton*. Sir, I do find that Gentlemen do very much inſiſt in this Caſe, That if a Gentleman does believe that Sir *John Fenwick* is guilty, he muſt give his Vote for the paſſing of this Bill: If that be ſo, I am glad that Opinion did not take Place in the laſt Reign; if it had, I am of Opinion I ſhould not have been here now, and I believe my Lord *Warrington*, who was very inſtrumental in promoting this Revolution, would not have died in his Bed. My Lord and I were accuſed of a Crime, which, I believe, if proved by two Witneſſes, had been Treaſon. I have heard ſome Gentlemen ſay in this Houſe, they did believe my Lord *Warrington* was guilty (though he was not guilty of the Fact as it was laid). There was a Man ſwore, &c. and there was ſome corroborating Evidence; but as to Mr. *Fley*, and myſelf, there was none but this particular Perſon, and they indicted us of Miſdemeanor; tho' it would have been Treaſon, if there had been two Witneſſes. Now if the ſame Fact was Treaſon when proved by two Witneſſes, and but Miſdemeanor when proved by one, methinks we are doing an extraordinary Thing; we are going, after the Fact committed, to make that which is but a Miſdemeanor, to be Treaſon. And for theſe and other Reaſons, I can't agree to the paſſing of this Bill.

Lord *Norreys*. Sir, though I had always an Apprehenſion of the ill Conſequence of this Bill, yet never ſo much as now; for this Gentleman hath given Arguments that ſhake me more than all that I have heard before; for he ſays, there are a great many Men, if they may proceed according to their Conſciences, will ſubvert this Government, and bring in King *James* and arbitrary Power: And he tells you, that every Precedent in this Houſe is equal to a Law, and will juſtify the like for the future. I am ſure I am very unwilling to make a Precedent that ſhall juſtify Men in ſuch ill Actions, in ſaying their Conſciences prompted them to it.

[*Then a Queſtion was put for bringing in Candles; which paſſed in the Affirmative, and they were brought in.*]

Mr. *Hamond*. I don't think the Power of Parliaments in Queſtion in this Caſe; but then, as all other Powers, it muſt be founded upon Juſtice, and never uſed but upon extraordinary Occaſions, and when Criminals are not to be met with otherwiſe. The Power of Parliament is not leſſened, if this Bill does not paſs: But the Queſtion is, Whether this Power ſhall be exerted in this Caſe? What Gentlemen ſay of being guided by Conſcience, hath no Weight with me, further than that is governed by the Law of the Land: If it be to be admitted in the Caſe of Life and Blood, why not in *Meum & Tuum*? Why was he brought to the Bar then, if, according to our private Judgment, we are to determine this Matter? No Man thought but he was guilty.

I beg leave to mention one Thing that is come to my Knowledge: After the Trial and Condemnation of Mr. *Cook*, I had an Order ſent me, that I might ſee him; and I went to him by Virtue of that Order; and the greateſt Part of the Time I ſpent with him, he took up in declaring againſt the Evidence of *Goodman*, and that he would receive the Sacrament upon it, and give it in Writing, as his dying Words. I ſaw alſo three poſitive Witneſſes confront him at his Trial; and when I heard him ſay this, it weighed ſo much with me, that I have very great Ground of Suſpicion, that *Goodman* was perjured in the Caſe of *Cook*.

Here hath been popular Expreſſions of Plots, and Jacobites, that no Man can apply to this particular Caſe, or ſay, this is a Caſe wherein we ought to uſe this extraordinary Power: He was in the Hands of the Law, and nobody can ſay, that the Government muſt ſink, if he does not die. If we go from the Rules of Juſtice, I believe it will give a great Blow to the Government.

Mr. *Vernon*. Sir, I riſe up only upon what that worthy Gentleman hath offered unto you; for I did not think to trouble you with any Thing of that Nature. But if you will give me leave to acquaint you with what I believe who have been later with him than this Gentleman, and much oftner. Sir, he does tell me, that he is very far from denying what hath been ſworn againſt Sir *John Fenwick* and himſelf, concerning the Conſultation to bring over the *French*; for he hath a very particular Remembrance of it: And if that Gentleman was to ſpeak with him now, he would ſatisfy him, I believe, in that Point. And ſince I am up, I think every Man that ſpeaks upon this Occaſion, ſhould likewiſe give ſome Account of himſelf, in what Manner, and for what Reaſon, he diſcharges his Conſcience here: I hope I may uſe that Word, ſince Gentlemen make uſe of Conſcience for his Acquittal; and a Man ought to have a very good Conſcience for his Condemnation.

As to Sir *John Fenwick*'s Innocence, I wiſh he had given no Occaſion to have it called in queſtion: And ſince he did fall under this Accuſation, I wiſh he, or his Counſel for him, would have taken ſome Pains to have made his Innocency appear: But I don't find the Queſtion is, Whether Sir *John Fenwick* is guilty? But whether there be any Evidence of his Guilt? And I ſhall tell you, in ſhort, my Opinion of that: I take the Proof of the Fact to be, in general, ſuch a Demonſtration, as the Nature of the Thing is capable of; and that is ſufficient, and capable to convince a reaſonable, honeſt, unprejudiced Man, of the Truth of what is aſſerted. And there is no manner of Doubt left, Whether it is ſo or no; nor Appearance of any Poſſibility, that it could be otherwiſe. I think there hath been that Proof in this Caſe, and nothing attempted to diſprove it, and nothing hath been proved on Sir *John Fenwick*'s Behalf, that any Wrong hath been done him: And therefore, in ſhort, my Senſe is, That whereas ſome Gentlemen think him guilty, but the Matter not proved, I think him guilty, becauſe 'tis proved; and there hath been no Offer made to diſprove it.

Mr. *Bromley Warr*. Some Gentlemen have ſpoke of the Power of Parliaments; but I ſhall ſay nothing to their Power, which, I have learned from my Lord *Coke*, is ſo tranſcendent and abſolute, that it cannot be confined within any Bounds: But the more Juſt and Honourable it ought to be in its Proceedings, to give an Example to inferior Courts. And though their Power cannot be deny'd, yet the Exerciſe of it hath been often cenſured and condemned; and Acts that have paſſed in one Parliament, have been in the ſame Reign repealed, and ſometimes ſeverely branded, *Id poſſumus, quod jure poſſumus.* 'Tis certain, here is a Defect of legal Evidence: We are not tied here to the Forms of *Weſtminſter-Hall*; but certainly, with Submiſſion, we ought to tie ourſelves up to the Rules of *Weſtminſter-Hall*, eſpecially when they are founded upon Common Juſtice, which is the ſame, is not mutable, and ought to be univerſal.

By the Law of the Land, no Perſon ought to be convicted in Caſes of Treaſon, but upon two Witneſſes; the Law of God is the ſame. However, if you will paſs this Bill, all Perſons muſt acquieſce; and there is no diſputing of your Power afterwards. It hath been an Argument uſed To-day, That the Security of the Government requires the Paſſing of this Bill; which I think to be a good one too, if they can make it appear, that unleſs you proceed in this Way, the Government is in Danger: Though I muſt obſerve, it was not that Conſideration, but the Vindication of an honourable Perſon's Reputation, that brought this Matter firſt before you.

It does not appear to me, that Sir *John Fenwick*'s Life or Death can endanger the Government. You have been told of a Deſign that he hath been engaged in, and is carried on at this Time: That an Invaſion from *France* ſeems to threaten us: The former Deſign hath been happily diſcovered and defeated; and 'tis not probable that Sir *John Fenwick* ſhould have any great Share in any that is carrying on at preſent: And, as far as I can learn, he is not ſo conſiderable a Man in his own Perſon or Intereſt, that we need fear him.

An honourable Perſon ſaid, If we do not paſs this Bill, they that ſent us here would give us no Thanks. 'Tis not a good Way of arguing; but, I believe, if thoſe look forward, they will thank us. Sir, in the Act for declaring the Rights and Liberties of the People, you have it ſaid, That the late King *James*, by the Aſſiſtance of divers evil Counſellors, *&c.* How comes it to paſs, that we never have Attainted any of them? And if we are for proceeding in this Way of Attainder, becauſe it pleaſes them that ſent us hither, I dare ſay, the Attainting one of thoſe Men would gratify thoſe that ſent us hither, more than the Attainting twenty ſuch as Sir *John Fenwick*. It was pretty well known what Share ſome Gentlemen had in bringing in of Popery and Arbitrary Power; and I will take the Liberty to ſay, That there is never a Gentleman in this Houſe, but believes them to be the worſt of Criminals.

Upon the whole Matter, I do not think you have any Occaſion to exert a Power, that nobody denies: I ſee no Security this will be to the Government, and conſequently, no Neceſſity of it. I think you are making a moſt dangerous Precedent, and that it will be of ill Conſequence to you; and therefore I am againſt this Bill.

Mr. *Smith*. Sir, I will be as ſhort as I can; and if it had not been for ſomething in this Day's Debate, I ſhould not have troubled you. As to what was ſaid by the Gentleman that ſpake laſt, of making Examples of ſome that had been Criminal in the laſt Reign: How that came to happen, that no ſuch Examples were made, I ſhall not now entertain you; but I believe moſt of the Gentlemen in the Houſe know pretty well.

But I take the Matter before you is, What Evidence you have to prove Sir *John Fenwick* to be guilty? and whether there be not an extraordinary Occaſion at this Time to exert the Legiſlative Power?

I ſhall not enter into the Matter of Precedents, thoſe are out of my Province; but I have read ſome: However, it ſhall not paſs upon me for a Rule, becauſe ſome Bills have been reverſed, no others ſhall be brought in; it is poſſible, that the reverſing of them may be worſe than the firſt bringing of them in.

But to apply myſelf to the Evidence; I cannot but obſerve one Thing, that ſeems this Day extraordinary: We are told by ſome Gentlemen, they are againſt our proceeding upon this Bill, becauſe it does not *quadrate* to the Rules of *Weſtminſter-Hall*; and at the ſame Time, Gentlemen take Liberty to make Exceptions here againſt that Evidence that *Weſtminſter-Hall* has allowed: That they ſhould take Exceptions to that Evidence which the Law of *England* allows to be good! For it is notorious, it hath been admitted in *Weſtminſter-Hall*; and Gentlemen might as well have told you, That thoſe Men that ſuffered died innocent, as to have denied it. And I think there is a further ſtrengthening of his Evidence; for there is not one Man, who hath died upon his Evidence, but hath acknowledged himſelf guilty of what he hath charged him with.

As to the Matter of the other Evidence, Sir, I do not ſay, that it is Evidence that will come at *Weſtminſter-Hall*; but at the ſame time, give me leave to tell you, they ſeem to lay a little Streſs upon it, when they tell you, they believe it was falſe Evidence, and inſtance in what *Cook* ſaid to a Gentleman of this Houſe, after his Condemnation; but I think thus far I may ſay, That when you ſent ſome of your Members to examine Sir *John Freind*, he did own all thoſe Perſons to be at that Place; and that is a much better Argument for the Validity of *Goodman*'s Teſtimony. But as to the Matter before you, ſome Gentlemen have made it a Queſtion, Whether Sir *John Fenwick* be ſo conſiderable a Man, as you ſhould proceed in this extraordinary Manner with? Though they all ſay, you may do it; yet at the ſame Time, they tell you this was never put in Execution, but they were in the Wrong that did it.

Now, Sir, the Queſtion is, Whether you ſhould make uſe of this Power at this Time? Say ſome, the Plot is over: I wiſh it was: But when a Conſpiracy hath been laid ſo deep and general as this was, 'tis not the hanging of one or two that will make us ſafe; when 'tis apparent to you, here is all the Artifice in the World, all the Endeavours in the World, by Sir *John Fenwick*'s Friends, to remove *Goodman* out of the Way; 'tis ſome Argument that he had ſomething to ſay to him: And when we ſee Priſons broke open daily; we have known Perſons murdered in the Streets for giving Evidence. Very notorious is the Caſe of *Dodſworth*: You have Plots all about you; and yet can you think there is no Occaſion to make uſe of this extraordinary Power?

I would have as great a Conviction upon my Conſcience as I could; but 'tis very hard a Man muſt throw his Conſcience aſide in the Caſe: 'Tis very hard to believe, That if there be two Witneſſes produced, though I don't believe the Witneſſes, yet I am ſafe if I condemn the Man; and if there be but one Witneſs, I am to acquit the Man, though I believe him to be guilty.

And though they go to Scripture, to tell you there muſt be two Witneſſes, yet they don't go ſo far as to tell you there have been very extraordinary Things done, even by God himſelf, for the preſerving a Community.

And there is the Reaſon of it, that one Witneſs may take away a Man's Life in one Caſe, and not in another. There was a Thing ſaid, that was one Thing that occaſioned my ſtanding up: A Gentleman ſaid, truly, it ſeemed to him to be a better Way to put an End to the Plot to have an Act of Indemnity, than the Conviction of Sir *John Fenwick* would be.

Sir, there ſeems very little Reaſon for Acts of Indemnity, when we have ſeen an Act paſſed ſo lately, which has not reſtrained Perſons, nor brought them to a Senſe of their Duty; and we have heard Perſons own at your Bar, That the Fact was committed juſt after the Act of Indemnity. Sir, I do heartily, according to my Conſcience, vote for this Bill.

Mr. *Harcourt*. Sir, I am ſenſible it is very difficult to ſay any thing, and not ſeem tedious at this Time of Night; but I take it to be my Duty not to be ſilent in this Matter.

All the Arguments that I remember have been made uſe of in any former Debate, or in this Day's, may be reduced, in ſhort, to theſe two Heads; The Danger of the Government, and Gentlemen's private Opinion.

Sir, As to the Danger of the Government, if any Body will convince me there is ſuch Danger, (I promiſe him, if it be worth his while ſo to do) I will be his Proſelyte, and vote for this Bill: But to tell me, the Government is in Danger, and that the Fate of *England* and *Europe* depends upon this Bill, is certainly rather offered to amuſe, than to convince.

It hath been aſked, Can the Circumſtances that Sir *John Fenwick* is in admit of any Danger to the Government, which hath Power over his Liberty every Day, and may reſtrain him of his Liberty during his Life? A Man, by the Account I have had of him, of little Intereſt, not worth Nine-pence. (I have no Acquaintance with him, and ſo I may eaſily miſtake his Circumſtances.) But, Sir, whatever his Circumſtances are, he is in ſafe Cuſtody, and no doubt there he will be kept; and to ſay the Government is in Danger by ſuch a Man, ſure, that cannot be thought by any Man living: And God forbid this ſhould be the Caſe of the Government, that it cannot ſupport itſelf without taking away this unfortunate Gentleman's Life, contrary to the Rules of Law!

For the Argument of private Opinion, 'tis almoſt as dangerous as the Precedent you are making. I will not argue it from the Caſe of the People, *Enthuſiaſts* and Madmen; but I will urge it in the Caſe of Men that ſat in Judgment. If Opinion is to juſtify the condemning of a Man, let us never more call the Verdicts againſt Mr. *Corniſh*, Mr. *Sidney*, Lord *Ruſſel*, and others, Murders. Aſk the Jury, no doubt none of them are ſo ſilly, but in his Opinion, they were guilty. But if Opinion may condemn a Man without Proof, why not acquit him as well, where there is Proof? Such a Practice, I am ſure, would never be endured.

The propereſt Method, I think, was propoſed by the Gentleman that began the Debate; and I beg Leave to follow the ſame Steps, to conſider his Guilt, how it appears to us, and whether there be any Reaſon for this extraordinary Manner of Proceeding.

The Recital of that Bill are the Arguments for it; and thoſe we ſend up to the Houſe of Lords for the Paſſing of this Bill: And firſt, it ſays, That Sir *John Fenwick* was indicted by the Teſtimony of *Porter* and *Goodman*, &c. It ſays, that ſeveral Days were appointed for his Trial, and at one of thoſe Days the Trial had come on, if it had not been for the Diſcovery that he pretended to make; but it does not ſay it was put off at any other Days or Times, for that Reaſon: But it goes on, and ſays, He hath made ſeveral Reflections, *&c.* inſtead of making an ingenuous Diſcovery; and then it recites how that *Goodman* is withdrawn.

I would beg leave to put Gentlemen in mind of what was a great Inducement to bring this Bill in: It was ſaid, That Sir *John Fenwick* and his Relations had done it; that they would prove that *Goodman* was withdrawn by his Means. Give me leave to ſay, That there was no Proof of it, unleſs the Hearſay of *Clancy*, and the Actions of my Lady *Fenwick*, are to be Evidence, contrary to the known Laws of *England*, to affect this unhappy Gentleman in the Caſe of his Life: I ſay, if any Gentleman had been of another Opinion, no doubt, he would have offered that Amendment to the Committee.

As to the Diſcovery that Sir *John Fenwick* hath made, it does not appear to me, whether it be true or falſe: It is one Thing to give a Vote to clear a Gentleman's Reputation, and another Thing to carry it ſo far, as to give Judgment, That the Perſon that made thoſe Reflections ſhall die, and that before any Proof of their Falſhood.

Here is an Indictment found, and here is an Evidence withdrawn; that is all I am ſatisfied in: And ſuppoſing the Perſon guilty, it is no manner of Inducement from theſe Arguments, to proceed in this extraordinary Manner.

But I would conſider the Matter of the Amendment made at the Committee [Of which Treaſons he the ſaid Sir *John Fenwick* is guilty]. I can't ſay that; and therefore I can't vote for the Bill. If he be guilty, it does not appear ſo by legal Evidence; and therefore I am to judge him, as he appears to me, an innocent Man. The Law requires two Witneſſes to convict a Man of this Crime. 'Tis the greateſt Crime, and the Law is ſo merciful, that it won't expoſe a Man to ſuch great Penalties, without demonſtrative Evidence.

The firſt Act of Parliament that requires two Witneſſes is, 1 *Edward* VI. The next is 5 *Edward* VI. And upon that Act, give me leave to take notice, that Act goes a little further than the firſt; for the 5 *Edward* VI. does not only ſay there ſhall be two Witneſſes, but it goes on, and ſays,———which two Witneſſes (they are there called Accuſers, but mean the ſame Thing) ſhall be produced in Perſon before the Party at his Arraignment, and ſhall there, before his Face, maintain and avow what they have to ſay. So the Parliament particularly provided, That there ſhould not only be two Witneſſes, but that they ſhould appear in proper Perſon, in open Court.

I beg leave to obſerve, That after the making of the firſt Act, in the 2 or 3 Year of *Edward* VI. there was an Attainder of Sir *Thomas Seymour*, in Parliament, without hearing of him; and that very ſelf-ſame Parliament, within two Years afterwards, ſeems ſo to have reſented that Matter, that they made that Proviſion, I have mentioned, in the 5 *Edward* VI. and to ſecure, that that ill Precedent ſhould do no harm, they put in that Clauſe. If this Act paſſes, I wiſh we do not repent it in leſs Time than that Parliament did the Attainder of Sir *Thomas Seymour*. Let us be guided by the Reaſon, the Juſtice, and the Diſcretion of that Act, though we are not bound in our Legiſlative Capacity by the Power of it. I can't but obſerve, that from the making of that Act, no Perſon has been attainted in any other manner, till the Duke of *Monmouth*: So great a Veneration has that Law always had in all Reigns, though a multitude of Conſpiracies have happened in them all. I do not think it ſo material, that there ſhould be two Witneſſes, as that theſe Witneſſes ſhould be heard Face to Face, and croſs-examined. It hath been told you, That 'tis natural Juſtice and Reaſon that there ſhould be two Witneſſes. A Gentleman aſked you, where that natural Juſtice was before the Statute of *Ed.* VI.? Sir, the Statute of 25 *Edw.* III. ſays, That every Perſon that is attainted, ſhall be *Provablement attaint*; and ſomewhat may be from thence inferr'd more than that the Crime ſhould be prov'd, for ſo muſt every Crime. But as to the Proof required by that Act, and the Acts of *Ed.* VI. all thoſe Acts, by very learned Opinions, have been thought declarative of the Common Law: But that's ſcarce worth the Enquiry, ſince 'tis certain how the Law ſtands at this Day.

An honourable Gentleman took notice, That ſuch Evidence as we have had, and ſuch Proceedings as theſe, would not be reaſonable in Caſe of Impeachment; but diſtinguiſhed between that Proceeding and this. But certainly the Reaſon is the ſame. 'Tis true, the ſame Perſons that accuſe in one Caſe, give their Judgment in the other; but in each Caſe, ſuch Privileges as are juſt and reaſonable, ought to be allowed to the Party accuſed.

I ſhall add no more, but that we are making a Precedent, which can't be made without breaking through all the Fences of the Law; and when 'tis made, we know not who may ſuffer by it.

Sir *Rich. Temple.* As to the Evidence you have before you, I appeal to any Man, Whether at the Common Law, if there was but one Witneſs againſt a Man, whether he was not at Liberty of demanding Trial by Battle? Thoſe Acts that have been made ſince, are made certainly to provide, That in no Caſe whatſoever, a Man ſhould be ſo much as accuſed without two Witneſſes of the Treaſon.

As to what hath been ſaid of the particular Evidence before you; what hath been obſerved here, is a good Objection in the Courts below. I do not ſay it does diſable a Man from being an Evidence, becauſe he is not pardoned; but he is not ſo good an Evidence as if he was pardoned: But that I ſtand upon is this: Shall you come here, and make a Precedent in this Place to condemn a Man to the higheſt Penalties, upon leſs Evidence than you will allow any Body elſe to do it? That is what was never done in Parliament before. Will you make a Precedent in Parliament, that at any Time they may bring in a Bill here, and judge a Man to Death for Treaſon upon no Evidence?

As to this Bill itſelf, conſider what a Precedent you will make: There is nothing that any Bill was condemned for in Parliament, that is not in this Bill. All Mankind muſt perceive, that you have but one Evidence, and ſuch a one as I have told you: And whatever any Man's private Perſuaſion is, 'tis the Proof muſt govern you. Then this is a Law *ex poſt Facto*, and that hath always been condemned; you make that Evidence, that was not ſo before. Sir, this is, beſides making a Law in a particular Caſe, againſt the Common Law of *England*, and the Right that every Subject has: It is making a Law to hang a Man without a Trial; 'tis making a Law here, that was introduced here upon a Pretence to make him an Evidence. Every one ſaid, That they did not ſeek his Blood; and if that be the ſecret Inducement in this Caſe, 'tis a dangerous Precedent. The Earl of *Exeter*, when he brought the Rack into the *Tower*, every Body knows the Fate that came upon him afterwards.

Let any body ſhew me there was any Reaſon for reverſing any Act of Parliament; they are all againſt this Bill.

Then to the Neceſſity of it; I can't imagine any Thing that hath been ſaid to you upon that, is a ground for this Bill. Pray conſider firſt, how this Matter came before you; it was for an honourable Perſon's Vindication, and it was not tranſmitted to you by the King, but by the honourable Secretary: He told you, That if you had a mind to ſee theſe Papers, and required it, he had Leave to let you have them; but if it had been a Thing of this conſequence, that the Government had been in the utmoſt Danger, would it have been tranſmitted only at the Requeſt of a private Gentleman, and left unto you, whether you would proceed upon it or no?

But 'tis obſerved, that the Plot may go on ſtill: Pray if this Gentleman be cut off, does that cure it? You are ſecure of him now, that he can't act in it; ſo that I have not heard the leaſt Ground to convince me, that the Government would be in leſs Danger if this Gentleman was cut off.

Sir, we are told here of going according to our Conſciences; give me leave to ſay to you what was inſtanced in the other Day; That in the worſt of Times, when they did not ſtick at murdering of the King, yet they ſtuck at this; they would not allow any Man to ſuffer upon one Witneſs; and they did not admit of Depoſitions againſt my Lord *Mordaunt*; and my Lord *Mordaunt* ſaved his Life by it.

You have depoſed King *James* for breaking in upon the Law; and did any body believe that Mr. *Hampden* was not guilty of the Treaſon he was charged with? He owned it before this Houſe; and yet he was tried only for Miſdemeanor, there being but one Witneſs againſt him; and they that ſtrained all other Laws, ſtuck at this, and would not violate this Law; ſo that I think there is no Neceſſity for making ſuch a Precedent, and I think it would be the worſt of Precedents.

Mr. *Boſcawen.* I have obſerved upon this Debate that ſome Perſons deny that 'tis juſtifiable at any Time to proceed upon Bills of Attainder, and yet they don't diſpute the Power of Parliaments; but at the ſame Time ſay, they ought to go according to the Rules of *Weſtminſter-Hall.*

Another ſays, it is the ſame Thing whether we proceed by Way of Impeachment, or Bill of Attainder: I think him much out of the Way; for in that Caſe, the Lords only are Judges, and you are the Proſecutors; and you don't uſe your Legiſlative Power in that.

A worthy Friend of mine ſaid, He had often been miſtaken in his own Conſcience, when he thought himſelf very much in the Right. That might be ſo; and if there was any room rationally to ſuppoſe, that Sir *John Fenwick* was not guilty, I ſhould be of Opinion to be of the more favourable Side; but I take it, there is no room for any Man to believe but he is guilty.

Now I would examine what Grounds we have to believe him guilty. Upon Trials, when they charge a Jury with a Priſoner, one Part of their Charge is to enquire, whether he fled for it or no? 'Tis notorious, that Sir *John Fenwick* fled for this, which is no ſmall Argument of his Guilt. Another is, that he was here at the Bar, and did not deny the Fact; if he had confeſſed it, no doubt but you would have concluded him guilty; and when he does not deny it, this is the next door to it.

It hath been told you, many Bills of Attainder have been reverſed as unjuſt; it hath been as notorious, that the Verdicts of twelve Men, and when Men have been tried by their Peers, have been reverſed too. I will inſtance in two or three. The firſt I begin with, was that of the Duke of *Somerſet*; but nobody could ſay but he was guilty of the Fact, for he confeſſed it; but there was a powerful Enemy, the Duke of *Northumberland.* The next is, the Duke of *Norfolk*, who was attainted in Queen *Elizabeth*'s Time; and they were not by Parliament, and yet both were reverſed. And I think, as this Matter ſtands now, ſome Gentlemen are of Opinion, by the Evidence they have heard, that he is guilty; but I think nobody hath ſaid, that it appears to him, by the Evidence he hath heard, that he is innocent. Now I deſire to know, whether every Man muſt not uſe his Conſcience, to judge whether there be ſufficient Evidence? I acknowledge there is not ſufficient Evidence to convict him in *Weſtminſter-Hall*; but there is more to ſatisfy my Conſcience, and the World abroad, than if *Goodman* was here; beſides his not denying it, you have the Evidence of the Perſons that died, who owned the ſame Thing: And I mention that the rather, becauſe they confeſſed it to Perſons ſent from this Houſe; and did not only confeſs themſelves to be guilty, but acknowledged, that there was ſuch a Conſpiracy; and Sir *William Parkyns* acknowledg'd in particular, that he was to raiſe a Troop of Horſe, and that the *French* were to be invited over: Is this nothing for the Legiſlative Power, that is to ſecure the Peace and Welfare of the Government?

Gentlemen ſay, there is a great deal of Danger in this Matter: Some, if you acquit him; others, if you condemn him. If you are ſatisfy'd he is guilty, by this Bill you ſet up a Land-mark, that others may take Care they do not come into this Predicament: On the other hand, if you reject this Bill, you will give Advantage to your Enemies; when they ſhall ſee a Man that is ſo notoriouſly concerned in calling in a *French* Army, the worſt of your Enemies, to be Scot-free. If he be guilty, what Danger is there of the Precedent? When a Perſon in the like Nature, that hath fled for it, that does not deny it; when living Perſons confeſs it, and dying Perſons confirm it, then there will be Danger in ſuch a Perſon.

Upon the whole Matter, I think there is no Man that ever I heard, that does not believe him to be guilty; and 'tis ſtrange you ſhould want Evidence, and yet every one think him guilty; and I think no Man muſt be acquitted or condemned, but according to a Man's Conſcience.

An honourable Perſon ſaid, *Porter* was no good Witneſs: If *Goodman* was here, he would not be ſo much; and yet we muſt acquit him becauſe *Goodman* is not here: And therefore, upon the whole, I think you will give your Enemies a great Advantage, if you acquit him; and if you condemn him, you will do yourſelves Right.

Mr. *Cowper.* Sir, being concerned in Proſecutions of this Nature without Doors, I have hitherto declined concerning myſelf in any Debate of this Evidence, though unconcern'd in the Conduct of the Evidence againſt Sir *John Fenwick*; but being to give my Opinion and Vote as a Judge, I ſhall crave Leave to give my Senſe of this Matter.

I would beg Leave, in the firſt Place, to make uſe of a Diſtinction, which, I think, will ſerve to anſwer ſeveral of the Arguments that have been made uſe of: I think there are two Things to be conſider'd; Firſt, his Crime, and the Proof of that Crime; and then the other Matters done by him ſubſequent, *&c.*

The Crime and Proof of it that hath been given againſt him at your Bar, is the Ground by which, I think, before God and Man, I ought to give my Affirmative to this Bill, by which you judge him to die. What he hath done ſubſequent, convinces me in my Judgment, that we are here in a proper Method and Courſe of Proceeding againſt him; therefore let no Man ſay, That you have condemned him becauſe he hath protracted his Trial: No, you have condemned him for having been guilty of High-Treaſon, manifeſtly proved againſt him: Then let them not ſay, on the other hand, Will you condemn any Man that is at any Time guilty of High-Treaſon? No; but when a Man is guilty of the worſt of Treaſons, and this would have been manifeſtly proved againſt him in the ordinary Courſe of Proceedings, but that he, undertaking to atone for his Crime, and ſerve his Country, hath protracted his Trial till one of the Evidence is gone; and then, though he pretended to have a Reſerve, which he would make known to the King's Perſon, yet when he thinks he is out of the ordinary Reach of Juſtice, he ſets the Juſtice of his Country at defiance. Theſe are Grounds, not why he is to die, but to juſtify our Proceeding in this Manner.

Sir, I would beg leave, in a few Words, to take notice of a few Things ſaid in this Matter: Gentlemen are afraid, that this will be made uſe of by Poſterity to the Diſadvantage of honeſt Men: And you have been told, That Precedents have begun with the Puniſhment of the Guilty, and then have been carried on to the Puniſhment of thoſe that have not been ſo. 'Tis true, there hath been a very bad uſe made of very juſt Acts in relation to the Publick: But what do Gentlemen infer from that? Muſt we have no ſuch thing as Juſtice? Muſt not the Guilty be puniſhed, becauſe the ſame Methods may be made uſe of for the puniſhing of honeſt Men?

I am not afraid of what uſe Poſterity will make of it; if there come Times of Violence when there are no Parliaments, they will not want this Precedent; there are others that have been cited, that will much more juſtify thoſe Proceedings; nay, this may protect the Innocent. If a Bill come to be proceeded in againſt another, he may ſay, Sir *John Fenwick* was heard perſonally, and by his Counſel; that the Evidence was produced before him, and confronted with him. An innocent Man may ſay, There was that extraordinary in his Crime, which is not in mine; he would have introduced a foreign Army, and afterwards have aggravated his Crime, by endeavouring to abuſe the King, and creating a Jealouſy between the King and his Miniſters.

Sir, in the next place it is ſaid, That here is not legal Evidence; which I think is a Miſtake: And, ſay ſome, Though here is an Evidence, that really convinces them in their Conſciences (I am not aſhamed to make uſe of that Word), yet they are not for paſſing this Bill, becauſe there is not a legal Evidence. With ſubmiſſion, that is a Miſtake; before 1 *Ed.* VI. one Witneſs was a good Evidence in High-Treaſon; but there was Variety of Opinions touching Treaſon before that Time; but neither the 1ſt nor the 5th *Ed.* VI. in the penning or wording of them, nor in the Reaſon of them, were intended to extend to the High Court of Parliament; ſo that, for aught that hath been ſaid, though one Witneſs corroborated by Circumſtances, as this Caſe is, and the Confeſſion of the Party, would not be legal Evidence below; yet, with ſubmiſſion, it is a legal Evidence in Parliament, even according to the ſtrict Rules of Law; becauſe no Law hath made two Witneſſes requiſite in this Caſe; ſo that 'tis a convincing Evidence: I think it may be juſtified to be a legal Evidence; and as it convinces me, that I can't reſiſt the Belief of it, I muſt be for this Bill, notwithſtanding what ſome Gentlemen have ſaid, by way of endeavouring to explode Conſcience as a Rule not to walk by in this Caſe. One Inſtance given againſt it was, becauſe a Hangman has not a diſcretionary Power to execute a Man according to his Conſcience, and put him to what ſort of Death he pleaſes; as if we had not a better, and more legal, and diſcretionary Power in the High Court of Parliament than the Hangman has.

But we are told of ſeveral Inſtances, where mad, and hair-brain'd Men have made uſe of their Conſcience to palliate their Extravagancies. No doubt it hath; and let me tell you, Religion hath been made uſe of as a pretence to the worſt of Villanies in all ages; and yet I hope they will not argue, that there ought to be no Religion neither, for a Guide to Men's Actions.

When Men come to be Judges, I would know what Rule they can have better than a ſedate, well-informed Conſcience? Below, when a legal Evidence is given, yet the Jury are not bound to go by that legal Evidence; they are, when they have heard it, Judges of the Fact, and are to go by no other Rule, than what is ridiculed here, even the Rule of their own Conſcience.

It was ſaid early in the Debate, by a Member of great Reputation, that this (except *Monmouth*'s Caſe) is the firſt Precedent of a Bill of Attainder that began in this Houſe. It ſeems the ancient Way was, for the Lords to give the Witneſſes their Oaths, and when they thought fit, they ſent down a Bill, and the Commons were to proceed upon it: But I think, with ſubmiſſion, this is a much better Way; and I had much rather give my Conſent upon hearing convincing Evidence, and that the Party has nothing to ſay for himſelf, than upon any Bill tranſmitted from the Lords, and no other Evidence, than that they thought fit to paſs it.

Some Gentlemen have ſet a great Weight, or rather miſtaken the Argument: Say they, Sir *John Fenwick* is not a Man ſo conſiderable as to endanger the Government. Admit that thoſe that have ſpoke for the Bill, have not made that uſe of the Argument; but this is that I lay my Finger upon in particular; 'tis plain he was to be General, and knew a great many of the Officers. I am ſatisfied he hath not made that Atonement to his injured Country, that he ought to have done. I am ſatisfied, that unleſs this Bill proceed ſteadily againſt him, you will have none of that Diſcovery——

[*Here he was interrupted by the Noiſe of ſome Gentlemen, ſhewing Diſſatisfaction at that Way of arguing.*]

Mr. *Cowper* proceeds. Don't let Gentlemen pervert this Argument, and ſay, Will you hang a man if he don't confeſs? No; but when I have heard Proof, that he is guilty of the worſt of Treaſons, and hath aggravated his Crime in that manner which he hath done, he deſerves to die; unleſs he will merit his Life by a Diſcovery of what he knows. I think it of the higheſt Importance to you, that can be, that you ſhould come to the further knowledge of the other Branch of the Conſpiracy; the Meeting of the *French* King's Forces in *England*. I think you are in a proper Method, and perhaps may have a better Iſſue of this Bill than his Death: But if not, he will but pay the Debt which he owes to the Juſtice of his Country.

Mr. *Paget*. Sir, I can't believe but I ſhall be heard, as to the little I have to ſay, with ſome uneaſineſs, after ſo long a Debate. But, Sir, ſince I did take the Liberty to give my Opinion, why I was againſt this Bill before; I think it as reaſonable to give you my Reaſons, why I don't ſtand convinced by the Arguments I have yet heard. And that I may the better give you my Reaſons, I ſhall, as well as I can remember, repeat ſome of the Arguments that have been urged for the Paſſing of it.

If I miſtake not, ſome of the Arguments have run upon the Power and Prerogative of Parliaments; ſome upon what was proper Evidence in this High Court of Parliament, other than what would be in other Places; others upon the Extraordinarineſs of the Occaſion.

As to the firſt of theſe Arguments; ſince Gentlemen, much more experienced in Rules of Parliament, do not think fit to deliver their private Opinion, what Rules Parliaments may in Reaſon be ſuppoſed to have, I ſhall not ſay any Thing to that.

As to the Arguments, of what Evidence ſhall be ſufficient to adjudge a Man to Death in this Houſe; I confeſs, I ſhall at all Times be very careful how I give my Opinion in Matters of Life and Death; becauſe I think the greateſt Caution is to be uſed in that Caſe: And for this Reaſon, I can't conſent to give my Opinion in one Caſe, that I ſhall think fit to retract in any Caſe afterwards.

If I underſtand the Meaning of the Houſe, 'tis not in favour to Sir *John Fenwick* himſelf that Gentlemen oppoſe this Bill, but for fear of uſhering in a Precedent, that may be made uſe of againſt a better Man.

I confeſs, here is a worthy Member that ſpake laſt, ſaid ſomething in his Argument that hath ſome Weight with me. I did apprehend by the general Debate of the Houſe, That the Parliament had no Rules at all, but what they would fix to themſelves; but I have a great Regard for his Opinion: But if he ſays true, the Evidence before you is not legal Evidence in *Weſtminſter-Hall*; but 'tis legal Evidence according to the Rules of Proceeding in the High Court of Parliament: But I think, truly, if they may be preſumed to have any Rules to go by, nothing is ſo plain to me, as that a Rule of their own of ſo late Date, as the Act for regulating Trials in Caſes of Treaſon, ſhould be a Rule to them: And 'tis ſaid in that Act, That after ſuch a Day no Perſon ſhall be brought to Trial in any Caſe of Treaſon, *&c.* but he ſhall be condemned upon the Evidence of two Witneſſes; and I muſt needs ſay, that Act that was paſſed laſt Seſſions, is ſo much for the Liberty of the People of *England*, that I think it will be very hard to repeal that ſubſtantial Part of the Law ſo ſoon after it was made.

As to the Extraordinarineſs of the Caſe, I am ſenſible what Streſs hath been laid on that Argument, as if the Strength of this Government did in ſome meaſure depend upon your Diſpoſal of this Matter one Way or the other: And ſince that is the Caſe, I ſhall ſpeak tenderly of it; for I do as much abhor Acts of Treaſon againſt the Government, as any Man that has ſpoke for this Bill: I think as the Crime is to be diſtinguiſhed from all others, as being a more than ordinary Crime, ſo I think the Perſon that is concerned, muſt be extraordinary: And I think, with ſubmiſſion, there is ſome difference between Principals and Seconds in an Act of Treaſon. When you can't come at a Man being at the Head of a Rebellion, it may be reaſonable to proceed by Bill of Attainder; but I think 'tis not to be uſed upon all Occaſions, or when you may come at a Perſon another Way; which, I think, is the Caſe of this Gentleman. I am of Opinion, that there does not depend more upon Sir *John Fenwick* now, than when he was firſt taken. Why he was not tried, I ſhall not examine the Reaſon; I ſuppoſe it was becauſe he gave ſome Aſſurance of his Confeſſion: Truly, I have heard no other Reaſon for proceeding againſt him now, but thoſe Papers which have been adjudged ſcandalous, and are ſo to all Intents and Purpoſes, I do think truly: But the Liberty of the People of *England* is very much concerned in the Revocation of that Act, which was promoted for the Liberty of the People; and none of the Arguments that have been uſed can convince me, That I ought to give Judgment upon leſs Evidence than is provided by that Act.

Mr. *Sloane*. Sir, I hardly thought I ſhould have needed to have troubled you with my Thoughts in this Matter, but that this honourable Gentleman that ſpake laſt, has gone ſo far in his Reaſon, as to ſpeak to Matter of Law: He ſeems to extenuate the Fault of Sir *John Fenwick*; and gives it as a Reaſon why he ſhould not be attainted by this Bill, for that he was none of the Principals, but only an Acceſſary: There is no Gentleman of the Gown but will tell you, that there is no Acceſſaries in Caſes of Treaſon, but they are all Principals, and equally guilty; and there is no Evidence in this Caſe to make him Acceſſary, but he is either Principal or nothing.

When I have made this Obſervation, give me leave to tell you my own Thoughts: As every Man is to be ſaved by his own Faith, ſo may my Salvation depend upon my Opinion, according to my Conſcience in this Matter, which is for paſſing this Bill.

The laſt Time, I gave you my Reaſons why I was for this Bill; and yet I have not heard them anſwered, though a Gentleman ſaid I anſwered myſelf: But I will ſtate the Caſe, and deſire him to reply to me. I did ſay then, Sir, and do ſo again, That I do not think thoſe ſcandalous Papers any Reaſon to provoke you to paſs this Bill; and I do think, if he ſhould be threaten'd, it would be a Blemiſh upon his Confeſſion. Another Thing I put out of the Caſe, That he is a Man ſo dangerous to the Government, that if he eſcape, we are all undone. I do take him, that in his Perſon, Intereſt and Friends, he is not ſo; and would not have that be a Motive for the paſſing of this Bill: But take it upon the Evidence that is before us, and the Nature of our Proceedings; then I will ſay, we have great Reaſon to proceed upon this Bill, for the Preſervation of the Government, and for this Reaſon; Whereas it is inſiſted on one ſide, that here are the Laws and Liberties of *England* at ſtake, and nobody knows whoſe Caſe it may be next. Sir, if we don't go upon good Grounds and Reaſons, that we don't fear any Body's following, God forbid we ſhould make this a Precedent! But pray turn the Tables on the other Side, and ſee what the Caſe will be; that here is a Gentleman that every Body of the Houſe does believe guilty; that he hath been in a Conſpiracy to bring in the *French*, and depoſe the King; and the Man came before us, and we had no Power to reach him; What will be the Precedent on the other Side? It will be eaſy to take off one of the Witneſſes by Men of great Eſtates, and then there is no coming at them, even by the Parliament themſelves: This Parliament was of Opinion, That they could not come at Sir *John Fenwick*, though they were of Opinion that he was guilty.

But now, Sir, to that which is the Queſtion: 'Tis allowed by every Body, you may do what you pleaſe; but without ſtraining your Legiſlative Power, I ſhall offer my Thoughts and Reaſons for it, upon theſe three Points: That the Fact is Treaſon; That he is plainly guilty; and That we have a plain Juriſdiction in this Caſe, in the ordinary Methods and Proceedings of Parliament.

Sir, the Fact is Treaſon, the Meeting at ſeveral Times, and conſpiring, and conſulting to bring in a *French* Power to depoſe the King. You have been told by ſeveral Perſons, and the Counſel at the Bar, That ſuch Meetings without ſome other Overt-Act, is not Treaſon; but I affirm the contrary, for that is an Overt-Act of compaſſing the Death of the King: And Sir *Bartholomew Shower*, who did inſiſt upon it at the Bar, did otherwiſe act his Part upon it at the Trial of Mr. *Cook*; for he offered it at firſt, but afterwards he deſerted it, as a Thing he could not ſtand upon; for 'tis the Opinion of all the Judges, upon a late Reſolution.

Then, Sir, the Fact being Treaſon, is no Act *ex poſt facto*. We are not making that Treaſon which was not ſo, but we are only judging of the Fact that was Treaſon before; though if it was a Doubt whether it was Treaſon or no, the Parliament hath a Power by 25 *Edw.* III. to judge that Treaſon, that the Courts below have no Power of.

The next Thing is, Whether there be ſufficient Evidence of his Treaſon before us? I will put it out of the Caſe, as no concluſive Evidence at all, what *Goodman* hath ſaid upon his Oath (further than that there was ſuch a Witneſs that did and could ſwear ſuch a Thing, and that he was examined before the Jury); and this I will take upon me to ſay (and I will give my Reaſon for my Opinion), That the Parliament is not obliged to Two Witneſſes by any Law now in being.

It hath been told you, That from the Time of *Edw.* III. one Witneſs was ſufficient till the Statute of *Edw.* VI. Now I will prove to you, from the Statute of *Phil.* and *Mary*, That by the Common Law, and all the Time between the Reign of *Edw.* III. and *Edw.* VI. one Witneſs was ſufficient for this Treaſon. For that Statute of *Phil.* and *Mary* does ſay, that any Perſon that ſhall bring from beyond Sea any falſe and counterfeit Coin, or be accuſed or impeached of any Offence concerning the Impairing, Counterfeiting, or Forging of any Coin current within this Realm, ſhall, and may be indicted, arraigned, convicted, or attainted by ſuch-like Evidence, and in ſuch-like Manner as was accuſtomed before the firſt Year of K. *Ed.* VI. Now, what was the Reaſon of that Statute before the Statute of *Ed.* VI.? Thoſe Counterfeits were to be tried by one Witneſs; and therefore at this Day all the Counterfeiters and Utterers of falſe Coin have been Attainted by one Witneſs.

'Tis ſaid again, That there is the Law of Nations, and the Law of God, to the contrary. Gentlemen have ſaid ſeveral times already, That in Murder and Felony one Witneſs is ſufficient; which, ſaving ſome little Parts of the Judgment as to the Forfeiture and Attainting of the Blood, is the ſame Penalties. We are not in the Land where that Law was in Force; for by that Law, as to common Felons, there was a Reſtitution only: But I would put a Gentleman that ſits by the Bar this Caſe; By the ſame Law of *Deuteronomy* and *Numbers*, that he hath quoted, Adultery is Death: Will you be contented that that ſhould be ſo here? They are either all of them in Force, or none of them in Force.

I do ſay, That by the Statute of *Ed.* III. and ever after, till the Statute of *Ed.* VI. one Witneſs was ſufficient to convict any Man of Treaſon. And I do ſay, That the Statutes of *Ed.* VI. do not preclude the Parliament from any Method of Proceedings.

The Statute ſays, That no Man ſhall be indicted, *&c.* nor ſhall they proceed upon ſuch Indictment. From which Words in the Statute, I do plainly make it appear to any Gentleman that will read it, 'tis confined only to the Courts of *Weſtminſter-Hall:* For certainly, you can't call a Bill of Attainder to be a Proceeding upon an Indictment. What I ſay, is only to diſcharge my own Conſcience, and to ſalve the tender Conſciences of them that hear me; and therefore, I deſire them never to ſay, That there ought to be two Witneſſes, before they anſwer what I have ſaid upon that Statute.

Then, Sir, you have need but of one Witneſs, and you have had Captain *Porter* before you; who, I think, notwithſtanding all that hath been ſaid, is a credible Witneſs. A Gentleman made ſome Objections to his Credit, and told you, he was not to be believed, becauſe he was in the ſame Conſpiracy, and had been in ſuch a villainous Action: But, Sir, the ſame Gentleman hath often confined you to the Rules of *Weſtminſter-Hall*; and he hath told you, 'Tis a wrong Place here, and that a Man has not ſo good a Trial here as in *Weſtminſter-Hall.* Why? the Thing that was ſpoke of, of his being concerned in the Aſſaſſination, and of his being a Fellow-Conſpirator with them, which is now urged as an Objection before you, is no Objection in *Weſtminſter-Hall.*

I would only take notice of another Objection this Gentleman made to the Witneſs, which he ſaid he had from the Bar; which was, That Captain *Porter* was not pardoned, and he was now drudging for his Pardon: But that is ſo far from what ought to be quoted, that he that ſaid it ought to be reprimanded for it.

He made another Objection againſt his being a good Witneſs, and compared it to the Caſe of an Hundredor; but he did not remember, that the Man that was robbed is a good Witneſs; and the Reaſon is, becauſe of the Neceſſity of the Thing, and that no others can be; and the Defendant in an Hundred can't be a Witneſs, becauſe there may be others; and that is the Reaſon of this Caſe.

And for the Precedents in *Richard* IIId's and *Henry* IVth's Time, no Gentleman can inſiſt upon them, conſidering the Differences of the Crown, and the one Attainted the other; and they were not reverſed upon the Point of Juriſdiction, but becauſe of the different Rights of the Kings; and nobody had pretended to anſwer the Caſe of the Regicides; they were not left to the Law, I mean ſuch as were actually tried before the Parliament; but the Parliament paſſed different Judgments on them; and ſome of them were in Cuſtody. What was told you of *Cromwell*'s Caſe and others, they go upon the ſame Reaſon, that they were not heard, though they were in Cuſtody.

Col. *Wharton.* A Gentleman lately told you, We had lately paſſed an Act for Trials in Caſes of Treaſon, and how we are in this Proceeding, about doing ſomething that is contrary to it: That is a Thing that would ſtick with me, if I could not anſwer it; but I appeal to every Gentleman in this Houſe, whether that Act hath any Sort of relation to Trials in Parliament; for that is only to direct the Courts in *Weſtminſter-Hall.*

I have only this to ſay; I think the Evidence very full before you. I think you have had one very good Witneſs, and the Counſel for the Priſoner had Liberty to confront him: If he had not been guilty, the Priſoner at the Bar would have deny'd it: I am convinced of the Truth of it, and my Conſcience is to make a Judgment upon it, and that is all we can go by here.

Mr. *Jefferys.* A worthy Gentleman of the Long Robe hath taken Pains to find out Precedents to juſtify our Proceedings; and another ſays, there is no Act to circumſcribe our Proceedings. But ſince Gentlemen differ ſo much, it gives me a great deal of Caution. This I know, there is a Law of the Land, by which Perſons ought to be governed: I take this to be an extraordinary Method of Proceeding, and I hope the Lords will take more Care of the Matter than the Commons.

Mr. *Edward Harley.* Sir, I can't ſatisfy myſelf to be for this Bill; and in a few Words, I ſhall give my Reaſon for it. It hath been ſaid, That the Parliament is unlimited. I do agree, that we are not tied to the Rules of *Weſtminſter-Hall.* I ſhall only mention the Reaſon why two Witneſſes are required in Caſes of High-Treaſon. If any will look into the Hiſtory of *England*, they will find it hath been often the Deſign of the Crown to trump up Plots upon the Subject; and therefore theſe Acts took particular Care there ſhould be two Witneſſes to prove the Fact: This is the Reaſon of the Law, and, I think, upon it the Liberty of the Subject is founded; and therefore I can't be for this Bill.

Then the Queſtion for paſſing this Bill was put, and the Houſe divided.

Ayes, 189. Noes, 156.

The Writ for Executing Sir *John Fenwick*, being under the whole Broad-Seal, and incloſed in it.

‘ GULIELMUS tertius Dei Gratia, *Angliæ*, *Scotiæ*, *Franciæ* & *Hiberniæ*, Rex, Fidei Def. *&c.* Vic. Com. *London*, & Vic. Com. *Midx.* Salutem: Cum *Johannes Fenwick*, Bar. per quendam actum ad ſeſſionem præſentis noſtri Parliamenti apud *Weſtminſt.* ſuper viceſimum diem *Octobris*, Anno Regni noſtri octavo, per prorogationem tent. edit. de alta proditione per ipſum perpetrat. & commiſſ. attinctus fuit, & executio ſuper inde adhuc reſtat faciend. & quia pro certis cauſis & conſiderationibus nos ſpecialiter moventibus, totam executionem Actus attincturæ prædict. ſuper dict. *Johannem Fenwick*, præter amputationem Capitis ſui, omitti volumus; ideo præcipimus vobis & per præſentes firmiter injungendo mandamus, quod in & ſuper viceſimum tertium diem inſtantis menſis *Januar.* inter horas nonam & undecimam ante meridiem ejuſdem diei dictum *Johannem Fenwick* in Goala noſtra de *Newgate* ſub Cuſtodia veſtra nunc exiſtent a Goala prædict. uſque ad *Tower-Hill*, ducatis, & Caput ipſius *Johannis Fenwick* ad tunc & ibidem amputari & a Corpore ſuo omnino ſeparari faciatis. Teſte me ipſo apud Weſtmonaſt. decimo octavo die *Januar.* Anno Regni noſtri octavo. CHUTE.

The Label.

Vic. Com. Lond. *&* Midx. *de executione*
faciend. John Fenwick, *Bar. authoritate Parl. Attinct.* CHUTE.

All the Puniſhment being remitted but Beheading, he was brought to a Scaffold erected on Tower-Hill, *where he delivered this Paper to the Sheriffs.*

SPEAKING nor Writing was never my Talent: I ſhall therefore give a very ſhort, but faithful Account, firſt, of my Religion, and next, what I ſuffer moſt innocently for, to avoid the Calumnies I may reaſonably expect my Enemies will caſt upon me when dead; ſince they have moſt falſely and maliciouſly aſperſed me, whilſt under my Misfortunes.

As for my Religion, I was brought up in the Church of *England*, as it is eſtabliſh'd by Law, and have ever profeſſed it; though I confeſs I have been an unworthy Member of it, in not living up to the ſtrict and excellent Rules thereof; for which I take Shame to myſelf, and humbly aſk Forgiveneſs of God. I come now to die in that Communion, truſting, as an humble and hearty Penitent, to be receiv'd by the Mercy of God, through the Merits of Jeſus Chriſt my Saviour.

My Religion taught me my Loyalty, which I bleſs God is untainted; and I have ever endeavoured in the Station wherein I have been placed, to the utmoſt of my Power, to ſupport the Crown of *England* in the true and lineal Courſe of Deſcent, without Interruption.

As for what I am now to die, I call God to witneſs, I went not to that Meeting in *Leadenhall-ſtreet* with any ſuch Intention as to invite King *James* by Force to invade this Nation; nor was I myſelf provided with either Horſe or Arms, or engaged for any Number of Men, or gave particular Conſent for any ſuch Invaſion, as is moſt falſly ſworn againſt me.

I do alſo declare, in the Preſence of God, That I knew nothing of King *James*'s coming to *Calais*, nor of any Invaſion intended from thence, till it was publickly known: And the only Notion I had, that ſomething might be attempted, was from the *Thoulon* Fleet coming to *Breſt.*

I alſo call God to witneſs that I receiv'd the Knowledge of what is cotain'd in thoſe Papers that I gave to a great Man, that came to me in the *Tower*, both from Letters and Meſſages that came from *France*; and he told me, when I read them to him, that the Prince of *Orange* had been acquainted with moſt of thoſe Things before.

I might have expected Mercy from that Prince, becauſe I was inſtrumental in ſaving his Life: For when, about *April*, 1695, an Attempt formed againſt him came to my Knowledge, I did, partly by Diſſuaſions, and partly by Delays, prevent that Deſign; which, I ſuppoſe, was the Reaſon that the laſt villainous Project was concealed from me.

If there be any Perſons whom I have injur'd in Word or Deed, I heartily pray their Pardon, and beg of God to pardon thoſe who have injur'd me; particularly thoſe who with great Zeal have ſought my Life, and brought the Guilt of my innocent Blood upon this Nation, no Treaſon being proved upon me.

I return my moſt hearty Thanks tothoſe noble and worthy Perſons who gave me their Aſſiſtance, by oppoſing this Bill of Attainder, without which, it had been impoſſible I could have fallen under the Sentence of Death. God bleſs them and their Poſterity; though I am fully ſatisfy'd they pleaded their own Cauſe, while they defended mine.

I pray God to bleſs my true and lawful Sovereign King *James*, the Queen, and the Prince of *Wales*, and reſtore him and his Poſterity to this Throne again, for the Peace and Proſperity of this Nation; which is impoſſible to proſper, till the Government is ſettled upon a right Foot.

And now, O God! I do with all humble Devotion commend my Soul into thy Hands, the great Maker and Preſerver of Men, and Lover of Souls; beſeeching thee that it may be always dear and precious in thy Sight, through the Merits of my Saviour Jeſus Chriſt. Amen.

John Fenwick.

Then he ſubmitted to the Block, and the Executioner ſever'd his Head from his Body.

CLXIV. *The Trial of* Edward *Earl of* Warwick *and* Holland, *before the Houſe of Lords, for the* Murder *of* Richard Coote, *Eſq*; March 28, 1699. 11 Will. III.

ABOUT Eleven of the Clock the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, for the Trials of *Edward* Earl of *Warwick* and *Holland*, and *Charles* Lord *Mohun*, in the Manner following:

The Lord High Steward's Gentlemen Attendants, two and two.

The Clerks of the Houſe of Lords, with two Clerks of the Crown in the Courts of *Chancery* and *King*'s-*Bench*.

The Maſters in *Chancery* two and two.

Then the Judges.

The Peers eldeſt Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeoman Uſher of the Houſe.

Then the Peers two and two, beginning with the youngeſt Barons.

Then four Serjeants at Arms, with their Maces.

Then one of the Heralds, attending in the Room of *Garter*, who by Reaſon of his Infirmity could not be preſent.

And the Gentleman Uſher of the Black Rod, carrying the White-Staff before the Lord High Steward.

Then the Lord Chancellor, Lord High Steward of *England* alone.

When the Lords were ſeated on their proper Benches, and the Lord High Steward upon the Wool-Pack;

The two Clerks of the Crown in the Courts of *Chancery* and *King*'s-*Bench*, ſtanding before the Clerk's Table with their Faces towards the State;

The Clerk of the Crown in *Chancery* having his Majeſty's Commiſſion to the Lord High Steward in his Hands, made three Reverences towards the Lord High Steward, and the Clerk of the Crown in *Chancery* on his Knees preſented the Commiſſion to the Lord High Steward, who delivered it to the Clerk of the Crown in the *King*'s-*Bench*, (then likewiſe kneeling before his Grace) in order to be opened and read; and then the two Clerks of the Crown making three Reverences, went down to the Table; and the Clerk of the Crown in the Court of *King*'s-*Bench* commanded the Serjeant at Arms to make Proclamation of Silence; which he did in this Manner:

Serjeant at Arms. O yes, O yes, O yes, My Lord High Steward his Grace does ſtraitly charge and command all manner of Perſons here preſent, to keep Silence, and hear the King's Majeſty's Commiſſion to his Grace my Lord High Steward of *England* directed, openly read, upon Pain of Impriſonment.

Then the Lord High Steward ſtood up, and ſpoke to the Peers.

*Lord High Steward**. Your Lordſhips will be pleaſed to ſtand up, and be uncovered, while the King's Commiſſion is reading.

* Lord *Somers*

All the Peers ſtood up, and were uncovered, while the Commiſſion was read.

Clerk of the Crown. 'GUlielmus Tertius Dei Gratia Angl. Scot. Franc. & Hibern. Rex, Fidei Defenſor, &c. Prædilecto & fideli Conſiliar. noſtro Johanni Domino Somers, Cancellar. noſtro Angl. Sciatis quod cum Edrus. Comes Warwic. & Holland, nuper de paroch. Sti. Martini in Campis in Com. Middleſex. & Carolus Dnus. Mohun, nuper de paroch. prædict. in Com. prædict. coram dilectis fidelib. noſtris Carolo Lee, Mil. Samuel. Buck, Willielmo Withers & Franciſco Tyſſon, Armigeris, & aliis ſociis ſuis Juſticiar. noſtris ad inquirend. per Sacramentum, probor. & legalium hominum de Com. noſtro Middleſex. prædict. ac aliis viis modis & mediis quibus melius ſciverint aut poterint, tam infra libertat. quam extra, per quos rei veritas melius ſciri poterit & inquiri de quibuſcunque Proditionibus Miſpriſionibus Prodition. Inſurrectionib. Rebellionib. Controfact. tonſur. lotur. falſis fabricationib. & aliis falſitat. Monet. hujus Regni noſtri Angl. & alior. Regnor. ſive Dominior. quorumcunque ac de quibuſcunque Murdris Feloniis Homicid. Interfectionibus Burglar. Raptib. Mulier. Congregationib. & Conventicul. illicit. verbor. prolationib. Coadunationib. Miſpriſionib. Confederationibus falſis Alleganciis Tranſgreſſionibus, Riotis, Routis, Retentionib. Eſcapiis Contempt. Falſitat. Negligentiis, Concelament. Manutenent. Oppreſſionibus, Cambiparciis, Deceptionib. & aliis Malefactis Offenc. & Injur. quibuſcunque; necnon Acceſſar. eorundem infra Com. prædict. tam infra libertat. quam extra, per quoſcunque & qualitercunque habit. fact. perpetrat. ſive commiſ. & per quos vel per quem cui vel quibus quando qualiter & quomodo & de aliis Articul. & Circumſtanc. præmiſſ. ſeu eor. alicujus vel aliquor. qualitercunque concernen. plenius veritat. & ad eaſdem proditiones & al. præmiſſ. audiend. & terminand. ſecundum legem & conſuetud. Regni noſtri Angl. nuper aſſignat. de Felonia & Murdro per ipſos Edrum. Comitem Warwick. & Holland, & Carolum Diminum Mohun, Commiſſ. & Perpetrat. per ſacrament. probor. & legal. hominum Com. noſtri Middleſex. prædict. Indictat. exiſtunt. Nos conſiderantes quod Juſtitia eſt virtus excellens & altiſſimo complacens, volenteſque quod prædict. Edrus. Comes Warwic. & Holland, & Carolus Dominus Mohun, de & pro Felonia & Murdro unde ipſi ut præfertur Indictat. exiſtunt. coram nob. in preſenti Parliament. noſtro ſecundum leg. & conſuetud. Regni noſtri Angl. Audiantur, Examinentur, Sententientur & Ajudicentur, cæteraque omnia quæ in hac parte pertinent debo. modo exerceantur & exequantur; ac pro eo quod Officium Seneſchalli, Angl. (cujus præſentia in hac parte requiritur ut accepimus) jam vacat, Nos de Fidelitate Prudentia provida Circumſpectione & Induſtria veſtris plurimum confidentes Ordinavimus & Conſtituimus vos ex hac cauſa Seneſchallum, Angl. ad Officium illud cum omnibus eidem Officio in hac parte debit. & pertinen. (hac vice) gerend. occupand. & exercend. Et ideo vob. Mandamus quod circa præmiſſ. diligenter intendatis & ea omnia quæ in hac parte ad Officium Seneſchal. Angl. pertinent & requiruntur (hac vice) faciatis exerceatis & exequamini cum effectu. In cujus rei Teſtimonium has Literas noſtras fieri fecimus Patentes, Teſte meipſo apud Weſtmonaſterium viceſimo quinto die Martii, Anno Regni noſtri Undecimo.

'Per ipſum Regem propria Manu Signat.'

Serj. at Arms. God ſave the King.

Then the Herald and the Gentleman-Uſher of the Black Rod, after three Reverences, kneeling, preſented the White Staff to his Grace, and his Grace removed from the Wool-pack to the Chair, which was placed upon an Aſcent juſt before the uppermoſt Step of the Throne, and ſeated himſelf in the Chair.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, My Lord High Steward of *England*, his Grace, does ſtraitly Charge and Command all manner of Perſons here preſent to be uncovered, upon Pain of Impriſonment.

Then the Judges and Maſters in *Chancery* ſat down in their Places upon the Wool-pack, uncovered.

Then the Clerk of the Crown read the Return of *Certiorari in hæc verba.*

'Gulielmus Tertius, Dei gratia, Angl. Scot. Franc. & Hibern. Rex, Fidei Defenſ. &c. Juſtic. noſtris per Literas noſtras Paten. confect. ad inquirend. per Sacrm. probor. & legal. hom Com. noſtri Midd. ac aliis viis mod. & med. quibus melius ſciverint aut poterint de quibuſcunque prodic. miſpriſ. prodic. inſurrection. rebellion. controfact. tonſur. lotur. falſis fabricat. & aliis falſitat. monet. hujus Regni Angl. & alior. Regnorum ſive Dominiorum quorumcunque ac de quibuſcunq; murdris, felon. homicid. interfection. burglar. raptibus mulierum, congregacon. & conventicul. illicit. verborum prolationibus, coadunat. miſpriſion. confederat. falſis alleganc. tranſgreſ. riot. rout. retention. eſcapiis contempt. negligenc. concelament. manutenen. oppreſſion. deception. & aliis malefactis offenſ. & injur. quibuſcunq; necnon acceſſariis eorundem infra Com. prædict. tam infra libertates quam extra per quoſcunq; & qualitercunq; habit. fac. perpetrat. ſive commiſſ. ac de aliis articulis & circumſtanciis præmiſſ. & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunq; concernen. plenius veritat. & ad eaſdem prodition. & al. præmiſſ. audiend. & terminand. aſſign. Necnon Juſtic. noſtris ad Gaol. noſtram de Newgate de Priſonar. in ea exiſten. deliberand. aſſign. & eorum cuilibet Saltm. volen. certis de cauſis omnia & ſingula Indictamen. & Inquiſition. de quibuſcunq; felon. & murdris, unde Edrus. Comes Warwic. & Holland, & Carolus Dominus Mohun, & al. coram vobis Indictat. ſunt; necnon Record. conviction. Rici. French, Rogeri James & Georgii Dockwra, pro felon. & homicid. unde indictat. ſunt. Et ſuper inde per quandam. Jur. Prie. inde inter nos & præfat. Richardum French, Rogerum James & Georgium Dockwra, capt. convict. exiſt. ut dicitur coram nobis & non alibi terminari vobis & cuilibet veſtrum mandamus quod omnia & ſingula in Indictament. & Record. convict. prædict. cum omnibus ea tangen. quibuſcunq; nominibus iidem Edrus. Comes Warwic. & Holland, Carolus Dominus Mohun, Richardus, Rogerus & Georgius nuncupentur in eiſdem coram nobis ſub ſigillis veſtris aut unius veſtrum in octab. Sti. Hiliarii ubicunq; tunc fuerimus in Angl. mittat. ſeu unus veſtrum mittat. una cum hoc brevi ut ulterius inde fieri fac. quod de jure ac ſecundum legem & conſ. Regni noſtri Angl. fore viderimus faciend. Teſte J. Holt, Mil. apud Weſtm. xxviii die Novembris, Anno Regni noſtri decimo.

'per Cur. Aſtry.

'Ad Inſtanc. proſecutor. quoad duos Def. & ad inſtanc. cæterorum Def.

'J. Holt.'

'Virtute cujus brevis mihi & aliis direct. Indictament. & Inquiſition. infra mentionat. necnon Record. conviction. infra nominat Rici. French, Rogeri James & Georgii Dockwra, pro felon. & homicid. unde indictat. & ſuperinde per quandam Jur. prie. convict. exiſt. cum omnibus ea tangen. coram Dom. Rege in quibuſdam Sched. huic brevi annex. mitto prout interius præcipitur.

'Reſponſ. Fra. Child. Mil. Major. Civit. Lond. un. Juſtic. infra ſcript.'

'Midd. ſſ. Memorandum quod ad deliberation. Gaol. Domini Regis de Newgate tent. pro Com. Middleſex. apud Juſtice-Hall in le Old-Bailey in Suburbiis Civit. London. die Veneris (ſcilt.) decimo tertio die Januarii Anno Regni Dom. noſtri Gulielmi tertii Dei gra. nunc Regis Angl. &c.

‘ decimo, coram Fran. Child, Mil. Majore Civit. London. Edro. Ward, Mil. Capital. Baron. Sccii. dict. Dom. Regis, Henrico Hatſel, Milit. un Baron. Sccii. dicti Domini Regis, Thoma Stamp, Mil. Edro. Clarke, Mil. Aldris dict. Civit. London. Salathiel. Lovell, Mil. ſervien. dict. Dom. Regis ad legem ac Recordator. dict. Civit. London. & aliis ſociis ſuis Juſtic. dict. Dom. Regis ad Gaol. ipſius Dom. Regis de Newgate prædict. de priſonar. in eadem exiſten. deliberand. aſſign. ven. hic in Cur. Carolus Lee, Com. Mil. Samuel Buck, Will. Withers, Fran. Tyſſon, Ar. Juſtic. dict. Dom. Regis per Literas patent. ipſius Dom. Regis eiſdem Juſtic. prænominat. & aliis ac quibuſcunq; quatuor vel plur. eorum ſub magno Sigillo dict. Dom. Regis Angl. confect. ad inquirend. per Sacrament. probor. & legal. hom. de Com. Midd. præd. ac aliis viis modis & mediis quibus melius ſciverint aut poterint tam infra libertat. quam extra, per quos rei veritas ſciri poterit de quibuſcunq; prodition. miſpriſion. prodition. inſurrection. rebellion. controfractur. tonſur. lotur. falſis fabrication. & al. falſitat. monetæ hujus Regni dict. Dom. Regis Angl. & al. Regnorum ſive Domin. quorumcunq; ac de quibuſcunq; murdris, felon. homicid. interfeccon. burglar. rapt. mulier. congregac. & conventicul. illicit. verborum prolation. coadunac. miſpriſion. confederac. falſis alleganc. tranſg. riot. rout. retention. eſcapiis contemp. negligenc. concelamen. manutenen. oppreſſion. cambiparciis deception. & aliis malefact. & offenc. quibuſcunq; nec non acceſſar. eorund. infra Com. præd. tam infra Libertat. prædict. quam extra, per quoſcunq; & qualitercunq; habit. fact. perpetrat. ſive commiſſ. ac de aliis articul. & circumſtan. præmiſſa & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunq; concernen. plenius veritat. & ad eaſdem prodition. & al. præmiſſa audiend. & terminand. ſecundum legem & conſuetud. hujus Regni dict. Dom. Regis Angl. aſſign. & per manus ſuas propr. deliberaver. hic in Cur. dict. Dom. Regis quoddam record. indictament. coram eis & aliis ſociis ſuis nuper præantea præſent. & capt. verſus Edrum. Comit. Warwic. & Holland, Carolum Dominum Mohun, de Oakehampton in Com. Devon. Ricum. French, Rogerum James & Georgium Dockwra, pro murdro cujuſdam Rici. Coote, Ar. in forma juris terminand. &c. (eiſdem Rico. French, Rogero James & Georgio Dockwra, priſonar. in dict. Gaol. dict. Dom. Regis de Newgate, cauſa in eodem indictament. content. adtunc exiſten.) Record. cujus quidem indictament. patet in quibuſdam ſchedul. huic annex.

‘ Midd. ſſ. Memorandum quod ad Seſſionem de Oyer & Terminer Domini Regis tent. pro Com. Middleſex. apud Hicks-Hall in St. John-Street, in Com. præd. die Mercurii ſcil. ſeptimo die Decembris, Anno Regni Domini noſtri Gulielmi tertii, Dei gratia, nunc Regis Angliæ, &c. decimo, coram Carolo Lee, Mil. Samuele Buck, Willielmo Withers, Franciſco Tyſſon, Armigeris, & aliis ſociis ſuis Juſtic. dict. Dom. Regis per Literas Paten. ipſius Dom. Regis, eiſdem Juſtic. prænominat. & al. ac quibuſcunque quatuor vel pluribus eorum ſub magno Sigillo dict. Domini Regis Angliæ confect. ad inquirend. per ſacrament. probor. & legalium hom. Com. Middleſex. præd. ac aliis viis mod. & med. quibus melius ſciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius ſciri poterit de quibuſcunque prodition. miſpriſion. prodition. inſurrection. rebellion. controfactur. tonſur. lotur. falſis fabrication. & aliis falſitat. monet. hujus Regni dict. Dom. Regis Angl. & al. Regnor. ſive Dominior. quorumcunque ac de quibuſcunq; murdris, felon. homicid. interfection. burglar. rapt. mulier. congregat. & conventicul. illicit. verborum prolation. coadunat. miſpriſion. confederat. falſis allegan. tranſgr. riot. rout. retention. eſcapiis contempt. negligen. concelamen. manutenen. oppreſſion. cambiparciis deception. & aliis malefactis & offenſis quibuſcunq; necnon acceſſar. eorundem infra Com. præd. tam infra libertat. quam extra, per quoſcunque & qualitercunque habit. fact. perpetrat. ſive commiſſ. ac de aliis articulis & circumſtantiis præmiſſa & eor. quodlibet vel aliqua qualitercunque concernen. plenius veritat. & ad eaſdem prodition. & al. præmiſſ. audiend. & terminand. ſecund. legem & conſ. hujus Regni dicti Dom. Regis Angl. aſſign. per ſacrm. Ægidii Riddle, Richardi Read, Roberti Leg, Joſephi Partherich, Johannis Marriott, Jonathan Hall, Nicolai Baker, Roberti Teague, Thomæ Briggs, Willielmi Brace, Thomæ Williams, Georgii Biſhop, Thomæ Hodges, Johannis Lynn, Samuelis Lee, Richardi Rogers, Joſephi Rogers, Johannis Cheney, Johannis Fowler, & Roberti Nicholſon, probor. & legalium hominum Com. præd. adtunc & ibidem jurat. & onerat. ad inquirend. pro dicto Dom. Rege & corpore Com. præd. præſentat. exiſtit. qd. Billa Indictament. huic Schedul. annex. eſt vera.

‘ Midd. ſſ. Jurator. pro Domino Rege ſuper ſacrum. ſuum præſentant quod Edwardus Comes Warwic. & Holland, nuper de paroch. S. Martini in Campis in Com. Middleſex. Carolus Dominus Mohun, Baro Mohun de Okehampton, in Com. Devon. nuper de paroch. præd. in Com. Middleſex. præd. Richardus French, nuper de paroch. præd. in Com. Middleſex. præd. Gen. Rogerus James, nuper de paroch. præd. in Com. Middleſex. præd. Gen. & Georgius Dockwra, nuper de paroch. præd. in Com. Middleſex. præd. Gen. Deum præ oculis ſuis non habentes, ſed inſtigatione diabolica moti & ſeducti, triceſimo die Octobris, Anno Regni Domini Gulielmi tertii, Dei gra. Angl. Scoc. Franc. & Hibern. Regis, Fidei Defenſ. &c. decimo, vi & armis, &c. apud paroch. præd. in Com. Middleſex. præd. in & ſuper quendam Richardum Coote, Ar. in pace Dei & dicti Domini Regis, nunc adtunc & ibidem exiſten. felonice voluntarie & ex malitiis ſuis præcogitat. inſult. fecer. & qd. præd. Edwardus Comes Warwic. & Holland, cum quodm. gladio (Anglice *a Sword*) de ferro & chalibe confect. valor. quinque ſolidor. quem ipſe idem Edwardus Comes Warwic. & Holland, in manu ſua dextra adtunc & ibidem extract. habuit & tenuit, præfat. Ricardum Coote in & ſuper ſiniſtram part. pectoris ipſius Ricardi Coote prope Os Collar (Anglice *the Collar Bone*), ipſius Ricardi Coote adtunc & ibidem felonice voluntarie & ex malitia ſua præcogitat. percuſſit pupugit & inforavit (Anglice *did ſtrike, ſtab, and thruſt in*) dans eidem Richardo Coote, adtunc & ibidem cum gladio extract. præd. in & ſuper dict. ſiniſtram partem pectoris ipſius Rici. Coote, prope Os Collar (Anglice *the Collar Bone*) ipſius Rici. Coote unum vulnus mortal. (Anglice *one mortal Wound*) latitud. dimidii unius pollicis & profund. quinq; pollicium; de quo quidem vulnere mortal. præd. Ricus. Coote adtunc & ibm. inſtanter obiit. Et qd. præd. Carolus Dnus. Mohun, Ricus. French, Rogerus James & Georgius Dockwra, adtunc & ibm. felonice voluntarie & ex maliciis ſuis præcogitat. fuer. preſen. auxilian. abettan. confortan. aſſiſten. & manutenen. præfat. Edrum. Comit. Warwic. & Holland, ad præfat. Ricum. Coote, modo & forma præd. felonice voluntarie & ex malitia ſua præcog. interficiend. & murdrand. Et ſic Jur. præd. ſuper ſacrm. ſuum præd. dic. qd. præd. Edrus. Comes Warwici & Holland, Carolus Dnus. Mohun, Ricus. French, Rogerus James & Georgius Dockwra, præfat. Ricum. Coote, modo & forma præd felonice voluntarie & ex maliciis ſuis præcogitat. interfecer. & murdraver. contra pacem dci. Domini Regis nunc Coron. & Dignitat. ſuas, &c.

‘ Ricus. French, 13 Januar. 98. pon. ſe Cul. de Felon. & Homicid. tant. Non. cul. de Murdro. catalla nulla. Pet. Librum. Legit ut Clericus. Crematio reſpectuatur quouſq; &c

‘ Rogerus James, 13 Jan. 98. pon. ſe cul. de Felon. & Homicid. tant. Non cul. de Murdro. catalla nulla. Petit Librum. Legit ut Clericus. Crematio reſpectuatur quouſq; &c.

‘ *Billa vera.* Samuel Cowthorne de paroch. Sti. Martini in Campis in Com. Midd. Yoman,
‘ Willus. Cripps de paroch. præd. in Com. præd. Yoman,
‘ Henricus Pomfret de paroch. præd. in Com. præd. Yoman,
‘ Willus. Salmon de paroch. præd. in Com. præd. Chirurgus,
‘ Robtus. Applegate de paroch. præd. in Com. præd. Yoman.

Jur. in Cur.

‘ Midd. ſſ. Memorand. qd. ad Deliberation. Gaolæ Dni. Regis de Newgate tent. pro Com. Midd. apud Juſtice-Hall in le Old-Bailey in Suburbiis Civitat. London. die Mercurii ſcilt. ſeptimo die Septembris, Anno Regni Dni. nri. Gulielmi tertii Dei grat. Angl. Scot. Franc. & Hiberniæ Regis, Fidei Defenſ. &c. decimo, coram Franco Child, Mil. Majore Civitat. London. Georgio Treby, Mil. Capital. Juſtic. dci. Dni. Regis de Banco, Littleton Powis, Mil. uno Baron. Sccii. dict. Dni. Regis, Thoma Stamp, Mil. Edro. Clarke, Mil. Aldris. dict. Civitat. London. Salathiel. Lovell, Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dict. Civitat. London. & aliis Sociis ſuis Juſtic. dci. Dni. Regis ad Gaolam ipſius Dni. Regis de Newgate præd. de Priſonar. in eadem exiſten. deliberand. aſſign. ven. Robertus White, gen. Coronator dci. Dni. Regis infra Libertat. Decani & Capituli Eccliæ. Collegiat. bti. Petri Weſtm. Civitat. Burgi & Villæ Weſtm. in Com. Midd. præd. Et per manus ſuas proprias deliberavit hic in Cur. quandam Inquiſition. de morte Rici. Coote, Ar. coram eo nuper capt. in Cur. hic de Recordo in forma juris terminand. Quæ quidem Inquiſitio huic Schedulæ annex. eſt, pon. ſe

Civitas, Burgus
& Villa. Weſtm. } ſſ.
in Com. Midd.

‘ INquiſitio indentat. capt. pro Dno. Rege apud paroch. Sti. Martini in Campis infra Libertat. Decani & Capitli. Eccleſiæ Collegiat. bti. Petri Weſtm. Civitat. Burgi & Villæ Weſtm. in Com. Midd. triceſimo die Octobris, Anno Regni Dni. nri. Gulielmi tertii Dei gra. Angl. Scoc. Franc. & Hiberniæ Regis, Fidei Defenſoris, &c. decimo, coram Roberto White, gen. Coronatore dci. Dni. Regis Libertat. præd. ſuper viſum Corporis cujuſdam Rici. Coote, Ar. ibm. jacen. mort. per ſacrm. Johis Harris, Petri Solomon, Rici. Newgent, Willi. Fryer, Samuelis Thomſon, Jacobi Timberlick, ſen. Jacobi Timberlick, jun. Rici. Jackſon, Johis. Finch, Samuelis Powell, Samuelis Dimont, Robti. Giltrick, Johis. Paulin, Joſephi Vernon, Thomæ Smithſon, Andreæ Rogers & David. Jones, proborum & legalium homin. Libertat. præd. jurat. & onerat. ad inquirend. pro dto. Dno. Rege quando qualiter & quomodo præfat. Ricus. Coote ad mortem ſuam devenit dicunt ſuper ſacrm. ſuum præd. qd. Edrus Comes Warwic. & Holland, nuper de paroch. Sti. Martini in Campis infra Libertat. præd. in Com. præd. Carolus Dnus. Mohun, nuper de paroch. præd. infra Libertat. præd. in Com. præd. Ricus. French, nuper de paroch. præd infra Libertat. præd. in Com. præd. gen. Rogerus James, nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. & Georgius Dockwra, nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. Deum præ oculis ſuis non habentes, ſed Inſtigatione diabolica moti & ſeducti dco. triceſimo die Octobris Anno decimo ſupradicto, vi & armis, &c. apud paroch. præd. infra Libertat. præd. in Com. præd. in & ſuper præfat. Ricum. Coote, in pace Dei & dci. Dni. Regis, nunc adtunc & ibm. exiſten. felonice voluntarie & ex maliciis ſuis precogit. inſult. fecer. & qd. præd. Ricus. French, cum quodam Gladio (Anglice *a Rapier*) de ferro & chalibe confect. valoris quinq; ſolid. quem ipſe idem Ricus. French, in manu ſua dextra adtunc & ibm. extract. huit. & tenuit præfat. Ricum. Coote, in & ſuper ſiniſtram partem pectoris ipſius Rici. Coote, prope Os Collar (Anglice *the Collar Bone*) ipſius Rici. Coote, adtunc & ibm. felonice voluntarie & ex malicia ſua precogitat. percuſſit & pupugit dans eidem Rico. Coote, adtunc & ibm. cum gladio præd. extract. in & ſuper præd. ſiniſtram partem pectoris ipſius Rici. Coote, prope dict. Os Collar ipſius Rici. Coote, unum vulnus mortale longitudinis dimid. unius pollicis & profunditatis quinq; pollicium, de quo quidem vulnere mortali præd. Ricus. Coote, apud paroch. præd. infra Libertat. præd. in Com. præd. inſtanter obiit. Et qd. prædicti Edrus. Comes Warwic. & Holland, Carolus Dnus. Mohun, Rogerus James, & Georgius Dockwra, adtunc & ibm. felonice voluntarie & ex maliciis ſuis præcogitat. fuer. preſentes auxiliantes abettantes confortantes aſſiſtentes & manutenentes præfat. Ricum. French, ad predictum Ricum. Coote, in forma præd. felonice voluntarie & ex malicia ſua præcogitat. interficiend. & murdrand. Et ſic Jur. præd. dicunt ſuper ſacrm. ſuum præd. quod præd. Edrus. Comes Warwici & Holland, Carolus Dnus. Mohun, Ricus. French, Rogerus James & Georgius Dockwra, præfat. Ricum. Coote, modo & forma prædict. felonice voluntarie & ex maliciis ſuis præcogitat. interfecer. & murdraver. contra pacem dci. Dni. Regis nunc Coron. & Dignitat. ſuas, &c. Et ulterius Jur. præd. dicunt ſuper ſacrm. ſuum præd. qd. immediate poſt Feloniam & Murdrum præd. per ipſos modo & forma præd. fact. & perpetrat. apud paroch. præd. infra Libertat. præd. in Com. præd. fugam fecer. Quæ bona & catalla terras ſive tenementa præd. Edrus. Comes Warwici & Holland, Carolus Dnus. Mohun, Ricus. French, Rogerus James & Georgius Dockwra, tempore Feloniæ & Murdri prædict. per ipſos modo & forma præd. fact. & perpetrat. ſive aliquo tempore poſtea uſque diem Captionis hujus Inquiſitionis habuerunt Jur. præd. penitus ignorant. In cujus Rei Teſtimonium tam præfat. Coronator quam Jur. præd. huic Inquiſitioni Sigilla ſua alternatim appoſuerunt die anno & loco, primo ſupra dcis.

‘ Ricus. French, 13 Jan. 98. pon. ſe cul. de felon. & homicidio tant. Non cul. pro Murdro. Catal. nulla. Judicium ſuper Indictamentum.

‘ Rogerus James, 13 Jan. 98. pon. ſe cul. de felon. & homicid. tant. Non cul. pro Murdro. Catalla nulla. Judicium ſuper Indictamentum.

‘ Georgius Dockwra 13 Jan. 98. pon. ſe cul. de felon. & homicid. tantum.

‘ Non cul. pro Murdro. Catalla nulla. Judicium ſuper Indictamentum.

‘ Midd. ſſ. Memorandum qd. ad Seſſionem de Oyer & Terminer Domini Regis tent. pro Com. Middleſex. apud Hicks-Hall in S. John-ſtreet in Com. præd. die Mercurii ſcilt. ſeptimo die Decembris Anno Regni Domini noſtri Gulielmi Tertii Dei gratia nunc Regis Angliæ, &c. decimo, coram Carolo Lee, Mil. Samuele Buck, Willielmo Withers, Franciſco Tyſſon, Armigeris, & aliis Sociis ſuis Juſtic. dict. Dom. Regis per Literas Patent. ipſius Dom. Regis eiſdem Juſtic. prænominat. & al. ac quibuſcunque quatuor vel pluribus eorum ſub magno Sigillo dict. Dni. Regis Angliæ confect. ad Inquirend. per ſacrm. probor. & legalium hom. de Com. Middleſex præd. ac aliis viis mod. & med. quibus melius ſciverint aut poterint, tam infra Libertates quam extra, per quos rei veritas melius ſciri poterit & inquiri de quibuſcunque Prodicion. Miſpriſion. Prodition. Inſurrection. Rebellion. Controfactur. Tonſur. Lotur. & falſis Fabrication. & aliis falſitat. Monet. hujus Regni dict. Dom. Regis Angliæ & aliorum Regnorum ſive Dominior. quorumcunque ac de quibuſcunque Murdris Feloniis Homicidiis Interfection. Burglar. Rapt. Mulier. Congregat. & Conventicul. illicit. Verborum prolation. coadunat. Miſpriſion. Confederat. falſis Alleganc. Tranſgr. Riot, Rout, Retention. Eſcapiis Contempt. Negligen. Concelamen. Manutenen. Oppreſſionibus Cambiparciis Deception. & aliis Malefactis & Offenſis quibuſcunque, necnon Acceſſar. eorundem infra Com. præd. tam infra Libertat. quam extra, per quoſcunque & qualitercunque habit. fact. perpetrat. ſive commiſſ. Ac. de aliis Articulis & Circumſtantiis præmiſſa & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunque concernen. plenius veritat. Et ad eaſdem Proditiones & alia Præmiſſa audiend. & terminand. ſcdm. Legem & Conſ. hujus Regni dci. Dni. Regis Angliæ aſſign. per ſacrm. Ægidii Riddle, Rici. Read, Roberti Legg, Joſephi Partherich, Johis. Marriot, Jonathan Hall, Nicholai Barker, Roberti Teague, Thomæ Briggs, Willi. Brace, Thomæ Williams, Georgii Biſhop, Thomæ Hodges, Johis. Lynn, Samuelis Lee, Rici. Rogers, Johis. Cheney, Johis. Fowler & Roberti Nicholſon, proborum & legalium Hominum Com. præd. & tunc & ibm. jurat. & onerat. ad inquirend. pro dco. Dno. Rege & corpore Com. præd. præſentat. exiſtit. qd. Edrus. Comes Warwici & Holland, nuper de paroch. S. Martini in campis in Com. præd. Carolus Dnus. Mohun, Baro Mohun de Oakehampton, in Com. Devon. nuper de Paroch. præd. in Com. Midd. præd. Ricus. French, nuper de paroch. præd. in Com. Midd. præd. gen. Rogerus James, nuper de paroch. præd. in Com. Midd. præd. gen. & Georgius Dockwra, nuper de paroch. præd. in Com. Midd. præd. gen. Deum præ oculis ſuis non hentes, ſed inſtigatione diabolica mot. & ſeduct. 30 die Octobris Anno Regni Gulielmi tertii Dei Gratia Angl. Scoc. Franc. & Hiberniæ Regis Fidei defenſoris, &c. decimo, vi & armis, &c. apud paroch. præd. in Com. Midd. præd. in & ſuper quendam Ricum. Coote, Ar. in pace Dei & dci. Dni. Regis nunc adtunc & ibidem exiſten. felonice voluntarie & ex maliciis ſuis præcogitat. inſult. fecer. Et qd. præd. Comes Warwici & Holland, cum quodam Gladio (anglice, *a Sword*) de ferro & Chalibe confect. valoris quinq; ſolid. quem ipſe idem Edrus. Comes Warwici & Holland, in manu ſua dextra adtunc & ibd. extract. huit & tenuit, præfat. Ricum. Coote, in & ſuper ſiniſtram partem pectoris ipſius Rici. Coote, prope Os Collar (anglice, *the Collar Bone*) ipſius Rici. Coote, adtunc & ibm. felonice voluntarie & ex malicia ſua præcogitat. percuſſit pupugit & inforavit (anglice, *did ſtrike, ſtab, and thruſt in*). Dans eidem Rico. Coote, adtunc & ibm. cum gladio extract. præd. in & ſuper dict. ſiniſtram partem pectoris ipſius Rici. Coote, prope Os Collar (anglice, *the Collar Bone*) ipſius Rici. Coote, unum Vulnus mortale (anglice, *one mortal Wound*) latitudinis dimidii pollicis & profunditatis quinq; pollicium, de quo quidem Vulnere mortali præd. Ricus. Coote, adtunc & ibm. inſtanter obiit. Et qd. præd. Carolus Dnus. Mohun, Ricus. French, Rogerus James & Georgius Dockwra, adtunc & ibm. felonice voluntarie & ex maliciis ſuis præcogitat. fuer. præſentes auxiliantes abettantes confortantes aſſiſtentes & manutenentes præfat. Edrum. Comitem Warwici & Holland, ad præfat. Ricum. Coote modo & forma præd. felonice voluntarie & ex malicia ſua præcogitata interficiend. & Murdrand. Et ſic Jur. præd. ſuper ſacrm. ſuum præd. dicunt. qd. prædict. Edrus. Comes Warwici & Holland, Carolus Dnus. Mohun, Ricus. French, Rogerus James, & Georgivs Dockwra, præfat. Ricum. Coote, modo & forma præd. felonice voluntarie & ex maliciis ſuis præcogitatis interfecer. & murdraverunt contra pacem dci. Dni. Regis nunc Coron. & Dignitat. ſuas, &c. Per quod Præceptum eſt vic. Midd. qd. non omitteret, &c. quin caperet predictos Edrum. Comitem Warwici & Holland, Carolum Dnum. Mohun, Ricum. French, Rogerum James & Georgium Dockwra, ad reſpondend. &c. Quod quidem Indictamentum præfat. Juſtic. dci. Dni. Regis (per dcas. Literas paten. ipſius Dni. Regis eiſdem Juſtic. prænominat. & aliis ac quibuſcunq; quatuor vel pluribus eorum ſub magno Sigillo dci. Domini Regis Angliæ ut præfertur confect.) poſtea ſcilt. ad Deliberationem Gaolæ dci. Dni. Regis de Newgate tent. pro Com. Midd. præd. apud Juſtice-Hall in le Old-Baily in Suburbiis Civitat. Lond. dco. die Mercurii ſcilt. ſeptimo die ejuſdem Menſis Decembris Anno Regni dci. Dni. Regis nunc decimo ſupradicto coram Franciſco Child, Mil. Majore Civitat. London. Georgio Treby, Mil. Capital. Juſtic. dci. Dni Regis de Banco, Littleton Powis, Mil. uno Baronum Sccii. dci. Dni. Regis, Thoma Stampe, Mil. Edro. Clarke, Mil. Aldris. dcæ. Civitat. London. Salathiel Lovell, Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dcæ. Civitatis London. & aliis Sociis ſuis Juſtic. dci. Dni. Regis ad Gaolam dci. Dni. Regis de Newgate, præd. de Priſonar. in eadem exiſten. deliberand. aſſign. per manus ſuas proprias deliberaverunt hic in Cur. de Recordo in forma juris terminand. &c. Super quo poſtea ſcilt. ad deliberationem Gaolæ dci. Dni. Regis de Newgate præd. die Veneris ſcilt. 13 die Jan. Anno Regni dci. Dni. Regis nunc decimo ſupradicto coram Franciſco Child, Mil. Majore Civitat. London. Edro. Ward, Mil. Capital. Baron. Sccii. dci. Dni. Regis Henrico Hatſall, Mil. uno Baron. Sccii. dci. Dni. Regis Thoma Stamp, Mil. Edro. Clarke, Mil. Aldris. dcæ. Civitat. London. Salathiel Lovell, Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dict. Civitat. Lond. & aliis ſociis ſuis Juſtic. dci. Dni Regis ad Gaolam ipſius Dni. Regis de Newgate prædict. de Priſonar. in eadem exiſten. deliberand. aſſign. vener. prædict. Ricus. French, Rogerus James & Georgius Dockwra, ſub cuſtod. Willi. Goare, Militis, & Joſephi Smart, Militis, vic. Com. præd. (in cuſtod. cujus ex cauſa præd. in Gaolam de Newgate præd. præantea commiſſi fuer.). Ad Barram hic duct. in propriis perſonis ſuis & ſtatim de præmiſſis in Indictamento præd. ſuperius ſpecificat. eis ſuperius ſeparatim impoſit. ſeparatim allocut. qualiter ſe velint inde acquietari iidem Ricus. French, Rogerus James & Georgius Dockwra, ſeparatim dicunt qd. ipſi non ſunt inde culpabiles nec aliquis eorum eſt inde culpabilis & inde de bono & malo ſeparatim. pon. ſe ſuper priam, &c. Jo. immediate ven. inde Jura. coram præfat. Juſtic. dci. Dni. Regis ult. noiat. hic, &c. Et qui nec, &c. Ad recogn. &c. Et Jur. Jure. ill. per præfat. Vic. ad hoc impanellat. (ſcilt.) Chrus. Rednap, Thomas Moody, Thomas Dunck, Simo. Smith, Johes. Smith, Michael Miles, Thomas Rowell, Nathaniel Lee, Joſephus Deveniſh, Henricus Bradbury, Willus. Giles, & Johes. Burgoyne, exacti vener. qui ad veritat. de & ſuper præmiſſis præd. dicend. electi triati & jurati dicunt ſuper ſacrm. ſuum qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, ſunt culpabiles, & quilibet eorum eſt culpabilis de Homicidio & Felonica Interfectione præfat. Rici. Coote, in Indictamento præd. ſuperius nominat. Et qd. iidem Ricus. French, Rogerus James & Georgius Dockwra, tempore Feloniæ & Homicidii præd. per ipſos Ricum. French, Rogerum James & Georgium Dockwra, in forma præd. commiſſ. ſeu unquam poſtea non huer. nec aliquis eorum huit. nec hent. nec aliquis eorum het. aliqua bona ſeu catalla terras ſive tenementa ad noticiam Jur. præd. ſed. iidem Jur. ulterius dicunt ſuper ſacrum. ſuum præd. qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, non ſunt culpabiles nec eorum aliquis eſt culpabilis de Murdro præd. in Indictamento præd. ſuperius ſpecificat. eis ſuperius ſeparatim impoit. prout iidem Ricus. French, Rogerus James & Georgius Dockwra pro ſeipſis ſuperius plitando. allegaver. nec ſeipſos ea occone. unquam retraxer. nec eorum aliquis ſe ea occone. unquam retraxit. Super quo viſis & per cur. hic intellectis omnibus & ſingulis præmiſſis Conſ. eſt per cur. hic qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, quoad Murdrum præd. in Indictamento præd. ſuperius ſpec. eis ſuperius ſeparatim impoit. ſint quiet. Et eant & quilibet eorum ſit quiet. & eat inde ſine die, &c. Et ſuperinde ſtatim ſeparatim per cur. hic quæſit. eſt de præfat. Rico. French, Rogero James & Georgio Dockwra, ſi quid pro ſe habeant vel diſcere ſciant, vel aliquis eorum aliquid pro ſe habeat vel diſcere ſciat quare cur. hic ad Judicium & Executionem de eis & eorum quolibet ſuper Veredicto præd. quoad Homicidium & Felonicam Interfectionem præfat. Rici. Coote, procedere non debet, qui ſeparatim dicunt qd. ipſi ſunt Clerici & quilibet eorum eſt Clericus & ſeparatim petunt Beneficium Clericale eis & cuilibet eorum in hac parte allocari & ſuper hoc (tradito eiſdem Rico. French, Rogero James & Georgio Dockwra ſeparatim per cur. hic Libro) iidem Ricus. French, Rogerus James & Georgius Dockwra, ſeparatim legunt ut Clerici & quilibet eorum legit ut Clericus; ſed qui cur. dci. Dni. Regis hic & præfat. Juſtic. dci. Dni. Regis ult. noiat. de Judicio ſuo de & ſuper Præmiſſis præd. quod Homicidium præd. & Felonicam Interfectionem præfat. Rici. Coote reddend. nondum adviſantur, Ideo dies inde dat. eſt præfat. Rico. French, Rogero James & Georgio Dockwra, in ſtatu quo nunc, &c. uſq; prox. Gaolæ deliberationem dci. Dni. Regis de Newgate, præd. pro Com. Midd. præd. tenend. de Judicio ſuo de & ſuper præmiſſis illis aud. &c. Eo. qd. præfat. Judic. dci. Dni. Regis ult. noiat. & cur. hic inde nondum, &c.’

Lord High Steward. Is it your Lordſhips Pleaſure that the Judges may be covered?------*Lords.* Ay, ay.

[*Then the Judges put on their Caps.*]

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes! Chief Governor of the Tower of *London*, bring forth the Body of *Edward* Earl of *Warwick* and *Holland*, your Priſoner, forthwith, on Pain and Peril will fall thereon.

[*Then the Earl of* Warwick *was brought to the Bar by the Deputy-Governor of the Tower of* London, *having the Ax carried before him by the Gentleman Jaylor, who ſtood with it at the Bar, on the Right Hand of the Priſoner, turning the Edge from him; the Priſoner at his Approach to the Bar making three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand; and his Grace and the Peers returned the Salute.*]

Lord High Steward. My Lord of *Warwick*, your Lordſhip is brought before this great Judicature, in order to your Trial. You ſtand indicted by the Grand Inqueſt for the County of *Middleſex*, as guilty of the Murder of one of the King's Subjects, for whoſe Blood Juſtice requires a ſtrict Inquiſition ſhould be made.

Your Lordſhip is called to anſwer this Charge before the whole Body of the Houſe of Peers aſſembled in Parliament. It is a great Misfortune to be accuſed of ſo heinous an Offence, and it is an Addition to that Misfortune, to be brought to anſwer as a Criminal before ſuch an Aſſembly, in Defence of your Eſtate, your Life, and Honour. But it ought to be a Support to your Mind, ſufficient to keep you from ſinking under the Weight of ſuch an Accuſation, that you are to be try'd before ſo noble, diſcerning, and equal Judges, that nothing but your own Guilt can hurt you. No Evidence will be received, but what is warranted by Law; no Weight will be laid upon the Evidence, but what is agreeable to Juſtice; no Advantage will be taken of your Lordſhip's little Experience in Proceedings of this Nature; nor will it turn to your Prejudice, that you have not the Aſſiſtance of Counſel in your Defence, as to the Fact, (which cannot be allowed by Law) and their Lordſhips have already aſſigned you Counſel, if any Matters of Law ſhould ariſe.

Your Lordſhip, throughout your whole Trial, may aſſuredly promiſe yourſelf, to find all the Candor and Compaſſion which is conſiſtent with impartial Juſtice; beyond that nothing is to be expected: Their Lordſhips can never ſo far forget themſelves, as to depart from what is right, and to draw the Guilt of Blood upon their own Heads; but if your Lordſhip is innocent you are ſafe.

My Lord, It will be requiſite for you to recollect yourſelf upon this Occaſion, in the beſt manner you can. You ought to hear with Temper what the King's Counſel have to ſay, without interrupting them; and to hearken carefully to the Witneſſes produced againſt you, that you may be ready to croſs-examine them if you find Cauſe, and to make your Obſervations upon the Evidence when the proper Time comes for your Lordſhip to make your Defence: of which I will not fail to give you Notice; and when that Time does come, your Lordſhip may be aſſured, yourſelf and

your Witneſſes will be heard with great Patience and Attention; and when my Lords have heard and conſidered the whole Matter, the Judgment will unqueſtionably be according to the Rules of Juſtice, and ſuch as will become the Honour of this high Court.

[*Read the Indictment to my Lord.*]

E. of *Warwick.* My Lord, I beg I may have the Uſe of Pen, Ink, and Paper.

L. H. St. Will your Lordſhips pleaſe to allow my Lord *Warwick* Pen, Ink, and Paper?----*Lords.* Ay, ay.

Lord High Steward. Carry Pen, Ink, and Paper to my Lord. (*Which was done by the Clerk.*)

Lord High Steward. My Lord, your Lordſhip will do well to give Attention while the Indictment is read to you. Read it to my Lord in *Engliſh.*

Clerk of the Crown, ‘YOUR Lordſhip ſtands indicted by the Name of *Edward* Earl of *Warwick* and *Holland*, late of the Pariſh of St. *Martin-in-the-Fields* in the County of *Middleſex*; for that your Lordſhip, together with *Charles* Lord *Mohun*, Baron *Mohun* of *Oakehampton* in the County of *Devon*, late of the Pariſh aforeſaid in the County of *Middleſex* aforeſaid, *Richard French*, late of the Pariſh aforeſaid in the County of *Middleſex* aforeſaid, Gent. *Roger James*, of the Pariſh aforeſaid in the County of *Middleſex* aforeſaid, Gent. and *George Dockwra*, late of the Pariſh aforeſaid in the County of *Middleſex* aforeſaid, Gent. not having the Fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the 30th Day of *October*, in the tenth Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, &c. with Force and Arms, &c. at the Pariſh aforeſaid, in the County of *Middleſex* aforeſaid, in and upon one *Richard Coote*, Eſq; in the Peace of God, and of our ſaid Sovereign Lord the King, then and there being, feloniouſly, voluntarily, and of your Malice afore-thought, did make an Aſſault; and that your Lordſhip, the ſaid *Edward* Earl of *Warwick* and *Holland*, with a certain Sword made of Iron and Steel of the Value of Five Shillings, which you the ſaid *Edward* Earl of *Warwick* and *Holland*, in your Right Hand then and there had and held drawn, the aforeſaid *Richard Coote*, in and upon the left Part of the Breaſt of him the ſaid *Richard Coote*, near the Collar Bone of him the ſaid *Richard Coote*, then and there feloniouſly, voluntarily, and of your Malice afore-thought, did ſtrike, ſtab, and thruſt in, giving to the ſaid *Richard Coote*, then and there with the Sword drawn aforeſaid, in and upon the left Part of the Breaſt of him the ſaid *Richard Coote*, near the Collar Bone of him the ſaid *Richard Coote*, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which ſaid mortal Wound the aforeſaid *Richard Coote*, then and there inſtantly died: And that the aforeſaid *Charles* Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, then and there feloniouſly, voluntarily, and of their Malice afore-thought, were preſent, aiding, abetting, comforting, aſſiſting, and maintaining you the ſaid *Edward* Earl of *Warwick* and *Holland*, the ſaid *Richard Coote*, in Manner and Form aforeſaid, feloniouſly, wilfully, and of your Malice afore-thought, to kill and murder; and ſo you the ſaid *Edward* Earl of *Warwick* and *Holland*, and the ſaid *Charles* Lord *Mohun*, *Richard French*, *Roger James* and *George Dockwra*, the aforeſaid *Richard Coote*, in Manner and Form aforeſaid, feloniouſly, voluntarily, and of your Malice afore-thought, did kill and murder, againſt the Peace of our Sovereign Lord the King, that now is, his Crown and Dignity, &c.

How ſay you, *Edward* Earl of *Warwick* and *Holland*, are you guilty of this Felony and Murder whereof you ſtand indicted, or not guilty?

Earl of *Warwick.* Not guilty.

Clerk of the Crown. Culprit, How will your Lordſhip be tried?

Earl of *Warwick.* By God, and my Peers.

Cl. of the Cr. God ſend your Lordſhip a good Deliverance.

Then at the Motion of ſome Lords who ſate towards the upper End of the Houſe, and by Reaſon of the Diſtance could not diſtinctly hear the Clerk, the Indictment was read again, the Clerk ſtanding near the upper End of the Houſe.

Cl. of the Cr. Serjeant at Arms, make an O Yes.

Serjeant at Arms. O Yes, O Yes, O Yes, If any one will give Evidence on behalf of our Sovereign Lord the King, againſt *Edward* Earl of *Warwick* and *Holland*, of the Felony and Murder whereof he ſtands indicted, let them come forth, and they ſhall be heard; for now he ſtands at the Bar upon his Deliverance.

L. H. St. Will your Lordſhips give me leave to go down to the Woolpack, that I may hear the better.----*Lords.* Ay, ay.

Then his Grace removed to the Woolpack, and delivered the White Staff to be held by the Gentleman Uſher of the Black Rod, who during the whole Trial always received and delivered back the White Staff upon his Knees.

L. H. St. Mr. *Attorney*, are you ready to proceed?

**Mr. Att. Gen.* Yes, my Lord.

L. H. St. Then begin, Sir.

Mr. Serj. *Wright.* May it pleaſe your Lordſhips.

L. H. St. Pray, Mr. *Serjeant*, raiſe your Voice as much as poſſible you can, that my Lords towards the upper End of the Houſe may hear.

Mr. Serj. *Wright.* May it pleaſe your Lordſhips, this noble Lord *Edward* Earl of *Warwick* and *Holland*, the Priſoner at the Bar, ſtands indicted for the felonious Killing and Murder of one *Richard Coote*, Eſq; and the Indictment ſets forth, That upon the 30th Day of *October*, in the tenth Year of his Majeſty's Reign, at the Pariſh of *St. Martin-in-the-Fields*, in the County of *Middleſex*, the Priſoner at the Bar, the Earl of *Warwick*, together with *Charles* Lord *Mohun*, Baron of *Oakehampton*, *Richard French*, *Roger James*, and *George Dockwra*, Gent. feloniouſly, voluntarily, and of their Malice afore-thought, did make an Aſſault upon the ſaid *Richard Coote*, in the Indictment named; and the Indictment chargeth, that the Earl of *Warwick*, at the ſame Time and Place, with a Sword, feloniouſly, voluntarily, and of his Malice afore-thought, did give unto the ſaid *Richard Coote*, in or upon the left Part of the Breaſt of him the ſaid *Richard Coote*, near his Collar Bone, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which ſaid Wound the ſaid *Richard Coote* then and there inſtantly died; and the Indictment further charges, that the ſaid *Charles* Lord *Mohun*, *Richard French*, *Roger James* and *George Dockwra*, the Earl of *Warwick*, to commit the Felony and Murder aforeſaid, were then and there aiding, aſſiſting, comforting, and abetting; and ſo the Jurors charge, that he the ſaid *Edward* Earl of *Warwick* and *Holland*, *Charles* Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, the ſaid *Richard Coote*, feloniouſly, voluntarily, and of their Malice afore-thought, at the Pariſh aforeſaid, in the County aforeſaid, did kill and murder, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment this noble Lord the Priſoner at the Bar, *Edward* Earl of *Warwick* and *Holland*, has pleaded not guilty, and for his Trial hath put himſelf upon my noble Lords his Peers here preſent: We ſhall call our Evidence, and if we prove this Fact for the King, we do not doubt but your Lordſhips will give ſuch Judgment for the ſame as ſhall be juſt.

Mr. Att. Gen. May it pleaſe your Lordſhips, I am of Counſel in this Cauſe for the King againſt this noble Lord *Edward* Earl of *Warwick* and *Holland*, the Priſoner at the Bar, who ſtands indicted by the grand Jury of the County of *Middleſex*, has been arraigned, and is now to be tried before your Lordſhips for the felonious killing and murdering of Mr. *Coote*, in the Indictment named; the Evidence to make good this Charge againſt this noble Lord, it comes to my turn to open to your Lordſhips.

My Lords, the Caſe, as to the Fact, according to my Inſtructions, is this: Upon *Saturday* the 29th of *October* laſt, at Night, my Lord of *Warwick*, my Lord *Mohun*, Mr. *French*, Mr. *Dockwra*, and Mr. *Coote*, the unfortunate Gentleman who was killed, met together at one *Locket*'s, who kept the *Greyhound* Tavern in the *Strand*, and there they ſtaid till it was very late; about twelve of the Clock at Night, or thereabouts, a Meſſenger was ſent by the Company to fetch another Gentleman, Mr. *James*; and Mr. *James* coming to them, in what Condition your Lordſhips will be told by the Witneſſes; about one of the Clock in the Morning, on *Sunday* the 30th of *October*, they all came down out of the Room where they had been ſo late, to the Bar of the Houſe, and there, as the Witneſſes will tell your Lordſhips, Swords were drawn, and Chairs were called for, and two Chairs which were neareſt at hand came, and two of the Company went into thoſe Chairs; who they were, and what paſt at that Time, the Witneſſes will tell your Lordſhips; thoſe that got into thoſe Chairs came out again, and more Chairs were called for. But I muſt acquaint your Lordſhips, that my Lord *Mohun*, when the two Gentlemen that went into the Chairs ordered the Chairmen to take them up, and carry them away, ſpoke to them to ſtop and go no furrher, for there ſhould be no quarrelling that Night, and that he would ſend for the Guards and ſecure them; and after this they came out of the Chairs again; it will appear there were Swords drawn amongſt all of them, and ſome Wounds given: More Chairs being called for, and brought, this noble Lord that is here at the Bar, my Lord of *Warwick*, my Lord *Mohun*, and the other four Gentlemen, went all into the Chairs, and gave the Chairman Directions whither they ſhould carry them, at leaſtwiſe the Foremoſt had Directions given them, and the reſt were to follow them; it was a very dark Night, but at laſt they came all to *Leiceſter* Square; and they were ſet down a little on this Side the Rails of the Square, and when the Chairmen had ſet them down they went away; but immediately ſome of them heard my Lord of *Warwick* calling for a Chair again, who came towards the Rails, and there they found two of the Gentlemen that had been carried in ſome of the other Chairs, holding up Mr. *Coote* between them, and would have had the Chairmen carried him away to a Surgeon's, but they found he was dying, and ſo would not meddle with him; afterwards my Lord of *Warwick* and Mr. *French* were carried by two of the Chairs to Mr. *Amy*'s, the Surgeon at the *Bagnio* in *Long-Acre*, where Mr. *French* being wounded, was taken care of particularly by the Recommendation of my Lord of *Warwick*, and the Maſter of the Houſe was called up, it being very late; Mr. *Coote*'s Sword was brought to that Place, but by whom it was brought we cannot exactly ſay. While my Lord of *Warwick* and Capt. *French* were there, and my Lord of *Warwick* had given Orders for the denying of himſelf, and forbid the opening of the Door; there came the other two Gentlemen, Mr. *James* and Mr. *Dockwra*, and upon their knocking at the Door they were let in by my Lord's Order, after he had diſcovered who they were, looking through the Wicket. Mr. *James* had his Sword drawn, but it was broken. My Lord of *Warwick*'s Hand was ſlightly wounded, and his Sword Bloody up to the Hilt when he came in, as will be proved by the Teſtimony of the Servants in the Houſe. There was a Diſcourſe between my Lord, Mr. *James*, and Mr. *Dockwra*, about going into the Country; but before they went, the Swords were all called for to be brought to them, and upon Enquiry, there was no Blood found upon Mr. *French*'s Sword, but a great deal upon my Lord of *Warwick*'s, of which great notice was taken at that Time. Mr. *Coote*, who was killed, had received one Wound in the left Side of his Breaſt, half an Inch wide, and five deep, near the Collar Bone; he had likewiſe another Wound upon the left Side of his Body; both which, your Lordſhips will hear, in the Judgment of the Surgeon, were mortal Wounds, and the Evidence will declare the Nature of them.

My Lords, the Evidence does chiefly conſiſt of, and depend on Circumſtances, the Fact being done in the Night, and none but the Parties concerned being preſent at it; we ſhall lay the Evidence before your Lordſhips, as it is, for your Judgment, and call what Witneſſes we have on behalf of the King, againſt this noble Peer the Priſoner at the Bar, and take up your Lordſhips Time no further in opening; and we ſhall begin with *Samuel Cawthorne*; he is a Drawer at the Tavern were thoſe Lords and Gentlemen were together, and he'll give you an Account of the Time they came there, how long they ſtaid, what happen'd in the Houſe during their being there, and what Time they went away.

L. H. St. Give him his Oath. (*Which the Clerk did.*)

Mr. Att. Gen. My Lords, I doubt the Witneſs is ſo far off, that it will be difficult for him to hear the Queſtions that we are to aſk him, unleſs we could have him nearer to us.

L. H. St. Mr. *Attorney*, My Lords ſeem to be of Opinion, that it will be more for your Advantage and theirs, that the Witneſſes ſtand at the Diſtance they do; which will oblige you to raiſe your Voice ſo loud, that they may hear the Witneſſes and you too.

Mr. Att. Gen. Is your Name *Samuel Cawthorne*?--*Caw.* Yes, my Lord.

Mr. Att. Gen. Where do you live?

Cawthorne. With Mr. *Locket* at *Charing-Croſs.*

Mr. Att. Gen. Did you live with him at the *Greyhound* Tavern in the *Strand* the latter End of *October* laſt?——*Cawthorne.* Yes, I did.

Mr. Att. Gen. Well, pray will you acquaint my Lords with the Time when my Lord of *Warwick*, my Lord *Mohun* and Mr. *Coote* were at that Houſe, how long they ſtayed, what happen'd while they were there, and when they went away?

---

* *Sir* Thomas Trevor.

Cawthorne. It was *Saturday* Night, the 29th of *October* laſt.

Mr. Att. Gen. Pray tell my Lords the whole of your Knowledge in the Matter.

Cawthorne. There came my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coote*, Capt. *French*, and Capt. *Dockwra*, the 29th of *October* laſt, in the Evening, to my Maſter's Houſe at the *Grey-hound* Tavern in the *Strand*.

Mr. Att. Gen. How long were they there, and what time of Night came they in?

Cawthorne. About Eight a-Clock at Night, my Lord *Warwick*, my Lord *Mohun*, Capt. *French*, and Capt. *Coote*, came in.

Mr. Att. Gen. What Day do you ſay it was?

Cawthorne. Saturday, the nine-and-twentieth Day of *October* laſt.

Mr. Att. Gen. How long did they continue there?—*Cawthorne.* It was between One and Two the next Morning before they went away.

Mr. Att. Gen. Was any Body ſent for to come to them there?

Cawthorne. Yes, Mr. *James*.

Mr Att. Gen. What Time was that?

Cawthorne. About Twelve of the Clock.

Mr. Att. Gen. Did he ſtay with them till they went away?

Cawthorne. Yes.

Mr. Att. Gen. What did you obſerve paſt in the Company while they were there?

Cawthorne. I did not obſerve any Thing of Quarrel, not ſo much as an angry Word amongſt them, till they came down to the Bar and were going away; when they came down to the Bar they order'd me to call them Chairs, or Coaches; and there were no Coaches to be had, and ſo I went for Chairs, and two Chairs came; for the Porter that went to call the Coaches was a great while before he came back; and, as I ſaid, I going for Chairs, there came two; but that they ſaid was not enough; ſo more Chairs were called for, and at length there were more Chairs gotten; in the firſt three Chairs, my Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote* went away in; and my Lord *Warwick* and my Lord *Mohun* bid the Chairmen carry them home.

Mr. Att. Gen. Were there then any other Chairs at the Door?

Cawthorne. There were two more Chairs at the Door, and another was called for.

Mr. Att. Gen. Did you hear any Directions given where they ſhould carry them?—*Cawthorne.* My Lord *Warwick* and my Lord *Mohun* bid them carry them home.

Mr. Att. Gen. Did you hear my Lord *Warwick* or my Lord *Mohun* particularly, and which, ſay whither they would be carried?

Cawthorne. I did hear my Lord *Mohun* ſay, Capt. *Coote* ſhould go and lie with him, or he would go and lie with Capt. *Coote* that Night, for there ſhould be no quarrelling.

Mr. Att. Gen. Did they upon that go away?

Cawthorne. Mr. *French* and Mr. *Coote* were in Chairs before my Lord *Mohun* or my Lord *Warwick*, or any of the reſt.

Mr. Att. Gen. What then happen'd upon their going into the Chairs?

Cawthorne. My Lord *Mohun* came out to them and ſwore, there ſhould be no Quarrel that Night, but he would ſend for the Guards and ſecure them.

Mr. Att. Gen. What happen'd then?

Cawthorne. Upon that, both of them came out of their Chairs and came into the Houſe, and there they came to the Bar, three of them in the Paſſage by the Bar, and three of them behind that Paſſage.

Mr Att. Gen. Pray, will you tell what did really paſs throughout the whole Tranſaction? What was done after they came in again into the Houſe?

Cawthorne. After that, I was bid to call for ſix Chairs, if I could get no Coaches, and ſo I did; and when I had brought what Chairs I could get, and returned to the Bar, I heard the Swords claſh; when the Swords were drawn I cannot ſay, nor by whom, it might be by all the ſix, for aught I know, becauſe I was in the Street to call the Chairs, and when I came back to the Houſe, I was in hopes all had been quieted, for their Swords were putting up: And when they went away in the Chairs, I did hope they went away friendly.

Mr. Att. Gen. Pray, how did they go away? Who went together?

Cawthorne. My Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote* went in the firſt three Chairs, them three together, and bid the Chairmen go home; the ſixth Chair was not then come.

Mr. Att. Gen. When that Chair came, pray what Directions were given to it?—*Cawthorne.* I did not hear them give the Chairmen any Directions at all.

Mr. Att. Gen. Do you know any thing more that was done after this Time?

Cawthorne. No, my Lord, not after they went away; after I return'd with the Chairs, it was in two Minutes time that they went away.

Mr. Att. Gen. My Lords, I ſuppoſe he knows no more of the matter.

L. H. St. Will you then aſk him no more Queſtions, Mr. *Attorney?*

Mr. Att. Gen. No, my Lords, unleſs this noble Lord ſhall aſk him any Queſtions, upon which we ſhall have occaſion to examine him.

L. H. St. My Lord, has your Lordſhip any Queſtions to aſk this Witneſs? For now is your Time, the King's Counſel having done examining him.

E. of *War.* I deſire to aſk him, whether I did not bid the Chairmen go home?

L. H. St. If your Lordſhip pleaſe to propoſe your Queſtion to me, I will require an Anſwer to it from the Witneſs, and it will be the better heard by my Lords.

E. of *War.* My Lord, I deſire to know of this Man, whether, when I went away in the Chair from his Maſter's Houſe, I did not bid the Chairmen go home?

L. H. St. Witneſs, you hear my Lord's Queſtion, What ſay you to it?

Cawthorne. Yes; My Lord of *Warwick* did bid the Chair-men go home

E. of *War.* My Lord, I have another Queſtion to aſk him, Whether he knows of any Quarrel there was between me and Mr. *Coote* at that Time, or any other Time, becauſe we both uſed to frequent that Houſe?

Cawthorne. No, my Lords, I never heard any angry Words between my Lord *Warwick* and Mr. *Coote* in my Life.

[Then the Lords towards the upper End of the Houſe complaining that they did not hear his Grace, the Lord High Steward was pleaſed to repeat the Queſtion thus:]

L. H. St. When my Lord of *Warwick* bid the Chairmen go home, or at any other time, did you obſerve that there had been any Quarrel between his Lordſhip and Mr. *Coote?*

E. of *War.* My Lord, I deſire he may be aſked, ſince we both uſed that Houſe, Whether that Night, when I went away, or before or after, I had any Quarrel with Mr. *Coote?*

L. H. St. The Queſtion my Lord deſires you, that are the Witneſs, to anſwer, is, Whether you did hear any quarrelling or angry Words to paſs between my Lord *Warwick* and Mr. *Coote* that Night before or after they came down, or when they went away, or at any other time?

Cawthorne. No, my Lord, I never heard any angry Words paſs between them then, nor ever at any time before in all my Life, but I always looked upon them to be very good Friends.

E. of *War.* I deſire he may be aſked, Whether Mr. *Coote* did not come to that Houſe in my Company, and whether he did not frequently come to that Houſe?

Cawthorne. Yes; they uſed to be there every Day almoſt, and they came that Night together in Company.

E. of *War.* I deſire he may be aſked, Whether I have not been frequently in his Company there?—*Cawthorne.* Yes; I ſay very frequently, every Day almoſt, ſometimes twice a-Day.

L. H. St. Would your Lordſhip aſk him any other Queſtion?

E. of *War.* My Lord, I deſire he may be aſked this Queſtion, Whether he knows of any particular Kindneſs between Mr. *Coote* and me?

L. H. St. Do you know of any particular Kindneſs between my Lord *Warwick* and Mr. *Coote*, the Gentleman that was killed?

Cawthorne. Yes, my Lord, there was always a great Kindneſs between them, as I obſerved; it ever was ſo, and I never heard angry Words paſs between them, but they were very good Friends conſtantly; I waited upon them generally when they were at my Maſter's Houſe, which was every Day almoſt.

E. of *War.* I deſire to know of this Witneſs, Whether he does not remember, or can name, ſome particular Kindneſſes that paſſed between Mr. *Coote* and me?

L. H. St. Can you ſpecify any particular Inſtances of Kindneſs that paſſed between my Lord *Warwick* and Mr. *Coote?*

Cawthorne. Yes; my Lord of *Warwick* uſed generally to pay the Reckoning for Mr. *Coote*, and he did ſo at this Time.

E. of *War.* My Lord, I deſire he may be aſked, between whom he apprehended the Quarrel to be at this Time?

L. H. St. You ſay, Friend, there were Swords drawn, and a Quarrelling at the Bar; Can you tell between whom the Quarrel was?

Cawthorne. My Lord *Warwick*, my Lord *Mohun*, and Capt. *Coote*, were all on one Side, and the other three were on the other Side.

E. of *War.* Who were the two Perſons that it was apprehended the Quarrel was between? I deſire he may be aſked.

L. H. St. You ſay, there were Three on the one Side, and Three on the other; pray, between whom did you apprehend the Quarrel to be?

Cawthorne. I believe the Quarrel was between Mr. *Coote* and Mr. *French*.

E. of *War.* My Lord, I deſire to know of this Witneſs, what Words he heard Mr. *Coote* ſay, after he and Mr. *French* returned into the Houſe and came out of the Chairs.

L. H. St. What do you ſay to the Queſtion my Lord propoſes?

Cawthorne. I heard Mr. *Coote* ſay, He would laugh when he pleaſed, and he would frown when he pleaſed, God damn him.

E. of *War.* My Lord, I deſire to know, who he thinks thoſe Words were addreſſed to?

L. H. St. To whom did Mr. *Coote* ſpeak theſe Words?

Cawthorne. Whether he ſpoke them particularly to Mr. *French*, or to the other two Gentlemen who were on the other Side of the Bar, I cannot directly tell.

E. of *War.* I deſire to know of him, Whether Mr. *Coote* was not One of the Three that was on the outſide of the Bar?

Cawthorne. Yes, my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, were of the outſide of the Bar.

E. of *War.* Was Captain *Coote* with me in the Beginning of the Night at that Houſe?—*Cawthorne.* Yes, he came at the Beginning of the Night with my Lord of *Warwick*.

E. of *Peterb.* My Lords, I deſire to aſk this Witneſs one Queſtion.

L. H. St. I think it is proper, my Lords, in Point of Method, to let both Sides have done before any Queſtions be aſked by any of my noble Lords.

E. of *Peterb.* I did apprehend my Lord of *Warwick* had done.

L. H. St. No, my Lord, not as yet: Pray, my Lord *Warwick*, what other Queſtions has your Lordſhip to aſk of this Witneſs?

E. of *War.* My Lord, I deſire he may be aſked particularly this Queſtion, Whether he perceived any Quarrel particularly between me and Capt. *Coote* when we went out of the Houſe?

L. H. St. You hear the Queſtion, Did you perceive any Quarrel between my Lord *Warwick* and Mr. *Coote* before they went out of the Houſe?

Cawthorne. No, I did not; nor ever ſaw any Quarrel between them in my Life.

E. of *War.* I deſire to know who paid the Reckoning that Night?

Cawthorne. The Reckoning was called for before I came in to take it; and tho' I think my Lord of *Warwick* paid for Mr. *Coote*, yet I cannot ſo directly tell, becauſe it was collected before I came into the Room to receive it.

L. H. St. My Lord, have you any Thing more to aſk this Witneſs?

E. of *War.* No, my Lord, at preſent, that I think of.

L. H. St. My Lord *Peterborough*, your Lordſhip deſired to aſk a Queſtion, will you pleaſe to propoſe it now?

E. of *Peterb.* My Lord, this Witneſs ſeems to take notice of two Sides, who were on the one Side, and who were on the other, and that Mr. *Coote* and my Lord of *Warwick* were on one Side; I deſire to know one Thing of him, what reaſon he had to apprehend that they two were of a Side?

L. H. St. Friend, you hear that noble Lord's Queſtion ; you ſeem to ſay, there were three and three of a Side. What reaſon had you to apprehend, that my Lord *Warwick* and Mr. *Coote* were of one Side ? You muſt explain to my Lords how you come to make that Judgment, what Reaſon you had to think ſo ?

Cawthorne. They three, my Lord *Mohun*, my Lord *Warwick*, and Mr. *Coote*, were on the one Side of the Bar ; and Capt. *James*, Capt. *French*, and Capt. *Dockwra*, were on the other Side of the Bar.

L. H. St. So you ſaid before ; but the Queſtion which my noble Lord deſires to be ſatisfied in, is this, How you come to ſpeak as if there was a Quarrel between three and three ? What Reaſon had you to think, that three were on one Side, and three on the other ?

Cawthorne. Their Swords were all drawn, and they ſtood three on one Side of the Bar, and three on the other.

E. of *Rocheſter.* My Lords, I deſire to aſk this Witneſs one Queſtion ; I think he told your Lordſhips at firſt, that he did not perceive any angry Words among them ; afterwards he comes to talk of Swords drawn amongſt them all, three on the outſide, and three on the inſide of the Bar ; I deſire to know what was the Occaſion of thoſe Swords being drawn on the one Side or the other ?

Cawthorne. Whatſoever Quarrel there was, was amongſt themſelves above Stairs, and I know no angry Words that paſſed between them when them came down to the Bar.

L. H. St. See what you ſay ; How conſiſtent one Part of it is with another ! You ſaid at firſt, you did not hear of any angry Words that paſſed between them, and yet you ſay, all their Swords were drawn, and three were on the one Side, and three on the other : And when you were examined upon the Motion of that noble Lord, what you meant by three on the one Side, and three on the other, you ſaid, my Lord *Mohun*, my Lord *Warwick*, and Mr. *Coote*, were on the one Side ; Mr. *James*, Mr. *French*, and Mr. *Dockwra*, were on the other Side : How could there be two Sides, unleſs there was a Quarrel ?

Cawthorne. I ſaid, I did not hear any angry Words paſs between them before they came to the Bar, or while they were above Stairs ; but they were three on the one Side of the Bar, and three on the other.

L. H. St. But you have not given a ſatisfactory Anſwer to that Queſtion which the noble Lord, my Lord *Peterborough*, aſked you, What Reaſon you had to apprehend that the noble Lord, the Priſoner at the Bar, and Capt. *Coote* were of a Side ?

Cawthorne. My Lord *Mohun* came to the Chair-ſide, when Capt. *Coote* and Capt. *French* were got into the two firſt Chairs, and told Capt. *Coote*, that there ſhould be no Quarrel that Night, but that they three, my Lord *Warwick*, my Lord *Mohun*, and he, ſhould go home together ; and I took them three to be of a Side, becauſe they were on the outſide of the Bar together ; and when they all went away, their three Chairs went away firſt, all three together.

L. H. St. Is that all the Reaſon you can give why you ſay, they were three and three of a Side ?

Cawthorne. Yes, my Lord, I did apprehend it ſo.

Mr. Att. Gen. If my noble Lords have done with their Queſtions, I deſire to aſk this Witneſs another Queſtion ; my Lords, I think this Perſon ſays, That there was a Quarrel at the Bar of the Houſe, and Swords drawn, and as he apprehended, three were on the one Side, and three on the other ; but if I take him right, I do not ſee that he has given your Lordſhips any Manner of Satisfaction, what Reaſon he had to apprehend there were three and three of a Side ; or, which will be very material in this Caſe, if your Lordſhips can get to the Knowledge of it, which three were on the one Side, and which three were on the other ; or indeed, whether there were three and three of a ſide, as your Lordſhips will have reaſon by and bye to enquire a little further into that Matter. My Lords, I deſire he may be aſked this plain Queſtion, What Words or other Paſſages he did perceive, that made him apprehend there was a Quarrel between them, and they were three and three of a Side ?

Cawthorne. I apprehended it from the Words that Mr. *Coote* ſaid, That he would laugh when he pleaſed, and frown when he pleaſed.

Mr. Att. Gen. Pray, my Lord, I deſire he may be aſked, Who thoſe Words were ſpoke to, and who they were applied to ?

Cawthorne. They were ſpoke to Mr. *James*, Mr. *French*, and Mr. *Dockwra*, who were within ſide of the Bar.

Mr. Att. Gen. Did he apply thoſe Words to all thoſe particular Perſons ?

Cawthorne. Yes, as I thought, for they three were within the Bar ; my Lord *Warwick*, my Lord *Mohun*, and Mr. *Coote*, were without the Bar.

Mr. Att. Gen. Pray, my Lord, I deſire he may be aſked this Queſtion, Was that before the Swords were drawn, or afterwards ?

Cawthorne. It was before.

Mr. Att. Gen. Then I deſire he may be aſked, whether the Swords were drawn upon thoſe Words ?

Cawthorne. No, my Lord ; the Time of drawing the Swords was when I went out to call Chairs and Coaches ; and I know not who drew the Swords firſt, or when they were drawn ; but when I came back I found them all drawn, and I heard them claſhing.

Mr. Att. Gen. Upon the Oath you have taken, Was thoſe Words that you ſpeak of Mr. *Coote*'s, That he would laugh when he pleaſed, and frown when he pleaſed, before the Swords were drawn, or after the Swords were drawn ?

Cawthorne. Before the Swords were drawn ; for I did not ſee the Swords drawn till I came back.

L. H. St. Does either Side deſire to aſk this Witneſs any Queſtions ; if not, then you may withdraw, and you may proceed, Mr. *Attorney*, to examine ſome other Witneſs.

Lord *Wharton.* My Lord, there was a Queſtion aſked at the Bar about the Hindring of the Quarrel, and my Lord *Mohun*'s Deſire to part them, and make them Friends ; I deſire the Witneſs, before he goes away, may be aſked what he knows of that Matter.

L. H. St. It has been obſerved by my Lord, that you ſaid, when they came down to the Bar, and the Quarrel happened, ſomebody would have prevented it ; pray repeat that Matter again, Did you obſerve any of the Company were diſpoſed to take up the Quarrel, and make them Friends, and who they were ?

Cawthorne. My Lord *Mohun* and my Lord *Warwick* ſaid they would ſend for a File of Muſqueteers ; and my Lord *Mohun* did all he could to quiet and pacify them till the Quarrel was over ; and my Lord *Mohun* particularly had his Finger prick'd with endeavouring to croſs their Swords, and keeping them from fighting ; which was all he got by it.

L. H. St. Do you know that of your own Knowledge ?

Cawthorne. His Hand was bloody, and he ſaid ſo at the Bar ; but I was juſt coming in again when I heard him ſay ſo ; but I cannot ſay that I ſaw him hurt, for I was without the Houſe at the Time when that was done.

Lord *Godolphin.* My Lords, I deſire to ask this Witneſs one Queſtion ; I obſerve he has told my Lords, there was not an angry Word paſs'd between them before they came down to the Bar : I would fain aſk him this Queſtion, Whether he was in the Room all the Time till they did come down to the Bar ?

Cawthorne. I received the Reckoning juſt before they came down to the Bar.

Lord *Godolphin.* And I deſire he may be aſked, How long he ſtaid in the Room when he received the Reckoning ?

Cawthorne. It was about two or three Minutes that I ſtaid in the Room, and not longer.

Earl of *Warwick.* My Lord, this Witneſs that has been examined, told you, That when we firſt came down to the Bar there were two Chairs call'd for ; and when they came, Mr. *Coote* and the other Gentleman, Mr. *French*, went into the Chairs, and afterwards they came out again, and Mr. *Coote* ſaid ſome Words ; I deſire the Witneſs may be aſked again, when it was Mr. *Coote* ſpoke thoſe Words ; whether it was before or after the Time that he came out of the Chair ; for I take it to be very material.

Cawthorne. It was after Mr. *Coote* came out of the Chair, for the Chairmen heard the Words as I verily believe.

Mr. Att. Gen. My Lord, I deſire he may be aſk'd, Was there any Reply made to thoſe Words by any of thoſe Perſons he ſays he apprehends were on the other Side ?

Cawthorne. No, not one Word that I know of.

E. of *Warwick.* My Lord, I muſt beg the Favour to have the Queſtion aſked again of him, Whether I did not at that Time endeavour to prevent any Quarrelling, and did not ſay I would call for the Guard if they did ?

Cawthorne. Yes ; my Lord of *Warwick* did ſay ſo, and ſo did my Lord *Mohun*, and ſo I think did Mr. *James*.

L. H. St. How came you not to ſay ſo when you were aſked that Queſtion particularly before ? Then you ſaid my Lord *Mohun* endeavoured to prevent the Quarrelling, and make them Friends.

Cawthorne. Yes, my Lord *Warwick* did ſo, and ſo did Mr. *James*.

L. H. St. I cannot tell whether any body elſe deſires to ask him any Queſtions.

Mr. Att. Gen. My Lord, he ſpeaks of what this noble Lord, my Lord of *Warwick*, ſaid ; but he does not tell you the particular Expreſſions, nor the Time when my Lord ſaid them.

L. H. St. You ſay, my Lord, the Priſoner, at the Bar, endeavoured to pacify the Quarrel between them ; but you do not tell my Lords who the Quarrel was between ; nor when the Endeavour was made by my Lord *Warwick* to pacify it ?

Cawthorne. My Lord of *Warwick* did ſay he would have the Guards ſent for.

L. H. St. What Time was that, before or after my Lord *Mohun* ſaid ſo ?

Cawthorne. Truly, my Lord, I do not know but that it was at the ſame Time.

L. H. St. Was it when the Swords were drawn, or before ?

Cawthorne. They ſpoke it both before and after the Swords were drawn, as I remember ; for the Swords were not drawn while I was in the Houſe, till I came back.

L. H. St. Were the Swords drawn when my Lord *Warwick* ſpoke of ſending for the Guards ?

Cawthorne. Surely, my Lord, it was before the Swords were drawn, when I was ſent for the Chairs.

L. H. St. You ſaid there was no angry Words or Quarrel between them ?

Cawthorne. Not above Stairs, my Lord : But I apprehended when they came down to the Bar, there were three on one Side, and three on the other.

Mr. Att. Gen. Pray, my Lord, let him be aſked this Queſtion, Was it after they were three on the one Side, and three on the other, that my Lord *Mohun* and my Lord *Warwick* ſpoke thoſe Words ?

Cawthorne. I apprehend the Words were ſpoke by Mr. *Coote*, That he would laugh when he pleaſed, and frown when he pleaſed, before the Swords were drawn.

L. H. St. But that which my Lords deſire to know is, What the Time was when my Lord *Warwick* and my Lord *Mohun* declared their Deſire to part them and make them Friends ; whether before or after the Swords drawn ?

Caw. Before and after ; for I was abſent when the Swords were drawn.

Earl *Rivers.* He ſays, That after my Lord *Mohun* and my Lord *Warwick* threaten'd to ſend for the Muſqueteers, they promiſed to be quiet : I deſire to know who he means by they ?

Cawthorne. Mr. *James* call'd to me, and ſaid, I need not go and call for the Guards, for the Quarrel was over. There is one Thing more that I forgot, my Lord : After my Lord *Mohun* and my Lord *Warwick* were gone away in their Chairs, and Mr. *Coote*, I heard Mr. *Dockwra* ſay to Captain *James* and Captain *French*, they did not care a Farthing for them, they would fight them at any Time.

L. H. St. Who were together then ?

Cawthorne. Capt. *James*, Mr. *French*, and Mr. *Dockwra*, after my Lord *Mohun* and my Lord *Warwick* were gone with Captain *Coote*.

L. H. St. Then Mr. *French* was with them ? Mr. *Dockwra* ſaid ſo ?

Cawthorne. Yes, my Lord.

Lord *Wharton.* If I apprehend him aright, as to what he ſays now, my Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote*, were gone away at that Time.

Cawthorne. Yes, they were gone away in the three firſt Chairs, which my Lord *Mohun* bid go home.

Lord *Wharton.* Who does he ſay ſpoke thoſe words ?

L. H. St. You hear my noble Lord's Queſtion, Who ſpoke thoſe Words ? Repeat them again.

Cawthorne. When my Lord *Warwick*, my Lord *Mohun*, and Captain *Coote* were gone, I heard Mr. *Dockwra* ſay to Mr. *French* and Mr. *James*, We don't care a Farthing for them, we will fight them at any time.

Mr. Att. Gen. I deſire to know, whether this Witneſs teſtified any Thing of this Matter when he was examined before the Coroner?

Cawthorne. No; I forgot thoſe Words when I was examined before the Coroner.

Mr. Att. Gen. How ſoon after your Examination did you recollect yourſelf as to what you now ſpeak?—*Cawthorne.* The next Day after.

Mr. Att. Gen. I pray, my Lords, that he may be aſked, Whether he did in general give the ſame Evidence before the Coroner that he now does?

Cawthorne. Yes, as to all but only thoſe Words, of Mr. *Dockwra*'s declaring he did not care a Farthing for them, they would fight them at any time.

Mr. Att. Gen. My Lord, I beg he may be aſk'd, how long it was after the Fact was done that he was examined before the Coroner?

Cawthorne. It was the next Day, in the Afternoon.

Mr. Att. Gen. Then I have this Queſtion further to aſk, if your Lordſhips pleaſe, Was he at the Trial of Mr. *Dockwra*, Mr. *James*, and Mr. *French*?—*Cawthorne.* Yes, I was.

Mr. Att. Gen. Did he then give any Evidence of thoſe Words of Mr. *Dockwra*'s, after when my Lord *Warwick*, my Lord *Mohun*, and Captain *Coote* were gone?—*Cawthorne.* No, I did not.

Mr. Att. Gen. My Lord, I have one Queſtion to aſk him then more, How he came not to ſwear this Matter at that Trial?—*Cawthorne.* It was out of my Mind at that Time, and I had like to have forgot it now.

Mr. Att. Gen. My Lord, we have done with this Witneſs: Is it your Lordſhip's Pleaſure that we go on to call our other Witneſſes?

Lords. Ay, Ay.

Mr. Att. Gen. Then our next Witneſſes, my Lords, will be the Chairmen that carried my Lord *Mohun*, my Lord of *Warwick*, and Captain *Coote*: We ſhall begin with *Thomas Browne* and *John Gibſon*; one of them carried Mr. *Coote*, the other my Lord of *Warwick*.

[Thomas Browne *was ſworn.*]

L. H. St. What Queſtion do you aſk this Witneſs, Mr. *Attorney*?

Mr. Att. Gen. That he would acquaint your Lordſhips, whether he carried Mr. *Richard Coote*, the Perſon that was ſlain, upon the 29th or 30th of *October*, from the *Greyhound* Tavern in the *Strand*, and to what Place he carried him?

L. H. St. You hear the Queſtion; pray ſpeak ſo loud that my Lords may all hear what you ſay.

Browne. My Lords, I was between the Hours of One and Two in the Morning, on *Sunday* the 30th of *October* laſt, with my Fellow and our Chair, at the *Buffler's-Head* Tavern at *Charing-Croſs*, and I heard ſome People at *Locket*'s, at the *Greyhound* in the *Strand*, calling Coach, Coach, a pretty while; but there were no Coaches in the Street, nor that came to them; when they could not get Coaches, then they called out for Chairs; and we coming to the Door with our Chair, there were four other Chairs there, and ſix Gentlemen ſtood in the Paſſage; and then it was ſaid, There was not Chairs enough, and there wanted one more, and they ſtood diſcourſing; and the firſt Man came into my Chair, who was Captain *Coote*; and my Lord of *Warwick* he got into another: When the Door of the Chair was ſhut up, we aſked them whither we ſhould go; but my Lord *Mohun* came and bid open the Chair again; and we did ſo, and he returned into the Houſe, and there was ſome Diſcourſe between them ſtanding at the Bar in the Entry. Mr. *Coote* came out again and came into my Chair, and my Lord *Mohun* and my Lord of *Warwick* went into two others; Mr. *Coote* bid me carry him into *Leiceſter-fields*, and to make all the haſte I could; my Lord of *Warwick* and my Lord *Mohun* being in the next Chairs, aſk'd him, *Whither are you a-going*, and called out twice, and he ſaid, *To* Leiceſter-fields; *Pray do not*, ſays my Lord of *Warwick*, *but come along with us, and let it alone till To-morrow*; but he bid us go on; and as we were turning up *St. Martin*'s-*Lane*, by the *Croſs-Keys* Tavern, my Lord *Mohun*, and my Lord *Warwick* called out to us to ſtop, and their Chairs came up to the Back-door of the *Croſs-Keys* Tavern, and there all the three Chairs were ſet on a-breaſt in *St. Martin*'s-*lane*, and while they were talking together, there came by three Chairs of the other Side of the Way; and Mr. *Coote* bid us take up and make all the haſte we could before them into *Leiceſter-fields*; ſo taking up the Chair again, Mr. *Coote* bid us make haſte, and if we could go no faſter, he ſwore, Damn him, he would run his Sword in one of our Bodies: There were two Chairs before me, and my Lord *Mohun* and my Lord *Warwick* followed in two Chairs after me; and when we came to the Corner of *Leiceſter-fields* at *Green-ſtreet* End, all the three Chairs were ſet down a-breaſt again, and Mr. *Coote* put his Hand in his Pocket, and took out half a Guinea to pay, and ſaid he had no Silver; and my Lord of *Warwick* ſpoke to my Lord *Mohun*, who took out three Shillings out of his Pocket, who ſaid, there was for my Lord *Warwick*, Captain *Coote*, and himſelf; and when they were gone out, I took my Box and my Pipe, and filled my Pipe, and took the Lanthorn and lighted it, and by that time I had lighted my Pipe, I heard a calling out, Chair, Chair, again, towards the upper End of the Square; ſo I took my Chair, and there was one of the Chairs that was not gone; and ſo we came up to the upper End of the Fields, and they called to us to bring the Chairs over the Rails; we told them we did not know how to do that, for we ſhould not be able to get them back again; at laſt we did get over the Rails, and made up cloſe to the Place where we heard the Noiſe, for we could ſee nothing, it being a very dark Night; and when we came up cloſe to them, by our Lanthorn there were two Gentlemen holding up Mr. *Coote* under their Arms, and crying out, *My dear* Coote, *My dear* Coote!

Mr. Att. Gen. Pray, who were thoſe two Gentlemen?

Browne. I did not know them, one was in Red Cloaths, and the other had Gold Lace, and they would have had me have taken Mr. *Coote* into my Chair; but ſeeing him bloody, and not able to help himſelf, I ſaid I would not ſpoil my Chair, and ſo would not meddle with him; but they ſaid they would make me any Satisfaction for my Chair, and deſired me to take him in; but he gave himſelf a ſpring from them, and we found he was too heavy for us to lift over the Rails, and all we could do could not make him ſit in the Chair, but the Chair was broken with endeavouring to place him there; and they ſaid, if we would carry him to a Surgeon's, they would give us a Hundred Pound Security; but we finding it impoſſible, the Watch was called for, but nobody would come near; for they ſaid it was out of their Ward, and ſo they would not come anigh me; and I ſtaid about half an Hour with my Chair broken, and afterwards I was laid hold upon, both I and my Partner, and we were kept till next Night Eleven a-Clock; and that is all the Satisfaction that I have had for my Chair and every Thing.

Mr. Att. Gen. Pray, My Lord, I deſire he may recollect himſelf; for we do apprehend it is very material, Who it was that deſired to take Mr. *Coote* into the Chair?

Browne. I cannot tell who they were, it was ſo very dark I could only ſee their Cloaths.

Mr. Att. Gen. Did you ſee the Earl of *Warwick* there?

Browne. No, Sir, he was not there; one of them, I tell you, had Officers Cloaths on, Red lined with Blue, and the other had Gold Lace on; there was nobody there that held him up but them two.

M. of *Norm.* He ſays he ſaw two Perſons holding up Mr. *Coote*; it would be very well to have that Matter very well ſettled, who thoſe two Perſons were; I deſire to know how he is ſure my Lord of *Warwick* was not one of them two?

Browne. I know my Lord of *Warwick* very well, and I am ſure he was neither of the two.

D. of *Leeds.* I would know what Light he had to diſcern it ſo well by, that he can be ſure my Lord of *Warwick* was not there; for he ſays, it was a very dark Night, and yet he deſcribes the particular Perſons that held Mr. *Coote* up.——*Browne.* Yes, my Lord, I am ſure my Lord of *Warwick* was none of them.

D. of *Leeds.* How could you diſtinguiſh in ſo dark a Night, the Colours of People's Cloaths?

Browne. With the Candle that I had lighted in my Lanthorn.

D. of *Leeds.* He could not know any of the Perſons unleſs he held a Lanthorn to their Faces, or knew them very well before.

L. H. St. My Lord *Warwick*, Will your Lordſhip aſk this Witneſs any Queſtions?

E. of *War.* My Lord, I deſire he may be aſk'd, Whether I did not bid him ſtop at *St. Martin's-lane* End, and do all that I could to hinder Mr. *Coote* from going any further, but to go home?

Browne. The Earl of *Warwick*, and my Lord *Mohun*, as they turned up the Lane, aſked Mr. *Coote*, Whither he was going? And when he ſaid to *Leiceſter-fields*, they deſired him to let it alone till To-morrow; and my Lord *Mohun* ſaid he ſhould go home with him; but the other bid us go on, and ſaid he would not go to his Lodgings, but that they would make an End of it that Night; ſtill they called to him again, dear *Coote*, let's ſpeak a Word with you; and as the Chairs came to the Back-door of the *Croſs-Keys* Tavern, there they ſtood all of a-breaſt, and they both of them ſpoke to him, and ſtood a pretty while there, and in the mean time three Chairs paſſed by on the other Side; he commanded us to take up, and carry him away to *Leiceſter-fields* immediately, and overtake the other Chairs, or he would run one of us into the Body.

L. H. St. Would your Lordſhip aſk him any more Queſtions?

E. of *War.* No, my Lord.

Mr. Att. Gen. My Lord, I obſerve, he ſays they diſcourſed ſome Time together while they ſtopped in St. *Martin*'s-*lane*; I deſire that he may be aſked, whether he can tell what that Diſcourſe was?

Browne. I could not well hear, they whiſpered together, but I could hear my Lord *Mohun*, and my Lord of *Warwick*, deſire Captain *Coote* to go home, and let the Buſineſs alone till another Time.

Mr. Att. Gen. I deſire he may explain himſelf, what that Buſineſs was that they would have put off till To-morrow.

Browne. I know not what it was; I heard of no Anger betwixt them, but they were as good Friends, for any Thing I know to the contrary, as ever they were in their Lives, or as ever I ſee any Men.

L. *Jefferys.* He ſays there were Two went into Chairs at the Door of the Houſe, and afterwards went out again, and went into the Houſe, and there was Diſcourſe at the Bar of the Houſe, I would deſire to know what that was?—*Browne.* I did not hear the Diſcourſe that was in the Houſe, I was at the Door of the Houſe.

Mr. Att. Gen. Our next Witneſs is *William Crippes.* (*Who was ſworn.*)

L. H. St. What do you aſk this Man, Mr. *Attorney*?

Mr. Att. Gen. Pray, will you give my Lords here an Account who you carried to *Leiceſter-fields* the 29th or 30th of *October*, and what happened in your Knowledge at that Time?

Crippes. Captain *Coote* was the firſt Man that went into the Chair when we came to the *Greyhound* Tavern; afterwards hecame out again, and when we took him up the ſecond Time, he was the firſt Man that ſet out; and he bid us carry him to *Leiceſter-fields*; and when he came to the Corner of St. *Martin*'s-*lane*, we turned up that Way; and my Lord of *Warwick*, and my Lord *Mohun*, called to us, being in Chairs behind, to know whither we were going, and deſired to ſpeak with Captain *Coote*; and he ſaid he was going to *Leiceſter-fields*; and when they aſk'd, What to do? He ſaid, to end the Buſineſs: They deſired him to put it off till To-morrow; and while they were diſcourſing about it in St. *Martin*'s-*lane*, there paſſed by other three Chairs, which, when Captain *Coote* ſaw, he bid us take up and overtake them, and go faſter, or he would run one of us into the Body: So we went on, and at the lower End of *Leiceſter-fields* we ſet him down; and the other two Gentlemen, my Lord *Warwick*; and my Lord *Mohun*, were there ſet down, and went lovingly together, for any thing that I ſaw, up the Pavement of the Square, towards the upper End; and in a little time we heard a Noiſe of calling for Chairs towards the upper End, and when we came there with the Chair, we were bid to lift over the Chair within the Rails; and when we ſaid it was hard to be done, they inſiſted upon it, and we did come in; and when we came there we ſaw two Gentlemen holding up Captain *Coote*, and would have had us taken him into the Chair; we ſaw there was a great deal of Blood, but I never heard how it came, and they would have had us carried him to a *French* Surgeon's, and proffer'd any Money.

Mr. Att. Gen. My Lord, I deſire to know, who they were that deſired him to be carried to the Surgeon ?

L. H. St. You hear the Queſtion, What ſay you ?

Crippes. I cannot tell, my Lord ; one of them had ſomething of Lace upon him, but it was ſo dark that I could hardly ſee my Hand, and therefore I cannot tell who they were ; and when there was an Objection made, that the Chairs would be ſpoiled, they ſaid, We need not queſtion our Chair, they would give us 100 *l.* Security to anſwer any Damages, if we would but carry him ; ſo we endeavoured to put him into the Chair, but could not ; and ſo we called out to the Watch, to have had ſome Help ; but they ſaid it was none of their Ward, and ſo they would not come to us ; ſo the Gentlemen went away, and we left them, and went and called a Surgeon, who, when he came, ſaid, he was a dead Man, and we were ſecured till the next Day.

Mr. Att. Gen. Pray, my Lord, I deſire he may be aſked, Were there not other Chairs in that Place at that Time ?

Crippes. There was one in the Field beſides, and no more that I could ſee ; they all went away but us two.

Mr. Att. Gen. What Diſtance of Time was there between their ſetting down in *Leiceſter-Fields*, and their calling the Chairs again ?

Crippes. Not a Quarter of an Hour.

Mr. Att. Gen. What became of the three Chairs that paſſed by you in St. *Martin*'s-*lane ?*

Crippes. They got before us ; but what became of them afterwards I cannot tell.

Mr. Att. Gen. Did they come from the ſame Place, the Tavern in the *Strand* that you were at ?

Crippes. Yes, I believe they did, my Lord ; for Captain *Coote* bid us follow them, and threatened us if we did not make greater Haſte.

Mr. Att. Gen. Do you know my Lord of *Warwick ?*

Crippes. Yes, he had whitiſh Cloaths on ; and none but he had ſuch Cloaths on as thoſe were.

L. H. St. Will your Lordſhip aſk this Witneſs any Queſtions ?

E. of *Warwick.* My Lord, I deſire he may be aſked, Whether I did not bid him ſtop ? and, Whether I did not ſay, they ſhould not go to quarrel that Night ?

Crippes. Yes ; both he and my Lord *Mohun* would not have had Captain *Coote* gone any where, but home to his Lodgings.

Mr. Att. Gen. My Lord, I deſire to know of him, directly and downright, Whether my Lord of *Warwick* was not one of them that held him when he was within the Rails in the Fields ?

Crippes. No, he was not ; he was neither of them ; for the one of them was too big for him, and the other was too little for my Lord *Mohun.*

Mr. Att. Gen. Now we call the Chairman that carried the Earl of *Warwick* into *Leiceſter-Fields, James Crattle.* *(He was ſworn.)*

Mr. Att. Gen. Will you tell my Lords what you know of any Perſon that you carried the 29th or 30th of *October* laſt, from the *Grey-hound* Tavern in the *Strand*, and who it was, and whither you carried him ?

Crattle. I was going along *Charing-Croſs*, between One and Two in the Morning, the 30th of *October* laſt, and I heard a Chair called for at *Locket*'s at the *Dog* Tavern ; and thither I and my Partner went, and we took up the Gentleman, and carried him to *Leiceſter-Fields.*

Mr. Att. Gen. Who was that Gentleman ?

Crattle. It was my Lord of *Warwick.*

Mr. Att. Gen. What Time of Night do you ſay it was ?

Crattle. It was about One or Two in the Morning.

Mr. Att. Gen. What Day of the Week was it ?

Crattle. It was *Saturday* Night and *Sunday* Morning.

Mr. Att. Gen. Whither did you carry him ?

Crattle. Into *Green-ſtreet*, towards the lower End of *Leiceſter-ſquare.*

Mr. Att. Gen. What Chairs were there more there ?

Crattle. There was one that Captain *Coote* was in, and another that my Lord *Mohun* was in, and we went away all together.

Mr. Att. Gen. Were there no other Chairs ?

Crattle. I did not know who went in the other Chairs, but there were three other Chairs that paſſed by us at St. *Martin*'s-*lane*, and we followed after them to *Leiceſter-Fields.*

Mr. Att. Gen. Pray what became of you after you had ſet down your Fare ?

Crattle. We were diſcharged and paid ; the other three went up towards my Lord of *Leiceſter*'s ; but we were coming away, and in a little Time we heard the Noiſe of calling Chairs, Chairs, again, and there were two Chairs did come up, *Thomas Browne*'s and our's ; my Lord of *Warwick* called our Chair, and we took him into it, and he bid us carry him to the *Bagnio* in *Long-Acre* ; and when we came there we knocked at the Door, and his Hand was bloody, and he aſked us if we had any Handkerchief to bind up his Hand.

Mr. Att. Gen. Was there any other Chairs at the Door of the *Bagnio*, at the ſame Time when you came there ?

Crattle. Yes, there was another Chair there at the Door at the ſame Time, and we ſet down both together.

Mr. Att. Gen. Pray whence came that Chair ?

Crattle. Indeed, I do not know.

Mr. Att. Gen. Who were the Chairmen that carried that Chair ?

Crattle. Indeed, my Lord *Mohun* and my Lord *Warwick* were the only Perſons that I knew of all the Company.

Mr. Att. Gen. What Sort of Gentleman was the other, that went out of the other Chair into the Houſe ?

Crattle. He was a pretty tall Man ; when he was in we went away ; I only can ſay, I ſaw my Lord of *Warwick* go into the Houſe.

Mr. Att. Gen. Did you take any notice of any Sword that my Lord of *Warwick* had in his Hand at that Time ?

Crattle. No ; I cannot ſay I did take any notice of any Sword, only that there was a Handkerchief deſired.

Mr. Att. Gen. Pray, did you hear no Noiſe at all in the Field, till you heard Chairs called for again ?

Crattle. No ; I cannot ſay I heard any Noiſe in the Field.

Mr. Att. Gen. Did you apprehend there was any Fighting ?

Crattle. No, I knew nothing at all of it ; but upon the calling of Chairs again, and my Lord *Warwick* coming along, we took him in, and he bid us go to the *Bagnio*, and thither we went.

Mr. Att. Gen. My Lord, we have done with this Witneſs.

L. H. St. My Lord *Warwick*, will you aſk this Witneſs any Queſtions ?

Earl of *Warwick.* No, my Lord.

Mr. Att. Gen. Then, my Lord, our next Witneſs is *John Gibſon* ; he was another of thoſe Chairmen that carried my Lord of *Warwick* to the *Bagnio* afterwards. Pray, will you give my Lords an Account what you know ; who you carried the 29th and 30th of *October* laſt, and whither you carried them ? *(Who was ſworn.)*

Gibſon. My Lord, I was at *Charing-Croſs* with my Partner the 29th of *October* laſt, at Night, and about One or Two a-Clock in the Morning Chairs were called for to the *Grey-hound* Tavern in the *Strand* ; and when we came there, my Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote* got into the three firſt Chairs, and we got my Lord *Warwick* into our Chair ; and when we had him there, we were bid to go towards *Leiceſter-Fields*, as I apprehended, for thither the Chairs that went firſt was to go ; and indeed my Lord *Mohun* and my Lord *Warwick* did call to ſtop at the End of *St. Martin*'s-*lane*, and aſked Mr. *Coote* whither he was going ? and he ſaid, he was going to make an end of the Buſineſs ; and they ſaid it ſhould not be To-night ; but preſently after three other Chairs coming along, and paſſing before us, the Chair that Captain *Coote* was in was bid to go on, and we were ordered to follow, which was done accordingly ; juſt at the Turning of *Green-ſtreet* we ſet down our three Chairs ; and, I think, juſt about the Turning of *Green-ſtreet* End we ſtaid till there came another Chair again ; and we and the other Chair, upon my Lord *Warwick*'s coming into us, went away from thence, and carried him to the *Bagnio* in *Long-Acre.*

Mr. Att. Gen. You talk of another Chair ; pray, whoſe Chair was that ?

Gibſon. There was another Chair that was got there juſt before us ; but indeed I do not know whoſe it was, nor indeed can I ſay who it was that was in it ; but this I am ſure, we went to the ſame Place, and we met and lit juſt at the ſame Time ; and my Lord of *Warwick* aſked for a Handkerchief to bind up his Hand, which was bloody ; which was given him.

Mr. Att. Gen. Did you not know who was in the other Chair at that Time ?

Gibſon. No, indeed, I did not know, I will aſſure you.

Mr. Att. Gen. Pray did you not know where that other Chair took the other Gentleman up ?——*Gibſon.* No, indeed, Sir, I did not.

Mr. Att. Gen. Pray, what Time of the Night was it ?

Gibſon. It was between One and Two of the Clock in the Morning.

Mr. Att. Gen. You talk of his Hand being hurt, and that he called for a Handkerchief : Did you ſee his Hand bleed ? and pray, in what Nature was his wound ?

Gibſon. My Lord, all I can ſay is, There was Blood, and he wanted a Handkerchief, and had one, for he ſaid his Hand was hurt ; but in truth I did not take any notice what that Hurt was, I did not ſee it ; if my Partner took notice of it, ſo ; but elſe I can ſay nothing to it ; but the Handkerchief was afterwards aſked again, and could not be had.

L. H. St. Would my Lord of *Warwick* aſk this Witneſs any Queſtions ?

Earl of *Warwick.* No, my Lord.

Mr. Att. Gen. Then, my Lord, our next Witneſſes are *Robert Applegate* and *Peter Catro*, who will give your Lordſhip an Account who they carried at this time.

L. H. St. Whom do you call firſt ?

Mr. Att. Gen. Robert Applegate. *(Who was ſworn.)*

L. H. St. What Queſtions do you aſk him, Mr. *Attorney ?*

Mr. Att. Gen. I deſire that he would acquaint your Lordſhip, what he knows of what paſſed at the *Grey-hound* Tavern in the *Strand*, the 29th of *October* laſt, whom he carried, and whither he carried them ?

Applegate. My Lord, about One or Two a-Clock in the Morning, a *Sunday* Morning, the 29th or 30th of *October* laſt, I was going home with my Partner and my Chair, and I heard them calling at the *Grey-hound* Tavern in the *Strand*, Mr. *Locket*'s, for Coaches and Chairs ; there was no Coach to be had that could be heard of ; but coming up to the Door, they ſaid they wanted ſix Chairs ; and when we were there at the Door, there came out firſt my Lord *Warwick*, Captain *Coote*, and my Lord *Mohun* ; Captain *Coote* got into the firſt Chair, and what Directions he gave them I cannot tell ; my Lord of *Warwick* got into the next ; and into ours, which was the third, my Lord *Mohun* came in, and bid us take him up and carry him towards *Weſtminſter*, and he ordered us to follow the Chairs before : Juſt as they turned at *St. Martin's-lane*, my Lord *Mohun* called out, and deſired to ſtop, and at the *Croſs-Keys* Tavern Back-door all the three Chairs came up together ; and then my Lord of *Warwick*, and Captain *Coote*, and my Lord *Mohun* talked together ; and I could hear my Lord *Mohun* and my Lord of *Warwick* deſire Captain *Coote* to defer it, and put it by till another Day ; what it was, indeed I cannot tell : But while they were talking there, three Chairs more came up on the other Side of the Way ; and Captain *Coote* would needs go forward, and my Lord *Mohun* and my Lord of *Warwick* went with him ; and ſo they were all ſet down at the lower End of *Leiceſter-Fields*, at *Green-ſtreet* End. But in truth I did not ſee where the other three Chairs ſet down thoſe they carried.

Mr. Att. Gen. What then happened afterwards, can you tell ?

Applegate. I cannot tell whether I had lighted my Pipe, or juſt lighting it, when I heard Chairs called again ; upon which we run up with our Chair towards the upper End of the Fields, and there I did ſee my Lord of *Warwick* within the Rails, who bid us put over our Chair into the Fields ; but we told him, if we did, we could not get it over again ; and ſo we went with our Chair to the Corner of the Fields ; and when we came there, there came out Captain *French*, who bid us open our Chair, and let him in, for he did believe he was a dead Man ; and upon that we did take him in, and he bid us carry him with all the Speed we could to the *Bagnio* in *Long-Acre*, and my Lord of *Warwick* got into another Chair behind ; ſo we went to *Long-Acre* ; and when we came to the Door of the *Bagnio*, and Captain *French* came out of the Chair, he was ſo weak that he fell down upon his Knees ; and when he came out, I aſked who ſhould pay me, and deſired to be diſcharged ; and the Earl of *Warwick* ſaid, *Damn ye, call for your Money To-morrow* ; ſo they both went in at the *Bagnio* Door together.

Mr. Att. Gen. Pray, who called for the Chair firſt, Captain *French*, or my Lord of *Warwick*, in the Fields?

Applegate. I cannot tell; but when I brought up my Chair, I firſt ſaw my Lord of *Warwick*, and he would have had me lifted the Chair over the Rails, and I told him we could not get it over again, and ſo went up to the upper End of the Fields.

Mr. Att. Gen. If you firſt ſpoke with my Lord of *Warwick*, why did you not carry my Lord of *Warwick*?

Applegate. Indeed I cannot tell; but I ſuppoſe it was becauſe he did not come ſo ſoon out of the Fields as Captain *French*, or did not come the ſame Way.

Mr. Att. Gen. Pray, do you remember any Thing that happened juſt at their carrying Capt. *French* away?

Applegate. Before he went into the Chair, he ſtopped, and would have pulled off his Cloaths, but we would not let him.

Mr. Att. Gen. Did you ſee any Sword Captain *French* had?

Applegate. I did ſee no Sword that I can ſay directly was a Sword; but Captain *French* had ſomething in his Hand, but what it was I cannot tell.

Mr. Att. Gen. What was it that he ſaid to you, when he firſt went into the Chair?

Applegate. He deſired to be carried to the *Bagnio*; for he ſaid he believed he was a dead Man.

Mr. Att. Gen. Pray, Friend, recollect yourſelf, if you heard him ſay any Thing at all when he firſt went into the Chair at the *Greyhound* Tavern?

Applegate. I did not hear him mention any Thing at all.

Mr. Att. Gen. Pray, what did you hear my Lord of *Warwick* ſay at that Time?

Applegate. Truly, I cannot ſay I heard him mention any Thing at all neither; but I did hear my Lord *Mohun* ſay, when he could not prevail, in St. *Martin*'s-*lane*, with Captain *Coote* to go home, that if they did go he would go and ſee it.

Mr. Att. Gen. If they did go; who did he mean by they?

Applegate. My Lord *Warwick* and Captain *Coote* that were in the other Chairs; there was nobody elſe to ſpeak to.

Mr. Att. Gen. Was there any talk of Fighting or Quarrelling?

Applegate. No, indeed, I do not know of any Difference there was between them.

L. H. St. My Lord *Warwick*, Will your Lordſhip aſk this Witneſs any Queſtions?

Earl of *Warwick.* My Lord, I deſire he may be aſked, Whether I did not endeavour to put off the going into *Leiceſter-Fields*, and to have all Things let alone till To-morrow.

Applegate. My Lord, I cannot ſay any Thing of that; but I did hear my Lord *Mohun* beg heartily of Captain *Coote* to go home, and let the Buſineſs alone till another Time; and indeed I think, I never heard a Man beg more heartily for an Alms at a Door, than he did, that they might not go into the Fields then; but I cannot ſay that I heard any Thing that my Lord of *Warwick* ſaid about it.

L. H. St. Will your Lordſhip aſk him any other Queſtions?

Earl of *War.* No, my Lord.

L. H. St. Did my Lord of *Warwick* expreſs any Inclination to go on?

Applegate. Indeed I know not any Thing one Way or other.

L. *Jeffreys.* My Lords, if I am not miſtaken, he did ſay, that he did not ſee any Thing of Inclination in my Lord of *Warwick* to go on; but I deſire, if your Lordſhips pleaſe, that he may be aſked this Queſtion, Whether he did ſee any Thing in my Lord of *Warwick* that ſhewed any Inclination to the contrary?

Applegate. All that I can ſay is, I heard my Lord *Mohun* ſay, Pray let's go home and lie all together, and let us put off this Buſineſs to another Time; but indeed I do not remember that my Lord of *Warwick* ſaid one Word of going any Way backward or forward.

Mr. Att. Gen. Pray, who did my Lord *Mohun* ſpeak theſe Words to?

Applegate. My Lord *Mohun* ſpoke to my Lord of *Warwick* and Captain *Coote*, both.

L. H. St. Mr. *Attorney*, who is your next Witneſs?

Mr. Att. Gen. Peter Catro. (*Who was ſworn.*)

L. H. St. What do you aſk him, Sir?

Mr. Att. Gen. He was the other Chair-man that carried my Lord *Mohun*; Pray, will you give my Lords an Account what you know paſſed at the Time when you carried my Lord *Mohun* to *Leiceſter-Fields*?

Catro. I and my Fellow carried my Lord *Mohun* from the *Greyhound Tavern* in the *Strand*, till we came to the Turning up of St. *Martin*'s-*lane*, where my Lord *Mohun* deſired that our three Chairs might ſtop, and that they might go down to *Weſtminſter*, and that my Lord *Warwick* and Capt. *Coote* would go thither, and he would wait upon them to their Lodging; Capt. *Coote* made Anſwer again ſomething, but what I cannot tell, and his Chair went on; and my Lord *Mohun* did ſay, if they went forward, he would follow them, and ſee what would come of it.

Mr. Att. Gen. What did you ſee happen while you were in St. *Martin*'s-*lane*?

Catro. There were other three Chairs that went by while we ſtood at the *Croſs-Keys* Tavern-Door, and Captain *Coote*'s Chair going forward, we followed and went to the End of *Leiceſter-Fields*, at *Green-ſtreet* End: and there all three went out of their Chairs and walked up the paved Stones of the Square; my Lord of *Warwick* aſked my Lord *Mohun* if he had any Silver, and three Shillings were given for the three Chairs, and they went from us, and bid us go about our Buſineſs; and in a little while after we heard a Noiſe from the upper End of the Fields, calling Chairs, again.

Mr. Att. Gen. Did you obſerve any Thing of Quarrel or Difference between them, or any claſhing of Swords?

Catro. Indeed I heard nothing of any Quarrel, for we were at the lower End of the Square, at *Green-ſtreet* End; and when we heard them call for Chairs again, we went up towards the upper End of the Fields; and when we came there, we heard one bid us bring up the Chair over the Rails.

Mr. Att. Gen. Who was that?

Catro. Indeed, my Lord, I cannot tell, for I was behind the Chair, and could not ſee who it was; but we ſaying that we could not get it over again if we did, we went up to the upper End of the Fields, and there was Captain *French*, I think it was, for I did not perfectly ſee him, being at the hind-part of the Chair; and we went on to the *Bagnio* in *Long-Acre*; and I did ſee my Lord *Warwick* come out of his Chair at the *Bagnio* Door, for there they were ſet down.

Mr. Att. Gen. You ſay you ſaw my Lord of *Warwick* at the *Bagnio* Door; Did you ſee any Sword as my Lord of *Warwick* had, or Capt. *French*?

Catro. No, I did not ſee any Sword at all of either of them.

Mr. Att. Gen. What do you know of Capt. *French* his declaring he was wounded?

Catro. I think it was either when he went into the Chair, or in *Newport-ſtreet* End, he called out to have the Chair opened; for, ſays he, I think I am a dead Man, and would have pulled off his Cloaths; and when we were at the *Bagnio* Door, we tarried a pretty while till they got them up to let them in; and aſking if we ſhould wait, my Lord of *Warwick* bid us come to that Houſe To-morrow Morning for our Money; and they went in together into the Houſe, but I never heard any one Word of Quarrel or Diſſatisfaction paſſed between them.

Mr. Att. Gen. This Witneſs ſpeaks to the ſame Purpoſe as the other did; and I think we need not trouble your Lordſhip any further as to that.

L. H. St. Would my Lord of *Warwick* aſk him any Queſtions?

E. of *Warwick.* No, my Lord.

Mr. At. Gen. Then our next Witneſs is one *John Palmer.* (*Who was ſworn.*)

Mr. Att. Gen. Pray, will you give my Lords an Account, who it was you did carry in your Chair the 29th or 30th of *October* laſt, and whither you carried him?

Palmer. About one a-Clock in the Morning, the 30th of *October*, we were called to the *Greyhound-Tavern* in the *Strand*, to Mr. *Locket*'s, and there we took up a Gentleman, one Captain *French*.

Mr. Att. Gen. Whither did you carry him?

Palmer. He bid us go to *Leiceſter-fields.*

Mr. Att. Gen. What did he particularly ſay to you?

Palmer. There were three other Chairs that were juſt gone before from the ſame Door, and he bid us get before all thoſe Chairs; and juſt as we came to St. *Martin*'s-*lane* End, we ſaw there were three other Chairs ſet down before us over-againſt the *Croſs-Keys* Tavern Back-door.

Mr. Att. Gen. Well, what did you do then?

Palmer. So we went before, according as we were bid, unto *Leiceſter-fields*, and at the upper-End of the Fields, by *Leiceſter-Houſe*, we opened the Door, and Captain *French* came out, and he gave us a Shilling, and we went away about our Buſineſs.

Mr. Att. Gen. Were there any more Chairs there that went with you?

Palmer. There were two more Chairs that ſet down two other Gentlemen by *Leiceſter-Houſe*, and we came away when we were paid; that is all I know.

Mr. Att. Gen. Did you ſee any other Chairs beſides your three when you came down again, or any other Gentlemen?

Palmer. We did ſee ſome Gentlemen walking up about the Middle of the Square when we came down, but we made what Haſte we could away Home, it being late on *Sunday* Morning.

Mr. Att. Gen. Did you obſerve any Fighting when you were in the Field?

Palmer. I did not hear or diſcern any Fighting while I was there.

Mr. Att. Gen. Did you hear of any Quarrel, or any Thing between any of them, and whom, before?

Palmer. No, I did not know of any Quarrel, or hear of any Thing at all, I do aſſure you.

Mr. Att. Gen. All that he ſays then, my Lord, is, That he carried Captain *French* to the upper End of *Leiceſter-fields*, and there he left him.

L. H. St. Would my Lord *Warwick* aſk this Witneſs any Queſtions?

E. of *War.* I deſire he may be aſked, Whether he knows who were in the Chairs that were in *St. Martin*'s-*lane*, when they paſſed by?

L. H. St. You hear the Queſtions, What ſay you to it?

Palmer. There were three Chairs, but who they were that were in them I cannot tell directly; but as they ſaid, when they ſet them down at *Leiceſter-fields*, they were my Lord *Warwick*, my Lord *Mohun*, and Mr. *Coote.*

Mr. Att. Gen. Who was it that ſaid ſo?

Palmer. Some of the other Chairmen when I came by.

L. H. St. Mr. *Attorney*, who is your next Witneſs?

Mr. Att. Gen. We ſhall call next the Chairmen that carried Mr. *Dockwra* and Mr. *James*: Call *Jackſon* the Chairman. (*Who was ſworn.*)

Mr. Att. Gen. This Man carried Capt. *James*: Pray acquaint my Lords, who you did take up at *Locket*'s in the *Strand* on the 29th or 30th of *October* laſt, and whither you carried him?

Jackſon. I carried Captain *James* from *Locket*'s in the *Strand* into *Leiceſter-fields.*

Mr. Att. Gen. How many Chairs were you that went?

Jackſon. There were two more that went when I went; there were ſix in all that took up Gentlemen there, and we were the laſt but one.

Mr. Att. Gen. Can you tell who were in the other three firſt Chairs?

Jackſon. I do not know who were in the other Chairs, but I heard my Lord *Mohun* at the Door of the Houſe deſire, That the Buſineſs might be deferred till To-morrow Morning: There were ſix Gentlemen at the Door, but truly who they all were I cannot tell.

Mr. Att. Gen. Who did my Lord *Mohun* ſpeak that to?

Jackſon. Indeed, I don't know who he ſpoke it to.

Mr. Att. Gen. What Anſwer was made to my Lord *Mohun*?

Jackſon. Truly, there was no Anſwer that I heard, but we all went away ſoon after that, and we were bid to go to *Leiceſter-fields* to follow the other Chairs; and when we came to the other End of *Leiceſter-fields*, we ſet down Captain *James* by the *Standard* Tavern, and he gave us a Shilling, and bid us go our Ways; ſo we went our Way, and I heard nothing afterwards, but came away down the Fields, and there were three Chairs that ſtood at the Bottom of the Fields; and we aſked them, what they ſtayed there for? And they ſaid, To fill a Pipe of Tobacco: And preſently after, we heard call Chairs again; but it was late, and it was *Sunday* Morning, and my Partner ſaid, Let us go away home; and we did ſo, we went directly home.

Mr. Att. Gen. Did you carry nobody back?

Jackſon. No, we carried nobody back.

Mr. Att. Gen. My Lord, we have done with this Witneſs; our next Witneſs is one *Richard Edwards*, and he was one of the Chairmen that carried Mr. *Dockwra.* (*He was ſworn.*)

Mr. Att. Gen. Pray will you acquaint my Lords, Whether you carried any Body from *Locket*'s the 29th of *October*, and who it was, and whither you carried him?

Edwards. I do not know who I carried, but they were calling Coaches at the *Greyhound* Tavern in the *Strand*, and no Coaches coming, they called for Chairs, and ſo our Chair was brought up.

Mr. Att. Gen. When you came there, who did you ſee there?

Edwards. Indeed I did not know my Lord of *Warwick*, nor my Lord *Mohun*, nor any of them.

Mr. Att. Gen. Well, What do you know? Tell my Lords what happened.

Edwards. When we were there, there went two into two Chairs; and my Lord *Mohun* ſaid, or another Gentleman, I cannot tell which, that the Chairs ſhould not go away, that they would kill any Man that ſhould go away; and they went out of the Chairs, and went into the Houſe again.

Mr. Att. Gen. And what happened after they went into the Houſe again?

Edwards. After they went out of the Chairs into the Houſe again, as I was told, my Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote*, went into three Chairs, and went away from the Door; and there were three Chairs of us that went laſt.

Mr. Att. Gen. Whither did you go with your Chair?

Edwards. We went to the *Standard* Tavern at the End of *Leiceſter-fields*, and when we came to the Tavern Door, we aſked him if we ſhould knock at the Door; he ſaid No; but he gave us a Shilling, and bid us go about our Buſineſs; and ſo we did, for we went ſheer away to *Charing-Croſs*.

Mr. Att. Gen. Pray can you tell who were in the other Chairs?

Edwards. Truly I cannot tell any Man that was in our three Chairs, for I was the hind-Chairman, and did not know any of them.

Mr. Att. Gen. My Lord, I deſire to know what he means by hind-Chairman?

Edwards. My Lord, ours was the laſt Chair that went to *Leiceſter-fields*, and I was behind the Chair, and never could ſee any of them, it being ſo very dark after they took the Chairs, till we came to *Charing-Croſs*, at *St. Martin*'s-*lane*; and then I could not ſee who the particular Perſons were that were in the Chairs; nor indeed, whoſe the Chairs were that carried them.

Mr. Att. Gen. What Hour was it?

Edwards. It was very late, between one and two in the Morning; it was paſt one before we were called out.

Mr. Att. Gen. You ſay you went to the upper End of *Leiceſter-fields* with two other Chairs; Pray did you ſee any other Chairs afterwards, and where?

Edwards. We ſaw three Chairs at the lower End of the Square, as we came down by *Green-ſtreet* End, and we aſked them, What they ſtay'd there for; and they ſaid, To light a Pipe of Tobacco.

Mr. Att. Gen. Pray, Who had been carried in thoſe Chairs, can you tell?

Edwards. I did not ſee them ſet down any Body, and I cannot tell who they carried; and as for the Perſon that we carried, I did not ſo much as ſee him to know him, nor know who he was; but we went away as ſoon as ever we were paid.

Mr. Att. Gen. I have one Queſtion more to aſk you; you ſay, That my Lord of *Warwick* at the Tavern Door bid you ſtay, and that none ſhould go away, and ſwore he would run any Man thro' that ſhould go away?

Edwards. It was my Lord *Mohun*; and then two that had gone into the Chairs, went into the Houſe again.

Mr. Att. Gen. Did not you ſay, that there was ſome Talk of going to *Weſtminſter*?

Edwards. My Lord *Mohun* did talk of going to *Weſtminſter*, when they went into the Chairs the ſecond time; and I think I heard Mr. *Coote* ſay, he would make an end of it then, and he would kill any Man that would not go forwards to *Leiceſter-fields*.

L. H. St. My Lord *Warwick*, will you aſk this Witneſs any more Queſtions?------Earl of *Warwick*. No, my Lord.

L. H. St. Mr. *Attorney*, have you any more Evidence to call?

Mr. Att. Gen. My Lord, the next Piece of Evidence that we ſhould apply ourſelves to, will be to what happened at the *Bagnio* in *Long-acre*, after my Lord *Warwick* and Captain *French* came there: And the Witneſs that we ſhall call is *Pomfret*, and he is a Servant at the *Bagnio* in *Long-acre*, and he will acquaint your Lordſhips who came thither the 30th of *October* laſt, and what happened there.

L. H. St. What is his Name?----*Mr. Att. Gen. Henry Pomfret.*

L. H. St. Is he ſworn?----*Mr. Att. Gen.* Yes, my Lord.

L. H. St. What is it that you examine him about? What Queſtions do you aſk him, Mr. *Attorney*?

Mr. Att. Gen. Who came to his Maſter's Houſe, and at what Time they came.

Pomfret. My Lord, on *Sunday* the 30th of *October* laſt, between Two and Three in the Morning, there came to my Maſter's Door the Earl of *Warwick*, and knocked at the Door, and there was Captain *French* with him; and when they were let in, my Lord of *Warwick* told me that Captain *French* was wounded, and he himſelf had a Wound, and he deſired that my Maſter might be called up for to dreſs the Wounds; eſpecially, becauſe Captain *French* was very much wounded; which accordingly was done in about a Quarter of an Hour after they were brought in.

Mr. Att. Gen. Did he deſire to be concealed when he was come in?

L. H. St. Of whom do you ſpeak, Mr. *Attorney*?

Mr. Att. Gen. My Lord of *Warwick*.

Pomfret. He did deſire, that if any body aſked for him, it ſhould be ſaid he was not there.

Mr. Att. Gen. Pray in what Condition did my Lord of *Warwick* ſeem to be in at that Time?

Pomfret. He ſeemed to be very much concerned at that Time, and his Right Hand, in which he had his Sword, and which was drawn, was very much bloody.

Mr. Att. Gen. Was the Sword bloody that he had in his Hand?

Pomfret. The Blade was bloody; but whether it was all over bloody, I cannot tell; there was beſides ſome Blood upon the Shell; it was very near all over bloody, as I remember.

Mr. Att. Gen. Pray, Friend, conſider what you ſwore at the Coroner's Inqueſt about the Blood upon the Sword.

Pomfret. Indeed I cannot ſay it was bloody all along the Blade; but there was Blood upon the Shell, and there was Blood upon the Inſide; it was ſo, to the beſt of my Remembrance.

Mr. Att. Gen. What Condition was Mr. *French*'s Sword in?

Pomfret. He had a drawn Sword in his Hand, but I did not perceive it had any Blood upon it: it was a large Blade.

Mr. Att. Gen. How do you know what Sort of Sword Mr. *French*'s was, and in what Condition it was?

Pomfret. He deſired me to take Notice of it next Morning, and I did ſo; and there was no Blood upon it.

Mr. Att. Gen. How came you to be deſired to take Notice of what paſſed there about the Swords?

Pomfret. My Lord, there was three of them the next Day, and one, it was ſaid, was Mr. *Coote*'s, and another of them was my Lord of *Warwick*'s, which I do believe was bloody from the Point upwards, very near; but I cannot directly ſay but that was afterwards.

Mr. Att. Gen. Who brought in that Sword that you ſay was Mr. *Coote*'s?

Pomfret. To the beſt of my Remembrance, Captain *Dockwra* brought it in; it was almoſt half an Hour after my Lord *Warwick* and Captain *French* came into the Houſe, when they came thither.

Mr. Att. Gen. They, Who do you mean?

Pomfret. Captain *James* and he.

Mr. Att. Gen. Were they let in preſently?

Pomfret. No, My Lord of *Warwick* had deſired that they might be private there; but when they knocked at the Door, my Lord of *Warwick* deſired to know who they were; and when it was underſtood that they were Mr. *James* and Mr. *Dockwra*, they were let in by my Lord's Order.

Mr. Att. Gen. Pray, which of all the Four brought in any Sword in a Scabbard?----*Pomfret.* It was Captain *Dockwra*.

Mr. Att. Gen. Pray, did they appear to be all of a Party?

Pomfret. They were glad to ſee one another; and they talked a pretty while together; but indeed I cannot ſay I heard what they talked.

Mr. Att. Gen. Pray, do you remember my Lord of *Warwick*'s Sword, and what there was upon it?

Pomfret. It was a Steel Sword, Water-gilt, and as near as I can remember, there was Blood upon it for the moſt Part from the Point upward.

Mr. Att. Gen. And what did appear upon Mr. *French*'s Sword?

Pomfret. There was Water and Dirt, but there was no Blood at all.

Mr. Att. Gen. How long did they ſtay there?

Pomfret. They all continued about half an Hour; and then went away, all but Mr. *French*, who ſtaid there.

Mr. Att. Gen. What then became of the others?

Pomfret. Mr. *James*, Mr. *Dockwra*, and my Lord of *Warwick* went away; and my Lord of *Warwick* deſired particularly, that we would all take care of Mr. *French*, for he was his particular Friend; and Mr. *French* continued there till *Sunday* about One of the Clock.

Mr. Att. Gen. Was there any Diſcourſe at that Time about Mr. *Coote*?

Pomfret. Not, that I heard of, one Word.

Mr. Att. Gen. Was there any Notice taken of any Quarrel that happened between any Body, and who?

Pomfret. No, indeed, I did not hear them take Notice of any Quarrel at all between any Body.

Mr. Att. Gen. You ſay Mr. *French*, when he came into your Houſe, was wounded, and there was Care particularly taken of him becauſe he was wounded.

Pomfret. Yes; my Lord of *Warwick* deſired to take care of him.

Mr. Att. Gen. Then pray, was there no Diſcourſe how he came to be wounded?

Pomfret. Indeed I do not know how he came to be wounded; nor did I hear one Word of Diſcourſe about it; indeed I cannot ſay any thing who wounded him.

Mr. Att. Gen. Pray will you recollect yourſelf, and tell my Lords what ſort of Handle had my Lord of *Warwick*'s Sword when you ſaw it.

Pomfret. It had a Steel Handle.

Mr. Att. Gen. Pray can you tell whether the Shell was open or cloſe?

Pomfret. I cannot tell juſtly; I ſaw it, and that was all.

Mr. Att. Gen. If I apprehend you, you ſay my Lord had a Wound in his Hand.

Pomfret. Yes, my Lord, he had ſo.

Mr. Att. Gen. Pray, in what Hand was it that he was wounded?

Pomfret. To the beſt of my Remembrance, it was in his Right Hand.

Mr. Att. Gen. Pray, did there appear much Blood there?

Pomfret. Yes, my Lord, indeed there did.

Mr. Serj. *Wright*. You talk of Mr. *James* and Mr. *Dockwra*'s Swords; pray in what Condition were they?

Pomfret. Mr. *Dockwra*'s Sword was by his Side, and not drawn.

Mr. Serj. *Wright*. What did you obſerve of Captain *James*'s Sword?

Pomfret. His Sword was naked, and he had loſt his Scabbard; but how that came I cannot tell; and there was Dirt on one Side of the Sword; and he ſaid he had left his Scabbard behind him.

Mr. Att Gen. Was there any Blood upon his Sword?

Pomfret. No, there was no Blood that I did ſee upon it.

Mr. Att. Gen. Pray did you ſee any Blood upon Mr. *Dockwra*'s Sword?

Pomfret. No, indeed, I did not ſee Mr. *Dockwra*'s Sword, it was in the Scabbard by his Side.

D. of *Leeds*. My Lords, there has been Notice here taken of ſeveral Swords that this Witneſs ſaw; and he takes ſo far Notice of my Lord of *Warwick*'s Sword, that he tells you what Sort of Hilt it had, and how it was bloody from the Point to the Hilt; I deſire he would give you an Account of the Length and Breadth of the other Men's Swords, Mr. *French*, Mr. *James*, and Mr. *Dockwra*'s.

L. H. St. You ſaid juſt now, that you took Notice of my Lord of *Warwick*'s Sword, that it was bloody from the Point to the Hilt; What ſort of Sword was it?

Pomfret. It was a pretty broad Sword.

L. H. St. Did you take Notice of the other Swords, what Breadth or Length they were of?----*Pomfret.* No, my Lord, I did not.

Mr. Att. Gen. Which was that Sword that was dirty, as you ſay?

Pomfret. That was Captain *French*'s.

Mr. Att. Gen. Was that a broad Sword or not?

Pomfret. No, it was not.

Mr. Att. Gen. Pray, was it over Night or next Morning that you ſaw the Swords?

Pomfret. It was in the Morning about Three a-Clock.

Mr. Att. Gen. What time did my Lord of *Warwick*, and Mr. *James*, and Mr. *Dockwra* go away?

Pomfret. My Lord of *Warwick* and they were gone ſeveral Hours before Mr. *French*; and to the beſt of my Remembrance, Mr. *James* broke his Sword upon the Floor after he came in.

Mr. Att. Gen. Pray, what Swords were there in all that you ſaw there?

Pomfret. There was Captain *French*'s, Captain *James*'s, my Lord of *Warwick*'s, and one Mr. *Coote*'s, as Mr. *French* ſaid when it was brought in.

L. H. St. Have you done with this Witneſs, Mr. *Attorney*?

Mr. Att. Gen. Yes, my Lord, we have.

L. H. St. My Lord *Warwick*, Will you aſk him any Queſtions?

E. of *Warwick*. No, my Lord.

L. H. St. Then, Mr. *Attorney*, call your next Witneſs.

Mr. Att. Gen. Our next Witneſs is *Thomas Goodall*, who is a Servant at the *Bagnio* in *Long-Acre*, as well as this Man that was laſt.

(*He was ſworn.*)

L. H. St. What Queſtions do you aſk him, Mr. *Attorney*?

Mr. Att. Gen. My Lord, I deſire he would acquaint your Lordſhips, what Time it was my Lord of *Warwick* and Capt. *French* came to his Maſter's Houſe?

Goodall. It was between One and Two of the Clock in the Morning.

Mr. Att. Gen. My Lord, I deſire he would acquaint your Lordſhips what he ſaw and knows, that paſſed at that Time?

Goodall. All that I can ſay is, That I did ſee my Lord of *Warwick*'s Sword bloody, and it was naked in his Hand, and I did ſee a Wound on his Hand: Indeed I did not ſee him when he firſt came in, for he had been there a pretty while before I ſaw him.

Mr. Att. Gen. Pray, in what Condition was my Lord when you ſaw him?

Goodall. He had his Sword in one Hand, and it was bloody at the Blade, and at the Hilt; but whether it was bloody all over, indeed I did not take notice of it, and ſo cannot give an Account.

Mr. Att. Gen. Pray, what ſort of Sword was it?

Goodall. Indeed I cannot give an Account what ſort of Sword it was, but it was either Steel or Silver gilt, as I remember; but I did take notice that there was Blood upon the Hilt, that is, upon the Shell.

Mr. Att. Gen. Was it an open Shell, or a cloſe one?

Goodall. I think it was a cloſe one.

Mr. Att. Gen. Pray, did my Lord of *Warwick* give any Order to be denied in the Houſe, or for any Concealment there?

Goodall. Indeed I did not hear of any Orders given for Concealing of any Body there; but my Lord walk'd up and down very much concerned.

Mr. Att. Gen. Did not Mr. *French* come in with him?

Goodall. I do believe he might: But I cannot ſay I ſaw him when he came in.

Mr. Att. Gen. Can you tell, when Mr. *James* and Mr. *Dockwra* came in? How long was that after my Lord of *Warwick* was there, and Mr. *French*?

Goodall. To the beſt of my Remembrance and Knowledge, it was half an Hour after my Lord of *Warwick* and Mr. *French* came, that Mr. *James* and Mr. *Dockwra* came: I am ſure it was ſo before I ſaw them in the Houſe; but indeed I cannot ſay directly when they came in, or when they went out.

Mr. Att. Gen. Pray, which Hand of my Lord of *Warwick* was it that was hurt, the Right or the Left?

Goodall. Indeed, I cannot poſitively ſay; but I think it was the Right Hand.

Mr. Att. Gen. You talk of my Lord of *Warwick*'s Sword; Did you take any notice of Mr. *French*'s Sword?

Goodall. No, indeed; I was buſy about the Affairs of the Houſe; I did ſee my Lord of *Warwick*'s Sword, but that was by Chance, and it was bloody at the Hilt, and upon the Blade; but whether it were all over bloody, indeed I cannot tell.

Mr. Att. Gen. I deſire to aſk him, Whether he can tell who brought in Mr. *Coote*'s Sword thither?

Goodall. Indeed I cannot.

L. H. St. Mr. *Attorney-General*, Have you any more Queſtions to aſk him?

Mr. Att. Gen. No, my Lord, not I.

L. H. St. My Lord of *Warwick*, Will you aſk him any Queſtions?

Earl of *Warwick*. No, my Lord.

L. H. St. Mr. *Attorney*, Who is your next Witneſs?

Mr. Att. Gen. My Lord, our next Witneſs is Mrs. *A. Goodall*, this Man's Wife. (*Who was ſworn.*)

L. H. St. What Queſtions do you aſk this Gentlewoman?

Mr. Att. Gen. I deſire that ſhe would acquaint your Lordſhips, Whether ſhe was at the *Bagnio* in *Long-acre* when my Lord of *Warwick* and Captain *French* came in?

A. Goodall. I was there when my Lord of *Warwick* came in.

Mr. Att. Gen. Was Captain *French* with him?

A. Goodall. Yes, Captain *French* was with him.

Mr. Att. Gen. About what a-Clock was it that they came there?

A. Goodall. It was about Two a-Clock, as near as I can remember.

Mr. Att. Gen. In what Condition were they when they came in, pray?

A. Goodall. Mr. *French* was very much wounded.

Mr. Att. Gen. Pray, how was my Lord of *Warwick*?

A. Goodall. My Lord had his Sword in his Hand, and it was very bloody, both at the Hilt, and upon the Blade.

Mr. Att. Gen. Did you obſerve any Wound that my Lord had?

A. Goodall. I think, to the beſt of my Remembrance, my Lord had his Hand wrapped up in a Handkerchief, which was bloody; but I was buſy up and down in the Houſe, and I cannot ſo well tell what Hand it was; I was indeed up and down there while they were there.

Mr. Att. Gen. Do you know of any Orders that were given by my Lord of *Warwick* to be concealed while he was there?

A. Goodall. He did deſire the Door might not be opened to any Body that aſked for him, and that it might not be ſaid that he was there; and when the other two Gentlemen came to the Door, he went to the Door himſelf, and when he ſaw who they were, he ordered them to be let in.

Mr. Att. Gen. What was the Occaſion of his going to the Door himſelf?

A. Goodall. There was a knocking at the Door, and he had a mind to know who it was; and when it did appear it was Mr. *James* and Mr. *Dockwra*, he himſelf ordered them to be let in.

Mr. Att. Gen. How came the Door to be open to them?

A. Goodall. Indeed I think he opened it himſelf.

Mr. Att. Gen. How long was that after he and Capt. *French* came in?

A. Goodall. It was about half an Hour.

Mr. Att. Gen. When they firſt came in, what Poſture were they in? Had they any Swords in their Hands?

A. Goodall. I did not poſitively take notice, whether they had any Swords in their Hands, nor what they had when they came in.

Mr. Att. Gen. What became of them afterwards?

A. Goodall. My Lord of *Warwick*, Mr. *James*, and Mr. *Dockwra*, went away within a little while, and my Lord of *Warwick* ordered particular Care to be taken of Mr. *French*, as his Friend, and he was put to Bed after his Wounds were dreſſed; but I cannot tell what afterwards became of my Lord *Warwick*, and the other Gentlemen.

Mr. Att. Gen. I think you were ſaying, that my Lord of *Warwick* was wounded in the Hand; which Hand was it?

A. Goodall. I cannot poſitively ſay, whether it was the Right or the Left.

L. H. St. Will you who are of the King's Counſel, aſk this Witneſs any further Queſtions?

Mr. Att. Gen. No, my Lord, we ſhall aſk her no other Queſtions.

Earl of *Warwick*. No, my Lord, nor I.

Mr. Att. Gen. Then our next Witneſs is *Henry Amy*, who is a Surgeon, and lives at the *Bagnio* in *Long-acre*; and he will give your Lordſhip an Account what paſſed within his Knowledge at this time within his Houſe, and who came thither wounded, and what particular Care was ordered to be taken of Mr. *French*, and by whom.

(*Mr.* Amy *was ſworn.*)

Mr. Att. Gen. I deſire you will give an Account to my Lords what happened at your Houſe early in the Morning, the 30th of *October* laſt?

Amy. The 30th of *October* laſt, about Two of the Clock, I was knock'd up out of my Bed to attend two Gentlemen, my Lord *Warwick* and Captain *French*, who came then into my Houſe.

Mr. Att. Gen. In what Condition were they?

Amy. They were both wounded; Mr. *French* very much, and my Lord of *Warwick* in his Hand.

Mr. Att. Gen. Did you ſee any Swords?

Amy. Yes; they had both Swords in their Hands, and my Lord of *Warwick*'s Sword was very bloody.

Mr. Att. Gen. Well, Sir, when they came into your Houſe, what Directions was given by my Lord *Warwick*?

Amy. He gave Directions, if any Body ſhould aſk for him, they ſhould ſay he was not there.

Mr. Att. Gen. Did any Body come and aſk for him?

Amy. While we were taking care of Mr. *French*, and dreſſing his Wound, there were ſome Perſons came and knocked at the Door, and my Lord of *Warwick* did order, that nobody ſhould be let in; but he himſelf went to the Door, and when he found that it was Mr. *Dockwra* and Mr. *James*, my Lord *Warwick* ordered that they ſhould be let in.

Mr. Att. Gen. Pray tell my Lords what followed after that?

Amy. After we had dreſſed Mr. *French* ———

Mr. Att. Gen. By the Way, was there any particular Directions, and by whom, to take care of Mr. *French*?

Amy. Yes, my Lord *Warwick* deſired me to take care of him as his particular Friend.

Mr. Att. Gen. Well then, after you had dreſſed Mr. *French*'s Wound, what happened?

Amy. I dreſſed my Lord *Warwick*'s Wound.

Mr. Att. Gen. Pray, whereabouts was my Lord of *Warwick*'s Wound?

Amy. It was near the firſt Joint of his Fore-finger.

Mr. Att. Gen. Pray, how long did they ſtay there?

Amy. After Mr. *Dockwra* and Mr. *James* came in, and my Lord's Hand was dreſſed, they ſtayed a little while, and they Three went away.

Mr. Att. Gen. What was ſaid when they went away?

Amy. My Lord of *Warwick* deſired to have great care taken of Mr. *French*; and they ſaid, Now let us go away; and they went away.

Mr. Att. Gen. Pray, what Time did they ſtay in your Houſe?

Amy. When they went away, I think it was about half an Hour after they firſt came in.

Mr. Att. Gen. Did you take notice of no Sword but my Lord of *Warwick*'s?----*Amy.* No, not then.

Mr. Att. Gen. Did you afterwards?

Amy. Afterwards in the Morning, Mr. *French* called for his Sword, and I looked upon it.

Mr. Att. Gen. Pray, in what Condition was his Sword? Was it bloody?

Amy. It was without Blood, only a little dirty.

Mr. Att. Gen. Pray, did you obſerve that they talked of any Quarrel that had been between Captain *French* and my Lord, when they came in?-----*Amy.* No.

Mr. Att. Gen. Did you aſk them any Queſtions about it, the one or the other of them?-----*Amy.* No, I did not.

Mr. Att. Gen. Did you hear them ſay, how they came by their Wounds?

Amy. No, I did not.

Mr. Att. Gen. Did you hear them talk of any Body being killed, particularly Mr. *Coote*?

Amy. I did not know of any body being killed till next Day.

Mr. Att. Gen. Did you take any notice of *James*'s and *Dockwra*'s Swords?

Amy. Truly, I took no notice of any Swords but my Lord *Warwick*'s, while my Lord *Warwick* was there in the Houſe; but the next Morning; Mr. *French* gave me his Sword, and there was another Sword there, which Mr. *French* told me was Capt. *Coote*'s Sword.

Mr. Att. Gen. When was that? How long after my Lord of *Warwick*, and *James*, and *Dockwra*, were gone away?

Amy. It was ſome Hours after.

Mr. Att. Gen. When did you hear of Mr. *Coote*'s being killed?

Amy. About Nine a-Clock next Morning I heard of Mr. *Coote*'s being killed.

Mr. Att. Gen. Whom did you hear it from?

Amy. From *Pomfret*, my Servant.

Mr. Att. Gen. Did you hear no Diſcourſe between my Lord of *Warwick*, Capt. *French*, Mr. *James*, and Mr. *Dockwra* about it?

Amy. No, I did not.

Mr. Att. Gen. Did they not talk how thoſe Wounds came they had; nor did not you aſk who gave them?

Amy. No, I did aſk no Queſtion of either of them: And in half an Hour after they came in, my Lord of *Warwick* and the other two Gentlemen went away.

Mr. Att. Gen. When they left *French* there, What Orders were left about him?

Amy. Only to take care of him, my Lord of *Warwick* deſired that.

Mr. Att. Gen. What Reaſon did my Lord give for that?

Amy. I heard nothing of Reaſon, only that he was his particular Friend.

Mr. Att. Gen. Did you hear them talk any Thing, whither they would go, when they went away?

Amy. I did hear ſome Talk about going into the Country.

Mr. Att. Gen. Do you know whither they went, when they went away from your Houſe?—*Amy*. No, indeed I did not.

Mr. Att. Gen. My Lord, we have done with him.

L. H. St. My Lord *Warwick*, Will your Lordſhip aſk this Witneſs any Queſtions?—E. of *War*. I deſire to have him aſked, Whether I was not wounded in the Hand.

Amy. His Hand was very bloody, the Handkerchief that was about it was wet with the Blood.

E. of *War*. I deſire to aſk him, When it was that he ſaw Capt. *French*'s Sword?—*Amy*. It was not before the Morning; it was about Nine a-Clock, as I remember.

M. of *Norm*. Before this Witneſs goes away, I deſire he may be aſked one Queſtion, Whether he can tell the Size of Mr. *French*'s Sword?

L. H. St. Here is a noble Lord that deſires to know, If you can tell about Capt. *French*'s Sword, what ſort of Sword it was?

Amy. As to the Blade, it was a middle-ſiz'd Sword.

M. of *Norm*. Was it a broad Blade or no?

Amy. No, my Lord, it was not a broad Blade.

L. H. St. Mr. *Attorney*, Who is your next Witneſs?

Mr. Att. Gen. Capt. *Loftus Duckinfield*. (*Who was ſworn.*)

Mr. Att. Gen. This Gentleman will acquaint your Lordſhips what Diſcourſe paſt between theſe Gentlemen the next Day; Pray, Sir, acquaint my Lords what you heard about Mr. *Coote*'s Death, and when, and where.

Capt. *Duck*. Early in the Morning I was told of this Accident.

Mr. Att. Gen. By whom?

Capt. *Duck*. One of the Company, I cannot tell who, I think they were all together then, my Lord of *Warwick*, Captain *James*, Captain *Dockwra*, and nobody elſe.

Mr. Att. Gen. What was their Diſcourſe?

Capt. *Duck*. They ſaid, they believed Captain *Coote* was killed.

Mr. Att. Gen. Did they tell you by whom?

Capt. *Duck*. By Mr. *French*, every body did ſay he was his Adverſary.

Mr. Att. Gen. What Account was given of the Action?—Capt. *Duck*. They ſaid it was done in the Dark, and Capt. *French* was his Adverſary.

Mr. Att. Gen. Was there any notice taken of any Duel?

Capt. *Duck*. Yes, there was, between thoſe two, and the other Perſons on both Sides; and it was ſaid my Lord of *Warwick* was Friend to Mr. *Coote*, and my Lord *Mohun*.

Mr. Att. Gen. Who were on the other Side?

Capt. *Duck*. Mr. *Dockwra* and Mr. *James*.

Mr. Att. Gen. Was there any Diſcourſe, who actually fought?

Capt. *Duck*. It was ſaid, that Capt. *French* fought with Capt. *Coote*, as they believed, and Mr. *James* with my Lord of *Warwick*.

Mr. Att. Gen. Did you ſee my Lord of *Warwick*'s Sword?

Capt. *Duck*. Some Time of the Day I did; but I cannot tell whether it was in the Morning, or no.

Mr. Att. Gen. In what Condition was it? Was it bloody or not?

Capt. *Duck*. It was a Steel Sword.

Mr. Att. Gen. How long did they ſtay with you?

Capt. *Duck*. About half an Hour.

Mr. Att. Gen. Did they come publickly?

Capt. *Duck*. We went away in a Hackney Coach together.

Mr. Att. Gen. Pray, what Diſcourſe was there about conſulting to go into the Country together?

Capt. *Duck*. That might be diſcourſed, but by whom I cannot tell.

Mr. Att. Gen. Did my Lord of *Warwick* talk of going into the Country?

Capt. *Duck*. Whether the Company talked of it, or my Lord of *Warwick* in particular, and the reſt aſſented to it, I cannot well tell.

Mr. Att. Gen. Whither did they go?

Capt. *Duck*. I cannot directly tell.

Mr. Att. Gen. What Time of the Day was it?

Capt. *Duck*. It was about ſix of the Clock.

Mr. Att. Gen. Cannot you tell whither they went?

Capt. *Duck*. Capt. *James* and Capt. *Dockwra* went to the *Ship and Caſtle* in *Cornhill* about five a-Clock or ſix, as near as I can remember.

Mr. Att. Gen. Can you tell what Time my Lord of *Warwick* went away?

Capt. *Duck*. No, I cannot tell what Time he went away, not directly.

Mr. Att. Gen. Can you tell of any Agreement amongſt them, whither they were to go?—Capt. *Duck*. No, I cannot.

Mr. Att. Gen. What Diſcourſe or Concern did you obſerve paſt between them, concerning Captain *Coote*?—Capt. *Duck*. My Lord of *Warwick* ſhewed a great deal of Concern for his Friend Mr. *Coote*.

Mr. Att. Gen. Had you any Notice of Mr. *Coote*'s Death amongſt you?

Capt. *Duck*. We had Notice before we went away; but I cannot tell whether it was before my Lord of *Warwick* was gone.

Mr. Att. Gen. Was it after the Diſcourſe of going into the Country, or before?

Capt. *Duck*. Indeed, I cannot directly ſay when it was.

Mr. Att. Gen. Pray, what Reaſon was there for their going into the Country before he was dead?

Capt. *Duck*. They believed he was dead.

Mr. Att. Gen. Cannot you tell the Reaſon why they would go into the Country?

Capt. *Duck*. No, indeed, I cannot tell the Reaſon.

Mr. Att. Gen. Did you obſerve my Lord of *Warwick*'s Sword? Was there any Blood upon it?

Capt. *Duck*. I cannot ſay his Sword was bloody at the Point; the whole Blade and Shell was bloody, to the beſt of my Remembrance.

Mr. Att. Gen. What Sort of Sword was it?—Capt. *Duck*. It was a pretty broad Blade, a hollow Blade, and a hollow open Shell.

Mr. Att. Gen. Was there any Diſcourſe concerning Captain *French*?

Capt. *Duck*. Yes, they thought he was very ill wounded.

Mr. Att. Gen. Was there any, and what Diſcourſe, who ſhould give my Lord of *Warwick* his Wound?—Capt. *Duck*. It was ſaid, they believed Captain *James* gave my Lord his Wound.

Mr. Att. Gen. Pray, was there any Blood upon Mr. *James*'s Sword, or was he wounded?

Capt. *Duck*. I ſaw no Wound upon Capt. *James*, that I know of.

L. H. St. Do you believe that my Lord *Warwick*'s Sword was bloodied with the Hurt of his own Hand, or any otherwiſe?

Capt. *Duck*. I cannot tell; it was a Cut-ſhell, and the Outſide bloody as well as the In.

L. H. St. My Lord *Warwick*, Will your Lordſhip aſk this Witneſs any Queſtions?—E. of *War*. No, my Lord.

L. H. St. Mr. *Attorney*, if you have any other Witneſſes, pray call them.

Another Witneſs was produced, that belonged to the Ship and Caſtle *in* Cornhill.

Mr. Att. Gen. This Man will give you an Account what paſſed at his Houſe at that Time, and between whom; Pray, will you tell my Lords who was at your Houſe the 30th of *October* laſt, and what paſt there then?

Witneſs. My Lord of *Warwick*, Capt. *James*, and Capt. *Dockwra*; and when my Lord of *Warwick* came in, I thought my Lord was in a very great Concern, and called for Pen, Ink, and Paper, and I feared there was ſome Quarrel in hand; but they ſaid no, the Quarrel was over, and ſays my Lord of *Warwick*, I am afraid poor *Coote* is killed.

Mr. Att. Gen. Did you obſerve any Deſire to be private?

Witneſs. No, indeed, I cannot tell that.

Mr. Att. Gen. How long did they continue there?

Witneſs. About ſix a-Clock my Lord of *Warwick*, and Capt. *James*, and Capt. *Dockwra*, and Capt. *Duckinfield* went away.

Mr. Att. Gen. Can you tell who went with my Lord *Warwick*?

Witneſs. No, indeed, I cannot tell who went with my Lord *Warwick*; there came in a Gentleman in black, whom I knew to be my Lord of *Warwick*'s Steward, and he came and ſpoke ſome Words to my Lord of *Warwick*, about a Quarter of an Hour after they came in, and then they went away, for after that I did not hear any farther Diſcourſe.

Mr. Att. Gen. What became of the reſt of the Company?

Witneſs. They went away; I do not know what became of them, nor whither they went; ſome of them went in and out of one Room into another ſeveral Times, two or three Times, and came out again.

Mr. Att. Gen. My Lord, we have done with this Witneſs.

L. H. St. My Lord *Warwick*, Will you aſk him any Queſtions?

E. of *War*. No, my Lord.

L. H. St. Mr. *Attorney*, who is your next Witneſs?

Mr. Att. Gen. Mr. *Salmon*, the Surgeon, who by the Coroner's Order ſearched the Wound. (*Who was ſworn.*)

Mr. Att. Gen. Pray, Sir, was you ordered by the Coroner to view the Body of Mr. *Coote*?

Salm. Yes, I was ordered by the Coroner to inſpect the Body of Capt. *Coote*, and to give the Jury an Account of the Nature of the Wounds.

Mr. Att. Gen. Pray, upon the View of the Body, what Wounds had he?

Salm. There was two Wounds; one on the Breaſt near the Collar-bone, running downwards very Deep.

Mr. Att. Gen. Pray, what Part of the Breaſt was it, and how deep was it?

Salm. It was on the left Part of the Breaſt near the Collar-bone, and it penetrated four or five Inches.

Mr. Att. Gen. Can you gueſs at what Sort of Sword it was that made the Wound?—*Salm*. No indeed, Sir, I cannot.

Mr. Att. Gen. Was it a broad Sword, or a little Sword?

Salm. The Orifice was about the length of half an Inch, and about the depth of five Inches.

Mr. Att. Gen. Was that made with a broad Sword, or with a narrow Sword?—*Salm*. Indeed, I cannot tell.

Mr. Att. Gen. You ſay he had another Wound; Where was that?

Salm. That was on his left Side too, near unto the ſhort Ribs, under the laſt Rib; which was about the length of an Inch, and of the depth of ſix Inches, and it run through the Diaphragma.

Mr. Att. Gen. Did you take one of thoſe Wounds, or both of them to be mortal?—*Salm*. I did look upon either of them to be mortal, and to be the Occaſion of his Death.

Mr. Att. Gen. Can you tell, whether they were both made with one and the ſame Sword?

Salm. Indeed I cannot tell that, whether they were made with one Sword, or two.

Mr. Att. Gen. Cannot you tell how they appeared to be? I ſuppoſe you probed them.

Salm. Yes, I probed them both; one was quite through the Diaphragma.

Mr. Att. Gen. What Time was it that you viewed the Body by the Order of the Coroner?

Salm. I ſaw the Body at Seven a-Clock on *Sunday* Night.

Mr. Att. Gen. If my Lord of *Warwick* deſire to aſk him any Queſtions, he may.

E. of *Warw.* My Lord, I deſire to aſk him, whether any of the Wounds were large enough to be made by a Sword run up to the Hilt?

Salm. No, my Lord, ſure they were not.

E. of *Warw.* My Lord, I deſire to know of him, whether both theſe Wounds were given before or behind?

Salm. I can only tell you the Length and Depth by following of the Probe; the one was downwards, and the other upwards.

Mr. Att. Gen. Do you ſuppoſe both thoſe Wounds were given when the Perſon was ſtanding, backward or forward?

Salm. 'Tis impoſſible to tell how they were given, becauſe of the Variety of the Poſtures of the Body in the divers Capacities thereby of receiving the Wounds.

Mr. Att. Gen. Pray, can you tell whether they were given by one and the ſame Sword, or no?

Salm. Indeed I cannot tell.

Mr. Att. Gen. Do you know any Thing to the contrary?

Salm. I cannot ſay any Thing for it or againſt it.

E. of *Kingſton.* My Lords, this Witneſs, if I apprehend him right, ſays, the Wound on his Side was a large Wound.

Salm. Yes, a very large Wound, of the Length of about three quarters of an Inch at the Orifice, and five or ſix Inches deep.

E. of *Kingſton.* I deſire he may tell whether that Wound could be given by any other than a broad Sword?

Salm. I cannot tell that.

E. of *Rocheſter.* Indeed, my Lords, I would have him aſked this Queſtion again; I know not whether he can anſwer it or no; but I cannot but think it is proper to have ſome Account of this Matter. In all Enquiries before the Coroner, there is a Judgment to be made of the Nature of the Wound, in order to form the Indictments, and that the Jury may know with what ſort of Weapon it was made; and it is his Profeſſion, as a Surgeon, to know ſuch Matters.

L. H. St. Mr. *Salmon*, you hear what is required of you by my noble Lords, and the Obſervation which is made. You are the Surgeon ſent for by the Coroner on purpoſe to inſpect this Body; and when you did ſo, it was incumbent upon you to conſider and give Information, as well with what ſort of Inſtrument the Wound was given, as the Length and Depth of the Wound, that the Jury might conſider upon all the Circumſtances of the Occaſion, and Manner of the Party's Death: And my Lords would know, whether by the Orifices of the Wounds, when you inſpected them, you can make a Judgment, if they were made by ſeveral Swords, or the ſame Sword?

Salm. I cannot ſay that I ſaw any Difference between the Orifices, as to the Nature of the Inſtrument they were given with, nor whether they were made by one and the ſame Sword or no; only the one Orifice was bigger than the other; that of the Side was bigger than that at the Collar-bone.

L. H. St. Then ſo far we have Light (if I apprehend you rightly), the Orifice of the upper Wound was not near ſo wide as that of the lower; but it ſeems to be much, in one of your Profeſſion, not to be able to judge whether the Wounds were given with the ſame ſort of Sword, when there was ſuch a Difference in the Orifices.

Salm. That below was a deeper Wound; and there was a conſiderable Difference between the Largeneſs of one and the other.

Lord *Audley.* My Lords, I deſire he may tell your Lordſhips how far backward the Wound in the Side lay.

Salm. It was directly on the left Side, immediately under the two laſt Ribs, and paſt through the Diaphragma.

M. of *Normanby.* Pray, my Lords, let him point with his Finger whereabouts it was.

L. H. St. My Lords would have you ſhew them with your Finger, whereabouts it was. *(Which he did.)*

E. of *Warw.* It is a very material Queſtion for me, that he ſhould anſwer, whether he did believe that one and the ſame Sword might not give both Wounds.

Salm. I cannot ſay any Thing of it one Way or other; but one Wound went much further than the other, becauſe it was in a fleſhy Part; and in ſuch a Caſe, the further the Sword goes in, it makes the Wound larger.

Mr. Att. Gen. Then our next Witneſs is *Stephen Turner*, who was Mr. *Coote*'s Man; and he will give you an Account what Sword his Maſter had, and where he found it.

[*He was ſworn, a Sword was ſhewn him.*]

Turner. This was my Maſter's Sword, Mr. *Coote*'s; and I never ſaw it after he went out in the Morning, till I ſaw it in the Hands of the Conſtable, and afterwards before the Coroner.

Mr. Att. Gen. What Time did you hear of your Maſter's Death?

Turner. It was about Nine a-Clock next Morning that I heard he was dead.

Mr. Att. Gen. Where was your Maſter's Body?

Turner. It was in *St. Martin's-lane.*

Earl of *Tankerville.* I would deſire he might be asked one Queſtion, Whether his Maſter uſed his Left Hand or his Right?

Turner. I do believe he was a right-handed Man. I did never ſee him fence. It was on the *Sunday* Morning that I went to the Round-houſe, where I found my Maſter dead.

E. of *Warw.* I deſire he may be asked, Whether he has not obſerved a particular Kindneſs and Friendſhip between his Maſter and me?

Turner. Yes, my Lord; I have ſeveral times waited upon my Maſter, when my Lord and he was together, and they were always very civil and kind one to another; and I never heard one Word of any Unkindneſs between them.

E. of *Warw.* Whether he knows of any Quarrel that was between us?

Turner. No, I never did.

E. of *Warw.* I deſire he may be asked, Whether he did not uſe to lie at my Lodgings ſometimes?

L. H. St. You hear my Lord's Queſtion: What ſay you? Did your Maſter uſe to lie at my Lord of *Warwick*'s Lodgings at any Time?

Turner. Yes; very often.

Mr. Att. Gen. Pray call *Pomfret* again, and let him ſee the Sword.

[*Then he came in, and two Swords were ſhewn him.*]

Mr. Att. Gen. I deſire he may acquaint your Lordſhips what he knows of thoſe two Swords.

Pomfret. Theſe two Swords were brought in by ſome of the Company that came to my Maſter's Houſe; and when they were ſhewn to Captain *French* in the Morning, he owned this to be his, and the other to be Mr. *Coote*'s; and he deſired that Notice might be taken, that his Sword was dirty, but not bloody; and there was ſome Blood upon the other.

Mr. Att. Gen. Who brought in Mr. *Coote*'s Sword?

Pomfret. Indeed I cannot tell.

Mr. Att. Gen. Then our laſt Piece of Evidence, my Lord, will be that of Mr. *White* the Coroner. *(Who was ſworn.)*

L. H. St. What do you ask him, Mr. *Attorney?*

Mr. Att. Gen. From whom had he theſe Swords?

[*The Swords were ſhewn him.*]

White. May it pleaſe your Grace, theſe Swords were delivered to me by the Conſtable.

Mr. Att. Gen. My Lords, I deſire he may be asked, Whether, upon his View of the Body, he looked upon the Wounds; and, Whether he did apprehend they were given by one and the ſame Sword.

White. May it pleaſe your Grace, when I had ſworn my Inqueſt, I ſent for the Surgeon that was here before, and gave him order to probe the Wounds, that the Jury might know the Nature of them, in order to the drawing up the Inquiſition; and I did expreſly ask him, Whether he found any ſuch Diſtinction between them, that they were given by one and the ſame Weapon, or different Weapons: He ſaid, as he ſays now, That he could not tell, whether the Wounds were given by two Swords, or by one; but he did apprehend there was a great Difference between them, and ſo did I; but generally the Orifice of a Wound does cloſe up when the Body is cold: One of the Wounds were nearer the Left Side than the other; to the beſt of my Remembrance, it was almoſt behind him.

Mr. Att. Gen. We have done with our Evidence, until we hear what my Lord of *Warwick* ſays to it.

L. H. St. My Lord of *Warwick*, will you ask this Witneſs any Queſtions?

E. of *Warw.* No, my Lord.

L. H. St. Make Proclamation for Silence.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O yes, O yes, O yes! His Grace, my Lord High Steward of *England*, does ſtrictly charge and command all manner of Perſons here preſent to keep Silence, upon Pain of Impriſonment.

L. H. St. My Lord of *Warwick*, the King's Counſel have made an End of giving Evidence for the King; now is the proper Time for you to enter upon your Defence.

E. of *Warw.* May it pleaſe your Grace, and you my noble Lords, my Peers,

I ſtand here before your Lordſhips, accuſed of the Murder of Mr. *Coote*, of which I am ſo innocent, that I came and voluntarily ſurrender'd myſelf ſo ſoon as I heard your Lordſhips might be at leiſure to try me; and had ſooner done it, but that the King was not then here, nor your Lordſhips ſitting, and had no mind to undergo a long Confinement; and now I think I might well ſubmit it to your Lordſhips Judgment, even on the Evidence that has been offered againſt me, whether there hath been any Thing proved of Malice propenſe, or my being any Actor therein, ſo as to adjudge me guilty. And I think I may with humble Submiſſion to your Lordſhips ſay, that my Innocence appeareth even from ſeveral of the Witneſſes who have been examined againſt me, which I will not trouble your Lordſhips to repeat, but ſubmit to your Memory and Obſervation.

But, my Lords, the Safety of my Life does not ſo much concern me in this Caſe, as the Vindication of my Honour and Reputation from the falſe Reflections to which the Proſecutor has endeavoured to expoſe me; and I ſhall therefore beg your Lordſhips Patience to give a fair and full Account of this Matter: In which the Duty I owe to your Lordſhips, and to Juſtice in general, and the Right I owe to my own Cauſe in particular, do ſo oblige me, that I will not in the leaſt prevaricate, neither will I conceal or deny any Thing that is true.

My Lords, I muſt confeſs I was there when this unfortunate Accident happen'd, which muſt be a great Misfortune in any Caſe, but was more ſo to me in this, becauſe Mr. *Coote* was my particular Friend; and I did all I could to hinder it, as your Lordſhips may obſerve by the whole Proceedings.

It was on the *Saturday* Night when my Lord *Mohun* and I, and ſeveral other Gentlemen, met at *Locket*'s, where the ſame Company uſed often to meet; and in ſome Time after ſeveral of us had been there, Mr. *Coote* came unexpectedly, and for ſome time he and we were very friendly, and in good Humour, as we uſed to be with each other: But then there happen'd ſome reflecting Expreſſions from Mr. *Coote* to Mr. *French*, who thereupon called for the Reckoning; and it being paid, we left the upper Room, and I propoſed to ſend three Bottles of Wine to my own Lodging, and to carry him thither to prevent the Quarrel. But while the Company ſtopp'd to call for a Glaſs of Ale at the Bar below, Mr. *Coote* (whoſe unfortunate Humour was ſometimes to be quarrelſome) did again provoke Mr. *French* to ſuch Degree, that they there drew their Swords; but we then prevented them of doing any Miſchief: then Mr. *Coote* ſtill inſiſting to quarrel further with Mr. *French*, my Lord *Mohun* and I propoſed to ſend for the Guards to prevent them: But they had got Chairs to go towards *Leiceſter-Fields*; and my Lord *Mohun* and I, as Friends to Mr. *Coote*, and intending to prevent any Hurt to him, did follow him in two other Chairs; and as he was going up St. *Martin*'s-*lane*, ſtopp'd him, and I extremely there preſſed him to return and be Friends with Mr. *French*, or at leaſt defer it, for that the Night was very dark and wet; and while we were ſo perſuading of him, Mr. *French* in one Chair, and Mr. *James* and Mr. *Dockwra* in two other Chairs paſt by us, (which we gueſs'd to be them) on which Mr. *Coote* made his Chairmen take him up again, and becauſe the Chairmen would not follow Mr. *French* faſter, threaten'd to prick him behind; and when we were gone to *Green-ſtreet*, and got out of our Chairs, Mr. *Coote* offered half a Guinea to be chang'd to pay for all our three Chairs, but they not having Change, he deſired Lord *Mohun* to pay the three Shillings, which he did. And in a few Minutes after, Mr. *Coote* and Mr. *French* engaged in the Fields, whither I went for the Aſſiſtance and in Defence of Mr. *Coote*, and received a very ill wound in my right hand; and there this fatal Accident befel Mr. *Coote* from Mr. *French*, whom Mr. *Coote* had dangerouſly wounded, and I muſt account it a great Unhappineſs to us all who were there: But ſo far was I from encouraging of it, that I will prove to your Lordſhips that I did my utmoſt Endeavours to prevent it; ſo far from any Deſign upon him, that I expoſed my own Life to ſave his; ſo far from propenſe Malice, that I will by many Witneſſes of good Quality and Credit, prove to your Lordſhips a conſtant, good and uninterrupted Friendſhip, from the firſt of our Acquaintance to the Time of his Death; which will appear by many Inſtances of my frequent Company and Correſpondence with him, often lending him Money, and paying his Reckonings; and about two Months before his Death lent him an hundred Guineas towards buying him an Enſign's Place in the Guards, and often, and even two Nights before this, he lodged with me, and that very Night I paid his Reckoning.

And when I have proved theſe Things, and anſwered what has been ſaid about the Sword, and what other Objections they have made, I doubt not but that I ſhall be acquitted to the entire Satisfaction of your Lordſhips, and all the World that hear it.

Before I go upon my Evidence, I will crave leave further to obſerve to your Lordſhips, that at the *Old Bailey*, when I was abſent, Mr. *French*, *James*, and *Dockwra*, have been all tried on the ſame Indictment now before your Lordſhips; and it was then opened and attempted, as now it is, to prove it upon me alſo; and by moſt of them the ſame Witneſſes who have now appeared; and they were thereupon convicted only of Manſlaughter, which could not have been, if I had been guilty of Murder. And on that Trial it plainly appeared that Mr. *French* was the Perſon with whom he quarrelled, and who killed him. And now I will call my Witneſſes.

L. H. St. Will your Lordſhip pleaſe to go on to call your Witneſſes, for the Proof of what you have ſaid; that is the Method, and then you are to make ſuch Obſervations as you pleaſe.

E. of *War.* My firſt Witneſs is Captain *Edmund Keeting*, who was with me at *Locket*'s, but went away before Captain *Coote* or any of them came; and he will tell you I was with him a while.

[*Then Captain* Keeting *ſtood up.*]

L. H. St. Captain *Keeting*, you are not upon your Oath, becauſe the Law will not allow it. In Caſes of this Nature the Witneſſes for the Priſoner are not to be upon Oath; but you are to conſider that you ſpeak in God's Preſence, who does require the Truth ſhould be teſtified in all Cauſes before Courts of Judicature; and their Lordſhips do expect, that in what Evidence you give here, you ſhould ſpeak with the ſame Regard to Truth as if you were upon Oath; you hear to what it is my Lord of *Warwick* deſires to have you examined, what ſay you to it?

Captain *Keeting.* My Lord, I will tell your Lordſhip all the Matter I know of it. I met with my Lord of *Warwick* that Evening at *Tom*'s Coffee-Houſe, and we continued there till about Eight at Night; I went away to ſee for a Gentleman that owed me Money, and afterwards I went to *Locket*'s; and while I was there, the Drawer came up and told me, my Lord of *Warwick* deſired to ſpeak with me; and when he came up into the Room, he ſaid he was to meet with my Lord *Mohun* there, and Captain *Coote*, and he aſked me if I knew where Captain *French* and Capt. *James* were; I told him I dined with Capt. *Coote* at *Shuttleworth*'s; and in a while after Capt. *Coote* came in, and about an Hour and an half, I think, I continued there, and Capt. *French* came in; Captain *Dockwra* and we drank together for an Hour and an half, and they admired, about ten a-Clock, that my Lord *Mohun* was not come; and I payed my Reckoning, not being very well, and away I went home; Mr. *James* came in juſt before I went away; but there was no Quarrelling, nor any Thing like it before I went away.

E. of *War.* My Lord, I deſire he may be aſked, Whether we did not uſually meet there as Friends, eſpecially Capt. *Coote* and I?

Capt. *Keeting.* Captain *Coote* and my Lord of *Warwick* uſed to be almoſt every Day together at that Place.

E. of *War.* Pray, did he ever know or obſerve any Difference or Quarrel between Captain *Coote* and me?

Capt. *Keeting.* No, my Lord, I never ſaw any Thing but the greateſt Friendſhip between my Lord of *Warwick* and Captain *Coote* that could be; I was with them, and ſaw them together almoſt every Day.

L. H. St. Have you any Thing further to examine this Witneſs to?

E. of *War.* No, my Lord, I have no other Queſtion to aſk him.

L. H. St. Who is your next Witneſs, my Lord?

E. of *War.* My Lord, I ſuppoſe I ſhall not need to trouble you to examine the Chairmen over again; your Lordſhips have heard what they can ſay: I deſire Colonel *Stanhope* may be called.

[*Who it ſeems ſtood by the Chair of State, and it was ſome while before he could get round to come to the Place where the Witneſſes were to ſtand.*]

L. H. St. While this Witneſs gets round, if your Lordſhip has any other Witneſs ready to ſtand up, pray let him be called.

E. of *War.* To prove the Kindneſs between Captain *Coote* and me, I deſire Colonel *Bliſſet* may be called.

[*Who ſtood up.*]

L. H. St. What is it your Lordſhip aſks this Witneſs, or calls him to?

E. of *War.* To teſtify what he knows of any Kindneſs or Unkindneſs between Captain *Coote* and me; whether he has not been often in our Company?

L. H. St. Have you been often in Company with my Lord of *Warwick* and Captain *Coote*?

Col. *Bliſſet.* Yes, my Lord, I was very well acquainted with both of them for a Twelvemonth paſt before this Accident, and I have often been in their Company, and always obſerved that there was a great deal of Friendſhip and Kindneſs between them.

E. of *War.* My Lord, I deſire he may tell any particular Inſtance that he knows or can remember.

Col. *Bliſſet.* I remember when Captain *Coote* had his Commiſſion in the Regiment of Guards, he was complaining of the Streightneſs of his Circumſtances; he was to pay for his Commiſſion 400 Guineas, and ſaid he had but 300 for to pay for it; and my Lord of *Warwick* did then ſay to him, Do not trouble yourſelf about that, or let not that diſturb you, for I'll take care you ſhall have 100 Guineas, and he ſaid he would give Order to his Steward to pay him ſo much; and I was told afterwards that he did ſo.

E. of *War.* I deſire he may tell, if he knows of any other particular Inſtances of my Friendſhip to Mr. *Coote*?

Col. *Bliſſet.* Once when he was arreſted by his Taylor for 13*l.* my Lord lent him five Guineas, and uſed very frequently to pay his Reckoning for him.

E. of *War.* I deſire he may tell, if he knows any Thing elſe; and whether he has not lain at my Lodgings, and particularly but ſome ſmall Time before this Accident happened.

Col. *Bliſſet.* About ten Days before this unhappy Accident happened, I was at my Lord of *Warwick*'s Lodgings, and when I came there I found Captain *Coote* there a-dreſſing himſelf; and I aſk'd him how that came to paſs, and they told me they had been up late together, and that he had ſent home for his Man to dreſs himſelf there; upon which I did obſerve that they had been a rambling together over Night; and there was a very great Familiarity between them.

E. of *War.* Did you obſerve any Quarrel between us?

Col. *Bliſſet.* No, none at all; I never knew of any Quarrel between my Lord of *Warwick* and Captain *Coote*, but I obſerved there was a particular Kindneſs between them; and a great deal of Friendſhip I know my Lord of *Warwick* ſhewed to him, in paying of Reckonings for him, and lending him Money when he wanted.

E. of *War.* My Lord, I deſire he may be aſked, Whether he does not know that Captain *Coote* was ſtraitened for Money?

Col. *Bliſſet.* I did hear Captain *Coote* ſay, That he had not received any Thing from his Father for thirteen Months, and his Father was angry with him, and would not ſend him any Supply, becauſe he would not conſent to cut off the Entail, and ſettle two or three hundred Pounds upon a Whore he had.

Mr. Att. Gen. Pray, Sir, will you conſider with yourſelf, and though you are not upon your Oath, anſwer the Queſtions truly, for you are obliged to ſpeak the Truth, though you are not ſworn, whenever you come to give your Teſtimony in a Court of Judicature; Pray, acquaint my noble Lords here, Whether you did never hear my Lord *Warwick* complain of Capt. *Coote*?

Col. *Bliſſet.* No, I never did hear him complain of him.

Mr. Att. Gen. Did you never hear the leaſt Word of any Quarrel between them?

Col. *Bliſſet.* No, indeed, I did never hear of any Quarrel between them.

Mr. Att. Gen. Did you never hear of any Unkindneſs at all?

Col. *Bliſſet.* No, indeed, my Lord, not I: I never ſo much as heard of the leaſt Unkindneſs whatſoever.

L. H. St. Well then, my Lord, who do you call next?

E. of *War.* Now Colonel *Stanhope* is here, I deſire he may be aſked the ſame Queſtion, Whether he does not know the particular Friendſhip that was between Captain *Coote* and me, and what Inſtances he can give of it?

L. H. St. You are to conſider, Sir, though you are not upon your Oath, you are in a great Court, and under no leſs ſtrict Obligation to teſtify the Truth, and nothing but the Truth: You hear what my noble Lord aſks you.

Col. *Stanhope.* My Lord, I have known my Lord of *Warwick* and Captain *Coote* for about a Twelvemonth, and I did perceive that they did always profeſs a great Kindneſs for one another.

E. of *War.* I deſire to know of him, Whether he obſerved any particular Friendſhip between Capt. *Coote* and me, much about the Time of this Buſineſs?

Col. *Stanhope.* About eight or ten Days before this unhappy Accident, I went to wait upon my Lord of *Warwick* twice at his Lodgings: Once I found Captain *Coote* there, one of them was in Bed, and the other was dreſſing of himſelf; I thought they were very good Friends that were ſo familiar, and I had good Reaſon to think ſo, becauſe of that Familiarity: Both the Times that I was there, when I found them together, was within eight Days before the Accident happened.

E. of *War.* The next Witneſs I ſhall call will be Mr. *Diſney*.

Mr. Att. Gen. But before Colonel *Stanhope* goes, I deſire to aſk him this Queſtion, Whether he did never hear or know of any Unkindneſs between my Lord of *Warwick* and Capt. *Coote*?

Col. *Stanhope.* No, indeed I did not; I always thought them to be very good Friends.

L. H. St. Will your Lordſhip go on to your next Witneſs?

E. of *War.* Yes, my Lord, there he is, Mr. *Diſney*; I deſire he may be aſked what he knows of any Expreſſions of Kindneſs and Friendſhip between me and Capt. *Coote*.

Mr. *Diſney.* About the Time that Captain *Coote* was to have his Commiſſion in the Guards, my Lord of *Warwick* received a Letter from him, wherein he deſired him to lend him the 100 Guineas, according to his Offer, for he had but 300 by him; and he ſaid his Father was unkind to him, and he could have no Money from him, and he would be honeſt to him, and pay it again as ſoon as he could; my Lord ſent for his Steward, and ordered him to provide 100 Guineas for Captain *Coote* while I was there;

and all the Times that ever I ſaw them together, which was very frequently, there was the greateſt Kindneſs between them that could be; and ſeveral Times I have ſeen my Lord of *Warwick* pay Captain *Coote*'s Reckoning for him, and lent him Money when he wanted Money.

Mr. Att. Gen. I deſire to aſk you, Sir, this Queſtion, though you are not upon Oath, yet you are obliged to ſpeak the Truth in a Court of Juſtice as much as if you were upon Oath: Did you not know or hear any Thing of a Miſunderſtanding or Quarrel about the Time that this Buſineſs happen'd?

Mr. *Diſney.* No, indeed: I was with them together but the Day before, and frequently, and I heard nothing of any Unkindneſs between them in my Life, nor never knew of any Quarrel between them, or any Reaſon for it.

L. H. St. My Lord, who is it you call next?

Earl of *Warwick.* Colonel *Whiteman.* (*Who ſtood up.*)

L. H. St. What do you call this Gentleman for?

Earl of *Warwick.* It is to the ſame Effect, to acquaint your Lordſhips with what he knows of the Converſation between Captain *Coote* and me.

Col. *Whiteman.* My Lord, I know my Lord of *Warwick* and Captain *Coote* were conſtant Companions together; they dined together almoſt every Day for half a Year's Time almoſt; and as to this Time, when this Buſineſs had happened, I went to my Lord of *Warwick*, being ſent for by him, and found him at a private Lodging, where he expreſſed a great deal of Concern for the Death of his dear Friend Mr. *Coote*; and he ſhewed me the Wound he had received in his Hand, and he deſired he might be private; and he told me he believed People would make worſe of it than it was, becauſe he did not appear; but he did but intend to keep himſelf out of the Way till he could be tried; and I took what Care I could to get him a Convenience to go to *France*.

Mr. Att. Gen. Pray, What Reaſon did he give for his going away?

Col. *Whiteman.* The King being at that Time out of *England*, and ſo the Parliament not Sitting, he ſaid he did not love Confinement, and had rather be in *France* till the Parliament ſhould meet, and he might have a fair Trial, which he thought he ſhould beſt have in this Houſe.

Mr. Att. Gen. But pray, Sir, conſider, You are bound to tell Truth, and the whole Truth, in ſuch a Caſe as this: Are you ſure there was no Unkindneſs or Quarrel between my Lord *Warwick* and Captain *Coote* about this Time?

Col. *Whiteman.* No; I never knew of any Quarrel or Unkindneſs between them in all my Life.

L. H. St. My Lord, Have you any more Witneſſes?

Earl of *Warwick.* I have a great many Witneſſes more to the ſame Purpoſe, but I think I need not trouble your Lordſhip with them; only I would call a Perſon that has been mentioned, that is my Steward.

L. H. St. What is his Name?

Earl of *Warwick. Edmund Raymund.* (*Who ſtood up.*)

L. H. St. What Queſtions do you aſk him?

Earl of *Warwick.* I deſire he may tell what he knows of any Friendſhip between Captain *Coote* and me, and what particular Inſtances he can give of it.

Raymund. My Lord, I know that my Lord ſent for me, and ſaid Capt. *Coote* had Occaſion for 100 Guineas to pay for a Commiſſion in the Guards, which he had not Money to make up; and I know that they were conſtant Companions every Day, did eat together, and often did lie together, and I did provide the 100 Guineas for him; and I always did obſerve that there was a very great Friendſhip between them.

Earl of *Warwick.* My Lord, the next Witneſs I ſhall call will be Mr. *French*, who, I hope, having been tried, and had his Clergy allowed him, will be a good Witneſs; I ſhould be ſorry to interpoſe any thing that would be a Hindrance to your Lordſhips giving Judgment in this Caſe preſently; he is able to give your Lordſhips an Account of the whole Matter; and though I hope I have no need of calling him as a Witneſs, yet I humbly offer it to your Lordſhips.

L. H. St. What ſay the Counſel on the other Side?

Earl of *Warwick.* My Lord, I do not inſiſt upon it; I think I have no need of it.

L. H. St. Your Lordſhip muſt judge for yourſelf, how far it is for your Advantage to deſire that this Matter ſhould be debated.

Earl of *Warwick.* I do not deſire to take up your Lordſhip's Time, though I am very well adviſed, that he is a good Witneſs in Law.

Earl of *Roch.* I apprehended it the Duty of the King's Counſel to make Objection againſt any Witneſs that ſhould be produced by the Priſoner; I am loth to give your Lordſhips any unneceſſary Trouble, yet I own, that I am not ſatisfied that a Witneſs ſhould be offered and rejected, though the Objection be not made and argued, by my Lord the Priſoner at the Bar: If a Witneſs be offered, and they think they have an Objection againſt him, if they do inſiſt upon it, it will occaſion a Debate, and then we muſt adjourn into the Houſe of Lords.

L. H. St. It is not inſiſted upon by my Lord, as I apprehend. My Lord of *Warwick*, Have you any other Witneſs you would have called?

Earl of *Warwick.* I deſire to aſk Mrs. *Amy* a Queſtion or two.

(*Then ſhe ſtood up.*)

L. H. St. What does your Lordſhip aſk her?

Earl of *Warwick.* What ſhe remembers paſſed at her Houſe about my Sword, or any Thing.

Mrs. *Amy.* My Lord, when I came into the Room where my Lord of *Warwick* and Captain *French* were, in our Houſe, I ſtood by Capt. *French* while his Wounds was dreſſing, and I ſaw my Lord of *Warwick*'s Sword, and looked upon it, and the Hilt and all the Shell was full of Blood, and it ran down to the Bottom of the Sword Blade.

Earl of *Warwick.* I deſire ſhe may be aſked, how ſoon that was after my coming in?

Mrs. *Amy.* It was a Quarter of an Hour after my Lord came in.

Earl of *Warwick.* I deſire ſhe may ſpeak what Sort of Sword it was at the Hilt, whether it were open or cloſe?

Mrs. *Amy.* Indeed, I cannot ſay; but the Hilt was full of Blood, the Shell of it, and it ran down to the Bottom of the Blade.

L. H. St. Has your Lordſhip done?

Earl of *Warwick.* My Lord, I will only take notice, that the three Gentlemen that were on the other Side were tried at the *Old-Bailey*, and found guilty only of Manſlaughter; but now I being on his Side, and not having any Malice to him, but always a great deal of Friendſhip, I ſubmit it to your Lordſhips, whether I can be thought any Ways guilty of his Death; and I humbly hope your Lordſhips will hear my Counſel, if you make any doubt of that.

L. H. St. What is it your Lordſhip would have Counſel heard to?

Earl of *Warwick.* To this Caſe, my Lord, Whether there being ſix Perſons, Three of a Side, one is killed, and I being engaged on the Side of him that was killed, the three on the other Side have been tried for the Death of that Man; whether I, who was of his Side, be equally guilty with them who were on the other Side, eſpecially, I engaging particularly with another of the three, that were of the other Side: That Queſtion I deſire my Counſel may argue, whether I be equally guilty with them that were on the other Side, and who, notwithſtanding Death happened in the Caſe, yet were found guilty only of Manſlaughter?

L. *Godolphin.* My Lords, it has been moved by my noble Lord at the Bar, that his Counſel ſhould be heard about Mr. *French*'s being Witneſs, whether he ſhould be a Witneſs or no; I think it would be much for the clearing of the Fact one Way or other, if the Evidence of that Witneſs could be heard; but whether he can be heard, or not, according to Law, is a Queſtion that muſt be debated amongſt your Lordſhips, after your Lordſhips have heard the Counſel on both Sides, and perhaps the Opinion of the Judges upon their Arguments; and therefore I think we muſt adjourn, to conſider whether this Matter ſhall be argued or no.

L. H. St. What ſay you to this Matter, Mr. *Attorney*?

Mr. Att. Gen. My Lords, I ſhould agree with the Motion that is made, if there were any Thing inſiſted upon by the Priſoner at the Bar, that would bear a Queſtion or Argument; but my Lord of *Warwick* himſelf has waved the Objection, and ſo I think there is no need for any Argument on our Side.

L. *Godolphin.* I would agree with the Motion that was made for adjourning, in order to debate; but I deſire to be thus underſtood, if he thinks it for his Advantage, that this Witneſs ſhould be heard for him, which he knows beſt, whether it be or be not; then I do ſuppoſe your Lordſhips will adjourn, to conſider of it in your own Houſe amongſt yourſelves; it will not be proper to enter into the Debate here, nor there neither, till you know what Objection the Counſel for the King make againſt this Man's being an Evidence; and therefore we would know, it is fit to be known, whether my Lord's waving, or not inſiſting upon this Man's Teſtimony, be free and voluntary, and abſolute; or whether it be only in reſpect to the Trouble it may put the Houſe to for the Debate.

L. H. St. My Lord *Warwick*, ſome of my noble Lords obſerve you have deſired Mr. *French* ſhould be examined, and that your Counſel may be heard to that Point, whether he be by law a Witneſs, or not? Several of my Lords think it reaſonable, Counſel ſhould be heard, Whether he be a Witneſs or not; or at leaſt, that that Queſtion ſhould be conſidered amongſt themſelves, if inſiſted upon; therefore your Lordſhip is to declare, whether you do inſiſt upon it, or deſire to wave it.

Earl of *War.* I wholly ſubmit myſelf to your Lordſhips; but as I am adviſed by my Counſel, I hope he is a good Witneſs, and I deſire my Counſel may be heard to that Point.

Mr. Att. Gen. My Lords, in Truth I acknowledge, according to the Method of Law, the Objection ought to come of our Side; for I think we have very good Reaſon to oppoſe that Gentleman's being a Witneſs in this Caſe, even upon that Objection which my Lord has made himſelf, upon the Conſideration, that he has been found guilty of Manſlaughter for the Death of this very Perſon. It is true, upon his Prayer, Clergy was allow'd him, but the burning of the Hand was reſpited, and he was not burnt in the Hand, and he is not pardoned; and how far can he be a Witneſs in this Caſe, is the Objection: If a Man convicted of Felony, that is within Clergy, prays his Clergy, and it is allowed him, but he is not burned in the Hand, nor pardoned, we apprehend he is no Witneſs; and that is the Objection we make againſt his Teſtimony to your Lordſhips.

L. H. St. My Lord of *Warwick*, you hear what is ſaid by way of Objection againſt this Man's being a Witneſs. What ſay you to it?

Earl of *Warwick.* For Matter of Law, my Lords, I am not capable of ſpeaking to it, but I deſire my Counſel may.

L. H. St. That which Mr. *Attorney* propoſes by way of Objection is Matter of Fact, and the Matter of Law does not ariſe till the Fact be ſettled, which muſt fall within your Lordſhip's own Knowledge, who produce him as a Witneſs, and therefore you muſt anſwer to that Fact yourſelf.

Earl of *Warwick.* I deſire to know of your Lordſhips, if a Man be convicted of Felony that is within Clergy, and prays his Clergy, and it is allowed him, but the burning of the Hand is reſpited, and there is a Warrant for his Pardon; whether he cannot be a good Witneſs: That his Clergy was allowed, and the burning of the Hand reſpited, I have the Record here to ſhew.

L. H. St. My Lords, my noble Lord at the Bar inſiſting upon a Warrant for a Pardon, I muſt acquaint you with ſomething that happened during your Lordſhips ſitting here this Day; ſince I came hither a Privy-Seal was delivered to me, in order to paſs a Pardon for the burning in the Hand of Mr. *French*, for the Manſlaughter for which he was convicted at the *Old-Bailey*; ſo far I can acquaint your Lordſhips as to Matter of Fact.

Earl of *Warwick.* My Lord, I am adviſed by my Counſel, that he is a good Witneſs without a Pardon, or without burning in the Hand.

L. H. St. What ſay you, Mr. *Attorney*, to the Law? Now you underſtand what the Fact truly is.

Mr. Att. Gen. Yes, my Lord; and I do apprehend, with Submiſſion to your Lordſhip's Judgment, That a Man convicted of Felony, tho' he prays his Clergy, and has it allowed him, but is not burnt in the Hand, nor has any Pardon, can be no Witneſs.

L. H. St. That is the Caſe upon which you are to form your Objections: Here is a Man produced as a Witneſs, who has been convicted of Felony within the Benefit of Clergy, has craved his Clergy, has had it allowed, but has not been burnt in the Hand, nor pardoned.

Mr. Att. Gen. Then, my Lords, with humble Submiſſion, upon the Matter of Fact ſo ſtated, I make this Objection, That he is no Witneſs in point of Law: He has been convicted, in one Reſpect, for the very Offence for which the noble Lord, the Priſoner at the Bar, ſtands indicted: Tho' not in the ſame Degree as the Indictment ſets it forth, yet it is for the ſame Fact Upon this Indictment Mr. *French* was indicted at the Seſſions at the *Old-Baily*, and there he was found guilty of Manſlaughter; upon which he pray'd the Benefit of his Clergy, which was allow'd him, but he was not burnt in the Hand: Thus ſtands the Caſe in Fact. Now, my Lords, the Allowance of Clergy of itſelf, does not diſcharge the Party from the Offence, ſo far as to ſet him *Rectus in Curia*, and make him in all reſpects a Perſon fit to have the Benefit and Privileges of a *Probus & legalis Homo*, till he has paſſed through thoſe Methods of ſetting himſelf right in the Eye of the Law, that the Law hath preſcribed; and in order to ſet this Matter in its true Light before your Lordſhips, it will be neceſſary for me to open to your Lordſhips, as far as I can, the Nature of this Benefit of Clergy, and what Advantage did accrue to the Party, by having that Benefit allow'd him, and likewiſe what Benefit he had by the Act that enacted the Burning in the Hand, which was the Statute of the 4th of *H.* VII. And by that Act the Burning in the Hand was to be of no more Effect, but only to ſhew that he had had his Clergy allow'd him; and that unleſs he were within Orders, he ſhould have it no more than once. Before that Act of Parliament, a Perſon might have had the Benefit of Clergy ſeveral times, but that Act limits it as to Time, that it ſhall be but once: And therefore, in order to the having of it known, whether a Man once had his Clergy allow'd him, that did not produce his Orders, that Act provides there ſhall be a Mark ſet upon him at the Time of the Allowance of this Clergy, as a Token that it was allow'd him, and he was never to have it allowed afterwards, but even at that time he was to be deliver'd over to the Ordinary to make his Purgation; but ſince that Act, ſeveral Statutes have been made about this Matter. I ſhall mention one that relates to your Lordſhips, and that is the Statute of *Edward* the VIth, which indeed does enact, That in caſe where a Peer is convicted of Felony within the Benefit of Clergy, he ſhall be diſcharged without being burnt in the Hand; but then and thus the Law ſtood till the Statute of 18 *Eliz. cap.* 7. by which 'tis enacted, That after the Burning in the Hand the Priſoner ſhall be delivered to the Ordinary, but he ſhall be diſcharged; by Virtue of which Act, after burning in the Hand, the Priſoner hath made full Satisfaction to the Law, without that Sort of Purgation which was before requiſite to be made; but till he be burnt in the Hand, or has his Pardon, he is not to be diſcharged; it may be, he may be bailed out by the Judge, in order to get a Pardon; but ſtill he remains *in ſtatu quo*, as to his being a Witneſs, or any Thing of that Nature; his Credit is gone till it be reſtored by the King's Pardon, or his undergoing the Puniſhment that the Law requires; and no Man would ſay, that where one lies under a Conviction of Felony undiſcharged by burning in the Hand, or Pardon, that he can be a Witneſs; he remains juſt as he was before, the Conviction remains upon him, which diſabled him to be a Witneſs; and that we ſubmit to your Lordſhips as the Caſe of this Perſon, Captain *French.*

Mr. Sol. Gen. My Lords, if your Lordſhips pleaſe to ſpare me one Word of the ſame Side: Sure at Common Law there would be no Difficulty at all, that a Perſon convicted of Felony within the Benefit of Clergy, unpardoned and undiſcharged, could be no Witneſs; and ſince thoſe ſeveral Statutes that have been mentioned by Mr. *Attorney*, unleſs there be an actual Burning in the Hand, or a Pardon for that Burning in the Hand; ſure it cannot be pretended, that one convicted of Felony can be admitted as a Witneſs. If my Lord of *Warwick* does inſiſt upon his Evidence as Matter of Right, we, for the King, do inſiſt upon it, that there is no Right at all in the Caſe; for *French* muſt be taken to be one convicted of Felony, and not diſcharged without either burning in the Hand, or Pardon; and then we are ſure it cannot be pretended in Law, that he can be a Witneſs.

L. H. St. My Lords, the King's Counſel have ſtated their Objection, what is your Pleaſure to have done in it?

Earl of *Rivers.* I ſuppoſe, my Lords, that it will be neceſſary to hear what Anſwer my Lord of *Warwick* gives to this Objection.

L. H. St. Is it your Lordſhips Pleaſure, then, that the Counſel aſſigned for my Lord *Warwick* be heard what they have to ſay to this Matter?

Lords. Ay, ay, ay.

[*Then Sir* Thomas Powys *came to the Bar, and ſtood by the Earl of* Warwick, *and ſpoke thus.*]

Sir *T. Powys.* May it pleaſe your Lordſhips, I am by the Order of this Honourable Houſe aſſigned of Counſel for this noble Lord at the Bar, in point of Law; and, my Lords, as to the preſent Queſtion that has been ſpoken to by the King's Counſel, I am a little ſurpriſed to hear it ſhould be wondered at, that my Lord of *Warwick* ſhould inſiſt upon it, that this Gentleman ſhould be examined for him as a Witneſs, becauſe, with humble Submiſſion to your Lordſhips, I think the Authorities of Law will make for the Opinion on the other Side. Mr. *Attorney-General* ſays true, The firſt Statute that was made for Burning in the Hand, was that in 4 *H.* VII. Before that Time the Benefit of Clergy, even for Murder, was uſed to be allowed upon the Prayer of the Party, and he was thereupon delivered over to the Ordinary to make his Purgation; and that not only once, but *toties quoties*, let him demand it as often as he would, and as often as he offended it was allowed: This was thought ſuch a Privilege as ought to be reſtrained; that Statute of the 4th of *Hen.* VII. takes notice, that an ill Uſe was made of it, and therefore does ordain, That it ſhould be allow'd no more than once, unleſs to Perſons within Orders: And as a Means to know, whether it had been before allowed, or not, the Act does direct, That the Party convicted ſhall be burnt in the Hand; that is all the Act does appoint, it does no otherwiſe alter the Caſe; it does not impoſe it upon the Party as a Puniſhment for the Offence, but only as a Mark of Diſtinction, that if ever he came again before the Court, and being convicted of the like Offence, ſhould pray the Benefit of Clergy, then upon Inſpection it might be known, whether before he had been allowed his Clergy or not; and ſo ſtood the Law without Alteration as to the Manner of Delivery of the Criminal over to the Ordinary to make his Purgation, with which the temporal Law, in the Manner of doing thereof, did not intermeddle; and therein conſiſted, with reſpect to this Matter, the Benefit of Clergy. Afterwards, by the Statute of *Edward* the VIth, the Peers were exempted from the Burning in the Hand; and then comes the Act that we rely upon, which is, that of the 18th of *Eliz.* that takes notice of the former Act of the 4th of *H.* VII. which only ordered the Burning of the Hand for the Purpoſes aforeſaid, but left the Party to be delivered over to the Ordinary to make his Purgation; which was found to be a Matter attended with many Abuſes, and upon the Reformation thought fit to be aboliſhed, and taken away, becauſe it was only an outward Appearance and Shew of Purgation, and was often the Occaſion of very great Perjuries; therefore it is taken totally away, and by this Act the Party ſhall have the Benefit of Clergy without making Purgation, as fully as if he had actually made it. But, ſay they, there is ſtill left ſomething that the Law requires, which is, that he ſhould be firſt burnt in the Hand; and if he be not burnt in the Hand, or at leaſt pardoned, he is not in that Condition that the Law calls for in ſuch a Caſe, to ſet him *Rectus in Curia:* If he be burnt in the Hand, or pardoned by the King, they agree on the other Side, that he may be a very good Witneſs. My Lords, that Act of Parliament of Queen *Eliz.* does impower the Court that tries the Criminal, and before whom he is convicted, not only to burn him in the Hand, purſuant to the Act of *Hen.* VII. but alſo to detain him in Priſon for a Year after; but yet I think that doth not ſignify any thing one way or other to reſtore him, or not reſtore him to his Credit; for I think the Burning in the Hand, which is a Mark of Infamy, was never intended as a Means, any more than Impriſonment for a Year, of reſtoring a Man to his Credit; it was only to ſhew he had his Clergy once, and ſhould have it no more. The Allowance of Clergy by the Statute of *Eliz.* operates as a Pardon; only, ſaith the Statute, he ſhall not be delivered out of Priſon before he is burnt in the Hand, according to the Statute of *Hen.* VII. Nobody can ſay, that the continuing in Priſon for a Year, which the Court may order, though burnt in the Hand, would, as to reſtoring of Credit, have operated one Way or other: But that we inſiſt upon is, That the Allowance of Clergy ſets him right in Court, ſince Purgation is aboliſhed, and is the ſame Thing as if he had undergone the ceremonial Parts of a formal Purgation. It is the Allowance of Clergy that makes the Alteration or Operation in this Caſe, by virtue of this laſt Act of the 18th of *Eliz.* for we take it, that he is to have the ſame Benefit of his Clergy, as if he had been delivered to the Ordinary, and Purgation had been made; and now the Allowance of Clergy by this Act, gives the ſame Benefit to the Party, as Purgation would have done before the Act; and he is in the ſame State and Condition as he would have been in caſe of a Purgation, or of a Pardon by the King. The Authorities are all with us. There is a Caſe that is very well known among the Men of the Law, in the Fourth Report of my Lord *Coke*, *Holcroft*'s Caſe, who was indicted and convicted of Manſlaughter, and he prayed the Benefit of his Clergy; the Judges thought fit to reſpite their Judgment therein, but his Prayer was enter'd upon Record; and then an Appeal being brought againſt him, it came to be a Queſtion, How far he had had his Clergy: For by the Statute of the 3d of *Hen.* VII. an Appeal will lie notwithſtanding a Conviction, if the Party have not had his Clergy; and in this Caſe it was adjudged, That the Party having prayed his Clergy, he ſhould have the ſame Benefit as if the Court had ordered every Thing to be actually executed, which ought thereupon to be done: And ſurely then it can be no Queſtion, Whether a Man ſhall be a Witneſs or no, who has had his Clergy allowed? It is ſo entred upon Record, That the Book was adminiſtred to him, and that he read as a Clerk; for the Party has done as much as he can, prayed the Benefit of his Clergy, and had it allowed, and ſo it is entred upon Record. The Reſpiting of the Burning of the Hand till the King's Pardon be obtained, ſhall not, ſure, put him in a worſe Condition than he would have been, if he had actually been burnt in the Hand. My Lords, I have in my Hand a Book which is of very great Eſteem, and that is, *The Reports of my Lord Chief Juſtice* Hobbart, wherein he declares his Opinion in this Point, and for whoſe Opinion every one of our Gown ever hath teſtified a very great Veneration and Reſpect; the Caſe is that of *Searle* and *Williams*, wherein my Lord *Hobbart* has ſpoken ſo fully to this Matter, that I think it ought to put an End to the Queſtion: He ſays, the Statute of *Eliz.* appointing the Burning in the Hand without Purgation, does operate as a Statute-Pardon to all Intents and Purpoſes, and the Party having now the Benefit of his Clergy allowed, is in all Reſpects in the ſame Condition as if he had been acquitted: That is the Opinion that he holds throughout that Caſe: I need not trouble your Lordſhips with reading all the particular Words that he uſes, but only thoſe which relate to the Thing now in Queſtion, immediately before your Lordſhips. He delivers his Opinion, *That whoſoever ſpeaks Words of Accuſation, reflecting upon a Man for any Offence for which he was indicted and convicted, and had had his Clergy allowed, an Action lies as if he had been totally acquitted from it; 'tis not the Burning in the Hand, but the Allowance of Clergy, that ſets him right in his Credit in the Eye of the Law, and he is thereby in the ſame Condition in that Reſpect, that he would have been, if he never had had any Conviction upon him.* Towards the End of the Caſe his very Words are theſe: *Though the Statute ſaith, after burning in the Hand according to the Statute in that Behalf made, he ſhall be diſcharged, and there is no Burning in the Hand, that makes nothing; for though it be a Caſe where the Hand ought to be burnt, yet it is not ſo eſſential but a Man may have the Benefit of the Statute, tho' he be not burnt; the King may pardon the Burning; for the Burning, even in an Appeal, is no Part of the Judgment, nor ſo much as in the Nature of Puniſhmeut, but rather a Mark to notify that he may have his Clergy but once.* Theſe are his very Words in this Caſe; ſo that the Statute of Queen *Elizabeth* doth aboliſh Purgation, but gives the Party all the Benefit thereof, as if he had gone through it, and inſtead of delivering the Party to the Ordinary to make his Purgation, it ſays, he ſhall be deliver'd out of Priſon; but leſt it might ſeem to repeal the Statute of *Hen.* VII. as to Burning in the Hand, it adds, *Being burnt in the Hand, according to the Statute in that behalf provided:* By the Statute of *Hen.* VII. he was firſt to be burnt in the Hand, and then delivered to the Ordinary to make his Purgation; but by the Statute of *Eliz.* he is firſt pardoned his Crime by being allowed the Benefit of his Clergy, without making his Purgation, and afterwards to be burnt in the Hand before he be delivered out of Priſon; ſo that the Burning in the Hand is only a Condition precedent to his getting out of Priſon, not to his being reſtored to his Credit: The King may pardon the Burning in the Hand undoubtedly, and he has gone a great Way in this Caſe, for he hath given a Pardon as far as the Privy-Seal, and that is ſufficient to ſhew his gracious Intention of pardoning it throughout; and if there be need, we hope it may paſs yet forward. What we inſiſt on, is not only the Opinion of my Lord Chief Juſtice *Hobbart*, but he is followed therein by the Opinion of a Man of very great Authority, one no leſs eminent than he in his Profeſſion, and that is my Lord Chief Juſtice *Hale*, in a Book of his that is intituled, *His Pleas of the Crown*, which is but an Abridgment of what he intended upon that Subject under the Title of Clergy: When he comes to treat of the Conſequences of the Allowance of Clergy, and what the ſeveral Effects of Clergy allow'd ſhall be, he ſays, it gives him a Capacity to purchaſe Goods, and retain the Profits of his Lands, and reſtores him to his Credit, according to the Caſe I have mentioned before in *Hobbart*, of *Searle* and *Williams*; for that Caſe is particularly in that Book mentioned and referred to: Therefore I hope your Lordſhips will make no Difficulty of hearing this Witneſs; for we think the having his Clergy allow'd him, is that which reſtores him to his Credit. If they have any other Objections againſt him, I hope we ſhall hear it from the King's Counſel: But if this be ſtood upon in Point of Law as an Objection, That though Clergy was allowed, he was not burnt in the Hand, nor pardoned; I would have obſerved to your Lordſhips, That my Lord High Steward has told you it is ſo far gone towards the Pardon, that the King has ſhewn his Intention to pardon by the Privy-Seal; and we hope your Lordſhips will not let this noble Lord at the Bar ſuffer any Prejudice, by the not perfecting of the Pardon by actual paſſing of the Great Seal.

L. H. St. Mr. *Attorney General*, what ſay you to the Matters which have been urged?

Mr. Att. Gen. My Lord, we have ſtated our Objection; we think there is nothing given as an Anſwer to it, and we ſubmit it to your Lordſhip's Judgment.

Marq. of *Hallifax.* My Lords, I deſire that the Queſtion that is to be decided before your Lordſhips, may be ſettled truly, what it is.

L. H. St. If there be ſix in Company, and one of them is killed, the other five are afterwards indicted, and three are tried, and found guilty of Manſlaughter, and upon their Prayers have their Clergy allowed, and the Burning in the Hand is reſpited, but not pardoned; Whether any of the three can be a Witneſs upon the Trial of either of the other two?

Sir *T. Powys.* My Lords, with Submiſſion, though he were convicted of the Felony, yet upon Prayer of his Clergy, that being allowed him, that reſtores him to all the Capacities, we ſay, that he had before the Conviction, and particularly to his Credit; and for that we ſubmit ourſelves to your Lordſhips Judgment.

Marq. of *Hallifax.* I ſuppoſe your Lordſhips will have the Opinion of the Judges upon this Point; and that muſt be in the Preſence of the Priſoner.

L. H. St. It muſt certainly be in the Preſence of the Priſoner, if you aſk the Judges Opinions.

Marq. of *Hallifax.* But in theſe Caſes, my Lords, it is uſual to hear the King's Counſel to make a Reply: I deſire to hear what they would ſay to what has been offered by the Counſel for the noble Lord the Priſoner at the Bar.

Mr. Serj. *Wright.* My Lords, I did apprehend that the very ſtating of the Objection would have ſet this Matter in its true Light: For in the firſt Place, it is agreed on all hands, That this Mr. *French*, that is deſired to be a Witneſs, does ſtand convicted of Felony; and by the Law of *England*, while that Conviction remains upon him, till he be either purged or pardoned, he cannot be a Witneſs: By the Conviction his Credit is loſt; and till he be reſtored to his firſt Condition, he ſtands not ſo clear in the Eye of the Law that he can be an Evidence. The Counſel for the Priſoner have objected, That if he either be pardoned, or Clergy allowed, he is put in the ſame Condition as if he had been acquitted.

My Lords, I muſt admit a Pardon reſtores to Credit; and I muſt likewiſe admit, That Allowance of the Benefit of Clergy, and Burning in the Hand upon it, amounts in Law to a Pardon, or is equivalent to a Pardon in this Matter: But the Fact here is not ſo; for here is neither actual Pardon, nor any Burning in the Hand: the Benefit of Clergy was prayed, and allowed; but that alone is not ſufficient; there muſt be an actual Burning in the Hand, or a Pardon of that Burning in the Hand, otherwiſe it cannot be a Satisfaction in Law, ſuch as ſhould put him in the ſame Condition as if he were acquitted. Your Lordſhips have heard what was ſaid by his Grace my Lord High Steward, That as to the Burning in the Hand, the King has been pleaſed to proceed ſo far as to grant a Privy Seal for the Pardon of the Burning in the Hand: But your Lordſhips very well know, and it cannot be inſiſted on to the contrary by the Counſel on the other Side, That it is no Pardon until it be paſt under the Great Seal of *England*: So that here is no actual Pardon; nor is the bare Allowance of Clergy, without Burning in the Hand, equivalent to a Pardon. My Lords, it muſt be agreed, That at the Common Law, Perſons that were convicted of Felony, were not reſtored to their Credit merely by allowing the Benefit of Clergy to them; there was ſomething further to be done to regain Credit; the Party convicted muſt undergo another Trial before the Ordinary, which was commonly called Purgation; when any Man was convicted of Felony, he was, upon his Prayer of the Benefit of Clergy, to have it allowed to him, and if he could read as a Clerk, his Life was ſaved. He was not diſcharged of the Felony, and therefore was delivered over to the Ordinary to be kept in Priſon until he had, by a Sort of Trial before the Ordinary, made his Innocence appear, and purged himſelf of the Fact charged upon him; and if he could not make his Purgation, he was to lie perpetually in Priſon; and notwithſtanding the Allowance of Clergy, and Delivery over to the Ordinary, yet was not the Credit reſtored, nor his former Capacities; he was not a legal Witneſs until he had purged himſelf of the Crime: It was the clearing themſelves of the Guilt, that reſtored ſuch Perſons to their Reputation and Credit, not the bare Allowance of Clergy: Some Criminals were delivered to the Ordinary generally; thoſe might make their Purgation: Others were ſpecially delivered, or delivered with a ſpecial Charge to the Ordinary, not to admit them to Purgation, *Abſque purgatione facienda:* Theſe latter could never be reſtored to Credit, except by the King's Pardon; for the Liberty of Purgation, which was the Means of regaining their Credit, was taken from them; their Guilt occaſioned their Loſs of Credit; taking away that Guilt doth conſequentially reſtore Credit again; and this Benefit of Clergy was to be allowed as often as any Man had Occaſion for it.

Thus the Matter of Benefit of Clergy ſtood in Common Law, in reſpect of Purgation and reſtoring of Credit, till the Statute of 18 *Eliz. c.* 7. which was cited on the other Side by Sir *Thomas Powys*; by which Statute Purgation is abſolutely taken away and ſet aſide: and the Party being burnt in the Hand, according to the Statute of 4 *H.* VII. is appointed by this Statute 18 *Eliz.* to be diſcharged, and not to be delivered over to the Ordinary, as was before that time uſed. The delivering over to the Ordinary was in Order to Purgation, and that by the laſt Statute is quite taken away, and the Party is to have the ſame Benefit by the having the Benefit of his Clergy and Burning in the Hand, as if he had made his Purgation; he ſhall be diſcharged: It is not his reading as a Clerk, and that pronounced by the Ordinary, that gives him the Benefit of a Diſcharge, as if he had been purged of the Crime; but there muſt be the Burning in the Hand, that is the very Terms of the Statute upon which he is to be diſcharged; that muſt actually be done before he can be put into the ſame Condition that he was in before the Conviction, and conſequently make him capable of being a Witneſs. As for the Caſe of *Searle* and *Williams*, that was cited by Sir *Thomas Powys*, that Caſe doth not oppoſe in this Matter; there it was not needful to burn the Perſon convicted; he was a Clerk in holy Orders, and by Law exempt from Burning in the Hand: ſo it was not needful to burn him, the Statute of 18 *Eliz.* not requiring any Perſon to be burned in the Hand that were not ſo liable before then. The moſt that is ſaid in that Caſe by the Chief Juſtice *Hobbart* is, That in Caſe where the Hand ought to be burnt, it is not eſſential; but the Party may have the Benefit of the Statute, *i. e.* be diſcharged without Burning, and the King may pardon the Burning; and no doubt if the King pardons the Burning, it is as good and effectual as if the Hand had been actually burnt. The King might pardon the whole, and conſequently any Part; the Pardon of the Puniſhment ſupplies the Effect of it; no Queſtion but a Pardon may ſupply the want of Burning in the Hand. Chief Juſtice *Hales* in his Book of *Pleas of the Crown*, *Fol.* 240. which I have here, ſays expreſsly, That Burning in the Hand is now, ſince the Statute 18 *Eliz.* the Conſequent upon the Allowance of Clergy, which hath this Effect: Firſt, It enables the Judges to deliver him. Secondly, It reſtores him to former Capacities. Thirdly, It reſtores him to his Credit, and ſo it puts him in the ſame Condition as if he were acquitted. What is it that hath this Effect? The Allowance of Clergy, and Burning in the Hand: There is not to be a Delivery of the Criminal till all be done which is required by Law: The Law requires that the Party be burnt in the Hand, or that the King do pardon the Burning in the Hand, before the Party be diſcharged; and, with humble Submiſſion, it was never yet pretended, that any Perſon could have the full Advantage of the Benefit of Clergy, ſince the Statute of 4 *H.* VII. till he was burnt in the Hand, or the Burning in the Hand was pardoned. Now, my Lords, to apply this to the Caſe in Queſtion; it is on all Hands admitted, That Mr. *French* was convicted of Felony and Manſlaughter, and is neither burnt in the Hand, nor pardoned; but he has prayed the Benefit of the Clergy, and has had the Book given to him, to try if he can read, and he certify'd he can read; this is all that is done. I think it cannot be pretended he ought to be diſcharged until he is burned in the Hand, or that Burning pardoned, as the Act requires; and if the Reading as a Clerk without Burning in the Hand, or Pardon of it, be not ſufficient in Law to entitle him to be diſcharged, why ſhould it be ſufficient to reſtore his Credit? The whole together works the Diſcharge, and reſtores the Party. In the Caſe of *Burroughs* and *Holcroft* that has been cited, there a Man was convicted of Manſlaughter, and prayed his Clergy; the Court did not allow his Clergy, but did adviſe upon it. This was held ſufficient to bar an Appeal; for if Clergy had been allowed, it had clearly been a good Bar; and the Act of the Court in adviſing upon the Prayer, and not allowing Clergy where it ought to be, ſhall not prejudice the Party convicted, but he ſhall be in the ſame State as if the Clergy had been actually allowed: But that has no likeneſs to the Caſe now before your Lordſhips; for here it is not pretended that Mr. *French* ever deſired to be burnt in the Hand, but that was reſpited in Favour to him, which was done with Intention, it ſeems, to get the King's Pardon for the Burning of the Hand, which is not yet obtained; and conſequently I take it he is not entitled to that Benefit which the Law would give him, if he was either pardoned or burned in the Hand; he is not fully diſcharged of the Conviction, and therefore I think he ought not to be admitted as a Witneſs.

L. H. St. What is the Reſolution your Lordſhips pleaſe to take upon this Matter? Is it your Lordſhips Pleaſure to have the Opinion of my Lords the Judges, who are here preſent, upon this Point?

Lords. Ay, ay, by all Means have the Judges Opinions.

L. C. J. Treby. Two Things have been mentioned at the Bar, which, I think, ought to be laid out of the Queſtion.

1. The Conſideration of a Peer, with reſpect to burning in the Hand.

I ſuppoſe it is not (I am ſure it ought not to be) inſinuated, that if any of your Lordſhips Degree ſhould have the Misfortune to fall into the like Condition as the Gentleman now produced, *viz.* to be once convict of a clergyable Felony, there could be any Doubt of receiving ſuch Peer as a Witneſs, without his having been burnt in the Hand. Certainly there could not; For the Statute of 1 *E.* VI. exempts the Peers from ſuch Penalty, and virtually repeals the Statute of 4 *H.* VII. as to ſo much. And the Statute of 18 *Eliz.* requires burning in the Hand only, according to the Statute in that Behalf (before) provided. And there being no Statute then or now in Force, to ſubject Peers to ſuch Brand; there are, in ſuch Caſe, upon the allowing the Benefit of the ſaid Statate of *E.* VI. which is as much as Clergy without reading or burning) freed from Diſcredit and other Penalties of the Felony, as much as Commons are by having Clergy formally allowed, and being burnt.

2. Here hath been Mention of a Pardon of the burning this Gentleman in the Hand; and, it ſeems, the Proceeding hath been ſo far as to paſs the Privy-Seal. I do not queſtion the King's pardoning of the Burning's being as effectual as the Party's undergoing it. But, I ſay, Here is no Pardon (though great Preparation for one). For the Sign Manual, the Signet, the Privy-Seal, are but Warrants in ſuch Caſes, and countermandable. But it is the great Seal that ſpeaks the King's laſt and irrevocable Intent, and paſſeth the Pardon (or other like Thing) to be granted. And that hath not been obtained here.

Now the Queſtion is cleared, I take it to be this; Whether this Commoner, being convicted of Felony, and having his Clergy allowed, but being unburnt and unpardoned, ſhall be received and allowed to be a Witneſs?

I am of Opinion he ought not.

For (whatever Quality or Credit he might perſonally be of) he is, by being and remaining a Felon convict, render'd infamous in the Eye of the Law. Upon the Conviction, he loſt, by the Intendment of Law, that Credit which is neceſſary to a Witneſs; and is not reſtored to it by the bare allowing of Clergy; but is in the State as a Felon convict would have been, before Purgation, at Common Law.

Clergy or (more properly called) Benefit of Clergy, is an antient Privilege, whereby a Clerk charged with Felony was diſmiſſed from the Temporal Judge, and delivered in Cuſtody to his Ordinary, before whom he was to purge himſelf, if he could, of the Offence; and if he failed in his Purgation, he was to remain in the Ordinary's Priſon.

I mean generally; and I think it not proper to this Occaſion, to diſcourſe of the ſpecial Caſes wherein the Delivery to the Ordinary was *abſque Purgatione.*

This Privilege took its Root originally from a Conſtitution of the Pope, exempting the Perſons of the Clergy from the ſecular Juriſdiction. This the Canon-Law is full in. But that Law was not thoroughly received here in *England.* And this Matter was moulded, ordered, and altered by our Common and Statute-Law.

For Inſtance. The Canon-Law gives the Privilege only to Men in holy Orders: Our Law, in favour to Learning, and the Deſire of the *Engliſh* Biſhop, extended it to Lay-Clerks, as an old Statute calls them, *i. e.* any Layman, that, by Reaſon of his Ability to read, was (other Circumſtances concurring) in a Poſſibility of being made a Prieſt. On the other Side; That Law would not ſuffer the Clergy to be tried before ſecular Judges: But ours hath, for ſeveral hundred Years, ſubjected them to ſuch Trial.

But the Common Law was ever clear in this, That when a Man was convicted of Felony, though by the allowing of Clergy, his Life, Land, and Blood were ſaved, yet, That Conviction laid him under divers Penalties and Forfeitures, ſome abſolute, others limited and determinable.

He forfeited all his Goods and Chattels, which he had at the Time of his Conviction, Abſolutely; not to be reſtored by Purgation or Pardon.

He alſo forfeited and loſt, 1. His Liberty, being to continue a Priſoner. 2. His Capacity of purchaſing more Goods or Chattels, and of taking and retaining the Iſſues and Profits of his Freehold Land to his own Uſe. 3. His Credit, ſo as not to be a Witneſs, Juror, *&c.* Under theſe three Penalties he remained till his Purgation: But by that they were determined. As ſoon as he had made his Purgation, he was reſtored to his Liberty, Capacities, and Credit.

Purgation was the Convict's clearing himſelf of the Crime, by his own Oath, and the Oaths or Verdict of an Inqueſt of twelve Clerks (as Compurgators). The Proceeding was before the Ordinary. And, for the Manner of it, old Books ſpeak of their making Proclamation for Perſons to come in againſt his Purgation, and of their enquiring into his Life, Converſation, and Fame, and of other Formalities. In all which, ſeveral other Statutes ſay, there were great Abuſes. But it is certain, that, upon his Acquittal, the Ordinary pronounced him innocent, and abſolved from Infamy. And thereupon he was diſcharged from the Impriſonment, Incapacities, and Diſcredit incident to the Felony.

The Statute 4 *H.* VII. brings in a new Thing, appointing that every Perſon convict of Felony, ſhould be marked in the Hand by the Gaoler in open Court, before he ſhould be delivered to the Ordinary. And this was partly that they might taſte of Corporal Puniſhment; but, principally, to notify that they had had their Clergy. For the ſame Statute, taking notice that Men were emboldened to commit Murder, Rape, Robbery, and other Felonies, becauſe they had the Benefit of Clergy *toties quoties*, ordains that no Perſon, who was once admitted to that Benefit, ſhould ever have it again for a following Offence, unleſs he were within Orders, and produced his Letters of his Orders, or a Certificate of them.

For this Act, *Perkin Warbeck* in his Declaration againſt *H.* VII. brands him as an *execrable Breaker of the Liberties and Franchiſes of holy Church.*

Then comes the Statute 18 *Eliz.* c. 7. which, for ſo much as concerns this Queſtion, I deſire to read.

It is in theſe Words,

For the avoiding of ſundry Perjuries and other Abuſes in and about the Purgation of Clerks Convict, delivered to the Ordinaries, Be it enacted, that every Perſon which ſhall be admitted and allowed to have the Benefit or Privilege of his Clergy, ſhall not thereupon be delivered to the Ordinary, as hath been accuſtomed, but after ſuch Clergy allowed, and burning in the Hand according to the Statute in that behalf provided [meaning that of 4 *Hen.* VII.] *ſhall forthwith be enlarged and delivered out of Priſon by the Juſtices before whom ſuch Clergy ſhall be granted, that Clauſe notwithſtanding.*

Then there follows a Proviſo to this Effect,

Provided nevertheleſs, and be it enacted, that the Juſtices before whom any ſuch Allowance of Clergy ſhall be had, may for the further Correction of ſuch Perſons, detain and keep them in Priſon for ſuch convenient Time as the ſame Juſtices in their Diſcretions ſhall think convenient, ſo as the ſame do not exceed one Year's Impriſonment.

This Statute refers to that of *H.* VII. and follows the Order of it; As that appointed that the Convict ſhould be burnt before he ſhould be delivered to the Ordinary to have the Benefit of Purgation, ſo this of 18 *Eliz.* appoints that he ſhould be burnt before he ſhall be diſcharged by the Juſtices, and have the Benefit thereby intended (inſtead of Purgation).

The Counſel for the noble Lord at the Bar ſay, that the Allowance of Clergy by virtue of this Act, freeth this Man, and makes him *Rectus in Curia*; as if he had made his Purgation: And that by this Statute he is firſt pardoned his Crime, by being allowed the Benefit of Clergy, without making his Purgation; and afterwards to be burnt in the Hand before he be delivered out of Priſon; and ſo the Burning is a Condition precedent to his getting out of Priſon, not to his being reſtored to his Credit.

But I am to ſeek for any Ground for this Notion in this Statute. It doth not require Clergy to be allowed, nor give any new Virtue or Operation to it, when allowed. It ſuppoſeth ſuch a Thing to be by virtue of the Common Law: But there it leaves it, if there be nothing more done. It is one Clauſe conſiſting of two Parts; 1. *Negative*; He that is allowed his Clergy, ſhall not be delivered to the Ordinary. 2. *Affirmative*; But after that, and burning in the Hand, ſhall be delivered by the Juſtices.

Now, If it had ſtopped at the firſt Part, it had been ſo far from pardoning or reſtoring any Clerk Convict, that it had put all into the ſame Condition that thoſe were who were without Purgation, *viz.* to be perpetually impriſoned, and infamous. Indeed, it had not been reaſonable to take away ſuch a Privilege from the Subjects, without ſome Recompence; and therefore it did not ſtop there: But proceeds to the 2d Part, and provides that thoſe who before were delivered to, and by the Ordinary, ſhall now be delivered by the Juſtices. But withal, it declares when, and upon what Terms, *viz.* After Clergy allowed, and burning in the Hand. And this is a Satisfaction to be given to the Law, before they ſhall have the Benefit of it.

I agree, if this Convict had made that Satisfaction to the Law, he might have been a Witneſs; for in that Caſe, he would have been freed from his Diſcredit by virtue of the laſt Words of the ſaid Clauſe. 'Tis true, the Words are only [*ſhall forthwith be enlarged and delivered out of Priſon by the Juſtices*], which literally import nothing but reſtoring his Liberty. But under this prime Inſtance, are implied and intended all other Particulars which a Convict might be diſcharged of by means of Purgation. It was never the Intent of the Statute merely to ſet him at large, and leave him a Felon Convict: But when it is ſaid *delivered*, 'tis meant delivered free, freed from all incident further Penalties, as he might have been if delivered upon Purgation. This is a reaſonable Conſtruction; to a Man that obſerves the Oppoſition in the Words, the Senſe will appear to be as if the Law-makers had ſaid, that inſtead of being diſcharged *a Culpa & Pœna* by the Ordinary upon a tedious Proceeding to Purgation, he ſhall now be ſo diſcharged by the Juſtices, forthwith.

And this alſo is neceſſary to vindicate the Juſtice of this Law; for, ſince it takes from him the Means he had of regaining his Credit, it is but juſt it ſhould reſtore to him by this Way.

'Tis objected, that it may as well be ſaid that he ſhall not be reſtored to Credit till he have ſuffered Impriſonment, not exceeding a Year, as that he ſhall not be reſtored till burnt. But that receives an eaſy Anſwer; for, if it were ſo, it would not avail this Perſon. But I take it to be otherwiſe. A Convict is diſcharged from Impriſonment and all other Penalties incident to the Conviction, forthwith upon the burning in the Hand: But if there be a Commitment made by virtue of the Proviſo, it is a collateral and a new Thing, and the Party is not then in Priſon by virtue of his Conviction, but by a freſh expreſs Order of the Judges, made upon the Heinouſneſs of the Circumſtances appearing on the Evidence. They may, and generally do, forbear to commit at all: And when they do, it may be for a Month or two, at their Diſcretion. The Proviſo calls it a further Correction.

As to the Manner in which this Statute works this full Diſcharge, it hath been diſputed, whether it be by Supply of Purgation, or rather by a kind of Statute-Pardon. But, I think, that by Force of the Statute the Party is purged and freed of the Felony, and all Penalties incident to it, in Nature of a Pardon.

In what Manner ſoever the Statute works it, 'tis manifeſt that it doth it not but upon a Condition precedent, *viz.* After Clergy allowed, and burning in the Hand. Now, this Perſon hath his Clergy allowed, but is not burnt in the Hand, (nor has any Pardon for it) and therefore is not yet intitled to the Benefit of this Statute. My Lord's Counſel ſay he is, becauſe he hath his Clergy allowed. But that is claiming the Advantage upon the performing of one Part of a joint Condition, which ought not to be had but upon performing both. They might as well have pretended to it before the Performance of either; The Statute ſays, After both Clergy and Burning. They ſay alſo, that this Burning is no Part of the Judgment, as hath been held in the Caſe of an Appeal. Be it ſo: But, I ſay, 'tis a Part of the Condition in this Statute.

There is no Caſe in our Books againſt this Opinion. (But, on the contrary, there are Authorities for it.)

Holcroft's Caſe is in no ſort applicable to this Caſe; as was truly obſerved by the King's Serjeant.

The Opinion of my Lord Chief Juſtice *Hobbart* in *Searle* and *Williams*'s Caſe, rightly conſidered, confirms this. I have borrowed the Book from the Gent. at the Bar, and read it. He ſaith expreſsly, that where a Convict is liable to be burnt in the Hand, he is not diſcharged and reſtored without it; becauſe the Statute ſays, After Burning: But from thenceforth the Statute frees him from all further Puniſhment. But, he ſaith, that where he is not liable to Burning, he ſhall have the ſame Benefit immediately upon the Allowance of Clergy only. So it was in the Caſe before him; which was that of a Clerk in Orders: For, *Searle* was a Clergyman, Parſon of *Heydon German*, in *Eſſex*, and convicted of Manſlaughter. So it is, he ſays, in caſe where the King pardons the Burning. And the laſt Words in the Caſe clearly ſhew his Meaning, *viz.* where the Statute ſays, after Burning, it imports where Burning ought to be, *&c.*

To me the Law is evident. A Peer ſhall have this Benefit, without either Clergy or Burning. A Clerk in Orders, upon Clergy alone, without Burning. A Lay-Clerk, not without both.

As I remember, there hath been but one Authority more mentioned, and that is of my Lord Chief Juſtice *Hale*, in his *Summary of the Pleas of the Crown*; I have got hither that Book alſo. To my Underſtanding, he plainly declares the ſame Opinion, and cites the beforementioned Caſe of *Searle* for Proof of it. His Words (ſo far as they relate to this Matter) are theſe;

What the Effect of Clergy allowed?

In ancient Time the Conſequent was Delivery to the Ordinary, either to make Purgation, or abſque Purgatione, *as the Caſe required.*

But by Stat. 18 Eliz. c. 7. *Now only burnt in the Hand, which hath theſe Effects,*

1. *It enables the Judge to deliver him out of Priſon.*
2. *It gives him a Capacity to purchaſe Goods, and retain the Profits of his Lands.* Foxley'*s* Caſe, 5th Report.
3. *It reſtores him to his Credit.* Hob. Searle'*s* Caſe.

The Word [which] uſed here (whatever elſe it do, or do not refer to) doth certainly refer to the next Antecedent, that is, Burning in the Hand; and the two Books which this moſt learned Judge cites, are full Authorities that 'tis this Burning which enables the Court to deliver him, and that that Delivering which is then due to him is, by good Conſtruction, in lieu of a Pardon, which reſtores him to his ſaid Capacity and Credit.

To conclude: This Condition precedent, upon which the Reſtitution of this Perſon's Credit depends, is not performed (by his undergoing the ſaid Puniſhment), nor diſcharged (by the King's pardoning it;) and therefore he is not a legal Witneſs.

Earl of *Rocheſter*. If the reſt of my Lords the Judges be of the ſame Opinion, ſo; and I hope you will not oblige them to deliver their Opinions at large, to take up your Lordſhips Time with Arguments of any length; for the Matter has been, I think, ſufficiently debated.

Lord Chief Baron *. My Lords, I am of the ſame Opinion.

Mr. Juſtice *Nevill*. And ſo am I.

L. H. St. My Lord of *Warwick*, Have you any Thing more to ſay to this Queſtion?

Earl of *Warwick*. No, my Lord.

L. H. St. Then what is your Lordſhips Pleaſure? Is this Man to be admitted a Witneſs or not?

Lords. No, no; we think, by Law, he can't be a Witneſs.

L. H. St. My Lord of *Warwick*, my Lords are of Opinion, That this Perſon cannot be admitted as a Witneſs for you.

Earl of *Warwick*. My Lords, I ſubmit to your Lordſhips Judgment in the Matter.

Earl of *Nottingham*. My Lords, I am very glad your Lordſhips have had this Matter debated by the Counſel, that ſo it might be ſettled: All my Lords the Judges that are here, it ſeems, are of Opinion, that this Man can be no Witneſs, and therefore his Teſtimony muſt be rejected. But there is another Propoſal that I have to make to your Lordſhips, of a Point that I think ought to be conſidered of: My noble Lord at the Bar did ſuppoſe that he had proved before your Lordſhips, that he went into the Field to fight on the Side of the Party that was killed, but not on the other Side; and indeed, that he went not to fight, but to prevent a Quarrel; and thereupon he did ſtart a Queſtion, Whether it ſhould not be a Preſumption in Point of Fact and Law, that he, being on the Side of the Party that was killed, ſhould not be reputed innocent of his Death? Now, I confeſs, upon the Starting of this Objection, I doubted of it, Whether, if any one were preſent at the Killing of a Man, where ſeveral People were engaged in fighting; on what Side ſoever ſuch a Perſon were, either on the Side of the Party that was killed, or on the other Side, yet whatſoever Crime it was in thoſe that killed him, it was the ſame Crime in thoſe that were preſent at the Action. My Lord of *Warwick* did deſire, that his Counſel might be heard upon that Point; if there be any Queſtion with your Lordſhips in that Caſe, and my Lord deſires his Counſel may be heard to that Matter, it may occaſion a Matter of Debate, which cannot be in this Place openly, but muſt be between your Lordſhips among yourſelves: Indeed, I think it reaſonable that Counſel ſhould be heard upon the Caſe.

L. H. St. My Lords, I think you are not arrived at that Queſtion yet; you are not to take for granted any Part of the Fact, but are to debate among yourſelves, after the Proof is over, what that Proof does amount to.

Earl of *Rocheſter*. Indeed, my Lords, I hope you will not ſuppoſe any Thing, and ſo take it for granted, that may occaſion any Debate, becauſe that is not to be done here in this Place, but we muſt adjourn to another Place for it: The bare putting of a Caſe by a Priſoner at the Bar, does not make that to be the Caſe truly in Point of Fact; for as far as I heard and underſtood the noble Lord's Propoſal at the Bar, what he deſired to have his Counſel heard to, was, That he being One of Six that went into the Field, but going with a Deſign to part them, and not with an Intention to promote the Quarrel, could not be in equal Degree of Guilt with thoſe that were on the other ſide, who killed the Party; but now, my Lords, I take it, it is far from being granted on the other Side, that that is the State of the Fact; nay, my Lord himſelf owns that he was in the Field, and that he was engaged in the Combat with Mr. *James*; and then the Queſtion muſt be that is to be debated, Whether a Party that is concerned in a Quarrel where a Perſon is killed, is in equal Degree guilty with thoſe that were on the other Side againſt the Perſon that was killed? And then the Queſtion would be far different from what it would be otherwiſe, and as his Lordſhip did propoſe it; and if there be a doubt in Matter of Fact, that ought to be ſettled here in this Place, that afterwards it may be conſidered in another.

Earl of *Nottingham*. My Lords, I cannot but agree with that noble Lord, That the Matter of Fact ought to be ſettled, and then if any Debate ariſes thereupon, your Lordſhips are to return to your own Houſe, and there to debate what is your Judgment upon that Matter of Fact: But whatſoever Motion is made by the noble Lord at the Bar, wherein he deſires to have his Counſel heard, that I ſuppoſe may be conſidered here; and this Point having been ſtarted by my noble Lord at the Bar, as a Point of Law, and not of Fact, I deſire to remind him of it, to know whether he does inſiſt upon it; if he does not move to have the Matter argued, then there is an End.

L. H. St. My Lords, I do not think you will hear Counſel upon a Matter of Fact, and therefore it is not ripe (till the Fact be ſettled) for you to hear Counſel.

Earl of *Warwick*. My Lords, I humbly pray, That you will hear my Counſel as to that Point.

L. H. St. My Lord, this is a Matter of Fact undetermin'd, and not a Matter of Law: What Opinion their Lordſhips will be of, when they have conſidered the Proofs as to the Fact, is one Step; when that is over, it will be the proper Time, if any Doubt be remaining with their Lordſhips, in Point of Law, to hear Counſel; but upon bare Matter of Fact Counſel is not to be allowed.

Earl of *Rocheſter*. My Lords, if there be any Debate among the Lords, Whether it be a Matter of Fact, or a Matter of Law, we muſt go up to our own Houſe; but upon any Point of Law, where Counſel is to be heard, it muſt be in this Place, in the Preſence of the Priſoner, and afterwards your Lordſhips will debate it among yourſelves.

Earl of *Nottingham*. I hope, my Lords, the Counſel would not ſtate the Caſe otherwiſe than as it is really in Point of Fact; nor can this noble Lord hope, that any Thing will make an Impreſſion upon my Lords, but what from the Fact rightly ſtated, is ſupported from the Evidence; and that which my Lord propoſes, is to have his Counſel heard to a Matter of Law, which your Lordſhips will be Judges of after you have heard it, whether there be any Weight in that which he ſuppoſes to be his Caſe, That a Perſon aſſiſting in a Combat on the Side of him that is killed, is in equal Degree of Guilt with them that are on the other Side; that poſſibly, if the Fact be agreed, may be a Point fit to hear Counſel to, before your Lordſhips go to debate it among yourſelves.

Duke of *Devonſhire*. If I am not miſtaken, my Lord of *Warwick* owns his being one of them that fought, for he has offered Witneſſes to prove, That he received a Wound in his Hand by fighting: If my Lord of *Warwick* thinks, that there is a Difference between his being on Mr. *Coote*'s Side, and theirs that were on the other Side, and would have his Counſel heard, how far it will difference his Guilt, and the Nature of the Crime, from what it was with them on the other Side, I cannot think that can be to any great Purpoſe to have that argued; but if your Lordſhips pleaſe, you may hear his Counſel what they have to ſay to that Matter; but otherwiſe, I cannot think, but that his Lordſhip will acknowledge the Matter of Fact, that he was engaged in the Quarrel.

Earl of *Peterborough*. My Lords, I deſire, if this be a Point that my Lords Counſel ſhould be heard to, that it ſhould be ſtated as a Point of Law, and then your Lordſhips will conſider of it.

L. H. St. As well as I could apprehend it, as it was offered by my Lord of *Warwick*, this was what he deſired to have his Counſel heard to: Tho' the Perſons engaged in the Quarrel on the oppoſite Party to Mr. *Coote* have been tried, and found guilty of Manſlaughter, yet he is not in equal degree of Guilt with them, he being engaged on Mr. *Coote*'s Side, and therefore his Lordſhip's Caſe differs from theirs who fought againſt Mr. *Coote*. This Point he would have argued by his Counſel before your Lordſhips as a Matter of Law founded upon the Fact; now the Fact of the Caſe muſt ariſe from the Evidence as it has been given, which has not yet been debated or ſettled by your Lordſhips; and till that be agreed to be the Caſe, no Queſtion of Law does properly ariſe.

Duke of *Leeds*. My Lords, if poſſible, I would put this Matter into its true Method; for indeed I think we have been all this while out of the Way. The noble Lord at the Bar has deſired to have his Counſel heard; this Houſe has allow'd him Counſel in Matters of Law; I would deſire that the Counſel would ſtate the Caſe ſo to your Lordſhips, that it may appear to be a Caſe fit to be argued, that ſo it may receive your Lordſhips Judgment thereupon. My Lord's own bare propoſing of ſuch a Thing, will not be enough to incline your Lordſhips to be of Opinion, perhaps, one Way or other; but I would pray your Lordſhips, That you would direct the Counſel that are aſſign'd for my noble Lord at the Bar, to propoſe that to your Lordſhips as a Point of Law that he ought to inſiſt upon. I think it is apparent to every Body, that no Point of Law can ariſe but upon Matter of Fact, which is agreed to be proved in any Caſe; now the Proofs of the Fact we have heard; now, that which I would propoſe to your Lordſhips is, That inſtead of hearing his Counſel to argue in point of Fact, what is not yet agreed upon to be the Fact, they ſhould ſtate ſuch a Point of Law as they would argue upon; and then whether you would think it a Point of Law, or not a Point of Law, we muſt go into another Place, where it may be debated, whether it be ſuch a Point of Law as that Counſel ſhould be heard to it.

Earl of *Peterborough*. My Lords, I hope you will forgive me for interpoſing in this Matter, but that which I have to ſay to it is this: I am far from giving any Opinion as yet, as to the Matter of Fact, whether my Lord of *Warwick* was Mr. *Coote*'s Friend or his Enemy; I know it is not a proper Place for that Matter to be debated in: But my noble Lord at the Bar deſires to have his Counſel heard upon that Point, as if the Fact was agreed: Truly, till the Fact be agreed, I queſtion whether we can give any Judgment or Opinion one way or other. If I obſerved aright, the Evidence for the King aimed at ſomewhat elſe: I ſhall not ſay what my Opinion now is, till we come to debate it among ourſelves; but here is a Deſire of having Counſel heard, but there is no Queſtion of Law ſtated, but it depends upon a Matter of Fact which is not yet determined by your Lordſhips, before whom the Conſideration of both Fact and Law doth lie, Whether a Perſon that is engaged on the Side of the Party that's kill'd in a Quarrel, where ſeveral Perſons on both Sides are concerned, be as much guilty as thoſe that are concerned on the other Side?

Marq. of *Norm.* My Lords, I do ſuppoſe that you may hear the Counſel to ſtate the Queſtion, without your determining any Thing upon it, as to your Opinion one Way or other; for your hearing of Counſel is only in order to prepare your Lordſhips for the Debate among yourſelves, if there remains any Doubt with you. It ſeems, my noble Lord at the Bar has propoſed that his Counſel ſhould be heard: If the Counſel will ſtate the Point to be argued upon, your Lordſhips may here conſider, Whether it be ſuch a one as it is fit to hear Counſel to; then, no doubt, you will hear Counſel to it. This, I ſuppoſe, you will hear from them, or otherwiſe your Lordſhips will not think fit to give yourſelves the Trouble to go and debate that which is no ſettled Queſtion to be debated of.

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* *Sir* Edward Ward.

E. of *Rocheſter*. My Lords, I am afraid, of Neceſſity, you muſt adjourn to your own Houſe, for I find my Lords are here arguing one with another; ſome are of Opinion, That the Counſel ſhould ſtate the Queſtion, that they ſhould be heard upon; others of my Lords are of Opinion, That it is only a Matter of Fact, not a Matter of Law, upon which Counſel ſhould be heard; then it muſt be debated between your Lordſhips, which is not proper for to do here; therefore I would humbly move your Lordſhips, that you would adjourn to your own Houſe.

E. of *Peterborough*. I ſuppoſe your Lordſhips will be pleaſed to enquire of the Counſel, Whether they do inſiſt upon this Point.

L. H. St. My Lord *Warwick*, if your Lordſhip inſiſt that your Counſel ſhould be heard upon the Point which you have offered, it ſeems there is ſuch a Difference of Opinion among my Lords, that for the Debating of what ſhall be done in the Caſe, my Lords muſt adjourn; but if you do not inſiſt upon it, they will go in the ordinary Method, to conſider of the Evidence that has been given, after it is ſumm'd up on both Sides; for if you have no more Evidence to offer, you are to make your Obſervations upon the Evidence that has been given.

E. of *Warwick*. I ſubmit it, upon the whole Matter to your Lordſhips, Whether my Counſel can be heard, or not, to that Point; how far, I being of Mr. *Coote*'s Side, can be guilty of his Death.

L. H. St. That is a Matter of Fact which is not yet determin'd; and therefore the Queſtion which you ſuppoſe to ariſe upon it, is not yet ripe to be reſolved. If you have no other Witneſſes to produce, that which remains, for I think I may properly acquaint you with the Method of Proceeding, is, That you are now on your Part to ſum up the Evidence that has been given, which is your own Work, as not being allow'd Counſel as to Matter of Fact; you are at Liberty to make ſuch Obſervations as you may think for your Advantage upon the Evidence, and ſo to cloſe your Defence.

E. of *Warwick*. My Lord, I ſubmit it upon the whole Matter to your Lordſhips.

L. H. St. Mr. *Attorney General*, my Lord of *Warwick* ſubmits the Matter, as it has been prov'd, to their Lordſhips, without any ſumming up of the Evidence; you who are of the King's Counſel, if you think fit, will ſum up the Evidence on yours, in order to their Lordſhips Conſideration of it: This you know is the Time for doing it. Make Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, my Lord High Steward of *England*, his Grace, does ſtraitly charge and command all manner of Perſons here preſent, to keep Silence, upon Pain of Impriſonment.

L. H. St. Gentlemen, you that are of the King's Counſel, now is your Time to ſum up the Evidence for the King.

Then Mr. Sollicitor * *began to ſum up the Evidence, but his Voice was ſo low, that he could not be heard by the Lords that ſat at the upper End of the Houſe.*

D. of *Leeds*. My Lords, I think it of ſo great Importance to have a true State of the Fact and Evidence laid before us, and that we may hear what the King's Counſel do ſay at the Summing up of the Evidence, that if my Lords be of my Opinion, we ſhall be very defective to know what Judgment we give when we come to give Judgment, unleſs we are thoroughly apprized of the Matter of Fact and the Proofs. I confeſs I am going to move that, which is a Thing not according to the Orders of the Houſe, but much without the Rules of the Houſe, That the Counſel ſhould be heard in any other Place but where they are, at the Bar of the Houſe; this is contrary indeed, I acknowledge, to the Orders of the Houſe, and ſo my Motion is irregular; but yet, in order to our Satisfaction, that we may be enabled to hear what the King's Counſel do ſay to us, eſpecially in ſumming up the Evidence, I cannot but offer this to your Lordſhips; for we can no more hear the Counſel here, than if we were quite out of the Houſe: Whether, therefore, your Lordſhips will pleaſe to order, that any Perſon that has a ſtronger Voice ſhould ſum up the Evidence; or whether you will diſpenſe with the Orders of the Houſe ſo far, as that Mr. *Sollicitor* may come to the Clerk's Table, or ſome other Place within the Houſe, where he may be heard by all, I muſt ſubmit it to your Lordſhips. It would be a great Satisfaction for us to hear him, in order to our Judgment; but I acknowledge in this I do make an irregular Motion, as to the Orders that are uſually obſerved by your Lordſhips: But I know not how to help it, in regard, without hearing, it is impoſſible for us to form our Judgment.

E. of *Roch.* My Lords, I have a very great Reſpect for every Motion that that noble Lord who ſpoke laſt does make, and I am of his Opinion, That it will mightily tend to the Satisfaction of my Lords who are to give their Judgment in this Caſe, to hear both the Evidence and the Counſel, and what Obſervations are made on both Sides; and that it is a great Diſadvantage that the Counſel ſhould have ſo low a Voice, that all my Lords ſhould not be able to hear him; but yet I hope that may be remedied ſome other Way than what is propoſed by that noble Lord; for if what he deſires were done, it will be obvious, that in Point of Precedent many Inconveniences will occur upon breaking the Orders of the Houſe, to comply with a Motion which is acknowledged by the noble Lord himſelf to be irregular; for it would be impoſſible to hear any Body, if it be permitted to make ſuch a great Noiſe without; and it is that which renders the Difficulty of hearing the greater. If that were quieted, your Lordſhips might hear this Gentleman as well as thoſe of the other Counſel: Or, if this Gentleman's Voice will not ſo well reach your Hearing, then there are other Gentlemen of the King's Counſel that have ſtronger Voices; and if any of them would ſum up the Evidence, I believe it would be better heard, and conſequently better apprehended by your Lordſhips; for I had rather any Expedient ſhould be found out to comply with the Orders of the Houſe, and preſerve them, than that any irregular Thing ſhould be done for the breaking the Orders of the Houſe, upon any Account whatſoever.

L. H. St. Make another Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, my Lord High Steward of *England*, his Grace, does ſtraitly charge and command all manner of Perſons here preſent to keep Silence, upon Pain of Impriſonment.

E. of *Bridgewater*. Truly, my Lords, the Noiſe about the Court is ſo great, that we who ſit much nearer to the Bar, than the noble Lord who made the Motion for the Removal of the Counſel into another Place, cannot hear Mr. *Sollicitor* what he ſays; and therefore I think ſome of the Guard ſhould be ſent out to clear all the Paſſages about the Court, that there may be no Noiſe; for it is the Noiſe of the People without, that makes it ſo difficult to hear the King's Counſel.

L. H. St. Let ſome of the Guard without take care that there be not that Noiſe made; and whoſoever does make a Noiſe, let him be taken into Cuſtody.

[*Then another Proclamation was made for Silence; upon which there was a greater Quietneſs in the Hall.*]

L. H. St. Mr. *Sollicitor*, There is hopes now, ſince there is not ſo great Noiſe as there was, that you may be heard by my Lords: You muſt uſe the beſt Endeavours you can, that you may be heard.

E. of *Roch.* If that Gentleman cannot ſpeak out ſo well that he can be heard, thoſe of the King's Counſel that have better Voices, muſt ſum up the Evidence.

Mr. Sol. Gen. My Lord, I ſpeak as loud as I can.

E. of *Roch.* There are others of the King's Counſel, pray let them do it then; Mr. *Attorney*, he being nearer and within the Bar.

L. H. St. I know not whether Mr. *Attorney* be prepared for the ſumming up of the Evidence, becauſe he examined the Witneſſes, and the King's Counſel uſually allot to themſelves the particular Parts which they intend to take.

E. of *Roch.* Then let Mr. *Solicitor* go on.

Mr. Sol. Gen. I would ſhortly obſerve to your Lordſhips what Evidence hath been given to you on Behalf of the King in this Caſe, againſt that noble Lord, the Priſoner at the Bar, for the Offence for which he ſtands indicted. The firſt Witneſs that was produced was the Drawer at the *Greyhound* Tavern in the *Strand*, where this Quarrel, that was the Occaſion of the Death of this Perſon that was ſlain, happen'd; and he tells you, that that Night there was at his Maſter's Houſe my Lord of *Warwick*, my Lord *Mohun*, Capt. *French*, Capt. *Coote* the Perſon that was kill'd, and Mr. *Dockwra*; and after they had been there ſome time, that other Perſon, that was the Sixth concerned in the Scuffle, Mr. *James*, was ſent for, and he came in when it was pretty late; there they continued till One or Two a-Clock, and then they came down to the Bar, and Orders was given for to call Coaches; but it being ſo late, and *Sunday* Morning, they could not find Coaches, and then there was Orders for the getting of Chairs; when ſome Chairs were brought, Mr. *Coote* and Mr. *French* went into two of the Chairs, but my Lord *Mohun* interpoſed, and ſaid there ſhould be nothing done that Night, and that if they went away he would call for a File of Muſqueteers from the Guard, and ſecure them; and thereupon they came out of the Chairs, and went into the Houſe, and there was the Noiſe of Swords claſhing heard at the Bar; Captain *Coote* ſaid he would laugh when he pleas'd, and frown when he pleas'd, and they parted; three were on one Side, and three on the other of the Bar; my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, were on one Side; Captain *French*, Captain *James*, and Mr. *Dockwra*, were on the other Side. Indeed he ſays my Lord *Mohun* and my Lord of *Warwick* did what they could to pacify them, and threaten'd to ſend for the Guards; but away they went. The next Witneſs was *Thomas Browne*, and he was the Chairman that carried Mr. *Coote*, and he ſays, that there was an Endeavour by my Lord of *Warwick* and my Lord *Mohun* to put off the Buſineſs at that Time, and that they did what they could to have put it off, and that even after they were in their Chairs, when they were turned up St. *Martin*'s-*lane*, there they ſtopp'd at the back Door of the *Croſs-Keys* Tavern, and that while they ſtood there with their three Chairs, three other Chairs came by, and then Captain *Coote* bid them put up, and follow after thoſe Chairs as faſt as they could to *Leiceſter-Fields*.

The next Witneſs is *William Crippes*, who was the other Chairman that carried Captain *Coote*, and he gives your Lordſhips much the ſame Account that *Browne* gave before, and his Evidence was juſt to the ſame Purpoſe, That my Lord of *Warwick* and my Lord *Mohun* endeavoured to pacify the Matter, and that there ſhould be an End of the Buſineſs for that Night, and let it alone till another Time; and that my Lord *Mohun* threaten'd to ſend for the Guards, and ſecure them, and would have had them gone home, that is, Mr. *Coote* either with him to his Lodging, or he would go to Mr. *Coote*'s; but he could not prevail. Then my Lord *Mohun* ſaid, If he would go on, his Lordſhip would go and ſee an End of the Buſineſs.

The next Witneſs was one *Crattle*, who was one of the Chairmen that carried my Lord of *Warwick*, and he ſays, That my Lord *Mohun* and my Lord of *Warwick* did endeavour what they could to put off the Matter till the next Morning, but that they could not prevail; that afterwards, when he carried my Lord from *Leiceſter-Fields* to the *Bagnio*, my Lord borrowed a Handkerchief of him to wrap his Hand in, for he ſaid he was wounded, but by whom that Wound was given does not appear, nor how he came by that Wound, any otherwiſe than as his Lordſhip himſelf ſays, that it was given him by Mr. *James*.

The next was the other Chairman that carried my Lord of *Warwick*, which was *John Gibſon*, and his Teſtimony need not be repeated, becauſe it did not differ from the others. The next Witneſs was *Robert Applegate*, who was the Chairman that carried my Lord *Mohun*; and he ſays, that there was an Endeavour uſed by my Lord upon his ſetting down in St. *Martin*'s-*lane*, to quiet Captain *Coote*, and prevent any Quarrel at that Time; but he ſays, when they would go on, my Lord *Mohun* ſaid, he would go and ſee the End of it; and thereupon they went on towards *Leiceſter-fields* to the End of *Green-ſtreet*, which is at the lower End of the Square.

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* *Sir* John Hawles.

The next Witneſs was *Palmer*, who was one of the Chairmen that carried Mr. *French* to the *Bagnio* in *Long-Acre*; and he tells your Lordſhips what happen'd upon his carrying him thither; how, immediately after his coming there, my Lord of *Warwick* came thither, and they knocked at the Door at the ſame time, and that Captain *French* was very much wounded, and they went into the Houſe together, and that *French* would have had them pull off his Cloaths to ſee his Wounds, for he believed he was a dead Man.

The next Witneſs was the Chairman which carried Mr. *James*, and he only tells your Lordſhips, that he carried a Gentleman into *Leiceſter-fields*; that my Lord *Mohun* endeavoured to put off the Buſineſs for that Night; but who the Perſon was that he carried he cannot ſo well tell, nor give an Account of; but when he had ſet him down at the further End of the Square, there he left him, and he knows no further.

Then there was the Surgeon at the *Bagnio* in *Long-Acre*, who gives your Lordſhips an Account, that about Two of the Clock in the Morning on the *Sunday*, my Lord of *Warwick* and Captain *French* came in there; Captain *French* was wounded in the Body, and my Lord *Warwick* was wounded in the Hand, and my Lord *Warwick* did take extraordinary Care of Captain *French*, and would not have the Door open'd to any Body, nor his Lordſhip known to be there; that afterwards Captain *James* and Mr. *Dockwra* came to the Door, and my Lord came to the Door himſelf, and when he ſaw who they were, he order'd them to be let in; and that there was a Diſcourſe about going into the Country, and that there was a Fear that *Coote* was kill'd. This is the Effect of the Teſtimony both of the Surgeon and his Servants; and it is to be obſerved, that when Captain *French* came in, his Sword was not bloody, but my Lord of *Warwick*'s Sword was bloody almoſt all over, and that was taken notice of the next Day; and there are ſeveral Witneſſes, both Men and Women of that Houſe, that give your Lordſhips an Account much to the ſame purpoſe. Then there was Captain *Duckinfield*, who ſays, that my Lord of *Warwick* came to his Lodgings, and they went in a Coach together to the Tavern in *Cornhill*, and then there was a Diſcourſe of going into the Country, and my Lord ſaid that he was afraid his Friend *Coote* was kill'd; but that they had no abſolute News of his being kill'd at that Time; for it ſhould ſeem my Lord of *Warwick* forſook the Field as ſoon as the fatal Stroke was given, which, by whom it was given, is left to your Lordſhips Conſideration. Indeed it is pretended by my Lord, that the Wound that he had in his Hand was given him by Mr. *James*; but nothing of that is made apparent to your Lordſhips upon the Proofs.

Then we came to give your Lordſhips an Account of the Nature of the Wounds that Mr. *Coote* had in his Body; and for that we produced both the Surgeon that did probe the Wounds by the Order of the Coroner, and the Coroner himſelf. Indeed we could not get a poſitive Anſwer from either the Surgeon or the Coroner, whether the Wounds were given by one and the ſame Sword, or by different Swords; but then your Lordſhips have the Teſtimony of Mr. *Turner*, who was Captain *Coote*'s Servant, and who knows his Maſter's Sword, and it hath been ſhewn to him, and he ſays, that is his Maſter's Sword that he went out with; and it can be eaſily judged whether he could give himſelf thoſe Wounds by that Sword.

And your Lordſhips have likewiſe had brought before you another Sword, which was left at the *Bagnio* in *Long-Acre*, that was Captain *French*'s, that had no Blood at all upon it; but my Lord of *Warwick*'s, it ſeems by all the Evidence, had a great deal of Blood upon it.

Then came the Witneſſes for the Priſoner at the Bar, this noble Lord, my Lord *Warwick*; and the Sum of the Teſtimonies that they have given, is of a great deal of Kindneſs between my Lord *Warwick* and Captain *Coote*; that my Lord lent him a hundred Guineas to purchaſe his Commiſſion in the Guards, when he had but three of four hundred Guineas which was neceſſary to make the Purchaſe; and there are ſeveral of them that do teſtify, that they always look'd upon Captain *Coote* and my Lord of *Warwick* to be very good Friends, and that there never was any Quarrel between them; and that is the Sum of what the Evidence on that Side did teſtify. And this, my Lords, I take to be the Sum of the Evidence that has been given on either Side; and when I have laid it thus before your Lordſhips, I muſt ſubmit it to your Lordſhips Judgment, what Opinion you will be of upon the whole Matter; only there is this one Obſervation that I would make to your Lordſhips upon this Evidence, That there is not one Witneſs that has given you an Account ſatisfactory, by whoſe Hand theſe Wounds were given to Mr. *Coote*; and therefore, tho' it is apparent my Lord of *Warwick* was in the Place where the mortal Wound was given, yet by whoſe Hand it was given is not yet known; until that can be known, every Perſon that was there muſt remain under the Imputation of the ſame Guilt, as having a Hand, and contributing to his Death; it is certain, and cannot be denied, that this noble Lord, my Lord at the Bar, was in the Field, wherein there was actual Fighting; for he does not deny it himſelf, but ſays, that he was engaged particularly with Captain *James*, when Captain *Coote* was engaged with Capt. *French*, between whom, as it is alledged, the Quarrel was; but that is no Way, in Point of Fact, made appear to your Lordſhips; and their being ſuch Suſpicions and Circumſtances of the Blood upon my Lord of *Warwick*'s Sword, and the great Concern that he was in when he came to the *Bagnio*, and deſiring to be concealed, and that nobody ſhould know that he was there, and the Care he took of Mr. *French*, who is the pretended Perſon that did the Fact, is that which is to be ſubmitted to your Lordſhips; and it is to be obſerved, that Mr. *French*'s Sword was not bloody, but only dirty; but my Lord of *Warwick*'s Sword was very bloody from the Hilt to the Point, and he was in a great Conſternation when he came into the Houſe.

There is likewiſe a Circumſtance which your Lordſhips will pleaſe to obſerve, that even Mr. *Coote*'s Sword was brought into the Houſe by ſome of the Company that were there; and whatſoever this noble Lord pretends of his Friendſhip to Mr. *Coote*, yet, it ſeems by his Care that he took of Captain *French*, he had as much Friendſhip for him.

There is another Circumſtance that has been teſtified, which it will be fit for your Lordſhips to take into Conſideration, and make ſome Obſervation of; that is, the Nature of the Wound: It ſeems, he had two Wounds, one on the left Side of the Breaſt, near the Collar Bone, and that was downward; and yet his Man, that was here produced as a Witneſs, does teſtify, that he was one that uſed his right Hand, and then it is a Wonder that he ſhould receive ſuch a Sort of a Wound in that Part; and the other Wound was on the left Side too, but it was upward; and how that could be given to one that was a Right-handed Man, is certainly a very great Wonder; and the Wounds being both given upon the ſame Side, it cannot but be concluded, that they were given by one and the ſame Sword.

Another Circumſtance which relates to my Lord of *Warwick* is, that when he came into the *Bagnio*, after the Fact was over, he would have himſelf denied to be there, and went to the Door when *James* and *Dockwra* came in; and his declaring his Deſire of going into the Country; theſe, we ſay, are Circumſtances that do induce a Doubt, That my Lord of *Warwick* had a Concern upon him of great Guilt of having a Hand in this Man's Death: It is indeed pretended by my Lord of *Warwick*, That Mr. *Coote* was a Perſon that my Lord of *Warwick* had a Kindneſs for; but it is plain by the Evidence, that he left him dead in the Field, and did not take any Care of him, but took a great deal of Care of Captain *French*, who, it is pretended, was the Perſon that fought with *Coote*, when he came to the *Bagnio*; and there is nothing of Kindneſs at this Time pretended, nor any Thing of a Defence to this Matter offer'd by my Lord of *Warwick*, but only what the Chairmen ſay, that he endeavoured to put it off to another Time. Theſe, my Lords, are all the Obſervations that I ſhall make upon the Evidence in this Caſe; how far this Evidence, upon Conſideration, will weigh with your Lordſhips, I muſt ſubmit it to you. If my Lord of *Warwick* did do the Fact, as theſe Circumſtances, we think, may incline your Lordſhips to believe he did, it will ſurely be Murder; but how far the Evidence comes up to the Proof of that, we muſt humbly ſubmit to your Lordſhips, who are the Judges of it; and we leave it entirely to your Conſideration upon what you have heard.

L. H. St. Then it ſeems you have done on all Sides.

Counſel. Yes, my Lords.

Lords. Then adjourn, adjourn.

L. H. St. Is it your Lordſhips Pleaſure to adjourn into the Houſe of Lords?-----*Lords.* Ay, ay.

L. H. St. This Houſe is adjourned into the Houſe of Lords.

Then the Lords went back to their own Houſe in the ſame Order they came into the Court in Weſtminſter-hall, *and debated the Matter among themſelves, what Judgment to give upon the Evidence that had been heard; and in about Two Hours Time they returned again into the Court, erected upon a Scaffold in* Weſtminſter-hall; *and after they were ſeated in their Places, the Lord High Steward being ſeated in his Chair before the Throne, ſpoke to the Lords thus:*

L. H. St. Will your Lordſhips proceed to give your Judgment?

Lords. Ay, ay.

L. H. St. Your Lordſhips will give me leave, as I aſk your Lordſhips your ſeveral Opinions, to take ſo much Time as to write down the Opinion of every Lord.-----*Lords.* Ay, ay.

Then the Lord High Steward *aſked this Queſtion of every one of the Lords there preſent, beginning with the Puiſne Baron, which was the Lord* Bernard.

L. H. St. My Lord *Bernard*, Is *Edward* Earl of *Warwick* guilty of the Felony and Murder whereof he ſtands indicted, or not guilty?

The Lord Bernard *ſtood up in his Place uncovered, and laying his Right Hand upon his Breaſt, pronounced his Judgment thus:*

L. *Bernard.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

The ſame Queſtion was aſked ſeverally of all the Lords, who in the ſame Form delivered their Opinions, as followeth:

L. *Haverſham.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Herbert* of *Cherbury.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Weſton.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Aſhburnham.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Cholmondeley.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Jefferys.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Godolphin.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Guilford.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Oſulſtone.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Osborne.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Craven.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Cornwallis.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Granville.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Berkley.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Lexington.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.-----L. *Rockingham.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Lucas.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.----L. *Culpeper.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Vaughan.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.-----L. *Byron.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Jermyn.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.-----L. *Leigh.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Raby.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.------L. *Howard* of *Eſcrick.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Lovelace.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.-----L. *Hunſdon.* Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *North and Gray*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Wharton*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Eure*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Willoughby of Parham*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Dudley*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Ferrers*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Willoughby of Ereſby*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Audley*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. *Abergavenny*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. H. Steward. My Lord Viſcount *Lonſdale*, Is *Edward* Earl of *Warwick* guilty, &c.

L. Viſcount *Lonſdale*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. Viſcount *Longueville*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. Viſcount *Townſhend*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. H. St. The Earl of *Grantham*, Is *Edward* Earl of *Warwick* guilty, &c.

E. of *Grantham*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Albemarle*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Tankerville*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Warrington*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Scarborough*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Torrington*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Marlborough*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Montagu*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Portland*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Rocheſter*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Nottingham*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Yarmouth*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Macclesfield*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Radnor*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Feverſham*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Burlington*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Carliſle*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Bath*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Angleſea*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Eſſex*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Scarſdale*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Thanet*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Cheſterfield*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Carnarvan*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Kingſton*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Winchelſea*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Stamford*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Peterborough*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. *Rivers*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Mancheſter*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Denbigh*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Leiceſter*. Not guilty of Murder, but guilty of Manſlaughter upon my Honour.

E. of *Bridgewater*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Dorſet and Middleſex*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Suffolk*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Huntingdon*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Derby*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Kent*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of *Oxford*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. H. Stew. My Lord Great Chamberlain, Is *Edward* Earl of *Warwick* guilty, &c.

E. of *Lindſey*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. H. Stew. My Lord Marquiſs of *Normanby*, Is *Edward* Earl of *Warwick* guilty, &c.

Lord Marquiſs of *Normanby*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

Lord Marquiſs of *Hallifax*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. H. Stew. My Lord Duke of *Newcaſtle*, Is *Edward* Earl of *Warwick* guilty, &c.

D. of *Newcaſtle*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *Scomberg*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *St. Albans*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *Northumberland*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *Ormonde*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *Southampton*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *Richmond*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *Somerſet*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *Devonſhire*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. H. Stew. My Lord Preſident, Is *Edward* Earl of *Warwick* guilty, &c.

D. of *Leeds*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. H. Stew. My Judgment is, That my Lord of *Warwick* is not guilty of the Murder, but is guilty of Manſlaughter, upon my Honour.

Then the Lord High Steward reckoned up the Number of the Peers that were then preſent, and the Opinions that were given, and afterwards acquainted their Lordſhips with the Reſolutions that they came to, in this Manner:

L. H. St. My Lords, your Lordſhips are Ninety-three in Number here preſent, and you have all acquitted my Lord of *Warwick* of the Murder whereof he ſtands indicted, but you are of Opinion that he is guilty of Manſlaughter: Is it your Pleaſure that he ſhould be called to the Bar, and acquainted with your Lordſhips Judgment?----------*Lords*. Ay, ay.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes! Chief Governor of the *Tower* of *London*, bring forth the Body of your Priſoner, *Edward* Earl of *Warwick*, forthwith, upon Pain and Peril will fall thereon.

Then the Earl of Warwick *was brought to the Bar.*

L. H. St. My Lord of *Warwick*, your Lordſhip has been arraigned upon an Indictment for the killing Mr. *Coote*; you have pleaded Not Guilty, and put yourſelf upon your Trial by your Peers here preſent; my Lords have heard the Evidence given both againſt you and for you, and have conſidered of it, and are come to a Reſolution; and their Judgment is, That your Lordſhip is not guilty of the Murder whereof you ſtand indicted, but that you are guilty of Manſlaughter. What has your Lordſhip to ſay, why Judgment of Death ſhould not be pronounced againſt you according to the Law?

Earl of *Warwick*. My Lords, I deſire that the Benefit of my Peerage may be allowed me, according to the Statute of *Edward* the Sixth.

L. H. St. My Lord, your Lordſhip has demanded the Benefit of your Peerage upon the Statute of *Edward* the Sixth, and you muſt have it by Law; but I am directed by their Lordſhips to acquaint you, That you cannot have the Benefit of that Statute twice; therefore I am likewiſe directed by their Lordſhips to ſay, That they hope you will take a more than ordinary Care of your Behaviour for the future, that ſo you may never hereafter fall into ſuch unfortunate Circumſtances as you have been now under; my Lords hope this will be ſo ſenſible a Warning, that nothing of this Kind will ever happen to you again; your Lordſhip is now to be diſcharged.

L. H. St. Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?---------*Lords*. Ay, ay.

L. H. St. This Houſe is adjourned to the Houſe of Lords.

Then the Lords went in Proceſſion, in the ſame Order that they came into the Court.

CLXV. *The Trial of* Charles *Lord* Mohun, *before the Houſe of* Lords, *for the* Murder *of* Richard Coote, *Eſq.* March 29, 1699. 11 Will. III.

ABout One of the Clock the Lords came in the ſame Order as, the Day before, to the Trial of the Earl of *Warwick*, into the Court erected in *Weſtminſter-Hall*.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes! My Lord High Steward, his Grace, does ſtrictly charge and command all manner of Perſons here preſent to keep Silence, upon Pain of Impriſonment.

Serj. at Arms. O Yes, O Yes, O Yes! All manner of Perſons who are obliged to give their Attendance here this Day, before his Grace my Lord High Steward of *England*, let them give their Attendance forthwith.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes! His Grace my Lor dHigh Steward of *England* does ſtraitly charge and command all manner of Perſons here preſent to be uncovered.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes! Chief Governor of the *Tower* of *London*, bring fort hthe Body of your Priſoner *Charles* Lord *Mohun* forthwith, upon Pain and Peril will fall thereon.

[*Then my Lord* Mohun *was brought to the Bar.*]

*L. High Steward**. My Lord *Mohun*, your Lordſhip is now brought upon your Trial for the Murder of Mr. *Coote*, for which you ſtand indicted by the Grand Jury for the County of *Middleſex*. The King, who knows that Juſtice is one of the Pillars which ſupports a Throne, will have a ſtrict Account taken of the Blood of any of his Subjects, without reſpect to the Quality of the Slain, or of the Perſon who ſtands charged with his Death. There is not one of the noble Peers here preſent, who are to be your Triers, but does heartily wiſh your Lordſhip innocent; but, on the other ſide, if you ſhould appear to be guilty upon the Evidence, you ought not to hope that any Conſideration of Relation, Friendſhip, or Pity, will prevail againſt Juſtice. And therefore, ſince in your preſent Condition every Thing that is valuable in this World is at ſtake, it will be highly neceſſary for your Lordſhip to recollect yourſelf, and to have your beſt Thoughts about you. Facts of this Nature are frequently attended with ſuch unhappy Circumſtances, that a noble Perſon may be juſtly covered with Shame to have Faults and Weakneſſes expoſed to ſuch an Aſſembly as this, although he be not conſcious to himſelf of the Guilt of Blood: But your Lordſhip ought not to be ſo far diſcompoſed with any Thoughts of this Kind, as to neglect your Defence againſt this heavy Accuſation of Murder. In order to this, it is neceſſary for your Lordſhip to hear with Temper what will be ſaid againſt you, and by no means to interrupt the Counſel or Witneſſes. I will take care to give your Lordſhip notice when the proper Time comes for you to make your Obſervations upon the Evidence, to examine your Witneſſes, and to ſay what you think proper for your own Defence; and when my Lords have heard, and fully and maturely conſidered the whole Matter, their Lordſhips will give ſuch a Judgment as the Law and Juſtice require.

* *Lord* Somers.

L. H. St. Read the Indictment to my Lord.

Clerk of the Crown. ‘ CHarles Lord *Mohun*, your Lordſhip ſtands indicted in
‘ the County of *Middleſex*, by the Name of *Charles* Lord
‘ *Mohun* of *Okehampton* in the County of *Devon*, late of the Pariſh of St.
‘ *Martin's in the Fields* in the County of *Middleſex*, together with *Edward*
‘ Earl of *Warwick* and *Holland*, late of the ſame Pariſh and County,
‘ *Richard French*, late of the ſame Pariſh and County, Gent. *Roger James*,
‘ late of the ſame Pariſh and County, Gent. and *George Dockwra*, late of
‘ the ſame Pariſh and County, Gent. not having the fear of God before
‘ your Eyes, but being moved and ſeduced by the Inſtigation of the Devil,
‘ the 30th Day of *October*, in the tenth Year of the Reign of our Sovereign Lord
‘ that now is, *William* the Third, by the Grace of God of *England*, *Scotland*,
‘ *France*, and *Ireland* King, Defender of the Faith, &c. with Force and
‘ Arms, &c. at the Pariſh aforeſaid, in the County of *Middleſex* aforeſaid,
‘ in and upon one *Richard Coote*, Eſq. in the Peace of God, and our ſaid
‘ Sovereign Lord the King, that now is, then and there being, Feloni-
‘ ouſly, Wilfully, and of your Malice afore-thought did make an Aſſault;
‘ and that the aforeſaid *Edward* Earl of *Warwick* and *Holland*, with a cer-
‘ tain Sword made of Iron and Steel, of the Value of five Shillings, which
‘ he the ſaid *Edward* Earl of *Warwick* and *Holland* in his right Hand then
‘ and there had and held drawn, the aforeſaid *Richard Coote*, in and upon
‘ the left Part of the Breaſt of him the ſaid *Richard Coote*, near the Collar-
‘ Bone of him the ſaid *Richard Coote*, then and there Feloniouſly, Volun-
‘ tarily, and of his Malice afore-thought, did Strike, Stab, and Thruſt in,
‘ giving to the ſaid *Richard Coote*, then and there with the Sword drawn
‘ aforeſaid, in and upon the left Part of the Breaſt of him the ſaid *Richard*
‘ *Coote*, near the Collar-Bone of him the ſaid *Richard Coote*, one mortal
‘ Wound of the Breadth of half an Inch, and of the Depth of five Inches,
‘ of which ſaid mortal Wound he the aforeſaid *Richard Coote* then and there
‘ inſtantly died: And that you the ſaid Lord *Mohun*, together with the
‘ ſaid *Richard French*, *Roger James*, and *George Dockwra*, then and there
‘ Feloniouſly, Wilfully, and of your Malice afore-thought, were preſent,
‘ aiding, abetting, comforting, aſſiſting, and maintaining the ſaid *Ed-*
‘ *ward* Earl of *Warwick* and *Holland*, the ſaid *Richard Coote*, in Manner
‘ and Form aforeſaid, Feloniouſly, Wilfully, and of his Malice afore-
‘ thought, to kill and murder; and ſo the ſaid *Edward* Earl of *Warwick*
‘ and *Holland*, and you the ſaid *Charles* Lord *Mohun*, *Richard French*,
‘ *Roger James*, and *George Dockwra*, the aforeſaid *Richard Coote*, in Man-
‘ ner and Form aforeſaid, Feloniouſly, Wilfully, and of your Malice afore-
‘ thought, did kill and murder, againſt the Peace of our Sovereign Lord
‘ the King, that now is, his Crown and Dignity.’

Cl. of the Crown. How ſay you, *Charles* Lord *Mohun*, are you guilty of this Felony and Murder, whereof you ſtand indicted, or not guilty?

Lord *Mohun*. Not guilty.

Cl. of the Crown. Culprit, How will you be tried?

Lord *Mohun*. By God and my Peers.

Cl. of the Crown. God ſend your Lordſhip good Deliverance.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes! All manner of Perſons that will give Evidence on behalf of our Sovereign Lord the King, againſt *Charles* Lord *Mohun*, the Priſoner at the Bar, let them come forth and give their Evidence; for now he ſtands at the Bar for his Deliverance.

Lord *Mohun*. My Lords, I deſire I may have the Benefit of Pen, Ink, and Paper.

L. H. St. Your Lordſhips are pleaſed to permit my Lord *Mohun* to have Pen, Ink and Paper?

Lords. Ay, ay.

[*Pen, Ink, and Paper were carried to my Lord, by one of the Clerks of the Houſe.*]

Mr. *Cowper*. May it pleaſe your Lordſhips, my Lord *Mohun*, the Priſoner at the Bar, ſtands indicted by the Grand Jury of the County of *Middleſex*, before Commiſſioners of *Oyer* and *Terminer* in that County; and the Indictment ſets forth, That *Edward* Earl of *Warwick* and *Holland*, *Charles* Lord *Mohun*, Baron *Mohun* of *Okehampton* in the County of *Devon*, *Richard French*, *Roger James* and *George Dockwra*, the 30th of *October*, in the Tenth Year of his Majeſty's Reign, with Force and Arms, at the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, upon one *Richard Coote*, Eſq; Feloniouſly, Wilfully, and of their Malice afore-thought, did make an Aſſault; and that the ſaid *Edward* Earl of *Warwick* and *Holland*, with a drawn Sword then in his right Hand, the ſaid *Richard Coote*, upon the left Part of his Breaſt near the Collar-Bone, did Strike, Stab, and Thruſt, giving him thereby a mortal Wound of the Breadth of half an Inch, and the Depth of five Inches, of which Wound he inſtantly died; That my Lord *Mohun*, Mr. *French*, Mr. *James* and Mr. *Dockwra*, Feloniouſly, Wilfully, and of their Malice afore-thought, were preſent, aiding, and abetting my Lord of *Warwick* and *Holland*, the ſaid *Richard Coote*, in manner aforeſaid, to Kill and Murder: and then concludes, ſo that the Earl of *Warwick* and *Holland*, the ſaid Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, the ſaid *Richard Coote*, in Manner and Form aforeſaid, Feloniouſly, Wilfully, and of their Malice afore-thought, did kill and murder, againſt the Peace of the King, his Crown and Dignity. To this Indictment my Lord *Mohun* has pleaded not guilty, and for his Trial has put himſelf upon God and your Lordſhips, his Peers. We ſhall call our Witneſſes, and produce what Evidence we have to give to prove my Lord *Mohun* guilty, and to ſubmit it to you.

Mr. *Att. Gen.** My Lords, This noble Lord, my Lord *Mohun*, the Priſoner at the Bar, ſtands indicted for the Death of Mr. *Coote*, one of the King's Subjects, as your Lordſhips have heard in the Caſe that was before you Yeſterday; to which Indictment he hath pleaded not guilty, and for his Trial has put himſelf upon my Lords, who are his Peers; I ſhall very ſhortly open the Subſtance of the Evidence that we ſhall offer for the King againſt my Lord, the Priſoner at the Bar; we ſhall produce Evidence to prove, That at the Time laid in the Indictment, the 29th of *October* at Night, and the next Morning, which was *Sunday*, my Lord the Priſoner at the Bar, and my Lord of *Warwick*, (who has been found guilty of Manſlaughter upon this Indictment before your Lordſhips) and thoſe other Perſons that are named in the Indictment, Captain *French*, Captain *James*, and Mr. *Dockwra*, and the Gentleman that was killed, happened to be at the *Greyhound* Tavern in the *Strand*, which was then kept by Mr. *Locket*, and continued there a great Part of the Night, indeed till the next Morning, about One or Two of the Clock in the Morning; there was my Lord of *Warwick*, my Lord *Mohun*, Captain *French*, Captain *Coote*, and Mr. *Dockwra*; but very late in the Night the other Gentleman, Mr. *James*, was ſent for: A Meſſenger was ſent particularly to have him come to them; there they continued drinking till about One or Two of the Clock in the Morning, then Coaches were ſent for; then the Drawer of the Houſe will acquaint your Lordſhips, that he went for them, and could not get any at that Time, being a very dark Night; and when there could be no Coaches had, then there were Chairs called for, and the Drawer went to call Chairs; and as we ſhall make it appear to your Lordſhips, when the Drawer came back, there did appear to be a Quarrel among them, for there was claſhing of Swords, and they ſeem'd to be divided into two Parties; on the one Side were my Lord of *Warwick*, my Lord *Mohun* the Priſoner at the Bar, and Mr. *Coote*; On the other Side were Captain *French*, Captain *James*, and Mr. *Dockwra*; and firſt there were two Chairs came to the Door, into which Mr. *French* and Mr. *Coote* went, and when they were in the Chairs my Lord *Mohun* came out, and ſaid he would kill any of the Chairmen that went away; and ſo they put up again, and the Gentlemen came out, and came into the Houſe; but afterwards Mr. *Coote* went into the firſt Chair, and my Lord of *Warwick* into the next, and my Lord *Mohun* into the third, and then they went away; and the other three Gentlemen went into the other three Chairs, and followed them. Your Lordſhips will hear whither they were all carried. When they came to the End of St. *Martin*'s-*lane* in the *Strand*, my Lord *Mohun* would indeed have endeavoured to have perſuaded Mr. *Coote* in particular to have gone home for that Night, and let the Buſineſs alone till another Time; but Mr. *Coote* would go on; and while the three Chairs carried my Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote* to St. *Martin*'s-*lane* End, which were the three firſt Chairs that went away from *Locket*'s, the other three Chairs that went after them overtook them, and then by Mr. *Coote*'s Command, the Chairmen that carried him went forward towards *Leiceſter-fields*; and then this noble Lord, my Lord *Mohun*, did ſay, If you go on, I will go and ſee the End of it, and ordered the Chairman that carried him to go after thoſe Chairs in which my Lord of *Warwick* and Mr. *Coote* went; and accordingly they did go till they came to the hither End of the Square in *Leiceſter-fields*, near *Green-ſtreet* End, where my Lord *Mohun* got out of his Chair, and paid for all the three Chairs three Shillings. But we ſhall not be able to give to your Lordſhips an Account particularly as to my Lord *Mohun*, what he did afterwards, but we ſhall call our Witneſſes to prove what we have opened; and when our Witneſſes are heard, we ſhall leave the Matter to your Lordſhips Judgment.

* *Sir* Thomas Trevor.

[Samuel Cawthorne, *which was the Drawer at the Tavern at* Locket's, *was ſworn, and gave his Evidence to the ſame Effect that he did the Day before.*]

Mr. *Att. Gen.* Pray, Will you acquaint my Lords, Who were at your Houſe the 29th and 30th of *October* laſt, *Saturday* Night and *Sunday* Morning?

Cawthorne. There were my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coote*, Capt. *French*, Mr. *Dockwra*, and Mr. *James*.

Mr. *Att. Gen.* How long did they continue there?

Cawthorne. Till between One and Two of the Clock in the Morning.

Mr. *Att. Gen.* Pray, Will you acquaint my Lords what happened at your Maſter's Houſe at that Time; you remember what Evidence you gave Yeſterday; tell the whole Matter again, becauſe it relates to another noble Lord that is now at the Bar.

Cawthorne. The Reckoning was called for about that Time, and I went up and took the Reckoning, and all the Gentlemen came down to the Bar, and Coaches were ſent for; I went for them, but no Coaches could be had: Then Chairs were ſent for, and I called for Chairs, and there came two Chairs to the Door, and into thoſe two Chairs went Captain *Coote* and Captain *French*; and my Lord *Mohun* and my Lord of *Warwick* endeavoured to quiet them, and to put off the Buſineſs till another Day, and thereupon they came out of the Chairs, and came into the Houſe again; My Lord *Mohun* did deſire there might be no Quarrel, and would have Mr. *Coote* go home with him to his Lodgings at *Weſtminſter*, or he would go with Mr *Coote*, and ſaid there ſhould be no Quarrel that Night: There were then three of them on one Side of the Bar, and three of the other Side, and their Swords were all drawn. My Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coote*, were of one Side, and Capt. *French*, Capt. *James*, and Mr. *Dockwra*, were of the other Side: I was without the Houſe when the Swords were firſt drawn; but I heard my Lord *Mohun* ſay, I have got a cut Finger by endeavouring to part them; and at firſt when the Chairs came on, my Lord *Mohun* ſaid, if they did quarrel, he would ſend to the Guards for a File of Muſqueteers, and ſecure them; ſo that he did what he could to prevent any Quarrel at all; and when he had received the Wound in his Hand, I helped him to a Napkin to wrap his Hand in, upon the bleeding of it: Then my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, went away in three Chairs, and my Lord *Mohun* gave Order to go down to *Weſtminſter*; and there were three Chairs called for by the other three Perſons; two did come, and Captain *French* and Captain *James* went into them; and the 6th not being come, they ſtayed till it did come, and then they three went away too; the Chairs were all ordered to go home with them; My Lord of *Warwick* and my Lord *Mohun* gave Order to their Chairs to keep cloſe with Mr. *Coote*; and the other three Chairs immediately followed.

Mr. Att. Gen. Pray, will you conſider, and recollect with yourſelf, Was Mr. *James* there at firſt?

Cawthorne. No, I was ſent for him about Ten a-Clock at Night, and there he continued with them till they went all away in the ſix Chairs, and he was almoſt fuddled when he came in.

Mr. Att. Gen. When *James* came in, was his Sword drawn?

Cawthorne. His Sword was in the Scabbard, but the Scabbard was broken, and he took and broke his Sword ſtamping upon it.

Mr. Att. Gen. Pray, can you tell, you being up and down in the Room, what was the Occaſion of the Quarrel?

Cawthorne. Indeed I can't tell; but ſome Words paſt when they were below Stairs by the Bar from Captain *Coote*, That he would laugh when he pleaſed, and frown when he pleaſed; and Mr. *Dockwra* did ſay, that they would fight them whenever they pleaſed when they went away; but I did not obſerve that there was any Quarrel between them while they were above, nor any Swords drawn till after I came from calling the Chairs.

Mr. Att. Gen. Were all the Swords drawn at once?

Cawthorne. They were all drawn when I came in from calling for the Coaches and the Chairs, and three were within the Bar, and three were without; They were putting up their Swords when I came in again; Indeed I do not know any Thing of the Quarrel.

L. H. St. My Lord *Mohun*, Will you aſk this Witneſs any Queſtions?

L. *Mohun.* Indeed, I think I need not aſk him any Queſtion; but yet, if your Lordſhips pleaſe, I would aſk him this, Whether directly or indirectly I was any ways concerned in the Quarrel? Or, Whether I did not endeavour all that ever I could to quiet them?

Cawthorne. Yes, indeed, my Lord *Mohun* did endeavour all that ever he could to prevent any Quarrel at that Time.

L. *Mohun.* Did I ſay any Thing tending to the promoting of a Quarrel or Fighting among them?

Cawthorne. No; my Lord *Mohun* did not promote any Thing of the Quarrel between them, but he did ſay two or three times, that he would ſend for the Guards to ſecure them, and keep them from fighting, both at the Door of the Houſe, and at the Bar, and aſk'd for a Napkin to wrap up his Hand in, for the Wound which he ſaid he got in endeavouring to quiet and part them, and prevent their fighting.

L. *Mohun.* That is all that I would aſk him, whether I did not endeavour all that I could to prevent any quarrelling or fighting at that Time?—*Cawthorne.* Yes, indeed, my Lord did ſo.

L. H. St. He has ſaid ſo already, my Lord, and therefore there does not need any further Examination of him to that Point: If both Sides have done with this Witneſs, let him go down. (*Which he did.*)

L. H. St. Then, Mr. *Attorney*, Who is your next Witneſs?

Mr. Att. Gen. Our next Witneſs is *Thomas Browne*, who was one of the Chairmen that carried Mr. *Coote* into *Leiceſter-fields*.

(*Then he was ſworn.*)

L. H. St. What is the Queſtion you would aſk him, Mr. *Attorney*?

Mr. Att. Gen. My Lords, I deſire he may be aſk'd and examin'd, and acquaint your Lordſhips, who it was that he carried from *Locket*'s the 29th of *October* laſt to *Leiceſter-fields*, and what Time it was of the Night?

Browne. I carried Mr. *Coote* in my Chair.

Mr. Att. Gen. Whither were you directed to carry him?

Browne. To *Leiceſter-fields*.

Mr. Att. Gen. What Time of Night was it?

Browne. It was three Quarters paſt One, as near as I could gueſs.

Mr. Att. Gen. Pray, What other Chairs were there that went along with you?—*Browne.* There were two other Chairs.

Mr. Att. Gen. Who were in thoſe Chairs, pray?—*Browne.* There were my Lord of *Warwick* in one, and my Lord *Mohun* in the other.

Mr. Att. Gen. Did you three go away from *Locket*'s together?

Browne. Yes, we did; and when we were bid to take up, we went to the End of St. *Martin*'s-*lane*, and turning up at the End of St. *Martin*'s-*lane*, there my Lord of *Warwick* and my Lord *Mohun* called out to Capt. *Coote* to ſtay, and to turn down to go to *Weſtminſter*; but Mr. *Coote* would turn up the *Lane*, and my Lord of *Warwick* and my Lord *Mohun* made a Stop at the Back-Door of the *Croſs-keys* Tavern, and both of them perſuaded Mr. *Coote* to put it off till the next Morning; but he would not, he ſaid he would make an End of it that Night.

Mr. Att. Gen. Pray, recollect yourſelf, Did they name among them what their Buſineſs was that they would make an End of?

Browne. No, they did not.

Mr. Att. Gen. Who was it that ſtopp'd at St. *Martin*'s-*lane* End?

Browne. When we were turning up at St. *Martin*'s-*lane* End, my Lord of *Warwick* and my Lord *Mohun* call'd out to ſtop, and aſk'd Mr. *Coote* whither he was going? And when he ſaid, To *Leiceſter-fields*, my Lord *Mohun* called out to us to ſet down, which we did, at the Back-Door of the *Croſs-Keys* Tavern; They did both of them, my Lord *Warwick* and my Lord *Mohun*, perſuade Mr. *Coote* to go home to *Weſtminſter*, and not to end the Buſineſs that Night; but he would go on; and while we were there, there went three other Chairs up St. *Martin*'s-*lane* on the other Side of the Way; then Mr. *Coote*, who was in our Chair, bid us take up, and follow thoſe Chairs into the Fields, and ſwore, Damn him, he would run his Sword into one of us, if we did not make haſte, and overtake thoſe other Chairs, and go before them; I think his Words were, *Damn me, I'll run my Sword into your Breech, if you do not make haſte, and get before that other Chair.*

Mr. Att. Gen. You ſay then, they went all away together up to *Leiceſter-fields*?—*Browne.* Yes, they did ſo.

L. *Mohun.* I deſire he may be aſk'd, Whether I did not deſire him to go home with me to my Lodging at *Weſtminſter*?

Browne. Yes, you did, and begg'd of him as if it had been for an Alms, that he would put it off for that Night; but when the other Chairs paſt by us at *Charing-Croſs*, in St. *Martin*'s-*lane*, he would have the Chair taken up, and us to make what haſte we could to get before them thither, or elſe, he ſwore, Damn him, he would run his Sword into one of us, if we did not make haſte to get to *Leiceſter-fields* before the other Chairs that went up the other Side of the Way.

Mr. Att. Gen. When the other Chairs were paſt by, and you went away to *Leiceſter-fields*, pray tell my Lords what happened then?

Browne. We went away to *Leiceſter-fields*, and when we came to *Green-ſtreet* End, and were entering upon the Square upon the Broad Stones, Mr. *Coote* call'd out to us, and bid us to ſet him down, and ſo did the other two Chairs; and when he put his Hand into his Pocket to diſcharge us, my Lord of *Warwick* put his Hand in his Pocket to pay the three Chairs, and Mr. *Coote* offered half a Guinea to diſcharge the Chairs, and my Lord *Mohun* did produce 3*s.* and with it diſcharged all the three Chairs, and they all three walked away together forward upon the Broad Stones, on the Right Hand Side of the Way; It was ſo dark a Night, I could not ſee half a dozen Yards from me; It was the darkeſt Night, I think, that ever I ſaw in all my Life, and therefore I cannot tell what became of them after they went out of the Chairs.

Mr. Att. Gen. Pray, did you ſee my Lord *Mohun* afterwards?

Browne. No, I did never ſee my Lord *Mohun* afterwards till now here at the Bar.

Mr. Att. Gen. You ſay it was ſo dark, that you could not ſee three Yards from you; pray, what did happen afterwards when you were in the Field?

Browne. A little while after we had ſet down theſe Gentlemen, I fill'd my Pipe out of my Box, and before I could light it, I heard a Calling of Chairs, Chairs, and I went up towards the End of the Square, where the Noiſe was; and when I came there, they would have had me lift the Chair over the Rails, and I told them, if I did I could not lift it over again: but they would needs have me lift it over, and I did ſo; and by the Light of the Lanthorn I ſaw Captain *French* and Captain *James* holding up Captain *Coote*, and they did deſire me to take him into our Chair, but he was in ſuch a Condition that I could not get him into the Chair; it was before I could well light my Pipe the Chairs were called.

Mr. Att. Gen. Who did call, can you tell?

Browne. No, indeed, I cannot tell who did call Chairs, but it was a Voice from the upper End of the Fields, and we lifted our Chair over the Rails into the Fields, and there were two Gentlemen holding up another Man; I have heard it ſaid it was Captain *French* and Captain *James*, and they cried out, Dear *Coote*, Dear *Coote*! and would have had him gotten into the Chair, but we could not; and my Lord of *Warwick* did then ſay, if any Damage did come to the Chair, tho' it were 100*l.* we ſhould be ſatisfied for the Damage; but we were not able to get him into the Chair, and ſo there we left him.

Mr. Att. Gen. You ſay you ſaw two Gentlemen holding up Mr. *Coote*, and 'twas a very dark Night, How could you tell who thoſe Gentlemen were?

Browne. I could not ſee any Thing of them till we came up with the Candle cloſe to them.

Mr. Att. Gen. And what did they ſay when you came up cloſe to the Chair?

Browne. They offered me an 100*l.* Satisfaction for any Damage to my Chair; but they could not get him in, for he was at that Time dead, I believe, for we went to hale him up, and to get him into the Chair, but we could not do it.

Mr. Att. Gen. Can you tell who the two Perſons were that held him up?

Browne. No; but by the Deſcription of the Perſons they had ſuch Cloaths on, as that they muſt be Captain *French* and Captain *James*; but indeed I cannot ſwear directly who they were that were there, nor who they were that called for Chairs at the upper End of the Field; but when our Chair was lifted over again over the Rails, and we came to the Corner to ſee who ſhould be taken in, there came one to us who bid us carry him to the *Bagnio* in *Long-Acre*; and thither we did go accordingly.

Mr. Att. Gen. Pray, can you tell who the Perſons were that held up the Gentleman they would have to be got into the Chair?

Browne. No, indeed, I cannot.

Mr. Att. Gen. Pray, can you deſcribe 'em ſo as to know them, whether my Lord of *Warwick*, and my Lord *Mohun* were thoſe two Gentlemen?

Browne. My Lord of *Warwick* and my Lord *Mohun* were not there, I'm ſure, for I know them very well; I was acquainted with them before; and when I came up to theſe Gentlemen with the Candle, there was one of them was bigger than my Lord of *Warwick*, or my Lord *Mohun*; and the Elder of them had other Sort of Cloaths than either of them had on at that Time, as we could ſee when we came up cloſe with the Candle to them.

Mr. Att. Gen. Were there any Lights of the Lamps, that are uſually in the Streets at that Time, about the Square?

Browne. Yes, there were thoſe Lights; but it was a very dark Night, and we could not ſee two Yards before us, that I am ſure of; and there was nobody elſe that I ſaw at that Time at the upper End of the Field, but thoſe two Gentlemen, holding up of Captain *Coote*, whom we had brought up before to the Square, and left him with the Earl of *Warwick* and my Lord *Mohun*, at the Bottom of the Square; but whither they all went, indeed I can't tell: We call'd Watch; but they ſaid it was not within their Ward, and therefore they would not come. When we ſaw how ill Mr. *Coote* was upon our coming up, and that he could not get him into the Chair, we went away, lifted our Chair over the Rails again, and carried a Gentleman to the *Bagnio* in *Long-Acre*.

Lord *Mohun*. I have a Queſtion to aſk this Witneſs, and that is, How far the Place is whither he carried the Chair, that is, from *Green-ſtreet* End, to the Place whither the Chairs were called for again, at the upper End of the Pales, where he found the two Gentlemen holding up Mr. *Coote*, and endeavouring to get him up into the Chair?

Browne. I believe it is about fifty Yards, as near as I can gueſs.

Lord *Mohun*. I deſire to know, whether he means fifty Yards from the upper End to the lower End of *Leiceſter-fields?*

Browne. Yes, I believe, my Lord, it is, and better.

Lord *Mohun*. I deſire to aſk him, whether *Green-ſtreet* be not the very lower End of the Square?

Browne. Yes, my Lord, the lower End of the Square, coming out of *St. Martin*'s-*lane* into *Green-ſtreet*.

Mr. Att. Gen. But did you ſee three other Chairs in that Place?

Browne. Yes, while I was filling my Pipe out of my Box, three other Chairs did come by, and went away; but within a little while after the filling of my Pipe, or rather before I could well fill it, or light it, we heard calling for Chairs again towards the upper End of the Fields, and we carried up our Chair thither, and there we found, as I have told you, two Gentlemen holding up Mr. *Coote*, and crying out, *My Dear* Coote! *my dear* Coote!

Mr. Att. Gen. Can you tell who it was that called for the Chairs the ſecond Time, when you were in the Fields?

Browne. No, indeed, I cannot; but they would have us bring our Chair over the Rails, and we did lift it over; and when we came up to them, I ſaw only two Gentlemen, whom I did not know who they were particularly, till we came up cloſe to 'em, that we could ſee their Cloaths, by the Light of the Candle in our Lanthorn; and they would have had us put Mr. *Coote* into our Chair, and he being very much wounded, they would have had us carry him away; we told them it would ſpoil our Chair, and we could not beſides lift him over the Rails again; they promiſed we ſhould have any Satisfaction for Damage to our Chair, even to the Value of a hundred Pounds; we went to heave him up to put him into the Chair, and did all we could to have got him into the Chair, but we could not; ſo we lifted the Chair over the Rails again; and when we came to the Corner of the Rails, at the Way that goes to *Long-Acre*, there we took up a Gentleman, whom we carry'd to the *Bagnio* in *Long-Acre*; we called out to the Watch; but they ſaid it was not within their Ward, and they would not come.

Mr. Att. Gen. Can you tell who were the Perſons that were at the upper End of the Fields?

Browne. No, indeed, I cannot tell who they were.

Mr. Att. Gen. Was my Lord *Mohun* and my Lord *Warwick* the two?

Browne. No, my Lord *Mohun* was not there, nor my Lord *Warwick*; I know them ſo well, that it could not be them; one of the Gentlemen was bigger then my Lord of *Warwick*, and the other of them had other Cloaths than my Lord *Mohun*.

Mr. Att. Gen. Was that the Way they walked up, when they came out of the Chairs, that led to that End of the Fields where you found Mr. *Coote* wounded?

Browne. Yes, it was.

Mr. Att. Gen. My Lords, this is but the Repetition of the Evidence that he gave to your Lordſhips Yeſterday.

L. H. St. If you have done with this Witneſs; my Lord *Mohun* may aſk him any Queſtions.

Lord *Mohun*. I deſire to have him aſk'd, How far is the Place where he carried the Chair at firſt into *Leiceſter-fields*, from the Place where they put over the Chair within the Rails, and would have taken in Mr. *Coote?*

Browne. It is about fifty Yards, as near as I can gueſs.

Lord *Mohun*. I deſire to know of him, whether the Place where we were ſet down, that came in the firſt three Chairs, from *Locket*'s into *Leiceſter-fields*, to the Place where he found Mr. *Coote* ſupported by the two Gentlemen, be not from one End of the Fields to the other?

Browne. The Place where we ſet down Captain *Coote* is at the lower End of *Green-ſtreet*, and the Place where we found him wounded, was at the upper End by *Leiceſter-houſe*.

L. H. St. I think it is underſtood, that *Green-ſtreet*, which comes out of *St. Martin*'s-*lane*, is at one End of *Leiceſter-ſquare*, and *Leiceſter-houſe* is at the other End.

Mr. Att. Gen. Pray, where was it that you ſaw the two Gentlemen holding up Captain *Coote*, and cry out, *My dear* Coote! *my dear* Coote!

Browne. It was on one Side of the Croſs-way, that leads out of the Fields towards *Newport-ſtreet*, and by *Leiceſter-houſe*.

Mr. Att. Gen. But you ſay three Chairs did go up towards the upper End of the Fields?

Browne. Yes, they did ſo; but our three Chairs that came away firſt from the *Greyhound* Tavern, ſet down at *Green-ſtreet* End, and the three Gentlemen that came in our Chairs went up the Pales to them; but whither they went I can't tell, but ſoon after we heard calling for Chairs again, and ſo we went up, where we found the two Gentlemen holding Captain *Coote*, and ſaying, *My dear* Coote! *my dear* Coote!

Mr. Att. Gen. But when you were called the ſecond Time, that is, into the Fields, where was the Place you ſay that you found them in?

Browne. It was within the Rails, one Side of the Croſs-way towards *Leiceſter--houſe*.

Lord *Mohun*. Pray, was that the direct Way that I went from the Place that I was ſet down, that is, the lower End of *Green-ſtreet*, to the Place that they afterwards went to, which was the *Bagnio* in *Long-Acre?*

Browne. When Captain *Coote*, and my Lord *Mohun* were ſet down, and walked away upon the Pav'd Stones of the Square, to the Place where I found the two Gentlemen holding up Capt. *Coote*, was the quite contrary Way from the End of *Green-ſtreet* to the *Standard* Tavern.

L. H. St. Who is your next Witneſs, Mr. *Attorney?*

Mr. Att. Gen. The next Witneſs that we call, is *Robert Applegate*.

(*Who was ſworn.*)

L. H. St. What do you aſk this Witneſs?

Mr. Att. Gen. My Lords, this is the Chairman that carried my Lord *Mohun* to *Leiceſter-fields* from *Locket*'s; he will give your Lordſhips an Account when he carry'd him, who he carry'd, and what happened afterwards, which is all but to the ſame Purpoſe with the Evidence that he gave Yeſterday. But pray, who was that whom you carried on the Thirtieth of *October* laſt to *Leiceſter-fields?*

Applegate. I carried my Lord *Mohun* from *Locket*'s, at the *Greyhound* Tavern in the *Strand*, to *Leiceſter-fields*.

Mr. Att. Gen. Pray, How many Chairs were there of you that went away together?

Applegate. There were three of us that went away together, one carry'd my Lord *Warwick*, we my Lord *Mohun*, and the third carry'd Captain *Coote*, which was the firſt Chair that went away.

Mr. Att. Gen. Whither did you go?

Applegate. We went to the Corner of *St. Martin*'s-*lane*.

Mr. Att. Gen. Who do you ſay were in the other two Chairs?

Applegate. My Lord of *Warwick*, and my Lord *Mohun*.

Mr. Att. Gen. When they came out firſt, What Orders or Directions were given?

Applegate. My Lord *Mohun* ſaid, That he and my Lord of *Warwick*, and Captain *Coote*, would go all three together down to *Weſtminſter*, and there they would all lie together, or be together that Night.

Mr. Att. Gen. What Anſwer was given to what my Lord *Mohun* ſaid?

Applegate. Indeed I do not remember any Anſwer that was given at all; but after that my Lord *Mohun* went into the Chair, and ordered us to follow down the other two Chairs towards *Weſtminſter*, and we put up the Chair and came away; and when we came to *St. Martin*'s-*lane* End, the Chair that carried Capt. *Coote* turn'd up the Lane, and we being ordered to follow the other Chairs, went up the Lane too; but my Lord *Mohun* perceiving that they were not going down to *Weſtminſter*, call'd out to ſtop, juſt when we were entered into *St. Martin*'s-*lane*, over-againſt the Back-door of the *Croſs-keys* Tavern, and made the other Chairs to ſtand, and all the three Chairs were ſet a-breaſt before that Place, and my Lord *Mohun* aſk'd Capt. *Coote*, Whither he was going? And he anſwered, To *Leiceſter-fields*: He begg'd of him, as one would beg for an Alms, that he would not go that Night, for the Buſineſs could not be done that Night, and it was better to put it off till the next Morning.

Mr. Att. Gen. Did they name what the Buſineſs was, that was to be done?

Applegate. No; but my Lord *Mohun* did ſay, 'twas impoſſible to be done that Night.

Mr. Att. Gen. Well, and what happened afterwards, while you were in that Place?

Applegate. While we were there, three other Chairs paſs'd by us on the other Side of the Way, and going forward up the Street, Capt. *Coote* order'd their Chairs to follow, and ſo we did to *Green-ſtreet* End, and there we ſet 'em down.

Mr. Att. Gen. Pray, can you remember what was ſaid by my Lord *Mohun* at the Time when the other Chairs paſs'd by?

Applegate. He was then deſiring and begging of Capt. *Coote* to go home to *Weſtminſter*, telling him that it could not be done that Night; but it muſt be deferr'd till the next Morning; but Capt. *Coote* ſaid he would not delay it till the next Morning, but he would go to *Leiceſter-fields* that Night; and all three Chairs were ordered to go forward, and we did go on forward to *Leiceſter-fields*; my Lord *Mohun*, indeed, did beg and deſire as heartily as, I ſay, a Man for an Alms, that they would let it alone for that Night; but Capt. *Coote* would not, and ordered his Chair to go forwards.

Mr. Att. Gen. You ſay, my Lord *Mohun* begg'd as heartily as if it were for an Alms to defer it for that Night?

Applegate. Yes, he did ſo; ſo that I do really think that he was not concerned in the Matter.

Mr. Att. Gen. If he were ſo earneſt to defer and put off the Buſineſs, how came you to carry him thither that Night? What Expreſſions did he uſe particularly in *St. Martin*'s-*lane*, after the other Chairs were paſs'd by?

Applegate. He ſaid, If you muſt go, I'll go with you and ſee it; and he bid us take up and follow the other Chairs wherein Capt. *Coote* and my Lord *Warwick* were; and we did go.

Mr. Att. Gen. And where did you ſet my Lord *Mohun* down?

Applegate. At the hither End of *Leiceſter-ſquare*, at the Corner of *Green-ſtreet*, the lower Corner of the Pav'd Stones, going up to *Leiceſter-Houſe*.

Mr. Att. Gen. What became of the three Gentlemen that you ſet down at the End of *Green-ſtreet?*

Applegate. They went all three together up the Stone Pavement, towards the upper End of the Square, towards the *Standard* Tavern, I think.

Mr. Att. Gen. Did they go together, or did they go aſunder?

Applegate. They went together, I think; I did not ſee them part one from another.

Mr. Att. Gen. Pray, did you ſee my Lord *Mohun* afterwards?

Applegate. No, I did not.

Mr. Att. Gen. What became of you afterwards?

Applegate. I ſtay'd a little at the lower End of the Square to take a Pipe of Tobacco, and when I had filled my Pipe, I heard calling Chairs, Chairs again, at the upper End of the Square; and when we brought up our Chair to the upper End of the Fields, the firſt Man that I did ſee was my Lord of *Warwick*, who would have had us put over our Chair within the Rails; but we told him we could not get it over again if any one was put in it; but if they would come out into the Square, there we were ready to carry 'em any where; and when we came to the upper End of the Square, there was Captain *French*, and we took him into the Chair, and he bid us carry him to the *Bagnio* in *Long-Acre*; and at *Newport-ſtreet* End he would have had us ſtop and pull off his Cloaths, for he believed he was a dead Man.

Mr. Att. Gen. Pray, who did you ſee there at the upper End of *Leiceſter-fields?*

Applegate. Nobody indeed, but my Lord of *Warwick* and Mr. *French*.

Mr. Att. Gen. Nobody but them two?

Applegate. No; nobody but them two.

Mr. Att. Gen. Where do you ſay that was, that the Calling for Chairs was, and where you brought your Chair?

Applegate. It was juſt at the upper End of *Leiceſter-fields*, by *Leiceſter-Houſe*, and by the *Standard-Tavern.*

Mr. Att. Gen. Who was it that you there took up?

Applegate. It was Captain *French.*

Mr. Att. Gen. Whither then did you carry him?

Applegate. We were order'd to go to the *Bagnio* in *Long-Acre*; and thither we, and another Chair that carried my Lord *Warwick*, did go; and when we came there, we did knock a good while before we could get any Body up; and when they were let in, we came away, and were bid to call for our Fare the next Morning.

Mr. Att. Gen. Pray, where was it that you took up Captain *French?*

Applegate. It was the upper End of all of *Leiceſter-fields.*

Mr. Att. Gen. And you went away with him, did you?

Applegate. Yes, as ſoon as ever we took him up; it was as ſoon as ever we could, at the outſide of the Rails. I was the firſt Chair that, upon the Calling for Chairs after they came thither, was by the *Standard-Tavern*, and from thence we went into *Long-Acre.*

Mr. Att. Gen. Whereabout is the *Standard-Tavern?*

Applegate. It is at the further End of the Fields by *Leiceſter-Houſe*; it is by *Cranburne-lane*, which is the Street that leads into *Newport-ſtreet*, and ſo into *St. Martin*'s-*lane*; and then we were to go to the *Bagnio* in *Long-Acre.*

L. H. St. My Lord *Mohun*, will you aſk this Witneſs any Queſtions?

Lord *Mohun.* Yes, my Lord, I have a Queſtion or two to aſk him, I deſire to aſk him, Whether, when we were going along, and the Chair in which Capt. *Coote* was, turn'd up *St. Martin*'s-*lane*, I did not call out to have him ſtop, and know whither they were going?---*Applegate.* Yes, my Lord, you did.

Lord *Mohun.* Pray, whither did I bid you go, when you firſt took me up at *Locket*'s?

Applegate. My Lord *Mohun* bid me follow thoſe Chairs; but go down to *Weſtminſter*, for he ſaid they all three would go together, and lie together that Night.

Lord *Mohun.* My Lords, I deſire this Man may be aſk'd, Whether there were not ſeveral Ways of going out of the Fields, beſides thoſe of *Green-ſtreet* and the *Standard-Tavern?*

Applegate. Yes, my Lord, no doubt there are.

Lord *Mohun.* Then I'll leave it to your Lordſhips to make the Obſervation; for there is no Evidence that I was even ſeen in the Field after I alighted out of the Chair at *Green-ſtreet* End; and I hope your Lordſhips do obſerve that he has told you, I was earneſt in begging Captain *Coote* to defer going to *Leiceſter-fields* till the next Morning, and begg'd as heartily of him for it, as any Beggar would do for an Alms.

L. H. St. My Lord, their Lordſhips, no doubt, have made that Obſervation; for he did ſay ſo.

Lord *Mohun.* My Lords, I have no more to aſk him.

L. H. St. Mr. *Attorney*, Who is your next Witneſs?

Mr. Att. Gen. Our next Witneſs is *Peter Ketro*, who likewiſe was a Chairman that carried my Lord *Mohun* into the Place where the Fact was done.

[Peter Ketro *was ſworn.*]

Mr. Att. Gen. Pray, will you acquaint my Lords who you carried upon the Thirtieth of *October* laſt, from the *Greyhound-Tavern* to *Leiceſter-fields?*

Ketro. Upon the Thirtieth of *October* laſt, in the Morning (which was *Sunday*) very early, we were call'd to the Door of the *Greyhound-Tavern*, and when we came there, there were ſeveral other Chairs there; for there was no Coach, it ſeems, to be had.

Mr. Att. Gen. And who was in your Chair?

Ketro. My Lord *Mohun*; and there were two other Chairs that went away together, wherein were Captain *Coote* and my Lord *Warwick.*

Mr. Att. Gen. And whither did you go from thence?

Ketro. We went along the *Strand*, and when we came to the End of *St. Martin*'s-*lane*, the Chair that Capt. *Coote* was in, we ſuppoſed by his Order turn'd up the Lane; for my Lord *Mohun* had given us Order to go down to *Weſtminſter*; and then when we came there to the End of *St. Martin*'s-*lane*, he called out to ſtop, and to have the other Chairs ſtopt, and they ſtood ſtill at the Back-door of the *Croſs-Keys-Tavern*, which is at the End of *St. Martin*'s-*lane*, and all the three Chairs did make a ſtand at that Place, and my Lord of *Warwick*, and my Lord *Mohun* and Captain *Coote* talk'd together; and my Lord *Mohun* did deſire Capt. *Coote* to go down to *Weſtminſter*, and to put off the Buſineſs for that Night; for nothing of Buſineſs could be done: Then my Lord of *Warwick* did ſay, if they did go on he would go on with them; but my Lord *Mohun* did endeavour to perſuade 'em to go down to *Weſtminſter* to lodge, for nothing could be done that Night; but when the other three Chairs paſs'd by, on the other Side of the Way, and Captain *Coote* would needs go forwards to *Leiceſter-fields*, my Lord *Mohun* did bid us take up and follow them; and he ſaid, if they would go, he would go and ſee what came of it; ſo we took up, and followed the other Chairs, and went up the Lane, and into *Green-ſtreet*, to the lower End of *Green-ſtreet* next the Square, and there our three Chairs ſet down my Lord *Warwick*, my Lord *Mohun*, and Captain *Coote*, and were diſcharged.

Mr. Att Gen. And what became of them after?

Ketro. There they went up upon the Broad-Stones, up towards the upper End of the Fields.

Mr. Att. Gen. Did they all go together, or did they part?

Ketro. They went together, for any Thing I know; I ſaw no parting, and indeed it was ſo dark a Night, that I cannot tell what became of 'em after they went out of the Chairs: It was one of the darkeſt Nights that ever I ſaw.

Mr. Att. Gen. Well then, pray, what happened after that?

Ketro. I went to light my Pipe of Tobacco, and before we could light a Pipe of Tobacco, there was calling at the upper End of the Square for Chairs again; and ſo up we went with our Chair to the upper End of the Fields; and when we came there, ſome Body call'd out to have us lift our Chair over within the Rails; but we told 'em, if we did ſo, we could not get it over again, if any Body were put into it; and ſo we were bid to go to the End of the Rails, in order to the getting out from that Place, and getting in of any body that was to go into the Chair; and when we came to the End of the Rails we took up Capt. *French*, and he bid us carry him to the *Bagnio* in *Long-Acre*, and we did ſo; and at *Newport-ſtreet* End he would have had us have pull'd off his Cloaths, for he ſaid he believ'd he was a dying Man; but we carried him on to the *Bagnio* in *Long-Acre*, and there came after us the Lord of *Warwick* in another Chair; and there we ſet them down.

Mr. Att. Gen. I have a Queſtion to aſk you, Friend; Did you not ſee my Lord *Mohun* after you ſet him down at *Green-ſtreet* End?

Ketro. No, indeed, not I; I did not after he went out of the Chair.

Mr. Att. Gen. Can you tell whither he went after he went out of the Chair?

Ketro. No, I can't tell whither he went; they all three went up the Pav'd Stones together; but whither they went I can't tell.

Mr. Att. Gen. Did you hear of any other Chair that was at the End of the Fields at that Time?

Ketro. There was another Chair at that Time, at the upper End of the Fields.

Mr. Att. Gen. Did you hear 'em deſire to take Mr. *Coote* into that Chair?

Ketro. No, I did not.

Mr. Att. Gen. Nor do you know any Thing of their putting Mr. *Coote* into a Chair?

Ketro. No, indeed, not I; what they did as to the other Chair that was before, they can beſt tell, for I can't.

L. H. St. Who is your next Witneſs, Mr. *Attorney?*

Mr. Att. Gen. *Richard Edwards.*

L. H. St. What do you call him to?

Mr. Att. Gen. Becauſe we would not trouble your Lordſhips with the Repetition of every one of the Witneſſes that were here Yeſterday; this is the Man that carry'd Mr. *Dockwra* into the Field.

[Edwards *was ſworn.*]

L. H. St. Mr. *Attorney*, What do you aſk this Witneſs?

Mr. Att. Gen. Pray, do you acquaint my noble Lords here, who you carried in your Chair to *Leiceſter-fields?*

Edwards. Indeed, I can't tell; there were three Chairs that took up three Perſons at the *Greyhound-Tavern* in the *Strand*, after three other Chairs were gone away, and every one had a Gentleman in 'em: I, for my Part, did not know who was in our Chair; but when we ſhut up the Chair we were bid to go to the *Standard-Tavern* in *Leiceſter-fields*; and thither we did go, and there we ſet down the Gentleman that was in our Chair, and away we went; and as we went up *St. Martin*'s-*lane*, we paſs'd by the three other Chairs that turn'd up before, at the Back-Door of the *Croſs-Keys* Tavern.

Mr. Att. Gen. Did you ſee the other three Chairs in *Leiceſter-fields* afterwards?

Edwards. No, indeed, I did not; but went up to the *Standard-Tavern*, and ſet down the Gentleman that was in our Chair, and there left him, and went away.

Mr. Att. Gen. Pray, Can you tell who it was that you carried?

Edwards. Indeed, I cannot very well tell; but I believe it was Captain *James*, or Mr. *Dockwra.*

Mr. Att. Gen. When you came to the *Standard-Tavern*, pray, what happen'd? What paſs'd there?

Edwards. To the beſt of my Knowledge, I took hold of the Knocker of the Door, and knock'd at the Door, and the Gentleman came out, and was ſet down there; and he gave me a Shilling, and away I went with my Chair.

Mr. Att. Gen. When you ſet him down at the *Standard-Tavern*, pray, what did he ſay?

Edwards. He gave me a Shilling, and bid me go about my Buſineſs; and ſo we went away.

Mr. Att. Gen. Was you there when you heard 'em call Chairs back?

Edwards. No, we went away as ſoon as we had ſet him down at the *Standard-Tavern.*

Mr. Att. Gen. Did you obſerve which Way they went after you ſet him down?

Edwards. No, indeed, I did not; I never minded which Way they went, after we ſet him down.

Mr. Att. Gen. Which Way did you go?

Edwards. We went away down towards *Charing-Croſs.*

Mr. Att. Gen. Did you ſee any other Chairs in the Square when you went down?

Edwards. Yes; there were other Chairs at the other End of the Square.

Mr. Att. Gen. Did you ſee any Gentlemen as you came down, walking towards the *Standard-Tavern*, upon the Pav'd-Stones.

Edwards. No, indeed, my Lords, not that I remember; but I did ſee the other three Chairs as I paſs'd by *Green-ſtreet* End; who were in 'em, or what was become of them that were in 'em, that I can't tell.

Mr. Att. Gen. What did they ſay to you any of 'em at that Time?

Edwards. They aſk'd us if we were going away, and we told them Yes; we were diſcharged.

Mr. Att. Gen. But pray, Did you not meet any of the other Gentlemen upon the Pav'd Stones?

Edwards. No, indeed, I did not ſee, to the beſt of my Remembrance, any other Gentleman upon the Pav'd Stones.

Mr. Att. Gen. What did the other Chairmen ſay to you?

Edwards. They aſk'd if we were coming away? And we left 'em behind us.

L. H. St. Has my Lord *Mohun* any Queſtions to aſk him?

Lord *Mohun.* No, I have not.

L. H. St. Mr. *Attorney*, who is your next Witneſs?

Mr. Att. Gen. *Jackſon*, who was the Chairman that carry'd Captain *James.* *(He was ſworn.)*

Mr. Att. Gen. Pray, Will you acquaint my Lords who you carry'd away from *Locket*'s to *Leiceſter-fields?*

Jackſon. Captain *James:* There were ſix Chairs in all: I do not know who went in the other Chairs, but in the three Chairs that went together when we went, there was Captain *Dockwra*, Captain *French*, and Captain *James.*

Mr. Att. Gen. And where did you ſet him down?

Jackſon. At the *Standard*-Tavern, in the Square in *Leiceſter-fields.*

Mr. Att. Gen. What became of him after you ſet him down ?

Jackſon. We knock'd twice at the Tavern Door, and then he gave us a Shilling, and we went away preſently, and went down on the Left Hand upon the Pav'd Stones, towards *Green-ſtreet* End.

Mr. Att. Gen. Did you meet any Perſons coming up upon the Pav'd Stones?----*Jackſon.* Yes, my Lord, I did.

Mr. Att. Gen. Can you tell who thoſe Perſons were?

Jackſon. Indeed, I cannot tell.

Mr. Att. Gen. How many were they in Number ?

Jackſon. They were two or three ; but it was ſo dark, that I cannot tell how many they were.

Mr. Att. Gen. Which Way were they walking ?

Jackſon. They were going up towards the middle Street.

Mr. Att. Gen. How far was that from the *Standard* Tavern ?

Jackſon. It might be about ſixty Yards from the *Standard* Tavern.

Mr. Att. Gen. You ſay there were three Chairs ſtanding at the End of *Green-ſtreet* when you came by ?

Jackſon. Yes, there were ſo.

Mr. Att. Gen. Had you no Diſcourſe with them ?

Jackſon. No, indeed, I had not.

Mr. Att. Gen. Did you not aſk them, why they ſtay'd there ?

Jackſon. No, indeed, I did not ; we paſs'd by and went home.

Mr. Att. Gen. You know my Lord *Mohun*, don't you ?

Jackſon. Yes, I do, very well.

Mr. Att. Gen. Was not my Lord *Mohun* in that Company ?

Jackſon. He was, when the ſix Chairs were call'd to *Locket*'s; but I did not hear any Diſcourſe, that I can remember, that paſs'd among 'em, nor do I know, or did hear, what became of my Lord *Mohun* afterwards.

Mr. Att. Gen. Were thoſe the other three Chairs that went away from *Locket*'s firſt, that you ſaw at *Green-ſtreet* End ?

Jackſon. Indeed, my Lords, I believe ſo; I cannot ſwear that they were thoſe three Chairs ; when we had ſet down Captain *James*, we did not look back any Way at all, but went away home, it being ſo late and ſo dark.

L. H. St. My Lord *Mohun*, will you aſk this Witneſs any Queſtions ?

Lord *Mohun*. No, my Lord.

Mr. Att. Gen. Then, my Lord, we ſhall call *William Salmon*, who was the Surgeon that did ſearch the Wound by the Coroner's Command, when he took the Inquiſition upon the View of the Body.

(*Who was ſworn.*)

Mr. Att. Gen. Pray, Did you view the Body of Mr. *Coote* after he was dead ?

Salmon. Yes, I did view his Body by the Command of the Coroner at the Watch-houſe, where it lay in St. *Martin*'s-*lane*.

Mr. Att. Gen. Pray then, will you acquaint my Lords what Wounds you found upon the Body ?

Salmon. There was one upon the Left Part of the Breaſt, near the Collar-bone ; which, upon probing, I found to be half an Inch in Breadth, and four or five Inches deep downward ; the other was a Wound that was in his Left Side, juſt under the ſhort Ribs, and that was upward ; and upon probing of it, I found it was about the Breadth of an Inch at the Orifice, and about the Depth of five or ſix Inches, and pierced through the Diaphragma.

Mr. Att. Gen. Pray, did you obſerve any Difference in the Wounds, or in the Orifice of them ?

Salmon. That below was a large Wound, larger than the other.

Mr. Att. Gen. Were the Wounds, do you think, given with two Swords, or with one and the ſame Sword ?

Salmon. Indeed, I can't tell.

Mr. Att. Gen. Did you look upon either, and which of them, to be mortal ?

Salmon. I look'd upon both to be mortal.

L. H. St. If you have done with him, Mr. *Attorney*, will my Lord *Mohun* aſk him any Queſtions ?

Lord *Mohun*. No, I ſhall aſk him no Queſtions, for I think I need not; I was never prov'd to be in the Company, in the Place where the Fighting was.

Mr. Att. Gen. We have done with calling of Witneſſes, till we hear what my Lord *Mohun* ſays to it.

L. H. St. My Lord *Mohun*, This is the Time (the King s Evidence being finiſhed) for you to call your Witneſſes, and make your Defence.

Lord *Mohun*. My Lords, I ſhall not call many Witneſſes, for I think there is nothing that fixes any thing of Guilt, as to Capt. *Coote*'s Death, as to me; but I ſhall call one Witneſs that was here (as I underſtand) yeſterday, but not examined, and that is a Perſon that ſaw me afterwards, and knows that I had a Wound in my Finger laid open, and that Wound was received at *Locket*'s, by endeavouring to part 'em, when they were quarrelling there at that Time.

(*The Witneſs ſtood up.*)

L. H. St. Tho' you are not upon your Oath, yet you are as much obliged, in Juſtice and Conſcience, to ſpeak the exact Truth, as if you was upon your Oath ; therefore have a Care what Teſtimony you give.

Witneſs. Yes, my Lord.

L. H. St. What is the Queſtion you would have this Witneſs aſk'd?

Lord *Mohun*. What he knows of my being wounded about this Time? and what I declared concerning that Wound, how I received it ?

L. H. St. I will not refuſe to aſk the Queſtion, but I muſt acquaint your Lordſhip that it ſignifies nothing in Point of Evidence at Law, what you yourſelf did declare after the Fact was over. It is material what you did to prevent this Miſchief before it happened, but not what you ſaid or declared after the Thing was done. You hear my Lord's Queſtion, What ſay you to it ?

Witneſs. I was at my Lord *Mohun*'s ſeveral Days after this Buſineſs happened, at the Lodging where he lay, and where I ſaw him : he had a Hurt in his Hand, and it was laid open, it was in the Finger; and that, he ſaid, was all he got by endeavouring to part People from fighting.

Mr. Att. Gen. Pray, Sir, when was this ?

Witneſs. It was ſeveral Days after the Death of Mr. *Coote*.

L. H. St. I told your Lordſhip before, that in Point of Law ſuch Evidence would ſignify nothing ; becauſe your declaring any Matter, after the Thing was done, in relation to the Fact, could not be admitted as legal Evidence ; if any of my Lords be of another Opinion, I ſuppoſe they will declare it.

Lord *Mohun*. My Lords, I ſubmit it to your Lordſhips; I only deſire he may be aſk'd, Whether he ſaw my Hand or no ? and how it was ?

Witneſs. I ſaw my Lord's Finger, and it had been laid open ſome time before ; and he ſaid, he had received that Wound by endeavouring to part Captain *French* and Captain *Coote* : That's all I know of the Matter.

Mr. Att. Gen. But, pray, When was that that he declared ſo? How long after the Death of Mr. *Coote* ?

Witneſs. It was ſeveral Days after that.

L. H. St. You hear, in Point of Law, that can be no Evidence at all : If you have no other Witneſſes to call, your Lordſhip would do well to ſum up your Evidence, and make what Obſervations you think fit upon the Evidence which has been given for the King.

Lord *Mohun*. My Lords, I hope I ſhall make my Defence againſt this Accuſation, with all the Modeſty and Submiſſion to your Lordſhips that becomes me. I am very much aſhamed to be brought before your Lordſhips upon any ſuch Account as this again, after having been once before your Lordſhips upon ſuch an Account before. I may very well ſay, I am not guilty at all of having any hand in Mr. *Coote*'s Death ; and I can aſſure your Lordſhips, I will avoid all Occaſions of giving you any Trouble of this Nature for the future : I do not doubt but to acquit myſelf of all Guilt, in relation to this Matter ; and, indeed, with Submiſſion to your Lordſhips, there has been no Evidence given, relating to me, that does infer any Guilt upon me, to prove that I was at the Place where the Fact was done ; therefore I ſhall only make ſome few little Remarks upon what has been ſaid, and leave it all to your Lordſhips Conſideration.

The King's Counſel firſt have call'd the Drawer of the Houſe, and he has ſatisfied, that I did ſo far endeavour to part 'em, that I threaten'd to ſend for the Guards and ſecure them, if they would not go home; and when they went into the Chairs, I went into my Chair, on purpoſe to follow 'em down to *Weſtminſter*, whither I would have had them gone. The Prick that I got in my Finger, of itſelf ſpeaks, that I endeavour'd to part 'em, and ſo the Drawer he has told you ; I am ſure it was the Occaſion of a great deal of Pain to me, it being forc'd to be afterwards laid open. The Chairman that carry'd Mr. *Coote* ſwears, That I, at the Door of the Tavern in St. *Martin*'s-*lane*, did make 'em ſtand, and when I came up to them, I begg'd, as for an Alms, that they would go home ; and I aſk'd *Coote* whither he was going ? Which proves that I was not conſcious of any Deſign of going to fight at that Time. Your Lordſhips are likewiſe told, That when he came to *Green-ſtreet* End, I was ſet down upon the Pav'd Stones. I was ſo, indeed, and I went up about five or ſix Yards, but that is all that's prov'd ; but I did take the quite contrary Way to the Place where Mr. *Coote* was wounded. Then there was another Chairman, one *Applegate*, and truly what Uſe they make of him, I cannot imagine, as an Evidence againſt me ; for he ſays, I was very earneſt in St. *Martin*'s-*lane* to hinder any Quarrel, and indeed at the Tavern Door, at *Locket*'s, I was ſo at firſt ; and when we came to St. *Martin*'s-*lane* End, he ſays, that I order'd 'em to make them ſtop, and aſk *Coote* whither he was going ? And he ſaying he was going to *Leiceſter-fields*, I endeavour'd all I could to perſuade him to the contrary, and did entreat him that he would go no farther, but go down to *Weſtminſter* to his Lodging, or lodge with me ; but Mr. *Coote* would not give me Time, at that Time, the other Chairs coming by, to give him further Reaſons, but would go away : And then it is objected, that I ſhould ſay, that if they would go, I would go and ſee : That was, my Lords, I would go on till I could have a further Opportunity to prevent any Fighting among them : And the Witneſs *Ketro* ſays, My Lord of *Warwick* did bid the Chair to follow the other Chair in which Captain *Coote* was. My Deſign was for *Weſtminſter*, to go to my Lodgings ; and when we came to the End of the Square, if I did go up the whole Stones, it was directly the contrary Way to the Place where it is prov'd this Fact happen'd. For the next Witneſs, *Edwards*, he ſays he ſaw nobody walking upon the Pav'd Stones ; and truly, I did go the direct Way into *Newport-ſtreet* : And for my not appearing before, it was for avoiding Confinement ; and I muſt ſubmit the whole Matter to your Lordſhips, how far any Guilt is fix'd upon me, not being prov'd to be in the Field at the Time when they fought, or ſeen to be in the Company when they came up and found Mr. *Coote* wounded, and dying, or dead. It is a plain Caſe I could have no hand at all in his Death ; and ſo I think I need give no further Trouble to your Lordſhips, for I believe your Lordſhips cannot but be ſatisfied, that as I have pleaded, I am not guilty of killing this Gentleman : Nay, it is impoſſible that I ſhould go into the Field to be a Second, when my own right Hand was wounded, for I was not able to hold my Sword in my Sword Hand, becauſe of that Wound. I ſubmit the Matter entirely to your Lordſhips, from whom I am ſure to meet with every Thing that will be ſuitable to Honour and Juſtice.

L. H. St. The King's Counſel are now to ſum up the Evidence for the King.

Mr. Sollicitor-General * *began to ſum up the Evidence for the King, but his Voice was ſo low, and the Noiſe in the Hall ſo great, that he could not be heard ; and therefore the Lord High-Steward moved the Houſe that he might ſtand by the Priſoner at the Bar, which was ſomething nearer than the Place where the King's Counſel ſtood, as was done the Day before ; and it was order'd accordingly.*

* *Sir* John Hawles.

L. H. St. Mr. *Sollicitor*, Pray raiſe your Voice as much as you can, that all my noble Lords may hear you.

[*Several of the Lords did move, That one that had a better Voice might ſum it up, and particularly Mr.* Cowper; *but it being uſually the Part of the* Solicitor General, *and he only having prepared himſelf, he was ordered to go on; but for the better Hearing of him, ſeveral of the Lords towards the upper End of the Houſe, removed from their Seats down, as they did the Day before, to ſit upon the Wool-packs.*]

Mr. *Sol. Gen.* My Lords, I am of Counſel for the King againſt this noble Lord, my Lord *Mohun*, the Priſoner at the Bar, who has been upon his Trial this Day, and it comes to my Turn to ſum up the Evidence that has been given againſt him, which is but a Repetition of what your Lordſhips, no doubt of it, have taken exact Notice of; but I muſt ſhortly ſum up the chief of the Particulars thereof, and make a few Remarks what of that Evidence ſticks particularly upon my Lord *Mohun*. The firſt Witneſs was the Drawer of the Houſe, at the *Greyhound* in the *Strand*, who gives you an Account, who were at his Maſter's Houſe the Nine-and-twentieth of *October* laſt, and particularly, that my Lord *Mohun* was there in the ſame Company wherein this Gentleman was that was unfortunately killed, and that he continued in that Company till very late that Night, or rather, very early the next Morning; when, after the Reckoning was paid, they came all down to the Bar and call'd for Coaches; and he tells you, that he was ſent out, and he tells you what he was ſent for, he was ſent for Coaches, and ſo cannot give any Account what paſs'd while he was gone; but when upon calling for Coaches, none could be had, there was Order for Chairs to be call'd, and Chairs were brought to the Door; and when he came in again he heard the Claſhing of Swords, and there were Three on the one Side of the Bar, and Three of 'em on the other: Indeed he does ſay, he did not ſee when the Swords were drawn; but at that Time they were putting up their Swords, my Lord *Mohun* was in the Company; upon which I would obſerve to your Lordſhips that there had been ſome Fighting; for the Witneſs ſays, upon my Lord's Queſtion, that my Lord call'd for a Napkin to put his Hand in, for his Finger was cut; and he ſaid, This is all that I have got by endeavouring to part them; ſo that it ſhews there was a Quarrel, and my Lord *Mohun* was in it. When the Chairs were brought to the Door, they went into them; there went Mr. *Coote* into one, into the ſecond my Lord of *Warwick*, and into the third my Lord *Mohun*; ſo that ſtill my Lord *Mohun* was in the Company, and they went away together; and tho' it is pretended by my Lord, that he did all he could to prevent the Quarrel, yet he gave Directions to the Chairmen that carry'd him to follow the other Chairs, and your Lordſhips perceive what the Buſineſs was that they went about; and the other three Chairs followed after preſently, ſo that they all went away together; nay, my Lord himſelf does not diſown his being in the Company till they came into *Leiceſter-Fields*. Next I would obſerve what fell from *Browne*, who carry'd the very Gentleman that was kill'd, Mr. *Coote*, that my Lord *Mohun* was in one of the three firſt Chairs, and that they all went together, till that my Lord *Mohun* call'd out to ſtop, upon the Turning up into *St. Martin*'s-*lane*; and tho' they ſtopp'd in *St. Martin*'s-*lane*, and my Lord *Mohun* did intreat them to let it alone at that Time, yet it was only to let it alone till the Morning; and when the other three Chairs paſs'd by on the other Side of the Way, and *Coote* would have them go on, my Lord *Mohun* ſaid, If they would go on, he would go with them and ſee it. *Applegate*, the Chairman, that carry'd my Lord *Mohun*, ſays the ſame: And ſo it is plain my Lord *Mohun* did go on with an Intention to make one in the Affray; for *Applegate* ſays, That when my Lord *Mohun* could not prevail upon his Perſuaſions, and when *Coote* went away, after the other three Chairs were paſs'd by, my Lord *Mahun* ſaid, If you do go, I muſt go and ſee it; and they did go all together: And the Chairman ſays, he ſet my Lord *Mohun* down at the End of *Green-ſtreet*, at the lower End of the Fields, where the other two Chairs ſet down Captain *Coote* and my Lord of *Warwick*, and that they all three walk'd up together towards the *Standard* Tavern; ſtill all this proves my Lord did go there, and that he himſelf did ſay he would go and ſee it: And it is plain that my Lord *Mohun* did go as far as *Leiceſter-fields*, and it is only his Declaration concerning himſelf, without any Proof, that he went away, and did not go into the Fields, to the Place where the Fact was done; and we think it is ſufficient Proof that he was one of them that were concerned, becauſe we do prove, that he was all along in the Company till the very Time that they came into the Place where the Thing was done. Then there is the Chairman that carry'd Mr. *James*, and he tells your Lordſhips, that the three firſt Chairs that went up *St. Martin*'s-*lane* went to the *Standard* Tavern, and there knock'd at the Door, and paid the Chairmen, and went out of their Chair; and ſo ſays the other Chairmen that carry'd Capt. *Dockwra* and Capt. *French*; and they ſay alſo, that when they came down the Pav'd Stones again, they heard Chairs call'd for, but they did not interpoſe at all in the Matter; but the other two Chairs it ſeems did, for they went up to the upper End of the Square, where there were two Perſons holding up Mr. *Coote*, and after they put the Chair over the Rails, in order to have him carried away in a Chair, but they could not get him into the Chair. I would likewiſe obſerve from the Evidence of the Surgeon, who gives you an Account of what Nature the Wounds were; one was in the Breaſt, near the Collar-Bone, on the left-Side; the other was under the ſhort Ribs, on the left Side too, which could not be given him by the Perſon that he was fighting with, he being a Right-hand Man, as was prov'd by his Servant. My Lord *Mohun* has call'd but one Witneſs, which is only about a little Circumſtance of his being wounded in the Hand, and having the Wound laid open, but that was two Days after the Fact was done; my Lord *Mohun* could not but know that the Matters he was to anſwer, related to a Time before. It muſt be agreed to me, that they all three, my Lord of *Warwick*, my Lord *Mohun* and Mr. *Coote*, went all away together, that they were carried to *Leiceſter-fields*, that they were ſet down together, and walk'd up together upon the Stone Pavement, when the others were gone towards the upper End of the Fields; ſo that in all probability, they all went together into the Place where the Fight was, and were all concern'd; and if ſo, my Lord *Mohun* muſt be equally guilty with the reſt, my Lord *Mohun* knowing what Buſineſs it was they were going about. It muſt be left to your Lordſhips, whether he ſhall not be preſumed to be there when the Fact was done, eſpecially his ſaying, when he could not prevail in *St. Martin*'s-*lane*, to put the Matter off till another Time, that if they did go on, he would go and ſee it; ſo that putting theſe two Circumſtances together, his going in one of the Chairs with my Lord *Warwick* and *Coote*, and what he ſaid after when the Chairs ſtopt in *St. Martin*'s-*lane*, we think are Circumſtances to induce your Lordſhips to believe, that he was preſent at the Time of the Fact committed, or very near the Place; and if that be ſo, how far he is guilty muſt be ſubmitted to your Lordſhips Conſideration; and this is all that I ſhall trouble your Lordſhips with, without repeating the particular Evidence, which your Lordſhips, I am ſure, very well remember.

Lord *Mohun*. My Lords, I deſire I may ſay one Word in anſwer to what Mr. *Solicitor* has obſerved. I think your Lordſhips have had no Evidence given you where Mr. *Coote* was kill'd; but only the Chairman that was deſir'd to bring over his Chair within the Rails, ſays, it was towards *Panton-ſtreet*, which is quite contrary to the Place where I was ſet down, at *Green-ſtreet* End; I muſt then be at a very great Diſtance from the Place where the Fact was done.

L. H. St. If all have done on both Sides, then your Lordſhips have nothing left but to conſider of the Evidence which has been given, which, I ſuppoſe, you will do among yourſelves.

Lords. Ay, adjourn, adjourn.

L. H. St. Is it your Pleaſure, my Lords, to adjourn into the Houſe of Lords?

Lords. Ay, ay.

L. H. St. This Houſe is adjourn'd into the Houſe of Lords.

[*And the Lords went back in the ſame Order to the Houſe of Lords, and there they ſtaid for about two Hours Time, debating the Matter among themſelves, and afterwards returned again into the Court in* Weſtminſter-hall, *and were ſeated all in their Places, as they were before, and the Lord High Steward was ſeated in the Chair before the Throne.*]

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes! My Lord High Steward of *England*, his Grace, does ſtraitly Charge and Command all manner of Perſons here preſent to be uncovered, and keep Silence, upon Pain of Impriſonment.

L. H. St. Is it your Lordſhips Pleaſure to go on now to give your Judgment?

Lords. Ay, Ay.

L. H. St. Then I muſt pray your Lordſhips to give me Time to write down your Opinions diſtinctly, that I may be able to acquaint you with Certainty of the Numbers.

Lords. Ay, ay.

[*Then the* Lord High Steward *ſtood up, and put the Queſtion to every Lord, beginning with the youngeſt Baron, to know what his Judgment was; and the Lord to whom he call'd, ſtood up in his Place uncover'd, and laying his Right Hand upon his Breaſt, deliver'd his Judgment in the Manner following.*]

L. H St. My Lord *Bernard*, Is *Charles* Lord *Mohun* guilty of the Felony and Murder whereof he ſtands indicted, or not guilty?

L. *Bernard.* Not guilty, upon my Honour.

[*The ſame Queſtion was ask'd ſeverally of all the Lords, who in the ſame Form deliver'd their Opinions, as followeth.*]

L. *Herbert.* Not guilty, upon my Honour.
L. *Weſton.* Not guilty, upon my Honour.
L. *Aſhburnham.* Not guilty, upon my Honour.
L. *Cholmondeley.* Not guilty, upon my Honour.
L. *Jefferys.* Not guilty, upon my Honour.
L. *Godolphin.* Not guilty, upon my Honour.
L. *Guilford.* Not guilty, upon my Honour.
L. *Oſelſtone.* Not guilty, upon my Honour.
L. *Oſborne.* Not guilty, upon my Honour.
L. *Craven.* Not guilty, upon my Honour.
L. *Cornwallis.* Not guilty, upon my Honour.
L. *Granville.* Not guilty, upon my Honour.
L. *Berkley.* Not guilty, upon my Honour.
L. *Lexington.* Not guilty, upon my Honour.
L. *Rockingham.* Not guilty, upon my Honour.
L. *Lucas.* Not guilty, upon my Honour.
L. *Culpeper.* Not guilty, upon my Honour.
L. *Byron.* Not guilty, upon my Honour.
L. *Jermyn.* Not guilty, upon my Honour.
L. *Leigh.* Not guilty, upon my Honour.
L. *Raby.* Not guilty, upon my Honour.
L. *Howard.* Not guilty, upon my Honour.
L. *Lovelace.* Not guilty, upon my Honour.
L. *Hunſdon.* Not guilty, upon my Honour.
L. *Wharton.* Not guilty, upon my Honour.
L. *Eure.* Not guilty, upon my Honour.
L. *Dudley.* Not guilty, upon my Honour.
L. *Fitzwalter.* Not guilty, upon my Honour.
L. *Willoughby.* Not guilty, upon my Honour.
L. *Audley.* Not guilty, upon my Honour.
L. *Abergavenny.* Not guilty, upon my Honour.

L. H. St. My Lord Viſcount *Lonſdale*, Is *Charles* Lord *Mohun* guilty, &c.

L. Viſcount *Lonſdale.* Not guilty, upon my Honour.
L. Viſcount *Townſhend.* Not guilty, upon my Honour.

L. H. St. The Earl of *Grantham*, Is *Charles* Lord *Mohun* guilty, &c.

E. of *Grantham.* Not guilty, upon my Honour.
E. of *Albemarle.* Not guilty, upon my Honour.
E. of *Tankerville.* Not guilty, upon my Honour.
E. of *Warrington.* Not guilty, upon my Honour.
E. of *Montagu.* Not guilty, upon my Honour.
E. of *Portland.* Not guilty, upon my Honour.
E. of *Rocheſter.* Not guilty, upon my Honour.
E. of *Nottingham.* Not guilty, upon my Honour.
E. of *Yarmouth.* Not guilty, upon my Honour.

E. of *Radnor*. Not guilty, upon my Honour.
E. of *Macclesfield*. Not guilty, upon my Honour.
E. of *Feverſham*. Not guilty, upon my Honour.
E. of *Burlington*. Not guilty, upon my Honour.
E. of *Carliſle*. Not guilty, upon my Honour.
E. of *Bath*. Not guilty, upon my Honour.
E. of *Angleſea*. Not guilty, upon my Honour.
E. of *Eſſex*. Not guilty, upon my Honour.
E. of *Scarſdale*. Not guilty, upon my Honour.
E. of *Thanet*. Not guilty, upon my Honour.
E. of *Cheſterfield*. Not guilty, upon my Honour.
E. of *Carnarvan*. Not guilty, upon my Honour.
E. of *Kingſton*. Not guilty, upon my Honour.
E. of *Winchelſea*. Not guilty, upon my Honour.
E. of *Stamford*. Not guilty, upon my Honour.
E. of *Peterborough*. Not guilty, upon my Honour.
E. *Rivers*. Not guilty, upon my Honour.
E. of *Mancheſter*. Not guilty, upon my Honour.
E. of *Denbigh*. Not guilty, upon my Honour.
E. of *Leiceſter*. Not guilty, upon my Honour.
E. of *Bridgwater*. Not guilty, upon my Honour.
E. of *Dorſet*. Not guilty, upon my Honour.
E. of *Suffolk*. Not guilty, upon my Honour.
E. of *Huntingdon*. Not guilty, upon my Honour.
E. of *Derby*. Not guilty, upon my Honour.
E. of *Kent*. Not guilty, upon my Honour.

Lord High Steward. My Lord Great Chamberlain, Is *Charles* Lord *Mohun* guilty, *&c.* ?

Lord Chamberlain. Not guilty, upon my Honour.

Lord High Steward. My Lord Marquiſs of *Normanby*, Is *Charles* Lord *Mohun* guilty, *&c.* ?

Lord Marqueſs of *Normanby*. Not guilty, upon my Honour.
Lord Marqueſs of *Hallifax*. Not guilty, upon my Honour.

Lord High Steward. My Lord Duke of *Newcaſtle*, Is *Charles* Lord *Mohun* guilty, *&c.* ?

D. of *Newcaſtle*. Not guilty, upon my Honour.
D. of *Scomberg*. Not guilty, upon my Honour.
D. of *St. Albans*. Not guilty, upon my Honour.
D. of *Northumberland*. Not guilty, upon my Honour.
D. of *Ormonde*. Not guilty, upon my Honour.
D. of *Southampton*. Not guilty, upon my Honour.
D. of *Richmond*. Not guilty, upon my Honour.
D. of *Somerſet*. Not guilty, upon my Honour.

Lord High Steward. My Lord Steward, Is *Charles* Lord *Mohun* guilty, *&c.* ?

Lord Steward. Not guilty, upon my Honour.

Lord High Steward. My Lord Preſident, Is *Charles* Lord *Mohun* guilty, *&c.* ?

Lord Preſident. Not guilty, upon my Honour.

Then the *Lord High Steward* of *England*, ſtanding up uncovered, putting his right Hand upon his Breaſt, ſaid, My Lord *Mohun* is not guilty, upon my Honour.

[*Then the Lord High Steward ſeated himſelf again in the Chair, to take the Number of the Peers who had given their Judgment.*]

L. H. St. My Lords, Eighty-ſeven of your Lordſhips are preſent, and you are all unanimouſly of Opinion, That my Lord *Mohun* is not guilty of the Felony and Murder whereof he ſtands indicted.

Lords. Ay, ay.

L. H. St. Let the Priſoner be called to the Bar.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, My Lord High Steward of *England*, his Grace, does ſtraitly Charge and Command all manner of Perſons here preſent to keep Silence, upon Pain of Impriſonment.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, Chief Governor of the *Tower* of *London*, bring forth the Body of your Priſoner *Charles* Lord *Mohun*, whom you have committed to you, in order to be brought hither this Day, upon Pain and Peril will fall thereon.

[*Then he was brought forth to the Bar, and the Lord High Steward addreſs'd himſelf to him in this Manner.*]

L. H. St. My Lord *Mohun*, you have been indicted for the Murder of Mr. *Richard Coote*, upon which Indictment your Lordſhip has been Arraigned, and upon your Arraignment has pleaded not guilty, and for your Trial you have put yourſelf upon your Peers, my Lords here preſent; and they have heard the Evidence, and have conſidered of it, and delivered their Judgment upon the whole Matter; and I am to acquaint your Lordſhip, they are all unanimouſly of Opinion, That your Lordſhip is not guilty of the Felony and Murder whereof you ſtand indicted; and therefore your Lordſhip is diſcharged from your Impriſonment, paying your Fees.

[*Then the Lord* Mohun *made his Reverence to the Lords, and expreſs'd himſelf thus.*]

Lord *Mohun*. My Lords, I do not know which Way to expreſs my great Thankfulneſs and Acknowledgment of your Lordſhips great Honour and Juſtice to me; but I crave leave to aſſure your Lordſhips, That I will endeavour to make it the Buſineſs of the future Part of my Life, ſo to behave myſelf in my Converſation in the World, as to avoid all Things that may bring me under any ſuch Circumſtances, as may expoſe me to the giving your Lordſhips any Trouble of this Nature for the future. And then making his Reverences to the Lords, he went away from the Bar.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Perſons here preſent, are commanded to keep Silence, by my Lord High Steward of *England*, his Grace, upon Pain of Impriſonment.

L. H. St. My Lords, the Trial being at an End, there is nothing remains to be done here, but the determining the Commiſſion.

Lords. Ay, ay.

L. H. St. Sir *Samuel Aſtry*, let Proclamation be made in order to the diſſolving the Commiſſion of *High Stewardſhip*.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, My Lord High Steward of *England*, his Grace, does ſtraitly Charge and Command all manner of Perſons here preſent, and that have here attended, to depart hence in the Peace of God, and of our Sovereign Lord the King; for his Grace, the Lord High Steward of *England*, intends now to diſſolve his Commiſſion.

And then the White Staff being delivered to his Grace, the Lord High Steward, he ſtood up, and holding it in both his Hands, broke it in two; and then leaving the Chair, came down to the Wool-pack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

L. H. St. This Houſe is adjourned to the Houſe of Lords.

And ſo they went back in the ſame Order that they came into the Court, and all the Aſſembly broke up.

CLXVI. *The Trial of* Spencer Cowper, *Eſq.* Ellis Stephens, William Rogers, *and* John Marſon, *at* Hertford *Aſſizes, for the* Murder of *Mrs.* Sarah Stout, July 16, 1699. 11 Will. III.

Proclamation was made for all Perſons concerned to attend.

Cl. of Arr. YOU good Men that are empannell'd to enquire, *&c.* anſwer to your Names, and ſave your Fines.

Then *Ellis Stephens*, *William Rogers*, and *John Marſon*, being upon Bail, Proclamation was made for them to attend, which they accordingly did; and Mr. *Cowper* was brought into Court by the Under Sheriff.

Cl. of Arr. *Spencer Cowper*, hold up thy Hand. (*Which he did.*)
John Marſon, hold up thy Hand. (*Which he did.*)
Ellis Stephens, hold up thy Hand. (*Which he did.*)
William Rogers, hold up thy Hand. (*Which he did.*)

‘ *Cl. of Arr.* YOU ſtand indicted by the Names of *Spencer Cowper*, late
‘ of the Pariſh of *St. John*'s, in the Town of *Hertford*,
‘ in the County of *Hertford*, Eſq. *John Marſon*, late of the Pariſh afore-
‘ ſaid, in the County aforeſaid, Gent. *Ellis Stephens*, late of the Pariſh
‘ aforeſaid, in the County aforeſaid, Gent. and *William Rogers*, late of
‘ the Pariſh aforeſaid, in the County aforeſaid, Gent. for that you not
‘ having the Fear of God before your Eyes, but being moved and ſedu-
‘ ced by the Inſtigation of the Devil, on the Thirteenth Day of *March*,
‘ in the Eleventh Year of the Reign of his preſent Majeſty, by Force and
‘ Arms, *&c.* at the Pariſh aforeſaid, in the County aforeſaid, in and up-
‘ on one *Sarah Stout*, Spinſter, in the Peace of God and our Sovereign
‘ Lord the King, then and there being, violently, feloniouſly, volunta-
‘ rily, and of your Malice afore-thought, did make an Aſſault; and that
‘ you the aforeſaid *Spencer Cowper*, *John Marſon*, *Ellis Stephens*, and *Wil-
‘ liam Rogers*, a certain Rope of no Value, about the Neck of the ſaid *Sa-
‘ rah* then and there feloniouſly, voluntarily, and of your Malice afore-
‘ thought, did put, place, fix and bind; and the Neck and Throat of the
‘ ſaid *Sarah*, then and there with the Hands of you the ſaid *Spencer Cow-
‘ per*, *John Marſon*, *Ellis Stephens*, and *William Rogers*, feloniouſly, vo-
‘ luntarily, and of your Malice afore-thought, did hold, ſqueeze, and
‘ gripe; and that you the ſaid *Spencer Cowper*, *John Marſon*, *Ellis Stephens*,
‘ and *William Rogers*, with the aforeſaid Rope, by you the ſaid *Spencer
‘ Cowper*, *John Marſon*, *Ellis Stephens*, and *William Rogers*, then as afore-
‘ ſaid about the Neck of the ſaid *Sarah Stout* put, placed, fixed, and bound,
‘ and by the ſqueezing and griping of the Neck and Throat of the ſaid
‘ *Sarah* with the Hands of you the ſaid *Spencer Cowper*, *John Marſon*, *Ellis
‘ Stephens*, and *William Rogers*, as aforeſaid, the ſaid *Sarah Stout* then and
‘ there, by Force and Arms, *&c.* feloniouſly, voluntarily, and of your Ma-
‘ lice afore-thought, did choak and ſtrangle; by reaſon of which choaking
‘ and ſtrangling of her the ſaid *Sarah Stout*, by you the aforeſaid *Spencer Cowper*,
‘ *J. Marſon*, *Ellis Stephens*, and *W. Rogers*, with the ſaid Rope about the
‘ Neck of the ſaid *Sarah Stout* as aforeſaid, placed, fixed and bound, and by the
‘ ſqueezing

‘ ſqueezing and griping of the Neck and Throat of the ſaid *Sarah* with
‘ the Hands of you the ſaid *Spencer Cowper*, *John Marſon*, *Ellis Stephens* and
‘ *William Rogers*, as aforeſaid, the ſaid *Sarah* then and there inſtantly died.
‘ And ſo you the ſaid *Spencer Cowper*, *John Marſon*, *Ellis Stephens* and
‘ *William Rogers*, the ſaid *Sarah Stout*, on the thirteenth Day of *March*,
‘ in the Year aforeſaid, in the Pariſh aforeſaid, in the County aforeſaid, in
‘ Manner and Form aforeſaid, feloniouſly, voluntarily, and of your Malice
‘ afore-thought, did kill and murder; and the ſaid *Sarah Stout*, as aforeſaid,
‘ by you the ſaid *Spencer Cowper*, *John Marſon*, *Ellis Stephens* and
‘ *William Rogers*, feloniouſly, voluntarily, and out of your Malice aforethought,
‘ choaked and ſtrangled; into a certain River there, being called
‘ the *Priory River*, then ſecretly and maliciouſly did put and caſt, to conceal
‘ and hide the ſaid *Sarah Stout*, ſo murdered, againſt the Peace of our
‘ Sovereign Lord the King, his Crown and Dignity, *&c.*’

How ſayeſt thou, *Spencer Cowper*, art thou guilty of the Felony and Murder whereof thou ſtandeſt indicted, or not guilty?

Mr. *Cowper*. Not guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Mr. *Cowper*. By God and my Country.

Cl. of Arr. God ſend you a good Deliverance.

[*Then the other Three pleaded Not Guilty, and put themſelves upon their Country in Manner aforeſaid.*]

Then Proclamation was made for Information.

Cl. of Arr. You the Priſoner at the Bar, theſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your ſeveral Lives and Deaths; therefore if you will challenge them, or any of them, your Time to ſpeak is as they come to the Book to be ſworn, before they be ſworn.

(*Then the Pannel was called over.*)

Cl. of Arr. Do you deſign to join in your Challenges, or to challenge ſeparately?

Mr. *Cowper*. If we ſhould challenge ſeparately, there muſt be ſo many ſeparate Trials; and therefore to prevent the Trouble of the Court, I am willing there ſhould be but one Challenge for all.

Cl. of Arr. Gentlemen, do you all agree to that?

Priſoners. Yes, yes.

(*Then after ſome Challenges, as well on the Part of the King as of the Priſoners, there not being a full Jury of the principal Pannel:*)

Mr. *Cowper*. If your Lordſhip pleaſe, the Pannel is now gone through, I deſire they may ſhew ſome legal Cauſe for their Challenges.

Mr. *Jones*. I conceive we that are retained for the King are not bound to ſhew any Cauſe, or the Cauſe is ſufficient, if we ſay they are not good for the King, and that is allowed to be a good Cauſe of Challenge; for what other Cauſe can we ſhew in this Caſe? You are not to ſhew your Cauſe, you challenge peremptorily; ſo in this Caſe the King does.

Mr. *Cowper*. My Lord, I ſtand at the Bar with ſome Diſadvantage, to encounter a Gentleman that hath no Concernment; but however, I do take it for Law, that there muſt be a Cauſe ſhewed, and that Cauſe muſt be a legal one, and what that Cauſe is they muſt certainly make out. I do think it ought to appear that there is ſome Relation, or ſome notorious Affection or Friendſhip, or ſomething of that ſort; or otherwiſe it is not a legal Cauſe of Challenge; and if there ſeem to be any Difficulty in this Particular, I hope your Lordſhip will aſſign me Counſel to argue it with the King's Counſel.

Mr. Baron *Hatſell*. Mr. *Cowper*, you are not under ſuch Diſadvantage as Men uſually are that ſtand where you now do. You have been educated in the Study of the Law, and underſtand it very well. I have ſeveral Times ſeen how you have managed your Clients Cauſes to their Advantage. As for this Matter of Challenge, Mr. *Jones*, I think, you ſhould ſhew your Cauſe of Challenge, tho' the Law allows the Priſoner Liberty to challenge twenty peremptorily.

Mr. *Jones*. I don't know, in all my Practice of this Nature, that it was ever put upon the King to ſhew Cauſe; and I believe ſome of the King's Counſel will ſay they have not known it done.

Mr. *Cowper*. In my Lord Chief Juſtice *Hales*'s *Pleas of the Crown*, p. 259, it is expreſly ſo; and in the Statute of 33 *Edw.* I. 'tis ſaid, the King ſhall not challenge without Cauſe, and that muſt be legal.

Cl. of Arr. Call *Daniel Clarke*.

Mr. Baron *Hatſell*. Mr. *Jones*, if you can ſay any Juryman hath ſaid any Thing concerning this Cauſe, and given his Verdict by way of Diſcourſe, or ſhewed his Affection one Way or other, that would be good Cauſe of Challenge.

Mr. *Jones*. My Lord, then we ſhould keep you here while To-morrow Morning.

Mr. Baron *Hatſell*. If there hath been any great Friendſhip between any Juryman and the Party, it will look ill if he be inſiſted upon.

Mr. *Cowper*. My Lord, I don't inſiſt upon it, but I profeſs I know of no Friendſhip, only that Mr. *Clarke* in Elections hath taken our Intereſt in Town; I know I have a juſt Cauſe, and I am ready to be tried before your Lordſhip and any fair Jury of the County; therefore I do not inſiſt upon it.

Then the Jury ſworn was as followeth:

Evan Lloyd, Eſq;
William Watſon,
John Prior,
John Harrow,
George Holgate,
John Stracey,
Thomas Parrot,
Sam. Wallingham,
Francis Cole,
Rich. Crouch,
John Cock,
Rich. Dickinſon.

Mr. *Cowper*. My Lord, I humbly move that I may have Pen, Ink and Paper.

Mr. Baron *Hatſell*. Ay, by all Means.

Cl. of Arr. Hold up your Hand. (*Which he did.*) *And ſo of the reſt.* You of the Jury, look upon the Priſoners, and hearken to their Charge. They ſtand indicted by the Names of, *&c.* (*Prout* in the Indictment, *mutatis mutandis.*)

Jury. My Lord, we deſire we may have Pen, Ink and Paper.

Cl. of the Aſſize. There are three of the Jury deſire Pen, Ink and Paper.

Mr. Baron *Hatſell*. Let as many have it as will.

Mr. *Jones*. May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, I am of Counſel for the King in this Cauſe, and it is upon an Indictment by which the Gentlemen at the Bar ſtand accuſed for one of the fouleſt and moſt wicked Crimes almoſt that any Age can remember: I believe in your County you never knew a Fact of this Nature; for here is a young Gentlewoman of this County ſtrangled and murdered in the Night-Time. The Thing was done in the Dark, therefore the Evidence cannot be ſo plain as otherwiſe might be.

After ſhe was ſtrangled and murdered, ſhe was carried down into a River to ſtifle the Fact, and to make it ſuppoſed ſhe had murdered herſelf; ſo that it was indeed, if it prove otherwiſe, a double Murder, a Murder accompanied with all the Circumſtances of Wickedneſs and Villainy that I remember in all my Practice, or ever read of.

This Fact, as it was committed in the Night-Time, ſo it was carried very ſecret, and it is very well we have had ſo much Light as we have to give ſo much Satisfaction: For we have here, in a manner, two Trials; one to acquit the Party that is dead, and to ſatisfy the World, and vindicate her Reputation, that ſhe did not murder herſelf, but was murdered by other Hands. For my Part, I ſhall never, as Counſel in the Caſe of Blood, aggravate; I will not improve or enlarge the Evidence at all; it ſhall be only my Buſineſs to ſet the Fact as it is, and to give the Evidence, and ſtate it as it ſtands here in my Inſtructions.

My Lord, for that Purpoſe, to lead to the Fact, it will be neceſſary to inform you, That upon *Monday* the 13th of *March*, the firſt Day of the laſt Aſſizes here, Mr. *Cowper*, one of the Gentlemen at the Bar, came to this Town, and lighted at Mr. *Barefoote*'s Houſe, and ſtaid there ſome Time, I ſuppoſe to dry himſelf, the Weather being dirty, but ſent his Horſe to Mrs. *Stout*'s, the Mother of this Gentlewoman. Some Time after he came thither himſelf, and dined there, and ſtaid till Four in the Afternoon; and at Four, when he went away, he told them he would come and lodge there that Night, and ſup.

According to his Word he came there, and had the Supper he deſired; after Supper Mrs. *Stout*, the young Gentlewoman, and he ſat together till near Eleven a-Clock. At Eleven a-Clock there was Orders given to warm his Bed, openly to warm his Bed, in his hearing. The Maid of the Houſe, Gentlemen, upon this went up Stairs to warm his Bed, expecting the Gentleman would have come up and followed her before ſhe had done; but it ſeems, while ſhe was warming his Bed, ſhe heard the Door clap together; and the Nature of that Door is ſuch, that it makes a great Noiſe at the clapping of it to, that any Body in the Houſe may be ſenſible of any one's going out. The Maid upon this was concerned, and wondered at the Meaning of it, he promiſing to lie there that Night; ſhe came down, but there was neither Mr. *Cowper* nor Mrs. *Stout*; ſo that we ſuppoſe, and for all that we can find and learn, they muſt go out together. After their going out, the Maid and Mother came into the Room; and the young Gentlewoman not returning, nor Mr. *Cowper*, they ſat up all Night in the Houſe, expecting what Time the young Gentlewoman would return. The next Morning, after they had ſat up all Night, the firſt News of this Lady was, that ſhe lay floating and ſwimming in Water by the Mill-dam. Upon that there was ſeveral Perſons called; for it was a Surprize how this ſhould come to paſs. There ſhe lay floating with her Petticoats and Apron, but her Night-Rail and Morning-Gown were off, and one of them not found till ſome time after; and the Maid will give you an Account how it came to be found.

This made a great Noiſe in the Country; for it was very extraordinary, it happening that from the Time the Maid left Mr. *Cowper* and this young Gentlewoman together, ſhe was not ſeen or heard of till next Morning, when ſhe was found in this Condition, with her Eyes broad open, floating upon the Water.

When her Body came to be viewed, it was very much wondered at; for in the firſt Place, it is contrary to Nature, that any Perſons that drown themſelves ſhould float upon the Water. We have ſufficient Evidence, that it is a Thing that never was; if Perſons come alive into the Water, then they ſink; if dead, then they ſwim; that made ſome more curious to look into this Matter. At firſt, it was thought that ſuch an Accident might happen, though they could not imagine any Cauſe for this Woman to do ſo, who had ſo great Proſperity, had ſo good an Eſtate, and had no Occaſion to do an Action upon herſelf ſo wicked and ſo barbarous, nor cannot learn what Reaſon ſhe had to induce her to ſuch a Thing. Upon View of the Body, it did appear there had been Violence uſed to the Woman; there was a Creaſe round her Neck, ſhe was bruiſed about her Ear; ſo that it did ſeem as if ſhe had been ſtrangled either by Hands or a Rope.

Gentlemen, upon the Examination of this Matter, it was wondered how this Matter came about, it was dark and blind. The Coroner at that Time, nor theſe People, had no Evidence given, but the ordinary Evidence, and it paſſed in a Day. We muſt call our Witneſſes to this Fact, that of Neceſſity you muſt conclude ſhe was ſtrangled, and did not drown herſelf. If we give you as ſtrong a Proof as can be upon the Nature of the Fact, that ſhe was ſtrangled, then the ſecond Matter under that Enquiry will be, to know who, or what Perſons ſhould be the Men that did the Fact. I told you before, it was, as all wicked Actions are, a Matter of Darkneſs, and done in ſecret, to be kept as much from the Knowledge of Men as was poſſible.

Truly, Gentlemen, as to the Perſons at the Bar, the Evidence of the Fact will be very ſhort, and will be to this Purpoſe.

Mr. *Cowper* was the laſt Man unfortunately in her Company; I could wiſh he had not been ſo with all my Heart; 'tis a very unfortunate Thing, that his Name ſhould upon this Occaſion be brought upon the Stage; but then, my Lord, it was a ſtrange Thing, here happens to be three Gentlemen, Mr. *Marſon*, Mr. *Rogers*, and Mr. *Stephens*. As to theſe three Men, my Lord, I don't hear of any Buſineſs they had here, unleſs it was to do this Matter, to ſerve ſome Intereſt or Friend that ſent them upon this Meſſage; for, my Lord, they came to Town, (and in Things of this Nature 'tis well we have this Evidence; but if we had not been ſtraightned in Time, it would have brought out more; theſe Things come out ſlowly) theſe Perſons, Mr. *Stephens*, Mr. *Rogers*, and Mr. *Marſon*, came to Town here on the thirteenth of *March* laſt, the Aſſize-Day. My Lord, when they came to Town, they came to an Houſe, and took Lodgings at one *Gurrey*'s; they took a Bed for two, and went out of their Lodging, having taken a Room with a large Bed in it; and afterwards they went to the *Glove* and *Dolphin*, and then about Eight a-Clock one *Marſon* came to them there; in what Company they came, your Lordſhip and the Jury will know by and bye; they ſtaid there, my Lord, at the *Glove* from Eight a-Clock to Eleven, as they ſay. At Eleven theſe three Gentlemen came all into their Lodging together to this *Gurrey*'s. My Lord, when they came in, it was very obſervable amongſt them, unleſs there had been a Sort of Fate in it, *Firſt*, That they ſhould happen to be in the Condition they were in; and, *ſecondly*, fall upon the Diſcourſe they did at that Time; for, my Lord, they called for Fire, and the Fire was made them; and while the People of the Houſe were going about, they obſerved and heard theſe Gentlemen talk of Mrs. *Sarah Stout*; that happened to be their Diſcourſe; one ſaid to the other, *Marſon*, ſhe was an old Sweet-heart of yours: Ay, ſaith he, but ſhe caſt me off, but I reckon by this Time a Friend of mine has done her Buſineſs. Another Piece of Diſcourſe was, I believe a Friend of mine is even with her by this Time. They had a Bundle of Linnen with them, but what it was is not known, and one takes the Bundle and throws it upon the Bed; Well, ſaith he, her Buſineſs is done, Mrs. *Sarah Stout*'s courting Days are over; and they ſent for Wine, my Lord; ſo after they had drank of the Wine they talk'd of it, and one pulled out a great deal of Money; ſaith one to another, What Money have you ſpent to Day? Saith the other, Thou haſt had 40 or 50*l.* for thy Share: Saith the other, I will ſpend all the Money I have, for Joy the Buſineſs is done.

My Lord, this Diſcourſe happened to be among them; which made People of the Houſe conſider and bethink themſelves; when the next Day they heard of this Mrs. *Stout*'s being found in the Water, this made them recollect and call to mind all theſe Diſcourſes.

My Lord, after theſe Gentlemen had ſtaid there all Night, next Morning, truly, it was obſerved (and I ſuppoſe ſome Account will be given of it) that Mr. *Cowper* and they did meet together, and had ſeveral Diſcourſes, and that very Day went out of Town; and I think as ſoon as they came to *Hoddeſdon*, made it all their Diſcourſe and Buſineſs to talk of Mrs. *Stout*.

My Lord, we will call our Witneſſes, and prove all theſe Facts that I have opened to your Lordſhip; and then I hope they will be put to give you ſome Account how all theſe Matters came about.

Call Sarah Walker (*who was ſworn.*)

Mr. *Jones*. Mrs. *Walker*, pray give an Account to my Lord and the Jury, of Mr. *Cowper*'s coming to your Houſe the 13th of *March*, and what was done from his coming there at Night to his going out?

Sarah Walker. May it pleaſe you, my Lord, on *Friday* before the laſt Aſſizes, Mr. *Cowper*'s Wife ſent a Letter to Miſtreſs *Stout*, that ſhe might expect Mr. *Cowper* at the Aſſize-Time; and therefore we expected Mr. *Cowper* at that Time, and accordingly provided; and as he came in with the Judges, ſhe aſk'd him if he would alight? He ſaid No; by Reaſon I come in later than uſual, I will go into the Town and ſhow my ſelf, but he would ſend his Horſe preſently. She aſk'd him, How long it would be before he would come, becauſe they would ſtay for him? He ſaid, he could not tell, but he would ſend her Word; and ſhe thought he had forgot, and ſent me down to know, whether he would pleaſe to come? He ſaid, he had Buſineſs, and he could not come juſt then; but he came in leſs than a Quarter of an Hour after, and dined there, and he went away at Four a-Clock: and then my Miſtreſs aſk'd him, if he would lie there? And he anſwered Yes, and he came at Night about Nine a-Clock; and he ſat talking about half an Hour, and then call'd for Pen, Ink and Paper, for that, as he ſaid, he was to write to his Wife; which was brought him, and he wrote a Letter; and then my Miſtreſs went and aſk'd him, what he would have for Supper? He ſaid Milk, by Reaſon he had made a good Dinner; and I got him his Supper, and he eat it; after ſhe called me in again, and they were talking together, and then ſhe bid me make a Fire in his Chamber; and when I had done ſo, I came and told him of it, and he looked at me, and made me no Anſwer: Then ſhe bid me warm the Bed, which accordingly I went up to do as the Clock ſtruck Eleven, and in about a Quarter of an Hour, I heard the Door ſhut, and I thought he was gone to carry the Letter, and ſtaid about a Quarter of an Hour longer, and came down, and he was gone and ſhe; and Mrs. *Stout* the Mother aſk'd me the Reaſon why he went out when I was warming his Bed? And ſhe aſk'd me for my Miſtreſs, and I told her I left her with Mr. *Cowper*, and I never ſaw her after that, nor did Mr. *Cowper* return to the Houſe.

Mr. *Jones*. How long did you ſit up?

Walker. All Night.

Mr. *Jones*. What Time next Morning did you ſee her?

Walker. About Seven a-Clock.

Mr. *Jones*. In the Water, or out?

Walker. Out of the Water.

Mr. *Cowper*. Pray will you recollect a little, and be very particular as to the Time when I went out at Night?

Walker. Sir, it was a Quarter after Eleven by our Clock; the Difference between the Town-Clock and ours was half an Hour.

Mr. *Cowper*. But you ſay by your Clock it was a Quarter after Eleven?

Walker. Yes, Sir.

Mr. *Cowper*. Pray, what Account did you give as to the Time to the Coroner's Inqueſt?

Walker. I ſaid then it was Eleven, or a Quarter after Eleven, when I heard the Door ſhut.

Mr. *Cowper*. Pray, was Mrs. *Stout* preſent with the Coroner's Inqueſt when you gave that Account?

Walker. Yes, ſhe was.

Mr. *Cowper*. Pray, what Account did you give as to the Time before my Lord Chief Juſtice *Holt*?

Walker. I gave the Account that it was Eleven, or a Quarter of an Hour after.

Mr. *Cowper*. In her Depoſitions there is half an Hour's Difference; for then ſhe ſaid it was half an Hour after Ten.

Mr. Baron *Hatſell*. Which Clock was earlieſt, yours or the Town-Clock?

Walker. Ours was half an Hour faſter than theirs.

Mr. *Cowper*. How came you to know this?

Walker. By reaſon that Dinner was dreſs'd at the Cook's, and it was ordered to be ready by Two a-Clock, and it was ready at Two a-Clock by the Town-Clock, and half an Hour after Two by ours.

Mr. *Cowper*. When you came down and miſſed your Miſtreſs, did you enquire after her all that Night?

Walker. No, Sir, I did not go out of the Doors; I thought you were with her, and ſo I thought ſhe would come to no Harm.

Mr. *Cowper*. Here is a whole Night ſhe gives no Account of. Pray, Miſtreſs, why did not you go after her?

Walker. My Miſtreſs would not let me.

Mr. *Cowper*. Why would ſhe not let you?

Walker. I ſaid I would ſee for her: No, ſaith ſhe, by Reaſon if you go and ſee for her, and do not find her, it will make an Alarm over the Town, and there may be no Occaſion.

Mr. *Cowper*. Did your Miſtreſs uſe to ſtay out all Night?

Walker. No, never.

Mr. *Cowper*. Have not you ſaid ſo?

Walker. I never ſaid ſo in my Life.

Mr. *Cowper*. Pray, Mrs. *Walker*, did you never take notice that your Miſtreſs was under Melancholy?

Walker: I don't ſay but ſhe was melancholy; ſhe was ill for ſome time; and I imputed it to her Illneſs, and I know no other Cauſe.

Mr. *Cowper*. Have you not often told People that your Miſtreſs was a melancholy Perſon, upon your Oath?

Walker. I have ſaid ſhe hath been ill, and that made her melancholy.

Mr. *Cowper*. I will aſk you this Queſtion; Pray, did you ever purchaſe any Poiſon more or leſs, within theſe twelve Months?

Walker. Yes, Sir, I did ſo, and can tell what it was for.

Mr. *Cowper*. By whoſe Order?

Walker. By my own Order.

Mr. *Cowper*. Did you buy Poiſon but once, upon your Oath?

Walker. I believe I might buy twice.

Mr. *Cowper*. Where?

Walker. Of Mr. *Ludman*.

Mr. *Cowper*. Both Times there?——*Walker*. Yes.

Mr. *Cowper*. Of him?

Walker. No, of the young Man.

Mr. *Cowper*. Did you ever buy any Poiſon at *Luton*?

Walker. No.

Mr. *Cowper*. Did you ever buy any by your Miſtreſs's Order, or of one Mrs. *Crooke*, upon your Oath?

Walker. No, I never did.

Mr. *Cowper*. Pray, at what Time was it that you bought this Poiſon you ſpeak of?——*Walker*. I can't remember.

Mr. *Cowper*. Pray recollect yourſelf.

Walker. It was within this half Year, to be ſure.

Mr. *Cowper*. What was the Name of the Poiſon you aſk'd for?

Walker. I aſk'd for White Mercury.

Mr. *Cowper*. She ſaith, I paſs'd by her Miſtreſs's Houſe, and went directly to Mr. *Barefoot*'s; Pray, did not you come to Mr. *Barefoot*'s after me?

Walker. Yes, Sir.

Mr. *Cowper*. Pray did you give the ſame Account before the Coroner, when this Matter was enquired into, that you have now done?

Walker. Yes, I did, as near as I can tell.

Mr. *Cowper*. Did you give this Account in Subſtance?

Walker. Yes, I did.

Mr. Baron *Hatſell*. Mr. *Cowper*, I ſuppoſe you don't mean in relation to the Poiſon.

Mr. *Cowper*. My Lord, I mean in relation to ſo much of the Evidence which ſhe now gives, and particularly reſpects me. For what End or Purpoſe did you buy it?

Walker. I bought it to poiſon a Dog.

Mr. *Cowper*. Why ſhould you poiſon the Dog?

Walker. It was a Dog that uſed to haunt our Houſe, that did us a great deal of Miſchief; but that did not do, ſo I bought it a ſecond Time.

Mr. *Cowper*. Who gave it to the Dog?

Walker. 'Twas another Maid did give it the Dog.

Mr. *Cowper*. Why did you then ſwear it was given the Dog?

Walker. Sir, I ſaw it given.

Mr. *Cowper*. Did your Miſtreſs know of it?

Walker. Yes, ſhe did know of it afterwards.

Mr. *Cowper*. How did you give it?——*Walker*. In warm Milk.

Mr. *Cowper*. How did the Milk look?

Walker. It did not look diſcolour'd in the leaſt.

Mr. Baron *Hatſell*. You ſaid juſt now your Miſtreſs was ill, and that made her melancholy; what Illneſs was it?

Walker. My Lord, ſhe had a great Pain in her Head.

Mr. Baron *Hatſell*. How long had ſhe been troubled with it?

Walker. Ever ſince laſt *May* was twelve Months was the beginning of it.

Mr. *Jones*. Did you ever find her in the leaſt inclined to do herſelf a Miſchief?——*Walker*. No, I never did.

Mr. *Cowper*. You bought Poiſon twice, did you give all the Poiſon you bought to the Dog?——*Walker*. Yes.

Mr. *Cowper*. The firſt and the laſt?

Walker. Yes, the whole.

Mr. *Cowper*. How much did you buy?

Walker. I am not certain how much I bought.

Mr. *Cowper*. Pray, what Miſchief did it do the Dog?

Walker. I cannot tell, he may be alive till now for aught I know.

Mr. *Cowper*. What Miſchief did the Dog do?

Walker. A great deal, he threw down ſeveral Things and broke them.

Mr. *Jones*. Did Mr. *Cowper*, upon your Oath, hear Miſtreſs *Stout* give you Order to make his Fire, and warm his Bed?

Walker. He knows beſt, whether he heard it or no; but he ſat by her when ſhe ſpake it.

Mr. *Jones*. Did ſhe ſpeak of it ſo as he might hear?

Walker. Yes, ſhe did; for he was nearer than I.

Mr. *Jones*. And did not he contradict it?

Walker. Not in the leaſt.

Mr. *Jones*. Was it the old or young Woman that gave you the Order?

Walker. The young Woman.

Mr. *Cowper*. Pray, did the Dog lap it, or did you put it down his Throat, upon your Oath?

Walker. No, he lapt it, upon my Oath.

Mr. *Jones*. Did Mr. *Cowper* ſend for his Horſe from your Houſe the next Day?

Walker. I can't ſay that; I was not in the Way.

Mr. *Jones*. Did he come to your Houſe afterwards?

Walker. No, I am ſure he did not.

Mr. *Jones*. Was the Horſe in your Stable when it was ſent for?

Walker. Yes, Sir.

Mr. *Jones*. And he did not come to your Houſe again, before he went out of Town?

Walker. No, Sir.

Mr. *Jones*. Do you know which Way he went out of Town?

Walker. No, Sir.

Mr. Baron *Hatſell*. Did Mr. *Cowper* uſe to lodge at your Houſe at the Aſſizes?

Walker. No, my Lord, not ſince I came there; the Seſſions before he did.

Mr. *Cowper*. Where did you come to invite me to Dinner?

Walker. At Mr. *Barefoot*'s.

Mr. *Cowper*. Then you knew I was to lodge there?

Mr. Baron *Hatſell*. Who wrote the Letter on *Friday*, that Mr. *Cowper* would lodge there?

Walker. I know not who wrote it, his Wife ſent it.

Mr. *Jones*. Did he tell you he would lodge there that Night before he went away?

Walker. When he went from Dinner he ſaid ſo.

Mr. *Jones*. Call *James Berry*. (*Who was ſworn.*) Now, my Lord, we will give Evidence of the Manner how ſhe was found. Mr. *Berry*, Do you remember when Mrs. *Stout* was found by your Mill?

Berry. No, indeed, I do not know juſt what Day it was?

Mr. *Jones*. When you found her, do you remember, how, in what Manner ſhe was found?

Berry. Yes; I went out in the Morning to ſhoot a Fluſh of Water by Six o'Clock, and I ſaw ſomething a-floating in the Water, ſo I went out to ſee what it was, and I ſaw part of her Cloaths.

Mr. *Jones*. Did you ſee her Face?

Berry. No, not then.

Mr. *Jones*. Was her Face under Water, or above?

Berry. No part of her Body was above Water, only ſome part of her Cloaths.

Mr. *Jones*. How many Foot deep might the Water be?

Berry. Five Foot deep.

Mr. *Jones*. And how much was ſhe under Water, do you conceive?

Berry. She might be under Water about five or ſix Inches.

Mr. *Jones*. Then the whole Body was not under Water, was it?

Berry. Yes.

Mr. *Jones*. Was her Face under Water?---*Berry*. Yes.

Mr. Baron *Hatſell*. Did ſhe lie upon her Face, or her Back?

Berry. She lay upon her Side.

Mr. *Jones*. When ſhe was taken out, were her Eyes open or ſhut?

Berry. Her Eyes were open.

Mr. *Jones*. Was ſhe ſwell'd with Water?

Berry. I did not perceive her ſwell'd: I was amaz'd at it, and did not ſo much mind it as I ſhould.

Mr. *Jones*. But you remember her Eyes were ſtaring open?---*Berry*. Yes.

Mr. *Jones*. Did you ſee any Marks or Bruiſes about her?---*Berry*. No.

Mr. *Cowper*. Did you ſee her Legs?---*Berry*. No, I did not.

Mr. *Cowper*. They were not above Water?---*Berry*. No.

Mr. *Cowper*. Could you ſee them under Water?

Berry. I did not ſo much mind it.

Mr. *Cowper*. Did ſhe lie ſtreight or double, driven together by the Stream.---*Berry*. I did not obſerve.

Mr. *Cowper*. Did you not obſerve the Weeds and Trumpery under her?

Berry. There was no Weeds at that time thereabouts.

Mr. *Jones*. Was the Water clear?

Berry. No, it was thick Water.

Mr. *Jones*. Was there any thing under her, in the Water, to prevent her ſinking?

Berry. No, I do not know there was; ſhe lay on her right Side, and her right Arm was driven between the Stakes, which are within a Foot of one another.

Mr. *Jones*. Did any Thing hinder her from ſinking?

Berry. Not that I ſaw.

Mr. *Jones*. Did you help to take her out from the Stakes?---*Berry*. No.

Mr. *Jones*. Call *John Venables*.

Mr. *Cowper*. Mr. *Berry*, if I underſtand you right, you ſay, her Right Arm was driven between the Stakes, and her Head between the Stakes; could you perceive her Right Arm, and where was her Left Arm?

Berry. Within a ſmall Matter upon the Water.

Mr. Baron *Hatſell*. Did you ſee her Head and Arm between the Stakes?

Berry. Yes, her Arm by one Stake, and her Head by another.

Mr. *Jones*. Did her Arm hang down, or how?

Berry. I did not mind ſo much as I might have done.

[*Then* John Venables *was ſworn.*]

Mr. *Jones*. Did you ſee Mrs. *Stout*, when ſhe was taken out of the Water, as ſhe lay in it?---*Venables*. Yes.

Mr. *Jones*. Give an Account how you found her.

Venables. She was floating upon the Water.

Mr. *Jones*. How? Was all her Body, or what part in the Water?

Venables. She lay upon her Right Side, and this Arm upon the Water, rather above the Water, her Ruffles were upon the Water.

Mr. *Jones*. Did you help to take her out?---*Venables*. No, Sir.

Mr. *Jones*. Were her Eyes open then?

Venables. Her Eyes were open when I ſaw her, but I did not ſee her when ſhe was taken out.

Mr. *Jones*. Did any thing hinder her from ſinking?

Venables. I ſaw nothing to hinder her if ſhe would have ſunk.

Mr. *Jones*. Call *Leonard Dell*. (*Who was ſworn.*) Did you ſee this Mrs. *Stout* in the Water?---*Dell*. Yes.

Mr. *Jones*. Pray, tell us in what Poſture ſhe was found?

Dell. I ſaw her floating in the River; I ſaw her Face and her Cloaths.

Mr. *Jones*. Were her Cloaths all above the Water?

Dell. Her Stays and her Coat that ſhe had next her.

Mr. *Jones*. Were theſe plainly above the Water?

Dell. Some part of them.

Mr. *Jones*. Did you ſee her Face, was that above the Water?

Dell. No, Sir, it was between the Piles; ſhe lay on her Right Side, and her Head was between the Stakes, and her Right Arm.

Mr. *Jones*. Did you help to take her out of the Water?---*Dell*. Yes.

Mr. *Jones*. Did any Thing hinder her from ſinking?

Dell. Neither Stakes, nor any Thing there.

Mr. *Jones*. Did her Arms or Neck ſtick to the Stakes?

Dell. Not to my thinking.

Mr. *Jones*. Was the Water clear, or weedy?

Dell. It was very clear.

Mr. *Jones*. How many Foot deep was it?

Dell. I know not but it might be five Foot deep.

Mr. *Jones*. Did you help to take her out of the Water?

Dell. Yes, Sir, and we took her and carried her into the Meadow juſt by, and laid her on the Bank.

Mr. *Jones*. Did you obſerve her Face, Neck, or Arms, to be bruis'd?

Dell. I ſaw no Bruiſe at all.

Mr. *Cowper*. How did you know but her Right Arm did reach to the Ground, ſince you did not ſee it?

Dell. We could ſee her Arm lie in this Manner between the Piles, the Right Arm was downwards, for ſhe lay on one Side.

Jury-man. Did you ſee any Arm above in the Water?---*Dell*. No.

Mr. Baron *Hatſell*. You ſhould propoſe your Queſtions to the Court.

Jury-man. My Lord, I deſire to know where was her Left Arm?

Mr. Baron *Hatſell*. Where was her left Arm?

Dell. I can't tell how it did lie; I did not obſerve it.

Mr. Baron *Hatſell*. When you took her out of the Water, did you obſerve her Body ſwell'd?

Dell. We carried her into the Meadow, and laid her on the Bank-ſide, and there ſhe lay about an Hour, and then was ordered to be carried into the Miller's.

Mr. Baron *Hatſell*. Did you obſerve that any Water was in her Body?

Dell. None at all that I could ſee; but there was ſome ſmall Matter of Froth came from her Mouth and Noſtrils.

Jury-Man. My Lord, I deſire to know whether her Stays were laced?

Dell. Yes, ſhe was laced.

Mr. *Cowper*. If I take you right, you ſay ſhe was ſtrait-laced?

Dell. Her Stays were laced.

Mr. *Cowper*. And you ſay there was Froth and Foam came out of her Mouth and Noſtrils?---*Dell*. Yes, Sir.

Mr. *Jones*. Pray what Quantity?

Dell. I could hold it all in the Palm of my Hand.

Mr. *Cowper*. How was ſhe taken out of the Water?

Dell. My Lord, we ſtood upon the Bridge, I and another Man, where ſhe lay, and he laid hold of her and took her out.

Mr. *Jones*. And did you not perceive ſhe was hung?---*Dell*. No, my Lord.

Mr. *Cowper*. Pray, where was ſhe laid when ſhe was taken out?

Dell. In the place call'd the *Hoppers*, juſt by.

Mr. *Cowper*. How long did ſhe lie there?

Dell. About an Hour.

Mr. *Cowper*. Did you ſtay there all that Time?---*Dell*. Yes.

Mr. *Cowper*. And did the Froth continue to iſſue from her Mouth and Noſtrils?

Mr. Baron *Hatſell*. He told you, Mr. *Cowper*, he could hold it all in the Palm of his Hand.

Mr. *Jones*. Call *John Ulfe*. (*Who was ſworn.*) *John Ulfe*, Did you ſee Mrs. *Stout* when ſhe was taken out of the Water?---*Ulfe*. Yes.

Mr. *Jones*. Give an Account of the Condition ſhe was in.

Ulfe. She lay on one Side; I help'd to take her out.

Mr. *Jones*. Did ſhe hang or ſtick to any Thing?

Ulfe. There was nothing at all to hold her up; ſhe lay between a Couple of Stakes, but the Stakes could not hold her up.

Mr. *Jones*. Did you ſee her after ſhe was taken out?---*Ulfe*. Yes.

Mr. *Jones*. Did any Water come out of her?

Ulfe. Nothing at all, only a little Froth came out of her Noſtrils.

Mr. *Jones*. Call *Katharine Dew*. (*Who was ſworn.*) Did you ſee Mrs. *Stout* taken out of the River?---*Dew*. Yes.

Mr. *Jones*. Did you ſee her in the River before?---*Dew*. Yes, Sir.

Mr. *Jones*. How did ſhe lie in the River?

Dew. She lay Side-way with her Eyes open, and her Teeth clenched in her Head, with Water flowing a little from her Face, ſome part of her and her Petticoats were above Water.

Mr. *Jones*. Did nothing hold her from ſinking?

Dew. Her Right Arm lay againſt the Stake.

Mr. *Jones*. Did you ſee her after ſhe was taken out of the River?

Dew. Yes, Sir.

Mr. *Jones*. Was ſhe ſwell'd?

Dew. I did not perceive ſhe was ſwell'd at all.

Mr. *Jones*. Did you handle her.

Dew. No, I touch'd nothing but her Petticoat.

Mr. *Jones*. Did you obſerve her Legs were in the Water?

Dew. No, I did not.

Mr. *Cowper*. Did you ſee where her Right Arm was?

Dew. I could not ſee her Right Arm, the Water flow'd over it.

Mr. *Cowper*. Did you ſee her after this Time?

Dew. No, Sir, I ſaw her taken out, but not afterward.

Mr. Baron *Hatſell.* Did you ſee her after ſhe lay on the Ground?

Dew. Yes, my Lord.

Mr. Baron *Hatſell.* How was ſhe then?

Dew. She purg'd at the Noſe and one of her Eyes; I did not take particular Notice after ſhe was out; the Notice I took was when ſhe was in the Water.

Mr. Baron *Hatſell.* What did you ſee at her Eye?

Dew. Froth, my Lord.

Mr. *Jones.* Did you ſee her after ſhe was ſtripp'd naked?

Dew. No, my Lord.

Mr. *Jones* Was it a ſettled Frothing, or a Purging?

Dew. A purging Froth.

Mr. Baron *Hatſell.* Did any Body wipe it off?

Dew. No, my Lord, I did not ſee any Body do it.

Mr. Baron *Hatſell.* Then there was no new Froth came?

Dew. No, my Lord, I ſaw her froth at the Noſe and one of the Eyes as ſoon as ſhe was taken out, but I did not ſtay long.

Mr. *Cowper.* Was ſhe in her Stays?——*Dew.* Yes, Sir.

Mr. *Cowper.* Was ſhe not laced?

Dew. Yes, ſhe was laced before and behind.

Mr. *Jones.* Call *Thomas Dew.* (*Who was ſworn.*) Did you ſee this Mrs. *Stout* in the Water? Pray give my Lord and the Jury an Acount what Poſture ſhe was in.

Dew. I ſaw her lying in the Water floating, above the Water I will not ſay, but the Water ran ſome ſmall Matter over her; her right Arm was within the Stake, and her left Arm without; ſhe lay juſt upon her Side, and I ſaw her when ſhe was firſt taken up, and her Shoes and Stockings were as clean as when they were put on, no Mud nor Dirt upon them, and I ſaw her Shoes and her Stockings, as high as her Knee almoſt; but I ſaw no Dirt

Mr. *Jones.* Do you believe ſhe had been ſunk to the Bottom?

Dew. She did not look as if ſhe had, nor I ſee no Water come from her.

Mr. *Jones.* Did you obſerve that ſhe was ſwelled at all?

Dew. No, nor ſwell'd that I perceived a bit; there was a little Froth that came out of her Noſe, and about her (I can't ſay from her Eye), in that it was a ſmall Quantity.

Mr. *Jones.* Call Mr. *Edward Blackno.* (*Who was ſworn.*) Did you ſee Mrs. *Stout* when ſhe lay in the Water?

Blackno. Yes, I did ſee her lie in the Water floating; I was ſo near, that I ſaw the Miller's Man lift her up by one of her Arms out of the Water.

Mr. *Jones.* Was the Arm bent or ſtreight?

Blackno. It hung in this Manner.

(*Shewing the Court how with his own Arm.*)

Mr. Baron *Hatſell.* The other Witneſſes ſaid, ſhe lay on her right Side.

Blackno. Yes, ſhe lay on her right Side, and her Arm in this Manner.

Mr. Baron *Hatſell.* Did you obſerve her to be ſwelled?

Blackno. I did not ſee her taken out.

Mr. Baron *Hatſell.* Did you obſerve any thing to hinder her from ſinking?

Blackno. No, I did not, nothing but the Water.

Mr. *Cowper.* I think, Sir, if I heard you right, you ſay, that this taking her by the Arm and ſtirring her, was before ſhe was taken out of the Water; then I would know, after ſhe was ſtirred, was ſhe let go again? Was you by at the taking of her up?——*Blackno.* No, I was not.

Mr. Baron *Hatſell.* He told you ſhe was floating when he ſaw her, and that nothing hindered her from ſinking.

[*Then* William Edmunds *and* William Page *were ſworn.*]

Mr. *Jones.* *Edmunds*, did you ſee Mrs. *Stout* when ſhe was in the Water?

Edmunds. Yes, Sir.

Mr. *Jones.* Give an Account what Poſture ſhe was in?

Edmunds. She lay againſt the Stake, her Head lay againſt the Stake in the River; we were coming up in a Barge, and called to a Miller to draw the Water, but he ſaid he could not, for then ſhe would ſwim through; and then we came on, and ſee her lie in the Water.

Mr. *Jones.* Did any Thing hinder her from ſinking?

Edmunds. Not that I ſee.

Mr. *Jones.* Did no Part of her Legs or Arms ſtick? Did you ſee her taken out?

Edmunds. No, I did not, I was gone; I did not know whether they would take her out, or no.

Mr. *Jones.* *Page*, Did you ſee Mrs. *Stout* upon the Water?

Page. Yes, Sir.

Mr. *Jones.* Tell us how ſhe lay.

Page. She lay floating on the Water, on her right Side, with her Head between the Stakes.

Mr. *Jones.* Did her Arms or Cloaths, or any Thing ſtick?

Page. Not that I ſaw.

Mr. *Jones.* Did any Thing hinder her from ſinking?

Page. I ſaw nothing.

Mr. *Cowper.* Did you ſee her Legs or Knees?

Page. No, I could not, they were not out of the Water.

Mr. *Jones.* Swear Mrs. *Anne Ulſe.* (*Which was done.*) Did you ſee Mrs. *Stout* in the Water?

Ulſe. Yes, I help'd to pull her out; ſhe lay on one Side in the Water floating, and the Water came over her Face.

Mr. *Jones.* Did ſhe ſtick by any Thing?

Ulſe. One of her Arms was about the Poſt.

Mr. *Jones.* How?———*Ulſe.* It got through the Grate.

Mr. *Jones.* But it did not hang?———*Ulſe.* No.

Mr. *Jones.* Did you take her out?——*Ulſe.* Yes, Sir.

Mr. *Jones.* Did you mind her Cloaths?

Ulſe. Yes, I turn'd up her Petticoats in the Water.

Mr. *Jones.* Had ſhe Gloves on?——*Ulſe.* No, Sir.

Mr. *Jones.* How were her Shoes and Stockings?

Ulſe. They were not muddy, her Stockings were rolled down, ſhe had no Garters on.

Mr. *Cowper.* You ſay, one Arm lay through the Grate, where lay the other?

Ulſe. The other was down in the Water.

[William How *was ſworn.*]

Mr. *Jones.* Did you ſee Mrs. *Stout* in the Water?

How. Yes, Sir, I ſee her lie upon the Water; ſhe lay a-float, ſhe might lie three or four Inches deep in the Water.

Mr. *Jones.* Did any of her Cloaths lie above the Water?

How. Some Part of her Coats lay above the Water.

Mr. *Jones.* Did any Thing hinder her from ſinking?

How. I ſaw nothing; I ſaw them take her out, and did not perceive ſhe hung any Way; ſhe lay with one Arm, and her Head in the Grate, but I did not perceive ſhe hung.

[John Meager *was ſworn.*]

Mr. *Jones.* Well, do you give an Account of what you know of Mrs. *Stout* being in the Water.

Meager. I ſee Mrs. *Sarah Stout* floating in the Water, her right Arm in the Grate, and her left Arm with the Stream.

Mr. *Jones.* Did ſhe hang or ſtick by any Thing?

Meager. No, neither hang nor ſtick, ſhe floated.

Mr. *Cowper.* Did you ſee ſome Body go through the *Blue-coat Building* about Eleven a-Clock?

Mr. *Meager.* No, Sir, I was in Bed before Nine.

Mr. *Jones.* Now, my Lord, we will give an Account how ſhe was when ſhe was ſtript, and they came to view the Body. Call *John Dimſdale* junior. (*Who was ſworn.*)

Dimſd. My Lord, I was ſent for at Night on *Tueſday* the laſt Aſſizes—

Mr. *Cowper.* My Lord, if your Lordſhip pleaſes, I have ſome Phyſicians of Note and Eminency that are come down from *London*; I deſire they may be call'd into Court to hear what the Surgeons ſay.

Mr. Baron *Hatſell.* Ay, by all means.

Mr. *Cowper.* My Lord, there is Dr. *Sloane*, Dr. *Garth*, Dr. *Morley*, Dr. *Gilſtrop*, Dr. *Harriot*, Dr. *Wollaſton*, Dr. *Crell*, Mr. *William Cowper*, Mr. *Bartlett*, and Mr. *Camlin*.

[*Who reſpectively appear'd in Court.*]

Mr. *Jones.* Give an Account how you found Mrs. *Stout.*

Mr. Baron *Hatſell.* You are a Phyſician, I ſuppoſe, Sir?

Dimſdale. A Surgeon, my Lord. When I was ſent for to Mrs. *Stout*'s, I was ſent for two or three Times before I would go; for I was unwilling after I had heard Mrs. *Stout* was drown'd; for I thought with myſelf, what need could there be of me when the Perſon was dead? But ſhe ſtill ſent; and then I went with Mr. *Camlin*, and found a little Swelling on the Side of her Neck, and ſhe was black on both Sides, and more particularly on the left Side, and between her Breaſts up towards the Collar-bone; that was all I ſaw at that time, only a little Mark upon one of her Arms, and I think upon her left Arm.

Mr. *Jones.* How were her Ears?

Dimſdale. There was a Settling of Blood on both Sides the Neck, that was all I ſaw at that Time.

Mr. *Jones.* How do you think ſhe came by it?

Dimſdale. Truly I only gave an Account juſt as I ſay now to the Gentlemen at that Time, I ſaw no more of it at that Time, but about ſix Weeks after the Body was opened by Dr. *Philips*——

Mr. *Cowper.* My Lord, he is going to another Piece of Evidence, and I would aſk him----

Mr. *Jones.* Let us have done firſt; how was her Ears?

Dimſdale. There was a Blackneſs on both Ears, a Settling of Blood.

Mr. *Jones.* Call *Sarah Kimpſon.*

Mr. Baron *Hatſell.* Mr. *Cowper*, now you may aſk him any Thing, they have done with him.

Mr. *Cowper.* I would aſk him, Whether he was not employed to view theſe particular Spots he mentions at the Coroner's Inqueſt?

Dimſdale. I was deſired to look upon the Face and Arms, and Breaſt, becauſe they ſaid there was a Settling of Blood there.

Mr. *Cowper.* When you return'd to the Coroner's Inqueſt, What did you certify as your Opinion?

Dimſdale. I did certify there was a Settling of Blood; but how it came I could not tell.

Mr. *Cowper.* I aſk you, Sir, Did not you ſay it was no more than a common Stagnation uſual in dead Bodies?

Dimſdale. I do not remember a Word of it.

Mr. *Cowper.* Sir, I would aſk you; You ſay the Spot was about the Collar-bone; was it above or below?

Dimſdale. From the Collar-bone downwards.

Mr. *Cowper.* Had ſhe any Circle about her Neck?

Dimſdale. No; not, upon my Oath.

Mr. *Jones.* Swear *Sarah Kimpſon.* Did you obſerve this Mrs. *Sarah Stout*, when ſhe was ſtripp'd, how her Body was?----*Kimpſon.* Yes.

Mr. *Jones.* Pray, give an Account of it.

Kimpſon. She had a great Settlement of Blood behind her Ear, as much as my Hand will cover, and more; and ſhe had a Settlement of Blood under her Collar-bone.

Mr. *Jones.* Did you ſee nothing about her Neck?

Kimpſon. Nothing round her Neck; on the Side of her Neck there was a Mark.

Mr. *Jones.* Was there any other Part bruiſed?

Kimpſon. Only her left Wriſt, and her Body was very flat and lank.

Mr. *Cowper.* Pray, what Day was it that you ſaw her?

Kimpſon. It was the Day ſhe was found.

Mr. *Cowper.* Was ſhe not laced?----*Kimpſon.* She was laced.

Mr. *Cowper.* Did you help to ſtir her?---*Kimpſon.* Yes, Sir.

Mr. *Jones.* Did her Body ſeem to be ſwell'd, or was there any Water come from her?

Kimpſ. I did not obſerve the leaſt Drop of Water that appeared any Way.

Mr. *Jones.* Did you know what did purge from her?

Kimpſon. Nothing that I ſaw.

Mr. *Jones.* Had not you a Child drowned there lately?

Kimpſon. Yes, about ten Weeks ago.

Mr. *Jones.* And you found her?

Kimpſon. She was drowned at Night, and we found her next Morning.

Mr. *Jones.* Where did you find her, at the Top, or at the Bottom of the Water?----*Kimpſon.* At the Bottom.

Mr. *Jones.* How was ſhe?

Kimpſon. She was ſwell'd as much as ſhe could hold.

Mr. *Jones.* Were her Eyes ſhut or open?

Kimpſon. Her Eyes were ſhut, and the Child was laced as tight as the Coat could be.

Mr. *Jones.* Was the Child opened?

Kimpſon. Yes.

Mr. *Jones*. And what was in the Body of the Child?

Kimpſon. 'Twas very full of Water.

Mr. *Jones*. Call *Sarah Peppercorn.*

Mr. *Cowper*. You ſay you view'd the Child; Had it any Settlement of Blood?----*Kimpſon*. I ſaw none.

Mr. *Cowper*. And you view'd the Body?-----*Kimpſon*. Yes.

(*Then* Sarah Peppercorn *was ſworn.*)

Mr. *Jones*. Did you ſee the Body of Mrs. *Sarah Stout*, after it was ſtript and laid out?-----*Peppercorn*. I did, Sir.

Mr. *Jones*. In what Condition did you find her?

Peppercorn. I did not ſee her till ſhe was brought home to her Mother's, and there was a Rumour in the Town that ſhe was with Child, and I was ſent for to give an account whether ſhe was or not, and I found ſhe was not; and I help'd to pull off her Cloaths, and ſhe was very clear as any I ever knew, only had a black Place on the Side of her Head, and in another Place about her Ear; but how it came I know not.

Mr. *Jones*. Did you obſerve how her Body was?

Peppercorn. Her Body was very well as any Woman's could be.

Mr. *Jones*. Did you obſerve any Water, or any ſuch thing from her?

Peppercorn. No.

Mr. *Jones*. Was there any Purging at her Mouth or Noſtrils?

Peppercorn. A little Froth as any Body might have.

Mr. *Cowper*. At what Hour did you ſee her?

Peppercorn. I believe it might be Nine or Ten a-Clock.

Mr. Baron *Hatſell*. In the Morning?

Peppercorn. Yes, Sir; but I can't give a juſt Account of the Time.

Mr. Baron *Hatſell*. What was you ſent to for?

Peppercorn. To know if ſhe was with Child; for it was reported ſhe had drowned herſelf becauſe ſhe was with Child; and ſo her Mother deſired me to come to give an Account that it was not ſo; and I found that it was not ſo.

Mr. Baron *Hatſell*. You are a Midwife, are you not?

Peppercorn. Yes, my Lord.

(*Then* Elizabeth Huſler *was ſworn.*)

Mr. *Jones*. Had you the View of the Body of Mrs. *Sarah Stout* the Day you heard ſhe was drowned?

Huſler. She was not drowned, my Lord; I went thither and helped to pull off her Cloaths.

Mr. *Jones*. In what Condition was her Body?

Huſler. Her Body was very lank and thin, and no Water appeared to be in it.

Mr. *Jones*. Was there any Water about her Mouth and Noſe?

Huſler. Not when I ſaw her.

Mr. *Jones*. Did you mind her about her Neck and Head?

Huſler. Yes, yes, there was a Settling of Blood at the Top of the Collar-bone, juſt here, and there was a Settling of Blood upon both her Ears, moſt about her left Ear.

Mr. *Jones*. Swear *Ann Pilkington.* (*Which was done.*) Did you ſee the Body of Mrs. *Stout* after ſhe was drowned?

Pilkington. Yes, Sir.

Mr. *Jones*. Pray, in what Condition was ſhe when ſhe was ſtript?

Pilkington. I was in the Houſe when ſhe was brought in dead; and old Mrs. *Stout* deſired me to help to lay her out; and taking a View of her, I did not at all perceive her Body to be ſwelled.

Mr. *Jones*. Was there any Water came out upon the moving of it?

Pilkington. No, I did not perceive any; and by a further View, I ſaw a Redneſs on the left Side of her Head, and her Ear was black, and there was a little Mark upon her Breaſt on the left Side.

Mr. *Jones*. What Colour was it of?

Pilkington. It ſeem'd reddiſh and blackiſh: As to Colour, it was like a Settling of Blood: I can't tell how to make it out very well.

Mr. *Cowper*. Had ſhe any Circle round about her Neck?

Pilkington. No, not that I ſee.

Mr. *Cowper*. Pray, did not you make ſome Depoſition to that Purpoſe, that you know of?---*Pilkington*. Sir, I never did, and dare not do it.

Mr. *Cowper*. It was read againſt me in the *King*'s-*Bench*, and I will prove it; was not Mr. *Mead* with you at the Time of your Examination?

Pilkington. Yes.

Mr. *Cowper*. Did not he put in ſome Words, and what were they?

Pilkington. Not that I know of.

Mr. *Cowper*. But you never ſwore ſo, upon your Oath?

Pilkington. No, I don't believe I did; if I did, it was ignorantly.

Mr. *Jones*. Here is her Examination, it is croſs her Neck.

Mr. *Cowper*. Was Mr. *Young* of *Hertford*, the Conſtable, preſent when you were examined?

Pilkington. Yes, he was ſo. The next Day Mrs. *Stout* ſent for me again to put on her Daughter's Shrowd, and I was one that helped to draw the Sheet away, and there was not one Drop of Water come from her; and I laid a Cloth under her Chin, when I help'd her into the Coffin, but I did not ſee the leaſt Moiſture come from her.

Mr. *Cowper*. What Day was it, that you put her into the Coffin?

Pilkington. The next Day after ſhe was dead.

Mr. *Cowper*. Do you know nothing of her being convey'd into the Barn?

Pilkington. I happen'd to be in the Barn, Mrs. *Stout* deſired me to go with her, and ſhe was brought up in an indecent Manner, and I put a Sheet about her. I was in Mrs. *Stout*'s Houſe before her Daughter was brought thither.

Mr. *Jones*. Call Doctor *Coatſworth*, Doctor *Nailor*, Doctor *Woodhouſe*, Doctor *Bide.*

(*Mr.* Coatſworth *was ſworn.*)

Mr. *Jones*. Pray, Doctor, had you a View of the Body of Mrs. *Stout?*

Coatſworth. Yes, I had, Sir: I am a Surgeon.

Mr. *Jones*. Pray, give an Account of it, and what your Opinion was how ſhe came by her Death?

Coatſworth. My Lord, in *April* laſt I was ſent for by Dr. *Philips*, to come to *Hertford* to ſee the Body of Mrs. *Stout* open'd, who had been ſix Weeks buried; and he told me, That there was a Suſpicion ſhe was murthered, and that her Relations were willing to have her taken up and opened. I came down, I think on the 27th of *April*, and lay at Mrs. *Stout*'s Houſe that Night; and by her Diſcourſe, I underſtood ſhe wanted to be ſatisfied, whether her Daughter was with Child? I told her, it was my Opinion we ſhould find the Parts contained in the *Abdomen* ſo rotten, that it would be impoſſible to diſcover the *Uterus* from the other Parts; however, if ſhe would have her opened, I could not diſcover whether ſhe was with Child, unleſs the Infant was become bony. Her Face and Neck, to her Shoulders, appeared black, and ſo much corrupted, that we were unwilling to proceed any further: But, however, her Mother would have it done, and ſo we did open her; and as ſoon as ſhe was opened, we perceived the Stomach and Guts were as full of Wind as if they had been blown with a pair of Bellows; we put her Guts aſide, and came to the *Uterus*, and Doctor *Philips* ſhewed it us in his Hand, and afterwards cut it out and laid it on the Table, and opened it, and we ſaw into the Cavity of it, and if there had been any Thing there as minute as a Hair, we might have ſeen it, but it was perfectly free and empty; and after that, we put the Inteſtines into their Places; and we bid him open the Stomach, and it was opened with an Inciſion-Knife, and it ſunk flat, and let out Wind, but no Water; afterwards we opened the Breaſt and Lobes of the Lungs, and there was no Water: Then we looked on each Side, and took up the Lobes of the Lungs too, to ſee if there was no Water in the *Diaphragm*, and there was none, but all dry. Then I remember I ſaid, This Woman could not be drowned, for if ſhe had taken in Water, the Water muſt have rotted all the Guts: That was the Conſtruction I made of it then; but for any Marks about her Head and Neck, it was impoſſible for us to diſcover it, becauſe they were ſo rotten.

Mr. *Cowper*. You ſay, this Inſpection was made about ſix Weeks after ſhe was dead?---*Coatſworth*. It was made on the 28th of *April.*

Mr. *Cowper*. She was drowned on the 13th of *March.*

Mr. *Jones*. Did you make an Inciſion into thoſe Parts of the Neck and Head?

Coatſworth. No: I told Mrs. *Stout* and her Son, If you imagine the Skull to be injur'd, I will open the Head; for if the Scalp be never ſo rotten, yet if the Skull has ſuffered any Impreſſion I ſhall diſcover it; they ſaid, They did not ſuſpect a broken Skull in the Caſe, and ſo we did not examine it.

Mr. *Jones*. But all her other Parts were ſound?

Coatſworth. Yes, ſound to a Miracle; for I did not imagine we could find them ſo.

Mr. *Jones*. Call *John Dimſdale?*

Mr. *Cowper*. My Lord, I would know, and I deſire to be heard to this Point: I think where the Coroner's Inqueſt have view'd the Body, and the Relations have been heard, and the Body buried, that it is not to be ſtirr'd afterwards for any private Inſpection of Parties, that intend to make themſelves Proſecutors; but if it is to be taken up, it is to be done by ſome legal Authority; for if it ſhould be otherwiſe, any Gentleman may be eaſily trepann'd: For inſtance, if they ſhould have thought fit, after the Coroner's View, to have broken the Skull into a hundred Pieces, This was a private View altogether among themſelves. Certainly, if they intended to have proſecuted me, or any other Gentleman upon this Evidence, they ought to have given us notice, that we might have had ſome Surgeons among them, to ſuperintend their Proceedings. My Lord, with Submiſſion, this ought not to be given in Evidence.

Mr. Baron *Hatſell*. Mr. *Cowper*, I think you are not in earneſt; there is no Colour for this Objection: If they did take up the Body without notice, Why ſhould not that be Evidence? unleſs you think they had a deſign to forſwear themſelves.

Mr. *Cowper*. Had you a *Melius Inquirendum*, or any lawful Warrant for making this Inſpection?

Coatſworth. No, there was not.

Mr. Baron *Hatſell*. Suppoſe they did an ill Thing in taking up the Body without ſome Order, tho' I don't know any more ill in taking up that Body than any other; but, however, is that any Reaſon why we ſhould not hear this Evidence?

Coatſworth. Mr. *Camblin*, Sir *William Cowper*'s Surgeon, was there by.

Mr. *Jones*. Call Mr. *Dimſdale* ſenior. (*Who was ſworn.*) Had you a View of the Body after it was taken up?------*Dimſdale*. Yes.

Mr. *Jones*. Pray, give your Opinion of it.

Dimſdale. On the 28th of *April*, as I remember, I was ſent for down by Mrs. *Stout* to view the Body of her Daughter. Her Daughter was juſt taken out of the Ground, but not opened; they had juſt touch'd the Body, but not opened the Skin when I came there———

Mr. Baron *Hatſell*. Are you a Surgeon?

Dimſdale. Yes, my Lord. Finding her Head ſo much mortified, down to her Neck, we thought all the Parts were ſeized, and had a Conſultation, Whether we ſhould open her or not; but Mrs. *Stout* was very much enraged, becauſe a great Scandal had been raiſed, That her Daughter was with Child; and ſhe ſaid, She would have her opened to clear her Reputation. With that we opened her, and found her Body as ſound as any Fleſh could be; no manner of Putrifaction in her Lungs or any other Part, but ſhe was very full of Wind. We ſearch'd the Stomach and the Thorax, and found not one Drop of Water about it. I was more curious than the reſt, and turn'd away her Legs, to ſee if the Coffin was ſoil'd, and the Coffin and Shrowd were not wet. Her *Uterus* was taken out, and I ſaw no manner of Sign of Conception. After this we had a Conſultation to conſider, Whether ſhe was drowned or not drowned; and we were all of Opinion, That ſhe was not drowned; only Mr. *Camblin* deſired he might be excuſed from giving his Opinion, whether ſhe was drowned or not; but all the reſt of us did give our Opinions, That ſhe was not drowned.

Mr. *Jones*. Give your Reaſons, why you believ'd ſhe was not drowned.

Dimſdale. My Reaſon was this: Becauſe we found no Water in her; her Inteſtines were not putrified; for if there had been Water in her, that would have cauſed a Fermentation, and that would have rotted the Lungs and Guts.

Mr. Baron *Hatſell*. Could you tell, ſo many Weeks after, whether ſhe was drowned or no?

Dimſdale. Yes, my Lord, for this Reaſon: For if ſhe had been drowned, there had been ſome Sign of Water; and if there had been a Pint of

Water, it would have rotted her Lights and her Guts; and that is done in a Week's Time by Fermentation.

Mr. *Cowper*. Sir, I deſire to know, Whether according to Reaſon and your Skill, after ſix Weeks Time, it's poſſible there ſhould be Water in the *Thorax?*

Dimſdale. I do believe there may be ſome; for it can't come out after the Body is dead, but by Putrifaction; and there was no Putrifaction, but it was firm and ſound.

Mr. Baron *Hatſell*. What Parts would have been putrified by the Water?

Dimſdale. The Lungs and Bowels.

Mr. Baron *Hatſell*. And they were firm?—*Dimſdale*. They were: And if there had been Water, they would have been putrified.

Mr. *Jones*. Call *John Dimſdale* junior.

Juryman. Was her Navel ſtarted?

Dimſdale ſen. No: I never ſaw ſuch a Body in my Life.

Mr. *Cowper*. Did you ever ſee a Body that was drowned, opened ſix Weeks after?

Dimſdale ſen. No, never. If a Body be drowned a Fortnight, the Bowels will be ſo rotten, there will be no coming near it; and I took particular Notice, and I did not ſee one Drop of Water.

Mr. Baron *Hatſell*. Was the Coffin cloſe?

Dimſdale ſen. Yes; it was cloſe and dry as any Board whatſoever; and all the Parts ſound, but the Head and Neck, and left Arm.

Mr. *Jones*. What do you think could be the Reaſon of that?

Dimſdale ſen. The left Arm was rottener than the other, the Neck was rotten before.

Mr. *Jones*. What did you take to be the Cauſe of it?

Dimſdale ſen. I can't judge of that.

(Call John Dimſdale *(junior) Who was ſworn.)*

Dimſdale jun. My Lord, the Body was opened before I came to ſee it, and they were drawing up an Affidavit, that there was no Water in the Body, and they deſired me to ſign it; but I deſired firſt to look into the Body; and I did look into it, and turn'd the Inteſtines aſide, and there was no Water in it; but the Head from the Neck was very much putrified.

Mr. *Jones*. Do you believe ſhe was drowned?

Dimſdale jun. No, I believe not.

Mr. *Jones*. Did you open the Child that was drowned? What difference was there between the Body of that Child and this?

Dimſdale jun. The Child was extremely ſwell'd in the Belly and Stomach, and had abundance of Water in it.

Mr. *Jones*. Was the Child lac'd that you open'd?

Dimſdale jun. It was laid upon the Table before I came.

Mr. *Cowper*. How long was it before the Child was opened?—*Dimſdale* jun. It was drowned in the Afternoon, and opened the next Morning.

Mr. *Cowper*. You ſaid, Sir, you was aſk'd to ſign the Affidavit before you ſaw the Body, and you were honeſt, and would ſee the Body firſt; Pray, who aſk'd you?—*Dimſdale* jun. All of them did.

Mr. *Cowper*. Who in particular? If you pleaſe name them.

Dimſdale jun. Mr. *Coatſworth*, Mr. *Philips*, Mr. *Camblin*, *&c.* they aſked me to ſet my Hand to it, becauſe they thought I had ſeen it before.

(Then Dr. Dimſdale *was ſworn.)*

Mr. *Jones*, Mr. *Robert Dimſdale*, was you at the opening of the Body?

Dr. *Dimſdale*. I came after it was opened; my Brother and I came together.

Mr. *Jones*. What Profeſſion are you of, a Phyſician?

Dr. *Dimſdale*. Yes: When the Body was taken up, they deſired us to be there, to inſpect the Body; but before we came, it happen'd they had opened the Body, and were ſetting their Hands to a Paper, a ſort of Affidavit; and when I came in, they would have had us ſet our Hands; but we would not, till we had look'd upon the Body, and went and laid it open again, and we did not find the leaſt Drop of Water neither in the Thorax nor Abdomen.

Mr. *Cowper*. Is it poſſible there ſhould be Water in the Thorax, according to your Skill?—Dr. *Dimſdale*. Yes, we did think there would have been, if ſhe had been drown'd.

Mr. Baron *Hatſell*. Could you expect to find it, ſo long as ſix Weeks after?

Dr. *Dimſdale*. We ſhould have expected that or a Putrifaction; but we found no Putrifaction, neither in the Bowels nor Inteſtines, but only upon her Head and Shoulders, and one Arm.

Mr. *Cowper*. Pray, by what Paſſage does the Water go into the *Thorax?*

Dr. *Dimſdale*. 'Twill be very difficult for me to deſcribe the Manner here; but we ſhould have found ſome in the Stomach and Inteſtines.

Mr. *Cowper*. Pray, Sir, how ſhould it go into the *Thorax?*

Dr. *Dimſdale*. By the *Lymphæduct*, if carried by any Means.

Mr. *Cowper*. When the Party is dead, Can any Water paſs into any Part of the Body?

Dr. *Dimſdale*. We opened the *Abdomen* of the Child that was drowned, and found in the ſeveral Cavities abundance of Water.

Mr. *Jones*. When a Perſon is dead, Can they receive any Water after?

Dr. *Dimſdale*. No; for all the Parts are cloſed and contracted.

Mr. *Cowper*. Pray, If a dead Body be put into the Water, will not the Water come into the Wind-pipe?

Dr. *Dimſdale*. I queſtion whether it will or no.

Mr. *Jones*. Was her Mouth ſhut?

Dr. *Dimſdale*. She was putrified about the Head and Shoulders, and one Arm that I ſaw was putrified; it was the left Arm, as I take it.

Mr. *Jones*. What is your Opinion, as to her Death?

Dr. *Dimſdale*. I believe if ſhe had been drowned, there would have been a Putrifaction of the *Abdomen* firſt; and it was her extreme Parts, her Arm, her Head, and her Breaſt, that was putrified, but her Bowels ſeem'd firm and ſound.

Mr. *Jones*. Then you don't think her Death was by drowning?

Dr. *Dimſdale*. No.

Mr. *Cowper*. Pray, did not you give ſome Certificate or Paper, declaring the Death of this Gentlewoman, before you ſaw the Body at all?

Dr. *Dimſdale*. No, I did not.

Mr. *Cowper*. Sir, I would aſk you, Was not you angry that Mr. *Camblin* would not join with you in Opinion?—Dr. *Dimſdale*. No.

Mr. *Cowper*. Did not you tell him that you were a Graduate Phyſician, and was angry he would not join with you?

Dr. *Dimſdale*. Suppoſe I did.

Mr. Baron *Hatſell*. But did you ſo or no?

Dr. *Dimſdale*. Yes, my Lord, we had ſome Words about it.

Mr. *Jones*. Swear Dr. *Coatſworth*. *(Which was done.)*

Now, my Lord, we call theſe Gentlemen that are Doctors of Skill, to know their Opinions of them that are found floating without Water in them, how they came by their Death.

Dr. *Coatſworth*. I have not ſeen many drowned Bodies to make Obſervation upon; but it is my Opinion, That every Body that is drowned, is ſuffocated by Water paſſing down the Wind-pipe into the Lungs upon Reſpiration; and at the ſame Time, the Water preſſing upon the Gullet, there will be a neceſſity of ſwallowing a great Part of it into the Stomach: I have been in danger of being drowned myſelf, and I was forced to ſwallow a great Quantity of Water. If a Perſon was drowned, and taken out immediately, as ſoon as the Suffocation was effected, I ſhould not wonder if there were but little Water in the Stomach and Guts; but if it lay in the Water ſeveral Hours, it muſt be very ſtrange if the Belly ſhould not be full of Water; but I will not ſay, it is impoſſible it ſhould be otherwiſe.

Mr. *Cowper*. I deſire to know, whether this Gentleman attempted to drown himſelf, or was in danger of being drowned by Accident.

Dr. *Coatſworth*. It was by Accident: I was paſſing up the Ship Side, and took hold of a looſe Rope inſtead of the Entring-Rope, which failing me, I fell into the Water.

Mr. *Cowper*. But you ſtruggled to ſave yourſelf from drowning?

Dr. *Coatſworth*. I did ſo; I have ſeen ſeveral Perſons that have been drowned, and they have lain ſeveral Days, until by Fermentation they have been rais'd? but I never made my Obſervations of any Perſons that have been drowned above ſix Hours.

Mr. *Jones*. Did you ever hear of any Perſons that, as ſoon as they were drowned, had ſwam above Water?

Dr. *Coatſworth*. I have not known ſuch a Caſe.

Mr. *Cowper*. Did you ever know, Sir, a Body that was otherwiſe kill'd, to float upon the Water?

Dr. *Coatſworth*. I never made any Obſervation of that.

Mr. Baron *Hatſell*. Dr. *Browne* has a learned Diſcourſe, in his *Vulgar Errors*, upon this Subject, concerning the floating of dead Bodies; I don't underſtand it myſelf, but he hath a whole Chapter about it.

(Then Dr. Nailor *was ſworn.)*

Mr. *Jones*. We aſk you the ſame Queſtion that Doctor *Coatſworth* was aſked, What is your Opinion of dead Bodies? If a Body be drowned, will it have Water in it or no?

Dr. *Nailor*. My Lord, I am of Opinion, That it will have a Quantity if it be drowned; but if there be no Water in the Body, I believe that the Perſon was dead before it was put into the Water.

Mr. *Cowper*. I would aſk the Doctor one Queſtion, my Lord, Whether he was not a conſtant Voter againſt the Intereſt of our Family in this Corporation?

Dr. *Nailor*. I never did come to give a Vote, but Sir *William Cowper*, or his Son oppos'd me, and ſaid I had no Right to Vote.

Mr. *Cowper*. I would have aſk'd the ſame Queſtion of the *Dimſdales*, if I had remember'd it; they are of another Party, as this Gentleman is.

Mr. Baron *Hatſell*. It is not all material, as they are Witneſſes.

Then call Mr. Babington. *(Who was ſworn.)*

Mr. *Jones*. Pray, What is your Opinion of this Matter?

Mr. *Babington*. I am of Opinion, that all Bodies that go into the Water alive, and are drowned, have Water in them, and ſink as ſoon as they are drowned, and don't riſe ſo ſoon as this Gentlewoman did.

Mr. *Cowper*. Pray, what is your Profeſſion, Sir?

Mr. *Babington*. I am a Surgeon.

Mr. *Cowper*. Becauſe Mr. *Jones*, call'd you Doctor.

Mr. Baron *Hatſell*. Did you ever ſee any drowned Bodies?

Mr. *Babington*. Yes, my Lord, once I had a Gentlewoman a Patient that was half an Hour under Water, and ſhe lived ſeveral Hours after, and in all that time ſhe diſcharged a great Quantity of Water: I never heard of any that went alive into the Water, and were drowned, that floated ſo ſoon as this Gentlewoman did; I have heard ſo from Phyſicians.

Mr. Baron *Hatſell*. I have heard ſo too, and that they are forced to tye a Bullet to dead Bodies thrown into the Sea, that they might not riſe again.

Mr. *Cowper*. The Reaſon of that is, that they ſhould not riſe again, not that they will not ſink without it. But I would aſk Mr. *Babington*, whether the Gentlewoman he ſpeaks of went into the Water Voluntarily, or fell in by Accident?

Mr. *Babington*. By Accident, but I believe that don't alter the Caſe.

Mr. *Jones*. Swear Dr. *Burnet*. *(Which was done.)*

Dr. *Burnet*. You hear what is the Matter in queſtion; what is your Opinion of it?

Dr. *Burnet*. My Lord, I think that if any Perſon fall into the Water by Accident, or throws himſelf in, the Body will receive Water as long as it is alive, and there are Endeavours for Reſpiration, and after theſe Endeavours are over, there is no Water will come in, for all the Parts are clos'd; ſo conſequently there muſt be Water in all probability found in her.

Mr. *Jones*. What, do they ſwim or ſink?

Dr. *Burnet*. They ſink; I never ſaw a Perſon drowned taken up without Water in my Life; but I have ſeen ſeveral full of Water.

Mr. *Cowper*. I think you ſay when the Faculty of Reſpiration ceaſes, no Water comes in.

Dr. *Burnet*. Yes, that is my Opinion.

Mr. *Cowper*. But the Water does paſs into them while there are Endeavours for Reſpiration?

Dr. *Burnet*. Yes, that is my Opinion.

(Then Dr. Woodhouſe *was ſworn.)*

Mr. *Jones*. Doctor, What is your Opinion of this Matter?

Dr. *Woodhouſe*. My Opinion is, that no Perſon is ſuffocated by Water, but he muſt have a great deal of Water within him, a great deal of Water in the Stomach, and ſome in the Lungs.

Mr. *Cowper*. Pray, Sir, did you ever open any of theſe Bodies?

Dr. *Woodhouſe.* Yes, I have opened a Child myſelf that had a great Quantity of Water in it.

Mr. *Cowper.* Did you find any Quantity of Water in the Throat?

Dr. *Woodhouſe.* There was ſome, but a little, but a great deal in the Stomach.

Mr. *Cowper.* Pray, which way can it paſs into the Thorax?

Dr. *Woodhouſe.* While the Perſon is ſtruggling for Reſpiration, there may be a Relaxation of and the Perſon muſt ſuck in Water as well as Air, and ſome Water may get into the Wind-pipe, and ſo enter into the Lungs.

Mr. *Cowper.* Is there a Paſſage from the Lungs to the Thorax?

Dr. *Woodhouſe.* The Thorax is the Veſſel wherein the Lungs lie, the Lungs in the Thorax, the Breaſt is the Cavity where the Lungs lie, the Windpipe is the Conveyance to the Lungs, and a Perſon in Reſpiration takes down ſome Water there, but no doubt the greater Quantity will be in the Stomach.

Mr. Baron *Hatſell.* Pray let me aſk you a Queſtion: Some of the Witneſſes ſaid, That if a Perſon be drowned, and lies dead a great while, the Inwards will be putrified; What is your Opinion of it?

Dr. *Woodhouſe.* No doubt, my Lord, where Water gets into the Stomach, or wherever it is, it will putrify very ſoon.

Mr. *Jones.* Call *Edward Clement.* (*Who was ſworn.*) Are not you a Seaman?----*E. Clement.* Yes, Sir.

Mr. *Jones.* How long have you been ſo?

E. Clement. Man I have writ myſelf but ſix Years, but I have uſed the Sea nine or ten Years.

Mr. *Jones.* Have you known of any Men that have been kill'd, and thrown into the Sea, or who have fallen in and been drowned? Pray tell us the Difference as to their ſwimming and ſinking.

E. Clement. In the Year 89, or 90, in *Beachy* Fight, I ſaw ſeveral thrown over-board during the Engagement, but one particularly I took notice of, that was my Friend, and kill'd by my Side; I ſaw him ſwim for a conſiderable Diſtance from the Ship; and a Ship coming under our Stern, caus'd me to loſe ſight of him, but I ſaw ſeveral dead Bodies floating at the ſame time; likewiſe in another Engagement, where a Man had both his Legs ſhot off, and died inſtantly, they threw over his Legs; though they ſunk, I ſaw his Body float: Likewiſe I have ſeen ſeveral Men who have died natural Deaths at Sea, they have when they have been dead had a conſiderable Weight of Ballaſt and Shot made faſt to them, and ſo were thrown over-board; becauſe we hold it for a general Rule, that all Men ſwim if they be dead before they come into the Water; and on the contrary, I have ſeen Men when they have been drowned, that they have ſunk as ſoon as the Breath was out of their Bodies, and I could ſee no more of them. For Inſtance, a Man fell out of the *Cornwall*, and ſunk down to rights, and ſeven Days afterwards we weighed Anchor, and he was brought up graſping his Arm about the Cable; and we have obſerved in ſeveral Caſes, that where Men fall over-board, as ſoon as their Breath is out of their Bodies they ſink downright; and on the contrary, where a dead Body is thrown over-board without Weight, it will ſwim.

Mr. *Jones.* You have been in a Fight; How do Bodies float after a Battle?

E. Clement. Men float with their Heads juſt down, and the ſmall of their Back and Buttocks upwards: I have ſeen a great Number of them, ſome hundreds in *Beachy-head* Fight, when we engaged the *French.* I was in the old *Cambridge* at that Time. I ſaw ſeveral (what Number I will not be poſitive, but there were a great Number, I can't gueſs to a Score) that did really ſwim, and I could ſee them float for a conſiderable Diſtance.

Mr. *Jones.* Have you ſeen a Shipwreck?

E. Clement. Yes; the *Coronation*, in *September* 1691. I was then belonging to the *Dutcheſs*, under the Command of Captain *Clement*; we look'd out and ſee them taking down their Maſts; we ſaw the Men walking up and down on the right Side, and the Ship ſink down, and they ſwam up and down like a Shoal of Fiſh one after another; and I ſee them hover one upon another, and ſee them drop away by Scores at a time; and there was an Account of about Nineteen that ſav'd themſelves, ſome by Boats, and others by Swimming; but there were no more ſav'd out of the Ship's Complement, which was between five and ſix Hundred, and the reſt I ſaw ſinking downright, ſome twenty at a time. There was a Fiſherman brought our Captain Word, that in laying in of his Nets he drew up ſome Men cloſe under the Rocks that were drowned belonging to the *Coronation.* We generally throw in Bags of Ballaſt with them.

Mr. *Jones.* I ſuppoſe all Men that are ~~drowned~~ buried, you ſink them with Weights?

E. Clement. Formerly Shot was allowed for that purpoſe; there us'd to be threeſcore Weight of Iron, but now 'tis a Bag or Ballaſt that is made faſt to them.

Mr. *Jones.* Then you take it for a certain Rule, that thoſe that are drowned ſink, but thoſe that are thrown over-board do not?

E. Clement. Yes; otherwiſe why ſhould the Government be at that vaſt Charge to allow threeſcore or fourſcore Weight of Iron to ſink every Man, but only that their Swimming about ſhould not be a Diſencouragement to others?

(*Then* Richard Gin *was ſworn.*)

Mr. *Jones.* You hear the Queſtion; Pray what do you ſay to it?

R. Gin. I was at Sea a great while, and all the Men that I ſee turned over-board had a great Weight at their Heels to ſink them.

Mr. *Jones.* Then will they ſwim otherwiſe?---*R. Gin.* So they ſay.

Mr. *Jones.* Are you a Seaman?

R. Gin. I went againſt my Will in two Fights.

Mr. *Jones.* Then, Gentlemen of the Jury, I hope we have given you Satisfaction that Mrs. *Stout* did not drown herſelf, but was carried into the Water after ſhe was killed. That was the firſt Queſtion; for if it be true that all dead Bodies when they are put into the Water do ſwim, and the Bodies that go alive into the Water and are drowned do ſink, this is ſufficient Evidence that ſhe came by her Death not by drowning, but ſome other Way. Now, my Lord, as to the ſecond Matter, and that is to give ſuch Evidence as we have againſt theſe Gentlemen at the Bar. Mr. *Cowper*, it appears, was the laſt Man that any one can give an Account of was in her Company. What became of her afterwards, or where they went, nobody can tell; but the other Witneſſes have given you Evidence that he was the laſt Man that was with her. I ſhall only give this further Evidence as to Mr. *Cowper*, That notwithſtanding all the Civility and Kindneſſes that paſs'd between him and this Family, when the Bruit and Noiſe of this Fact was ſpread abroad, Mr. *Cowper* did not come to conſider and conſult with old Mrs. *Stout* what was to be done; but he took no manner of Notice of it; and the next Day he rode out of Town, without further taking Notice of it.

Call George Aldridge, *and* John Archer.

(John Archer *was ſworn.*)

Mr. *Jones.* Do you know any thing of Mr. *Cowper*'s going out of Town about this Buſineſs of Mrs. *Stout*'s being drowned?

J. Archer. Yes, I did ſee him go out of Town afterwards.

Mr. *Jones.* Which Way did he go?

J. Archer. He went the Back-way from the *Glove*; I ſuppoſe he came that Way.

Mr. *Cowper.* What Day was it I went? Is it not the Way that I us'd to go when I go the Circuit into *Eſſex*?

J. Archer. Yes, I believe ſo.

Mr. *Cowper.* I lodg'd at Mr. *Barefoot*'s, and he has a Back-door to the *Glove*, where my Horſe was, and I went the direct Way into *Eſſex*, and it was *Wedneſday* Morning: What Day was it you ſee me go?

J. Archer. It was on the *Wedneſday* Morning.

Mr. *Cowper.* That was the very Day I went into *Eſſex.*

(*Then* George Aldridge *was ſworn.*)

Mr. *Jones.* When did Mr. *Cowper* go out of Town the laſt Aſſizes?

G. Aldridge. On *Wedneſday.*

Mr. *Jones.* Which Way did he go?

G. Aldridge. He went the Way to *Chelmsford.*

Mr. *Jones.* Did you not fetch his Horſe from *Stout*'s?

G. Aldridge. Yes, Sir.

Mr. *Jones.* How often did you go for it?---*G. Aldridge.* Three Times.

Mr. *Jones.* When?

G. Aldridge. On *Tueſday* Night I ſent once, and went twice myſelf; the firſt Time there was nobody at home to deliver the Horſe; ſo I went to Mr. *Stout*'s, and aſk'd him about the Horſe, and he ſaid he could not deliver him till the Maid went home, and then I went about Eleven of the Clock and had the Horſe.

Mr. Baron *Hatſell.* Was it Eleven at Night?

G. Aldridge. Yes, my Lord.

Mr. *Cowper.* When I ſent you to fetch my Horſe, what Directions did I give you?

G. Aldridge. You gave me Directions to fetch your Horſe, becauſe you ſaid you ſhould have occaſion to go out next Morning betimes with the Judge.

Mr. *Cowper.* The Reaſon I ſent for my Horſe was this; when I heard ſhe had drowned herſelf, I think it concern'd me in Prudence to ſend a common Hoſtler for him, for fear the Lord of the Manor ſhould ſeize all that was there as forfeited.

Mr. Baron *Hatſell.* There was no Danger of that, for ſhe was found *Non compos mentis.*

Mr. *Cowper.* No, my Lord, I ſent before the Verdict.

Mr. *Jones.* It ſeems you did not think fit to go and take Horſe there yourſelf, though you put your Horſe there.

Now, my Lord, we will go on, and give the other Evidence that we opened concerning theſe three other Gentlemen that came to Town; two of them took Lodgings at *Gurrey*'s at Five in the Afternoon, but did not come in till between Eleven and Twelve, and then they brought another in with them; and though he had been in Town five or ſix Hours, his Feet were wet in his Shoes, and his Head was of a reeky Sweat; he had been at ſome hard Labour I believe, and not drinking himſelf into ſuch a Sweat.

Call John Gurrey, Matthew Gurrey, *and* Elizabeth Gurrey.

(John Gurrey *was ſworn.*)

Mr. *Jones.* Do you know any of the Gentlemen at the Bar?

J. Gurrey. Yes.

Mr. *Jones.* Name who you know.

J. Gurrey. There is Mr. *Stephens*, Mr. *Rogers*, and Mr. *Marſon.*

Mr. *Jones.* Pray, do you remember when they took Lodging at your Houſe?

J. Gurrey. The laſt Aſſizes; when they firſt came, there was only Mr. *Stephens* and Mr. *Rogers.*

Mr. *Jones.* At what Time did they take it?

J. Gurrey. I was at Church, and can't tell that, they hir'd the Lodgings of my Wife.

Mr. *Jones.* What can you ſay more?

J. Gurrey. I was in at Night when they came; there came three of them at Eleven at Night, whereof Mr. *Marſon* was the third Perſon, and he ſaid he was deſtitute of a Lodging, and he aſk'd for a ſpare Bed; my Wife told him ſhe had one, but had let it; whereupon Mr. *Stevens* and Mr. *Rogers* ſaid he ſhould lodge with them; ſo they went up all together, and they call'd for a Fire to be kindled, and aſk'd for the Landlord, which was I, and they aſk'd me to fetch a Bottle of Wine; and I told them I would fetch a Quart, which I did; and then they aſk'd me to ſit down and drink with them, which I did; and then they aſk'd me if one Mrs. *Sarah Stout* did not live in Town, and whether ſhe was a Fortune? I ſaid Yes. Then they ſaid they did not know how to come to the Sight of her; and I ſaid I would ſhew them her To-morrow Morning, not queſtioning but I might ſee her ſome time as ſhe was coming down the Street; ſo they ſaid they would go to ſee her. Mr. *Rogers* and Mr. *Stephens* charged Mr. *Marſon* with being her old Sweetheart; ſaith Mr. *Marſon*, She hath thrown me off, but a Friend of mine will be even with her by this Time.

Mr. Baron *Hatſell.* What a-Clock was it then?

J. Gurrey. I reckon Eleven of the Clock when they came in.

Mr. Baron *Hatſell.* Did you obſerve in what Condition Mr. *Marſon* was in?

J. Gurrey. I did not obſerve, only that he was hot, and put by his Wig; I ſee his Head was wet, and he ſaid he was juſt come from *London*, and that made him in ſuch a Heat.

Mr. *Jones.* Had he Shoes or Boots on?

J. Gurrey. I did not obſerve that.

Mr. *Jones.* What did they do the next Day?

J. Gurrey. The next Morning I heard this Party was in the Water; I ſat up all Night, and was fain to wait till my Daughter came down to look after the Shop; and then I went to ſee her, and ſhe was remov'd into the Barn, and they were wiping her Face, cloſing her Eyes, and putting up her Jaws; and as I came back theſe Perſons were walking, and I met Mr. *Marſon* and Mr. *Stephens*, and told them the News; Said I, This Perſon has come to a ſad Accident: Say they, So we hear; but nevertheleſs we will be as good as our Word, and go and ſee her. I went with them, and overtook Mr. *Rogers*; and *Marſon* ſaid, We are going to ſee Mrs. *Stout*. O Landlord! ſaid *Rogers*, you may take up that Rogue (pointing at Mr. *Marſon)*, for what he ſaid laſt Night; but I did not think, they ſpeaking ſo jocularly, that there was any Suſpicion of their being concern'd in the Murder. A ſecond time I went, the Barn-door was lock'd; I knock'd, and they open'd it, and let us in, and they uncover'd her Face to let me ſee her, and I touch'd her; and looking about for them, they were gone, and I can't ſay they ſee her or touch'd her: Then Mr. *Marſon* and they were conſulting how to ſend a Great Coat to *London*, and I directed them to a Coachman at the *Bell-Inn*; but I did not hear he went to enquire after the Coachman; then they went to your Lordſhip's Chamber, and I went home; and about Eleven of the Clock I ſaw Mr. *Marſon* and Mr. *Stephens* coming down with Mr. *Spencer Cowper*.

Mr. *Marſon.* I did not go out that Night after I came in.

Mr. *Jones.* No; we agree that. Did you ſee Mr. *Cowper* and theſe Gentlemen together?

J. Gur. Only at Eleven of the Clock on *Tueſday* Noon, Mr. *Cowper*, Mr. *Marſon*, and Mr. *Stephens* were coming down to the Market-place.

Mr. *Jones.* Did not they take their Leave of you when they went away from you that Forenoon?

J. Gur. No; only in the Morning they told me they would ſend me Word at Noon if they intended to lodge there.

Mr. *Marſon.* I deſire to know of Mr. *Gurrey*, if his Siſter was not in the Room when we came in?

J. Gur. She was in our Houſe that Day; but whether when they came in I cannot tell.

Mr. *Cowper.* Pray, have you not had ſome Diſcourſe with your Siſter, the Widow *Davis*, concerning ſome Suſpicion that you had of *Sarah Walker*, that hath been produced as a Witneſs?

J. Gur. I don't remember any ſuch.

Mr. *Cowper.* Then did not you ſay theſe Words, We muſt not concern ourſelves with *Sarah Walker*, for ſhe is the only Witneſs againſt the *Cowpers?*

J. Gur. I can't remember any ſuch Thing.

Mr. Baron *Hatſell.* You may anſwer according to the beſt of what you remember; if you ſay you have forgot when you have not, you are forſworn.

Mr. *Cowper.* If your Lordſhip pleaſes to give Leave to Mr. *Gurrey* to recollect himſelf. I aſk him, Whether he did not talk with his Siſter *Davis* about ſome Suſpicion his Wife and he had about *Sarah Walker*, the Maidſervant of the Deceas'd?

J. Gur. I believe there might be ſome Talk of a Perſon that was ſeen to go into the Church-yard at ſome Diſtance with *Sarah Walker*.

Mr. *Cowper.* Did your Wife ſay that ſhe did ſuſpect that Perſon?

J. Gur. Yes.

Mr. *Cowper.* Did your Wife ſay they behav'd themſelves ſtrangely, and that ſhe would have perſuaded the Widow *Blewit* to have watch'd her?

J. Gur. There was ſomething of that.

Mr. *Cowper.* Was there not ſome ſuch Words, that they muſt not meddle with *Sarah Walker*, for ſhe is the Witneſs againſt the *Cowpers?*

J. Gur. I ſaid, Do not concern yourſelf with *Sarah Walker*, for fear of takn off her Evidence.

Mr. *Cowper.* Pray, did not the Widow *Davis* warm the Sheets for theſe Gentlemen?

J. Gur. She was with my Wife, but I can't ſay whether ſhe warm'd the Sheets.

Mr. *Cowper.* When they came home, had you any Lodgers that wanted to come home? Had not you one *Gape?*

J. Gur. I can't ſay whether he was in before or after them.

Mr. *Cowper.* Did not you ſay to your Siſter *Davis*, Now theſe Gentlemen are in Bed, if Mr. *Gape* would come home, our Family would be quiet?

J. Gur. I do not remember that.

Mr. *Cowper.* Pray, did not you go to look for Mr. *Gape?*.

J. Gur. Yes, I went to *Hockley*'s.

Mr. *Cowper.* Who did you employ to ſpeak to Mr. *Gape?*

J. Gur. Mrs. *Hockley*.

Mr. *Cowper.* When you came home to your own Houſe, and after you had been at *Hockley*'s to ſpeak with Mr. *Gape*, what Account did you give of the Time of Night, and other Particulars?

J. Gur. I gave no Account of the Time.

Mr. *Cowp.* Not to Mrs. *Davis?---J. Gur.* I can't tell whether I did or no:

Mr. *Cowper.* Did not you ſay, Mr. *Gape* aſk'd Mrs. *Hockley* what a-Clock it was?

J. Gur. No, I don't remember that; but Mrs. *Hockley* went in and told him what Time of Night it was; it was Eleven or Twelve of the Clock, whether I can't ſay.

Mr. *Jones.* Call *Martha Gurrey*. (*Who was ſworn.*) Which of theſe Gentlemen do you know?

Mrs. *Gur.* Mr. *Marſon*, Mr. *Rogers*, and Mr. *Stephens*.

Mr. *Jones.* What Time of the Night was it when they came to your Houſe? Give an Account of it, and what you heard them ſay.

Mrs. *Gur.* It was a little after Five, or thereabouts, that they came—

Mr. *Jones.* Who came?

Mrs. *Gur.* Mr. *Stephens*, and Mr. *Rogers*, and there was one Mr. *Gilbert*, that married a firſt Couſin of mine; he came and aſk'd me for my Huſband; and I aſk'd him his Buſineſs, and he ſaid he wanted to ſpeak with him---

Mr. *Jones.* Pray, come to theſe Men; when did they come to your Houſe?

Mrs. *Gur.* They hired the Lodging at Five of the Clock. When they firſt came to ſee them I was not at Home: Mr. *Gilbert* brought them, and as I was coming along the Street I ſaw Mr. *Gilbert* walking off, and would not look at me.

Mr. *Jones.* When did they go out?---Mrs. *Gur.* They never ſtaid there.

Mr. *Jones.* When did they come in again?

Mrs. *Gur.* Between Eleven and Twelve.

Mr. Baron *Hatſell.* What did they do when they came in again?

Mrs. *Gur.* I was laying on ſome Sheets two Pair of Stairs when they came, and then there was three of them; ſo they ſaw me a little after, and begg'd my Excuſe for bringing in another, for they ſaid it was ſo late that they could not get a Lodging any where elſe: and ſaid, if I thought fit, the Gentleman ſhould lie with them; and I told them I liked it very well.

Mr. *Jones.* What Firing had they?

Mrs. *Gur.* The Firing I laid on in the Morning, and they ſent for my Huſband to fetch them ſome Wine.

Mr. *Jones.* What did you hear them talk on?

Mrs. *Gur.* They diſcours'd with my Huſband, and aſk'd him if he knew Mrs. *Sarah Stout*; and one of them ſaid to Mr. *Marſon*, I think ſhe was an old Sweetheart of yours; Ay, ſaid he, but ſhe turn'd me off, but a Friend of mine is even with her: And Mr. *Rogers* ſaid he was in with her; and afterwards ſaid, her Buſineſs was done. They had a Bundle, that was wrapt in a pure white Cloth, like to an Apron, but I can't ſay it was an Apron; and there was a Parcel hanging looſe by it; and when he laid it down he ſaid, he would paſs his Word Mrs. *Sarah Stout*'s courting Days were over; and I ſaid, I hoped 'twas no Hurt to the Gentlewoman; and then I looking upon Mr. *Marſon*, ſaw him put his Peruke aſide, and his Head reek'd, and he told them he was but juſt come from *London* that Night, which made him diſappointed of a Lodging.

Mr. *Jones.* What did you hear them ſay about any Money?

Mrs. *Gur.* I aſk'd them how they would have their Bed warm'd? And Mr. *Marſon* anſwer'd, Very hot: With that I went down to ſend my Daughter up, and ſhe could not go preſently; I told her then ſhe muſt go as ſoon as ſhe could.

Mr. Baron *Hatſell.* Pray, don't tell us what paſs'd between you and your Daughter: What do you know of theſe Gentlemen?

Mrs. *Gur.* I went to the next Room, to ſee if every thing was as it ſhould be; I hearkened, and they had ſome Diſcourſe about Money, and I heard ſome-body (I don't know who it ſhould be except it were Mr. *Stephens)* anſwer and ſay, the Uſe-money was paid To-night; but what Money they meant, I can't tell.

Mr. *Jones.* What did you find when they were gone?

Mrs. *Gur.* Sir, I found a Cord at the End of the Trunk.

Mr. *Jones.* Was it there in the Morning, or before they came?

Mrs. *Gur.* No, it could not, for I ſwept my Room, and wiped down the Duſt.

Mr. *Jones.* Was the Cord white?

Mrs. *Gur.* No, it was more dirty than it is now, for my Huſband and I have worn it in our Pockets.

Mr. *Cowper.* Pray, who brought the Cord down from above Stairs?

Mrs. *Gur.* My Daughter that liv'd with me, and ſhe laid it upon the Shelf.

Mr. *Cowper.* Did not you hear there was a Coroner's Inqueſt ſitting?

Mrs. *Gur.* The next Day at Night I did hear of it.

Mr. *Cowper.* Why did not you go to the Coroner's Inqueſt and give an Account of it there?

Mrs. *Gur.* I told my Huſband of it, and I aſk'd my Huſband if he did not hear what they ſaid concerning Mrs. *Sarah Stout?* And he anſwer'd, Yes, they ought to be taken up for the Words they ſaid laſt Night: Why, ſaith I, don't you take notice of it? I think you ought to take them up. But he went out of Doors, and I ſaw no more of him till the Afternoon. When I heard the Words, I thought ſome-body had ſtole away and got to bed to her.

Mr. *Cowper.* Pray, if your Huſband heard theſe Words, why did not he go to the Coroner's Inqueſt?

Mrs. *Gur.* I did ſpeak to him to have them taken up.

Mr. *Cowper.* Why did he not do it?

Mrs. *Gur.* He ſaid he would not do it; he did not know but it might coſt him his Life.

Mr. *Jones.* How came you after this to diſcover it?

Mrs. *Gur.* Becauſe I was ſo troubled in Mind I could not reſt Night nor Day; and I told him if he would not tell of it, I would tell of it myſelf, for I was not able to live.

[*Then* Elizabeth Gurrey *was ſworn.*]

Mr. *Jones.* Pray, do you know Mr. *Rogers*, Mr. *Stephens*, and Mr. *Marſon?*

E. Gur. I know Mr. *Marſon*, and theſe are the other Gentlemen, I reckon.

Mr. *Jones.* What Diſcourſe did you hear from them?

E. Gur. Mr. *Marſon* aſked the other Gentlemen how much Money they had ſpent? The other anſwered, What was that to him; you have had forty or fifty Pounds to your Share. Then the other aſk'd him, Whether the Buſineſs was done? And he anſwer'd, he believed it was; but if it was not done, it would be done To-night. Then, my Lord, he pull'd a handful of Money out of his Pocket, and ſwore he would ſpend it all for Joy the Buſineſs was done.

Mr. *Jones.* Was Mr. *Cowper*'s Name mention'd?

E. Gur. I heard them mention Mr. *Cowper*'s Name, but not Mrs. *Sarah Stout*'s.

Mr. *Jones.* What Condition was the Gentleman's Shoes in?

E. Gur. I think it was Mr. *Marſon*, his Shoes were very wet and dirty; one of them was very hot, and he wiped his Head with his Handkerchief.

Mr. *Jones.* Now, my Lord, we have done as to our Evidence. Mr. *Marſon* pretended he was juſt then alighted and come from *London*, and was in a great Heat, and his Shoes were wet: I wonder what Mr. *Marſon* had been doing; for when he was examined, he ſaid, he came to Town about Eight of the Clock, and went to the *Glove and Dolphin* Inn, and ſtay'd there till he came to his Lodging. Now 'tis a wonderful Thing that he ſhould come wetſhod from a Tavern, where he had been ſitting four or five Hours together.

[*Then the Examination of Mr.* John Marſon *was read.*]

The Examination of JOHN MARSON, taken before Me, this 27th Day of *April*, 1699.

‘ WHO being examin'd where he was on *Monday* the 13th of
‘ *March* laſt, ſaith, That he was at the Borough of *Southwark*
‘ (he being an Attorney of the ſaid Court) till paſt Four of the Clock in
‘ the Afternoon; and ſaith, That he ſet out from *Southwark* for *Hertford*
‘ ſoon after, and came to *Hertford* about Eight of the Clock the ſame
‘ Afternoon, and put up his Horſe at the Sign of ———, an Inn there,
‘ and then went to the *Hand and Glove*, together with *Godfrey Gimbart*,
‘ Eſq. *Ellis Stephens*, *William Rogers*, and ſome others, where they ſtayed
‘ 'till about Eleven of the Clock at Night, and then this Examinant went
‘ thence directly to the Houſe of *John Gurrey*, with the ſaid *Stephens* and

‘ *Rogers*, who lay all together in the ſaid *Gurrey*'s Houſe all that Night. And being aſk'd what he ſaid concerning the ſaid Mrs. *Sarah Stout*, deceas'd, this Examinant ſaith, That on *Sunday* the 12th of *March* laſt, this Examinant being in Company with one *Thomas Marſhall*, and telling him that this Examinant intended the next Day for *Hertford*, with the Marſhal of the *King's-Bench*, the ſaid *Thomas Marſhall* deſired this Examinant and the ſaid *Stephens*, who was then alſo in Company, that they would go and ſee the ſaid *Sarah Stout* (his Sweet-heart). He confeſſeth, That he did aſk the ſaid *Gurrey*, If he would ſhew this Examinant where the ſaid *Stout* lived; telling the ſaid *Gurrey* that his Name was *Marſhall*, and aſk'd him if he never heard of him before; and jocularly ſaid, That he would go to ſee her the next Morning; but doth not believe that he ſaid any thing that any Friend was even with the ſaid *Sarah Stout*, or to ſuch like Effect. And doth confeſs, That he did the next Day, upon the ſaid *Gurrey*'s telling him that the ſaid *Stout* was drowned, ſay, that he would keep his Word, and would ſee her. And ſaith, That meeting with Mr. *Cowper* (who is this Examinant's Acquaintance) he believes he did talk with him concerning the ſaid *Stout*'s being drowned, this Examinant having ſeen her Body that Morning.

Cogn. Die & Anno antedict. coram *John Marſon.*’

J. Holt.

Mr. *Jones*. All that I obſerve from it, is this; That he had been five Hours in Town, and when he came to his Lodging, he came in wet and hot, and ſaid he was juſt come from *London*.

Mr. *Marſon*. I had rid forty Miles that Day, and could not be ſoon cold.

Mr. Baron *Hatſell*. They have done now for the King; come, Mr. *Cowper*, what do you ſay to it?

Mr. *Jones*. If your Lordſhip pleaſe, we will call one Witneſs more, *Mary Richardſon*. Mrs. *Richardſon*, Do you know Mr. *Marſon*, or any of theſe Gentlemen?

Mrs. *Richardſon*. They came on *Tueſday* Night to the *Bell* at *Hoddeſdon*, and lay there, and one of the Gentlemen, when I was warming the Sheets, aſk'd me if I knew Mrs. *Sarah Stout?* And I ſaid Yes. He aſk'd me if I knew which Way ſhe came to her End? And I told him, I could not tell.

Mr. *Jones*. Is that all? What did they ſay more?

Mrs. *Richardſon*. They did deſire and wiſh it might be found out how it came about; and one Gentleman took no notice of her at all. They had a little Bundle, but what was in it I can't tell, but there I ſaw it bound up in ſome colour'd Stuff or other, but what it was I can't tell.

Mr. *Jones*. Is that all you can ſay?---Mrs. *Richardſon*. Yes, that's all.

Mr. *Jones*. Then we have done.

Mr. Baron *Hatſell*. Come, Mr. *Cowper*, what do you ſay to it?

Mr. *Cowper*. Now they have done on the Part of the King, my Lord, and you Gentlemen of the Jury, I muſt beg your Patience for my Defence. I confeſs it was an unfortunate Accident for me (as Mr. *Jones* calls it) that I happen'd to be the laſt Perſon (for aught appears) in the Company of a melancholy Woman. The Diſcourſe occaſion'd by this Accident had been a ſufficient Misfortune to me, without anything elſe to aggravate it; but I did not in the leaſt imagine that ſo little, ſo trivial an Evidence as here is, could poſſibly have affected me to ſo great a Degree, as to bring me to this Place to anſwer for the worſt Fact that the worſt of Men can be guilty of.

My Lord, your Lordſhip did juſt now obſerve, that I have appear'd at the Bar for my Clients; but I muſt ſay too, that I never appear'd for my ſelf under this, or the like Circumſtances, as a Criminal, for any Offence whatſoever.

Mr. *Jones* very well ſaid, when he ſpoke on the Part of the King, That if this Gentlewoman was murther'd, the Crime was Villainous, Baſe, Barbarous, and Cruel; and for my Part I think ſo too; the Crime would be ſo great, that it could never be ſufficiently condemn'd: but at the ſame time I may aver, that to ſuppoſe a Murther without good Grounds for it, and afterwards to charge innocent Men with it knowingly and maliciouſly, is to a Trifle as Baſe and Barbarous as the Murther itſelf could be. My Lord, I ſpeak for my own Part; I know not at what Price other Men may value their Lives; but I had much rather myſelf was murther'd than my Reputation; which yet I am ſenſible hath ſuffer'd greatly hitherto by the Malice and Artifice of ſome Men, who have gone pretty far in making this Fact, as Barbarous as it is, to be credited of me. And therefore I muſt beg your Lordſhip's and the Jury's Patience, while I not only defend my Life, but juſtify myſelf alſo from theſe things that have unjuſtly aſpers'd me, by the Conſpiracy and Artifice of my Accuſers.

My Lord, in all the Evidence that hath been given, I muſt obſerve, that there is no poſitive Evidence, with Submiſſion, to induce the Jury or any one to believe the General, that this Gentlewoman was murther'd; but they go upon Suppoſitions and Inferences, which are contradicted by other Circumſtances, in the very Evidence of the Proſecutor, that make full as ſtrong to prove ſhe was not murther'd, as that ſhe was; ſo that, as it ſtands, it can amount only to a bare Suppoſition that ſhe was murther'd by any Body.

Then, as to the Evidence that particularly relates to myſelf, or the Gentlemen who ſtand with me at the Bar, that they or I were concern'd in it (if ſhe was murther'd) there is not one Syllable of Proof; at moſt, it amounts but to make us ſuſpect a Murther, not prov'd, but only ſuſpected: This I obſerve upon the Evidence, as it now ſtands without Anſwer, as it has been given on the King's Part: And how far, in the Caſe of Life, Men ſhall be affected with Evidence of this nature, which neither proves the Murther in general, nor that they did it in particular; tho' no Defence was made, or any further Anſwer given, I muſt ſubmit to your Lordſhip's and the Jury's Judgment.

But, my Lord, I do not doubt but I ſhall be able to wipe away even that remote Suſpicion by my Defence: They have been long in their Evidence for the King, and therefore I muſt beg your Patience while I give a particular Anſwer to every Part of it, in as good a Method as I am able: and I will waſte as little Time as may conſiſt with the juſtifying my Reputation; for which I know your Lordſhip will have as tender a Regard, to ſee it doth not ſuffer unjuſtly, as for my Life itſelf.

And I promiſe your Lordſhip, I ſhall trouble you with no Evidence which is not expreſs and plain; no Inuendo's or Suſpicions; but I ſhall prove fully and clearly, in the firſt place, That there was no Ground at all, in this Caſe, to ſuppoſe ſhe was murther'd by any one but herſelf.

The firſt Fact that they inſiſted upon to infer a Murther from it, was, that the Body was found floating: Now, my Lord, that Fact, I am able by the Evidence I have, as well as from that of the Proſecutor, to deny; for the Fact was directly otherwiſe, that is, ſhe was not found floating.

And whereas the Proſecutor's Witneſſes, who have been produced to this Point, are obſcure and poor Men, and your Lordſhip obſerves, have been taught to ſay generally that ſhe floated; which, when they are requir'd to explain, and deſcribe how ſhe lay, they contradict themſelves in, by ſhewing ſhe lay ſideways between the Stakes, and almoſt all under Water. Now I ſhall give your Lordſhip and the Jury a full and particular Account and Deſcription from the Pariſh Officers, Men employ'd by the Coroner to take the Body out of the Water, of the very Manner and Poſture in which it was firſt found; which they are much better able to do than the Proſecutor's Witneſſes, having ſeen her before all or moſt of thoſe People; and theſe Officers clearly agree, that her Body was under Water when found, except ſome ſmall Appearance of her Petticoats, near or on the Surface of the Water; which may be very eaſily accounted for, becauſe the Stakes the Witneſſes mention, and which are driven into the Ground croſs the River, to prevent Weeds and Trumpery from running into the Mill-ſtand, as the Witneſſes have already ſaid, about a Foot diſtance from one another, and are ſet with their feet from the Mill, and their Heads inclining toward the Mill with the Stream. Now, my Lord, every one knows, that tho' a drowned Body will at firſt ſink, yet is buoyant, and does not go downright and reſt in one Place like Lead; for a human Body is ſeldom or never in a Stream found to lie where it was drown'd; A Body drown'd at *Chelſea*, has been often found by Fiſhermen at *London*, and that before it came to float above Water. Now, if a Body is ſo buoyant, as that it is driven down by the impellent Force of the Current (tho' it do not float above Water) it ſeems a Conſequence, that when it comes to be ſtopp'd and reſiſted by the Stakes, which lie with their Heads downward, inclining with the Stream, the Stream bearing the Body againſt the Stakes, muſt needs raiſe it upwards to find another Paſſage if poſſible, when the Ordinary and Natural is obſtructed. I have ſeen, I remember, that where Weeds have been driven down a River, and have been rouled along at the Bottom, when they have come down to a Board or Stakes of a Wyer, or Turnpike, they have been by the Force of the Water raiſed up againſt thoſe Boards or Stakes, and forced over them, tho' without ſuch Obſtruction they had undoubtedly continued to roul under the Water. I don't know of any other Symptom they pretend to, of her not being drowned, from any thing obſerv'd of her in the Water. Then, as to the Flatneſs of her Belly, when ſhe was put into her Coffin, I ſhall ſhew 'tis a common and natural Accident; ſometimes drowned Bodies are ſwell'd more, ſometimes leſs, ſometimes not at all: I think it hardly deſerves a Phyſician to prove that a Body may be drowned with very little Water; that a Man may be drowned by Strangling or Suffocation, cauſed by a little Water in the Lungs, without any great quantity of Water receiv'd in the Body, is a certain and eſtabliſh'd Truth; for I am told that when Reſpiration ceaſes, the Party dies, and can receive no more Water after that: So that nothing is to be inferr'd from a Body's having more or leſs Water found in it, eſpecially if your Lordſhip will give me Leave to obſerve this Diſtinction, where a Body is voluntarily drowned, and where it is drowned by Accident; for People that fall in by Accident do ſtruggle and ſtrive as long as they can; every time they riſe they drink ſome Water into the Stomach, to prevent its paſſing into the Lungs, and are drowned no ſooner than needs muſt; but Perſons that voluntarily drown themſelves, to be ſure deſperately plunge into the Water, to diſpatch a miſerable Life as ſoon as they can; and ſo that little quantity in the Lungs which cauſes Death may be the ſooner taken in; after which no more is receiv'd: And I hope by Phyſicians it will appear there is good Ground for this Difference.

The next is the Evidence that the *Surgeons* have given on the other Part, relating to the taking this Gentlewoman out of her Grave after ſhe had been buried ſix Weeks. Whether this ought to have been given in Evidence, for the Reaſons I hinted at, in a Criminal Caſe, I ſubmit to your Lordſhip; but as it is, I have no Reaſon to apprehend it, being able to make appear, that the Gentlemen who ſpoke to this Point have deliver'd themſelves in that Manner, either out of extreme Malice, or a moſt profound Ignorance; this will be ſo very plain upon my Evidence, that I muſt take the Liberty to impute one or both of thoſe Cauſes to the Gentlemen that have argued from their Obſervations upon that Matter.

And now, if your Lordſhip will but pleaſe to conſider the Circumſtances under which they would accuſe me of this horrid Action, I don't think they will pretend to ſay, that in the whole Courſe of my Life I have been guilty of any mean or indirect Action; and I will put it upon the worſt Enemy I have in the World to ſay it. Now, for a Man in the Condition I was in, of ſome Fortune in Poſſeſſion, related to a better, in a good Employment, thriving in my Profeſſion, living within my Income, never in Debt (I may truly ſay not five Pounds at any one Time theſe Years paſt), having no poſſibility of making any Advantage by her Death, void of all Malice, and, as appears by her own Evidence, in perfect Amity and Friendſhip with this Gentlewoman, to be guilty of the murthering her, to begin at the Top of all Baſeneſs and Wickedneſs, certainly is incredible.

My Lord, in this Proſecution my Enemies ſeeing the Neceſſity of aſſigning ſome Cauſe, have been ſo malicious to ſuggeſt before (tho' not now, when I have this Opportunity of Vindicating myſelf publickly), that I have been concern'd in the Receipt of Money for this Gentlewoman, had her Securities by me; and ſometimes that I had been her Guardian, or her Truſtee, and I know not what. I now ſee the Contrivers and Promoters of that Scandal, and they know it to be Baſe, Falſe, and Malicious; I never was concern'd in Intereſt with her, directly or indirectly, and ſo I told them when I was before my Lord Chief-Juſtice: 'Tis true, it was then juſt ſuggeſted by the Proſecutors, I then denied it, and I deny it ſtill———— I thank God, I have not been uſed, nor have I need, to deny the Truth.

My Lord, you find the Proſecutors have nothing to ſay to me upon this Head, after all the Slanders and Stories they have publiſh'd againſt me, of my having Money in my hands which belong'd to the Deceaſed: But tho' they do not ſtir it, I will, and give your Lordſhip a full Account of all that ever was in that Matter. When I lodg'd at *Hertford*, ſome time ſince, ſhe deſired me to recommend to her a Security for 200*l.* if it came in my Way; my Lord, when I came to Town, I underſtood that one Mrs. *Puller*, a Client of mine, had a Mortgage formerly made to her by one Mr. *Loftus*, of *Lambeth* in *Surrey*, for the like Sum, and that ſhe was willing to have in her Money: I wrote to this Gentlewoman, the Deceaſed, to acquaint her of the Security; ſhe thereupon did ſend up 200*l.* and ſome odd Pounds for Intereſt (the Account of which I produced to my Lord Chief-Juſtice); this Money was ſent to me by Mr. *Cramfield*, as I have been inform'd, and by him given to Mr. *Toller*'s Clerk, and by him brought publickly to me: My Lord, this Mortgage I immediately transferr'd by Aſſignment, endors'd on the Back of it, and Mrs. *Habberfield*, a Truſtee for Mrs. *Puller*, ſign'd and ſeal'd it, and that very 100*l.* and Intereſt due, was at one and the ſame time paid to Mrs. *Puller*, and by her the Principal was paid to her Daughter, in Part of her Portion. All this was tranſacted the beginning of *December* laſt, and ſhe was not drowned till the 13th of *March* following: And, my Lord, theſe People that are now the Proſecutors, did own before my Lord Chief Juſtice that they had found this Mortgage among the Deceaſed's Writings in her Cabinet at the Time of her Death. Now, my Lord, I ſay, that ſaving this one Service I did her, as I ſaid in *December* laſt, I never was otherwiſe concern'd with her in the receiving or diſpoſing of any of her Money; nor had I ever any of her Securities for Money in my keeping; and I defy any Adverſary I have to ſhew the contrary.

My Lord, as there appears no Malice, no Intereſt, ſo they have prov'd for me that there was no Concealment of Shame, to induce me to commit ſo barbarous an Action; otherwiſe, perhaps, now they find they can aſſign no other Cauſe, they would content themſelves to give that Reaſon, and fling that Scandal at me: And tho' I take it by the Experience I have had of them, they did not deſign to do me any Favour, yet I thank them, in endeavouring to vindicate her Honour, they have ſecured my Reputation againſt that Calumny; and tho' I am ſatisfied, as I ſaid, they did not intend me Kindneſs, yet, I thank God, they have given me a juſt Opportunity to take Advantage of their Cunning for the clearing of my Innocence in that Particular.

Then, my Lord, not to reſt it here, but to ſatisfy the *Jury* and the *World* how this Gentlewoman came to deſtroy herſelf: I ſhall give the cleareſt Evidence that was ever given in any Court, that ſhe murther'd herſelf. When I enter upon this Proof, I muſt of neceſſity treſpaſs upon the Character of this Gentlewoman that is dead. I confeſs this is a tender Point, 'tis a thing I would willingly be excuſed from, and 'tis not without a great deal of Reluctance and Compulſion forced from me. That ſhe was melancholy the Proſecutors themſelves have prov'd; but I muſt of neceſſity ſhew you the Occaſions and Reaſons of it, and the Witneſſes will tell your Lordſhip what deſperate Reſolutions ſhe had been under formerly, and that will lead me to near the Time of her Death, to ſhew why, and upon what Accidents, ſhe made away herſelf. I will not enumerate Particulars by way of opening; only I muſt tell your Lordſhip, that ſome Letters of her's muſt of neceſſity be produced, which truly, as I ſaid, I ſhould not meddle with, if I had not theſe innocent Gentlemen here to defend as well as myſelf. Perhaps it may be ſaid, that in Honour I ought to conceal the Weakneſs of this Gentlewoman; but then, in Honour and Juſtice to theſe Gentlemen that are falſly accus'd with me, I cannot do it: I hope this one Reaſon will excuſe me to the World, for I have no other that could have oblig'd me to bring theſe Letters upon the Stage. I ſolemnly proteſt, if I ſtood here ſingly in the Caſe of my own Life, upon the Evidence given againſt me, I take it to be ſo inconſiderable, I would not do it; but I muſt do it, to ſhew that theſe Gentlemen alſo are innocent, and to preſerve them, becauſe I am ſatisfied in my own Mind they are ſo. My Lord, when I have done that, I ſhall ſhew your Lordſhip in the next Place, that it is utterly impoſſible I could be concern'd in this Fact, if I had had all the Motives and Provocations in the World to have done it; I ſhall ſhew your Lordſhip, in Point of Time it could not be.

The Maid *Sarah Walker*, who is the ſingle Witneſs, I take it, that ſays any thing in the leaſt relating to me, ſaid but now the Clock had ſtruck Eleven before ſhe carried up the Coals, and about a quarter of an Hour after, while ſhe was warming the Bed above Stairs, ſhe heard the Door clap, and ſome time after that ſhe came down and found that I and her Miſtreſs were gone. Now, in Point of Time I ſhall prove it utterly impoſſible I could be guilty of the Fact I am accus'd of, being ſeen to come into the *Glove-Inn* as the Town-Clock ſtruck Eleven, and ſtaying there more than a quarter of an Hour, was, after ſeveral things done at my Lodging, in Bed before Twelve a-Clock, and went no more out that Night, as I ſhall prove. As for that little Circumſtance of ſending for my Horſe, which they have made uſe of all along to back this Proſecution, their very telling me of that Matter, ſhews how much they are put to their Shifts to juſtify their accuſing me; I ſay, in Prudence I ought to have done what I did: I ſent for him on the *Tueſday*; but, as their Witneſs ſaith, I told him at the time I bid him fetch my Horſe, not to uſe then, nor till by the Courſe of the Circuit I was to go into *Eſſex* with the Judges the next Morning; and 'till then the Proſecutor's Witneſs, who is the Hoſtler of the *Glove-Inn*, was order'd to ſet him up there, to litter him down, and to take care of him and feed him, and that he ſhould be ready for me to go to *Chelmsford* on the Morrow, whither I went with the other Counſel the next Morning, being *Wedneſday*: And this, my Lord, is the Whole of that Matter.

My Lord, this Buſineſs ſlept near two Months after the Coroner's Inqueſt before I heard of it, or imagin'd myſelf to be concern'd in it, and was never ſtirr'd till two Parties, differing on all other Occaſions, had laid their Heads together: I beg leave to let your Lordſhip a little into that Matter, to ſhew you how this Proſecution came to be manag'd with ſo much Noiſe and Violence as it hath been. I can make it appear, that one of the greateſt of the Quakers, Mr. *Mead* by Name, has very much, and indirectly too, concern'd himſelf in this Matter: It ſeems they fancy the Reputation of their Sect is concern'd in it: for they think it a wonderful thing, nay, abſolutely impoſſible (however other People may be liable to ſuch Reſolutions), that one who was by her Education entitled to the *Light within her*, ſhould run headlong into the Water, as if ſhe had been poſſeſs'd with the Devil; of this they think their Sect is to be clear'd, tho' by ſpilling the Blood of four innocent Men. The other ſort of People that concur with the Quakers in this Proſecution, I ſhall mention; now I come to obſerve what the Witneſſes are that have been produced againſt me; ſome of 'em I have nothing to object to, but that they are extreme indigent and poor, and have been help'd by the Proſecutor; thoſe that are ſo, ſay nothing as to me; others, who live in this Town, and give their Opinions of the Manner of her Death, are poſſeſt with much Prejudice againſt me, upon Feuds that have riſen at the Elections of my Father and Brother in this Town; and theſe, with the *Quakers*, have wholly dreſs'd up this Matter for ſeveral Ends; the Quakers, to maintain the Reputation of their Sect; and the others, to deſtroy, or break at leaſt, the Intereſt of my Family in this Place: But however effectual theſe Deſigns may have been to have made a great Noiſe in the World out of nothing, I am ſatisfied now that I am in a Court of Juſtice, where no Perſon's Reputation, much leſs his Life, will be ſacrificed to the Policy or Malice of a Party without Proof; and therefore I have taken up ſo much of your Time, to ſet the true Riſe of this Proſecution before you in a clear Light.

My Lord, as to my coming to this Town on *Monday*, it was the firſt Day of the Aſſizes, and that was the Reaſon that brought me hither: Before I came out of Town, I confeſs, I had a Deſign to take a Lodging at this Gentlewoman's Houſe, having been invited by Letter ſo to do; and the reaſon why I did not was this: My Brother, when he went the Circuit, always favour'd me with the Offer of a Part of his Lodging, which out of good Huſbandry I always accepted: The laſt Circuit was in Parliament-time, and my Brother being in the Money-Chair, could not attend the Circuit as he us'd to do; he had very good Lodgings, I think one of the beſt in this Town, where I us'd to be with him; theſe were always kept for him, unleſs notice was given to the contrary. The *Friday* before I came down to the Aſſizes, I happen'd to be in Company with my Brother and another Gentleman, and then I ſhew'd them the Letter by which I was earneſtly invited down to lie at the Houſe of this Gentlewoman during the Aſſizes ('tis dated the 9th of *March* laſt); and deſigning to comply with the Invitation, I thereupon deſir'd my Brother to write to Mr. *Barefoot*, our Landlord, and get him, if he could, to diſpoſe of the Lodgings; for, ſaid I, if he keeps 'em they muſt be paid for, and then I cannot well avoid lying there: My Brother did ſay he would write, if he could think on't; and thus, if Mr. *Barefoot* diſpoſed of the Lodgings, I own I intended to lie at the Deceaſed's Houſe; but if not, I look'd on myſelf oblig'd to lie at Mr. *Barefoot*'s. Accordingly I ſhall prove, as ſoon as ever I came to this Town, in the Morning of the firſt Day of the Aſſizes, I went directly to Mr. *Barefoot*'s (the Maid and all agree in this), and the Reaſon was, I had not ſeen my Brother after he ſaid he would write, before I went out of *London*; and therefore 'twas proper for me to go firſt to Mr. *Barefoot*'s, to know whether my Brother had wrote to him, and whether he had diſpos'd of his Lodgings or not. As ſoon as I came to Mr. *Barefoot*'s, there was one Mr. *Taylor*, of this Town, came to me, and I in his hearing aſk'd Mr. *Barefoot*, his Wife, and Maid-ſervant, one after another, if they had receiv'd a Letter from my Brother to unbeſpeak the Lodgings; they told me No, that the Room was kept for us; and I think they had made a Fire, and that the Sheets were airing. I was a little concern'd he had not writ; but being ſatisfied that no Letter had been receiv'd, I ſaid immediately, as I ſhall prove by ſeveral Witneſſes, If it be ſo, I muſt ſtay with you, I will take up my Lodging here: Thereupon I alighted, and ſent for my Bag from the Coffee-houſe, and lodg'd all my Things at *Barefoot*'s, and thus I took up my Lodging there as uſual. I had no ſooner done this, but *Sarah Walker* came to me from her Miſtreſs to invite me to Dinner, and accordingly I went and dined there; and when I went away, it may be true, that being aſk'd, I ſaid I would come again at Night; but that I ſaid I would lie there, I do poſitively deny; and knowing I could not lie there, 'tis unlikely I ſhould ſay ſo. My Lord, at Night I did come again, and paid her ſome Money that I receiv'd from Mr. *Loftus*, who is the Mortgager, for Intereſt of the 200*l.* I before mention'd (it was 6*l.* odd Money, in Guineas and Half-guineas): I writ a Receipt, but ſhe declined the ſigning of it, preſſing me to ſtay there that Night; which I refuſed, as engag'd to lie at Mr. *Barefoot*'s, and took my leave of her; and that very Money which I paid her was found in her Pocket, as I have heard, after ſhe was drowned.

Now, my Lord, the Reaſon that I went to her Houſe at Night was, firſt, as I ſaid, to pay her the Intereſt-Money; in the next Place, 'twas but fitting, when I found myſelf under a Neceſſity of diſappointing her, and lying at *Barefoot*'s, to go to excuſe my not lying there, which I had not an Opportunity at Dinner-time to do. My Lord, I open my Defence ſhortly, referring the Particulars to the Witneſſes themſelves, in calling thoſe who will fully refute the Suppoſitions and Inferences made by the Proſecutor, whom firſt, my Lord, I ſhall begin with, to ſhew there is no Evidence of any Murther at all committed; and this, I ſay again, ought to be indiſputably made manifeſt and prov'd, before any Man can be ſo much as ſuſpected for it.

Mr. Baron *Hatſell.* Do not flouriſh too much, Mr. *Cowper*; if you have open'd all your Evidence call your Witneſſes, and when they have ended, then make your Obſervations.

Mr. *Cowper*. Then, my Lord, I will take up no more of your Time in opening this Matter.

Call Robert Dew. (*Who appeared.*)

When Mrs. *Sarah Stout* drowned herſelf, was not you a Pariſh Officer?

R. Dew. I was ——— I was next Houſe to the *Coach and Horſes*; and about Six a-Clock came a little Boy (*Thomas Parker*'s Boy), and ſaid there was a Woman fallen into the River. I conſider'd it was not my Buſineſs, but the Coroner's, and I ſent the Boy to the Coroner, to acquaint

him

I im with it, and the Coroner ſent Word by the Boy, and deſir'd ſhe might be taken out; ſo I went to the River and ſaw her taken out: She lay in the River (as near as I could gueſs) half a Foot in the Water; ſhe was cover'd with Water; ſhe had a ſtriped Petticoat on, but nothing could be ſeen of it above Water. I heav'd her up, and ſeveral Sticks were underneath her, and Flags; and when they took her out, ſhe froth'd at the Noſe and Mouth.

Mr. *Cowper.* How was ſhe? Was ſhe driven between the Stakes?

R. Dew. She lay on the right Side, her Head leaning rather downwards; and as they pull'd her up, I cried, *Hold, hold, hold, you hurt her Arm*; and ſo they kneel'd down and took her Arm from the Stakes.

Mr. *Cowper.* Did you ſee any Spot upon her Arm?

R. Dew. Yes, Sir.

Mr. *Cowper.* What ſort of Spot was it?

R. Dew. It was reddiſh; I believe the Stakes did it; for her Arm hit upon the Stake where ſhe lay.

Mr. *Cowper.* Pray, how do theſe Stakes ſtand about the Bridge of the Mill?

R. Dew. I ſuppoſe they ſtand about a Foot aſunder; they ſtand ſlanting, leaning down the Stream a little.

Mr. *Cowper.* Could you diſcern her Feet?

R. Dew. No, nothing like it, nor the ſtriped Petticoat ſhe had on.

Mr. *Cowper.* Might not her Knees and Legs be upon the Ground, for what you could ſee?

R. Dew. Truly, if I were put upon my Oath, whether they were ſo, or not, I durſt not ſwear it; ſometimes the Water there is four Feet, ſometimes three and a half; I believe her Feet were very near the Bottom.

Mr. *Cowper.* Are not the Stakes nail'd with their Head againſt the Bridge?

R. Dew. They are nail'd to the Side of the Bridge.

Mr. *Cowper.* Pray, deſcribe the Manner in which they took her up.

R. Dew. They ſtoop'd down, and took her up.

Mr. *Cowper.* Did they take her up at once?

Mr. *Dew.* They had two Heavings, or more.

Mr. *Cowper.* What was the Reaſon they did not take her up at once?

R. Dew. Becauſe I cried out, *They hurt her Arm.*

Mr. *Cowper.* Was ſhe not within the Stakes?

R. Dew. No, this Shoulder kept her out.

Mr. *Cowper.* When you complain'd *they hurt her Arm*, what Anſwer did they make you?

R. Dew. They ſtoop'd down and took her Arm out from between the Stakes; they could not have got her out elſe.

Mr. *Cowper.* After ſhe was taken out, did you obſerve any Froth or Foam come from her Mouth or Noſe?

R. Dew. There was a white Froth came from her, and as they wiped it away, it was on again preſently.

Mr. *Cowper.* What was the Appearance of her Face and upper Parts at that Time?

R. Dew. She was ſo much diſfigur'd, I believe that ſcarce any of her Neighbours knew her, the Slime of the Water being upon her.

Mr. *Cowper.* Did you ſee her Maid *Sarah Walker* at that Time?

R. Dew. No.

Mr. Baron *Hatſell.* Mr. *Cowper*, do you intend to ſpend ſo much Time with every Witneſs? I don't ſee to what Purpoſe many of theſe Queſtions are aſk'd.

Mr. *Cowper.* I have done with him, call *Young.*

Mr. Baron *Hatſell.* Mr. *Cowper*, I would not have you ſtraiten yourſelf, but only aſk thoſe Queſtions that are pertinent.

Mr. *Cowper.* Pray, give an Account of what you know of the Matter.

Young. On *Tueſday* Morning, between Five and Six a-Clock, laſt Aſſizes——

Mr. *Cowper.* What Officer was you?——*Young.* I was Conſtable.

Mr. *Cowper.* Was you employed by the Coroner?

Young. Not by him in Perſon. Between Five and Six a-Clock ſome of the Men that came into my Yard to work, told me a Woman was drowned at the Mill; I ſtaid a little and went down to ſee, and when I came there I ſaw a Woman, as they had told me, and I ſaw part of her Coat lie on the Top of the Water to be ſeen, and I look'd ſtrictly and nicely within the Bridge, and ſaw the Face of a Woman, and her left Arm was on the Outſide the Stakes, which I believe kept her from going thro'; ſo I look'd upon her very wiſhfully, and was going back again; and as I came back I met with *R. Dew* and two of my Neighbours, and they aſk'd me to go back with them, and ſaid they were going to take her up; and being Conſtable, I told them I thought it was not proper to do it, and they ſaid they had Orders for it; ſo I being Conſtable, went back with them, and when I came there I found her in the ſame Poſture as before; we view'd her very wiſhfully; her Coat that was driven near the Stakes was ſeen, but none of her other Coats, or her Legs; and after we had look'd a little while upon her, we ſpake to *Dell* and *Ulſe* to take her up, and one of them took hold of her Coat till he brought her above Water; and as her Arm drew up, I ſaw a black Place, and ſhe laid ſideway, that he could not take her up till they had let her down again, and ſo they twiſted her out ſideway; for the Stakes were ſo near together that ſhe could not lie upon her Belly, or upon her Back; and when they had taken her up, they laid her down upon a green Place, and after ſhe was laid down, a great Quantity of Froth (like the Froth of new Beer) work'd out of her Noſtrils.

Mr. Baron *Hatſell.* How much do you call a great Quantity?

Young. It roſe up in Bladders, and run down on the Sides of her Face, and ſo roſe again; and ſeeing her look like a Gentlewoman, we deſired one *Ulſe* to ſearch her Pockets, to ſee if there were any Letters, that we might know who ſhe was; ſo the Woman did, and I believe there was twenty or more of us that knew her very well when ſhe was alive, and not one of us knew her then; and the Woman ſearch'd her Pockets, and took out ſix Guineas, ten Shillings, three Pence Halfpenny, and ſome other Things; and after that I deſired ſome of my Neighbours to go with me and tell the Money; for when it came to be known who ſhe was, I knew we muſt give an Account on't, and I laid it upon a Block and told it, and they ty'd it up in a Handkerchief, and I ſaid I would keep the Money, and they ſhould ſeal it up to prevent any Queſtion about it; and during all this while of Diſcourſe, and ſealing up the Money, the Froth ſtill work'd out of her Mouth.

Mr. *Cowper.* Have you meaſured the Depth of the Water? What Depth is it there?

Young. I meaſured the Water this Morning, and 'twas ſo high that it ran over the Floodgate, and the Height of it was about four Foot two Inches; but ſometimes 'tis pent up to a greater Height than 'tis To-day.

Mr. *Cowper.* Was it higher To-day than when the Body was found?

Young. To the beſt of my Remembrance, 'twas as high To-day as it was then.

Mr. *Cowper.* Was any Part of the Body above Water?

Young. No, nor nothing like the Body could be ſeen.

Mr. *Cowper.* Could you ſee where her Legs lay?

Young. No, nor nothing but her upper Coats, which were driven againſt the Stakes.

Mr. *Cowper.* Pray give an Account how long ſhe lay there, and when ſhe was convey'd away?

Young. I ſtay'd a quarter of an Hour, and then I went and ſealed up the Money at my own Houſe, ſo that I did not ſee her removed.

Mr. *Jones.* Was any Body there beſides yourſelf at this time?

Young. Yes; twenty People at the leaſt.

Mr. *Jones.* Now here is Ten of them that have ſworn that the Body was above the Surface of the Water.

Mr. Baron *Hatſell.* No, her Cloaths, they ſay, were, but the Body was ſomething under the Water.

Mr. *Cowper.* Now I will trouble your Lordſhip no more with that Fact, but I will give you an Account of the Coroner's Inqueſt, how diligent they were in their Proceedings, and produce a Copy of the Inquiſition itſelf, that ſhe was found to have drowned herſelf.

Mr. Baron *Hatſell.* Mr. *Cowper*, that is no Evidence, if it be produced in order to contradict what theſe Witneſſes have ſaid, that have been examined for the King; but if you will prove, that they have ſworn otherwiſe before the Coroner than they now do, then you ſay ſomething, otherwiſe the Coroner's Inqueſt ſignifies nothing as to the preſent Queſtion.

Mr. *Cowper.* Call *Thomas Wall.* I am loth to be troubleſome; but if you pleaſe to favour me, I deſire to know of them, whether they do admit there was an Inquiſition, and that ſhe was found *Non Compos Mentis*, and did kill herſelf.

Mr. *Jones.* We do admit it.

Jury-man. We deſire it may be read.

Mr. Baron *Hatſell.* Why, won't you believe what they agree to on both Sides?

Jury-man. If they do agree ſo, I am ſatisfied.

Mr. *Cowper.* *Thomas Wall*, pray, do you give an Account of what you know of Mrs. *Stout*'s being taken up.

Wall. My Lord, I was one of the Jury, that view'd her at the Place where ſhe was laid when ſhe was taken up, and there was no Marks upon her, only a little Mark about her Ear, and ſomething near her Collar-bone; that was all I ſee upon her.

Mr. *Cowper.* Do you know any thing of any Surgeons being employ'd to view thoſe Marks?

Wall. My Lord, we had ſeveral Perſons that came before us that we examin'd; we had a Diſpute concerning theſe Marks what might effect them, and we deſir'd Mr. *Dimſdale* and Mr. *Camlin* to ſee them, that we might be the better ſatisfied; and they both went down and viewed the Body after it was brought down to Mrs. *Stout*'s; and they came back, both of them, and Mr. *John Dimſdale* told us, that theſe Marks were no more than were uſual in ſuch Caſes, and it was only the Stagnation of Blood.

Mr. *Cowper.* Was it the old Man or the young Man?

Wall. It was the young Man.

Mr. *Cowper.* Uſual did he ſay?

Wall. I can tell the very Words, I have them writ down.

Mr. *Cowper.* Pray do ſo, for he has denied it here.

Wall. (*Looks on his Paper.*) Here 'tis. Mr. *Dimſdale* and Mr. *Camlin* came to us, and Mr. *Dimſdale* ſpake, and ſaid theſe Marks are uſual, or might be uſual; or if they were Marks, it was no more than was uſual in ſuch Caſes; and that it was the Stagnation of Blood.

Mr. *Cowper.* Now you have your Notes in your Hand, pray, what did *Sarah Walker* ſay to you as to the Time I went from Mrs. *Stout*'s?

Wall. *Sarah Walker* ſaid, it was about Eleven a-Clock when ſhe took up Coals to warm the Bed, but ſhe ſaid ſhe could not, nor did not know when Mr. *Cowper* went out, for ſhe warm'd the Bed, and Mr. *Cowper* not coming up, ſhe took up ſome more Coals, and tarried a little longer, and nobody coming up, ſhe went down, and found Mr. *Cowper* was gone, and ſhe look'd into the Parlour, and her Miſtreſs was gone.

Mr. Baron *Hatſell.* The Woman ſaid the ſame Thing.

Mr. *Cowper.* 'Tis neceſſary in this Particular as to the Time.

Mr. Baron *Hatſell.* She told you the Clocks did differ.

(*Then Mr.* Bowden *was called.*)

Mr. *Cowper.* Well, what do you know of the taking up of Mrs. *Stout*?

Bowden. I went with the reſt of the Neighbours to view her, and I did perceive it was Mrs. *Sarah Stout*'s Body, tho' ſome queſtion'd it: I do believe I was the ſecond Perſon that diſcover'd it was ſhe; and, my Lord, I did ſee a great deal of Froth that came out of her Mouth and Noſtrils.

Mr. *Cowper.* Did you go about to wipe it away?

Bowden. No, but ſome other Perſons did; it came out in a great Quantity.

Mr. *Jones.* How much do you call a great Quantity?

Bowden. Her Mouth and Noſtrils were very full of it.

Mr. *Jones.* Was not her Mouth ſhut?

Bowden. I did not obſerve that.

Mr. *Cowper.* How long had ſhe lain there before you came?

Bowden. I believe I was there in half an Hour; as ſoon as I heard the Report of it I went down.

Mr. *Cowper.* Call Mr. *Shute.*

Mr. Baron *Hatſell.* Well, what can you ſay to this Matter?

Shute. Sir, I was ſummoned upon the Jury upon the Coroner's Inqueſt; and I perceiv'd when I was there, that the ſame Stuff worked out of Mrs. *Stout*'s Noſtrils as worked out of the Child's.

Mr. Baron *Hatſell.* What Child is that you ſpeak of? Is it the Child that was drowned in the ſame Place as Mrs. *Stout* was? *Shute.* Yes.

Mr. *Cowper.* My Lord, I am very tender how I take up your Lordſhip's Time; and therefore I will not trouble you with any more Witneſſes upon this Head; but, with your Lordſhip's Leave, I will proceed to call ſome Phyſicians of Note and Eminence, to confront the Learning of the Gentlemen on the other Side.———Dr. *Sloane*, you were in Court when theſe Gentlemen delivered their Opinion concerning Mrs. *Stout*'s having no Water in her; I deſire you would give your Opinion in that Matter.

Dr. *Sloane.* I have not heard them very particularly or diſtinctly, becauſe of the great Crowd; ſome of them I have; Caſes of this kind are very uncommon, and none of them have fallen directly under my own Knowledge. As to my Opinion of drowning, it is plain, that if a great Quantity of Water be ſwallowed by the Gullet into the Stomach, it will not ſuffocate or drown the Perſon: Drunkards, who ſwallow freely a great deal of Liquor, and thoſe who are forced by the Civil Law to drink a great Quantity of Water, which in giving the Queſtion (as 'tis called) is poured into them by way of Torture to make them confeſs Crimes, have no Suffocation or Drowning happen to them: But on the other hand, when any Quantity comes into the Wind-pipe, ſo as it does hinder or intercept the Inſpiration, or Coming-in of the Air, which is neceſſary for Reſpiration or Breathing, the Perſon is ſuffocated. Such a ſmall Quantity will do, as ſometimes in Preſcriptions, when People have been very weak, or forced to take Medicines, I have obſerv'd ſome Spoonfuls in that Condition (if it went the wrong Way) to have choaked or ſuffocated the Perſon. I take Drowning in a great meaſure to be thus; and though it is very likely when one ſtruggles he may (to ſave himſelf from being choaked) ſwallow ſome Quantity of Water, yet that is not the Cauſe of his Death, but that which goes into the Wind-pipe and Lungs. Whether a Perſon comes dead or alive into the Water, I believe ſome Quantity will go into the Wind-pipe; and I believe, without Force after Death, little will get into the Stomach, becauſe that it ſhould, ſwallowing is neceſſary, which after Death cannot be done.

Mr. Baron *Hatſell.* Pray, Doctor, I underſtand you ſay this; that in caſe a Perſon is drowned, that there may be but little Water in the Stomach?

Dr. *Sloane.* That it is accidental, my Lord.

Mr. Baron *Hatſell.* But what do you ſay to this? If there had been Water in the Body, would it not have putrified the Parts after it had lain ſix Weeks?

Dr. *Sloane.* My Lord, I am apt to think it would have putrified the Stomach leſs than the Lungs, becauſe the Stomach is a Part of the Body that is contrived by Nature partly to receive Liquids; but the Contrivance of the Lungs is only for the receiving of Air; they being of a ſpongy Nature, the Water might ſink more into them than the Stomach; but I believe it might putrify there too after ſome time. I am apt to think, that when a Body is buried under Ground, according to the Depth of the Grave, and Difference of the Weather and Soil, the Fermentation may be greater or leſſer, and that according to the ſeveral Kinds of Meats or Liquids in the Stomach, the Putrifaction will likewiſe vary; ſo that it ſeems to me to be very uncertain.

Mr. Baron *Hatſell.* But when they are in a Coffin, how is it then?

Dr. *Sloane.* No doubt there will be a Fermentation more or leſs, according as the Air comes more or leſs to the Body. Indeed it may be otherwiſe, where the Air is wholly ſhut out, which is ſuppoſed to be the Way of Embalming, or preſerving of dead Bodies of late, without the Uſe of any Spices, which is thought in a great meaſure to be brought about by the Cloſeneſs of the Coffin, and hindering of the Air from coming in to the Body.

Mr. *Cowper.* Is it poſſible, in your Judgment, for any Water to paſs into the Thorax?

Dr. *Sloane.* I believe 'tis hardly poſſible that any ſhould go from the Wind-pipe into the Cavity of the Thorax, without great Violence and Force; for there is a Membrane that covers the Outſide of the Lungs, that will hinder the Water from paſſing through it into any Part without them.

Mr. *Cowper.* Now, do you think it poſſible to find Water in a drowned Body after ſix Weeks time?

Dr. *Sloane.* I am apt to think if there was any Quantity in the Lungs, the Spongineſs of the Part would ſuck up ſome part of it. As to the Stomach, I have not known it tried; but 'tis like, if there was a great Fermentation, a great deal of it would riſe up in Vapours or Steams, and go off that way.

Mr. *Cowper.* Dr. *Garth*, I can't tell whether you were in Court when the Surgeons who are Witneſſes for the King gave their Evidence.

Dr. *Garth.* Yes, I was.

Mr. *Cowper.* Then I deſire you, Sir, to give your Opinion as to thoſe Particulars.

Dr. *Garth.* I obſerved in this Tryal, the firſt Gentleman called for the King that ſpoke to this Matter was Mr. *Coatſworth*: He ſaith he was ſent for to open her, upon an Aſperſion of her being ſaid to be with Child. I agree with him in what he ſpeaks to that Point, but muſt differ with him where he infers ſhe was murdered, becauſe he found no great Quantity of Water in her, as alſo her Head extremely mortified, but not her Lungs (Lungs and Bowels I think were uſed promiſcuouſly). Now, my Lord, as to the Matter of Putrifaction, I think 'tis not much material whether there be any Water or no in the Cavities of the Body; if Water would haſten Putrifaction, it would do it as well in the Lungs as otherwiſe; there is always ſome Water in the Lympheducts there, the Breaking of which may be one Occaſion of Catarrhs. As to what relates to the Putrifaction of the Head, it may happen from a Stoppage of the refluent Blood, which is ſtaid there in a great Quantity, through the Suffocation in the Water, or from the Nearneſs of the Brain, which is obſerved often to mortify firſt.

The next was Mr. *Dimſdale* (I would ſpeak to them all in order if my Memory would permit); I think he was of the ſame Opinion as Mr. *Coatſworth*; he laid the Streſs of his Suſpicion upon the Mortification of the Head, which I think is not at all material, no more than what they infer from her floating; it being impoſſible the Body ſhould have floated, unleſs it had reſted, or had been entangled among the Stakes, becauſe all dead Bodies (I believe) fall to the Bottom, unleſs they be prevented by ſome extraordinary Tumour. My Lord, we have not only Philoſophy, but Experiments for this. The Witneſſes all agree ſhe was found upon her Side, which to ſuppoſe her to float in this poſture, is as hard to be conceived, as to imagine a Shilling ſhould fall down and reſt upon its Edge rather than its broad Side; or that a Deal Board ſhou'd rather float Edgeways than otherwiſe; therefore 'tis plain ſhe was entangled, or elſe the Poſture had been otherwiſe.

As to the Quantity of Water, I do not think it neceſſary it ſhould be very great. I muſt own, the Water will force itſelf into all Cavities where there's no Reſiſtance. I believe when ſhe threw herſelf in, ſhe might not ſtruggle to ſave herſelf, and by conſequence not ſup up much Water. Now there's no direct Paſſage into the Stomach but by the Gullet, which is contracted or purs'd up by a Muſcle in Nature of a Sphincter: For if this Paſſage was always open, like that of the Wind-pipe, the Weight of the Air would force itſelf into the Stomach, and we ſhould be ſenſible of the greateſt Inconveniencies. I doubt not, but that ſome Water fell into her Lungs, becauſe the Weight of it would force itſelf down; but if we conſider the Wind-pipe with its Ramifications as one *Cylinder*, the Calculation of its Contents will not amount to above twenty-three or twenty-four ſolid Inches of Water, which is not a Pint, and which might imperceptibly work and fall out. I remember I offered a Wager at *Garaway*'s Coffee-Houſe to a Gentleman here in Court.

Mr. Baron *Hatſell.* Pray, Doctor, tell us your Opinion as to what the Seaman ſaid, and alſo as to what Dr. *Sloane* ſaid, whether Water in the Body will putrify it?

Dr. *Garth.* I ſay not; for in ſome Places they keep Fleſh-Meat from corrupting by preſerving it in Water, and 'tis well known 'twill putrify leſs ſo, than when expoſed to Air.

Mr. Baron *Hatſell.* But what do you ſay as to the ſinking of dead Bodies in Water?

Dr. *Garth.* If a ſtrangled Body be thrown into the Water, the Lungs being filled with Air, and a Cord left about the Neck, 'tis poſſible it may float, becauſe of the included Air, as a Bladder wou'd; but here is neither Cord, nor any Mark of it, nor nothing but a common Stagnation.

Mr. Baron *Hatſell.* But you don't obſerve my Queſtion; the Seaman ſaid, that thoſe that die at ſea, and are thrown overboard, if you don't tye a Weight to them, they will not ſink: What ſay you to that?

Dr. *Garth.* My Lord, no doubt in this they're miſtaken. The Seamen are a ſuperſtitious People, they fancy that whiſtling at Sea will occaſion a Tempeſt: I muſt confeſs I never ſaw any Body thrown overboard, but I have tried ſome Experiments on other dead Animals, and they will certainly ſink; we have tried this ſince we came hither. Now, my Lord, I think, we have Reaſon to ſuſpect the Seaman's Evidence; for he ſaith, that threeſcore Pound of Iron is allowed to ſink the dead Bodies, whereas ſix or ſeven Pounds would do as well. I cannot think the Commiſſioners of the Navy guilty of ſo ill Huſbandry; but the Deſign of tying Weights to their Bodies, is to prevent their floating at all, which otherwiſe wou'd happen in ſome few Days: Therefore what I ſay is this, that if theſe Gentlemen had found a Cord, or the Print of it, about the Neck of this unfortunate Gentlewoman, or any Wound that had occaſioned her Death, they might then have ſaid ſomething.

Mr. *Cowper.* Do you apprehend that any Quantity of Water can enter into the Cavity of the Thorax?

Dr. *Garth.* 'Tis impoſſible there ſhould till the Lungs be quite rotten; there is no Way but by the Lungs, which are inveſted with ſo ſtrong a Membrane, that we cannot force Breath with our Blow-pipes through it; and there's a great Providence in ſuch a Texture; for if there were any large Pores in the Membrane, the Air would paſs thro' it into the Cavity of the Thorax, and prevent the Dilatation of the Lungs, and by conſequence there would be an End of Breathing.

Mr. *Cowper.* Dr. *Morley*, pray, be pleaſed to give your Opinion of theſe Matters.

Dr. *Morley.* Thoſe which ſeem to be Queſtions of greateſt Moment, are whether there was a Neceſſity for this Body (if drown'd) to have a great Quantity of Water in it, and whether Bodies thrown dead into the Water float. To the firſt I anſwer poſitively, that there is no abſolute Neceſſity that ſhe ſhould have a great Quantity of Water in her; and I think the Queſtion Mr. *Cowper* aſk'd Dr. *Coatſworth*, whether he had like to have been drowned by Accident or Deſign, ſuits with my Aſſertion; for if this Gentlewoman did voluntarily drown herſelf, ſhe then, in all likelihood, threw herſelf into the Water, with a Reſolution of keeping her Breath for a ſpeedy Suffocation; and then if upon the firſt Endeavours for Reſpiration (which naturally muſt be) ſhe drew into her Lungs two Ounces of Water, it was the ſame Thing to drowning of her, as if there had been two Tun. We ſee the ſame Thing done by Divers in order to ſave themſelves, as it happened to this unfortunate Gentlewoman, in her Deſign of deſtroying herſelf: If a Diver, before he comes to the Surface of Water, ſhould ſo far miſtake his Power of holding his Breath, that he ſhould be forced to endeavour Reſpiration, the little Water he drew into his Lungs by his Attempt to reſpire, may drown him. We laſt Night drown'd a Dog, and afterwards diſſected him, and found not a Spoonful of Water in his Stomach, and, I believe, about two Ounces in his Lungs; while we were doing this, we drowned another, and he lay at the Bottom and did not float: no more would he have done, if he had been hang'd before thrown into the Water: We took him up, and opening him, we found much about the ſame Quantity of Water in his Lungs, and little or none in his Stomach. They both froth'd at Noſe and Mouth, becauſe the Water coming into the little Bladders of the Lungs, and there meeting with Air, a Commotion aroſe between the Water and Air, which cauſed the Froth. To the ſecond Queſtion, I think if Bodies new killed ſwim, 'tis by Accident; for the Reaſon that Bodies ſwim, is becauſe by Putrifaction they rarifye, by Rarifaction they grow lighter, which brings them to the Top of the Water.

Mr. *Cowper.* I deſire to know if any Man of Skill in Prudence wou'd give his Opinion?——Mr. Baron *Hatſell.* This is not a proper Queſtion.

Mr. *Cowper.* Then I will aſk it thus: Do you think, Doctor, it is to be known ſix Weeks after, if a Perſon was drowned?

Dr. *Morley.* I think it is morally impoſſible.

Mr. *Cowper.* Can there be any Water in the Thorax?

Dr. *Morley.* By an Impoſthume or ſome Violence to Nature, poſſibly; but I think no otherwiſe.

Mr. *Cowper.* Dr. *Woollaſton*, what is your opinion, if a Perſon be drowned, whether it can be diſcovered ſix Weeks after?

Dr. *Woollaſton.* My Lord, I think it is impoſſible to be known; for if there had been never ſo much Water in the Body at firſt, it could not lie there ſo long, but muſt of neceſſity have forced its way out. We ſee in Perſons that die of Dropſies, that the Water will work itſelf out (and ſometimes burſt the Body) before it is buried; and I am ſure, if it do ſo in Dropſies, where there are no viſible Paſſages for it to get out at, it muſt do ſo much more in drowned Perſons, where the Water lies only in the Stomach and Guts, and has nothing to hinder its working out when it ferments, as it always doth.

Mr. *Cowper.* Have you ever made any Experiments in that nature, Doctor?

Dr. *Woollaſton.* I have made no Experiments, but I have ſeen a very particular Inſtance.

Mr. Bar. *Hatſell.* That is very well; pray let us hear it, Doctor.

Dr. *Woollaſton.* My Lord, about three Years ſince, I ſaw two Men that were drowned out of the ſame Boat. They were taken up the next Day after they were drowned: One of 'em was indeed prodigiouſly ſwelled, ſo much that his Cloaths were burſt in ſeveral Places of his Sides and Arms, and his Stockings in the Seams; his Hands and Fingers were ſtrangely extended; his Face was almoſt all over black; but the other was not in the leaſt ſwelled in any Part, nor diſcoloured; he was as lank, I believe, as ever he was in his Life-time; and there was not the leaſt Sign of any Water in him, except the watery Froth at his Mouth and Noſtrils. My Lord, this I ſaw myſelf, and took very particular Notice of it.

Mr. *Jones.* Did you ſee theſe Bodies taken out of the Water yourſelf, Doctor?

Dr. *Woollaſton.* No, Sir.

Mr. *Jones.* How long had they been taken out when you ſaw them?

Dr. *Woollaſton.* I enquired, and to the beſt of my Memory, it was that ſame Day.

Mr. Bar. *Hatſell.* But what do you think, Doctor, of a Perſon's being drowned without taking in any Water?

Dr. *Woollaſton.* My Lord, what is taken in is, I believe, chiefly at the Surface of the Water, when they open their Mouths for Breath, and the Water that ruſhes in they are forced to drink down, to keep it from the Lungs: But when the Head is quite under Water, I don't think 'tis poſſible for any quantity to get down into the Stomach; becauſe it being Breath they open for, the very firſt Water they take in would of neceſſity fill the Lungs; and, when the Breath is ſtopped, I don't ſee how they can ſwallow.

Mr. *Cowper.* Dr. *Gelſtrop*, what is your Opinion of this Matter?

Dr. *Gelſtrop.* I don't think they can make any Judgment of Perſons being drowned after ſix Weeks time.

Mr. *Cowper.* Can any Water get into the *Thorax?*

Dr. *Gelſtrop.* No, not unleſs the Lungs be putrified.

Mr. *Cowper.* Is a great quantity of Water neceſſary to Perſons dying by drowning?

Dr. *Gelſtrop.* No; only ſo much as may hinder Reſpiration.

Mr. *Cowper.* Now, my Lord, I would call Mr. *William Cowper*; and becauſe of his Name, I muſt acquaint your Lordſhip, that he is not at all related to me, tho' I ſhould be proud to own him if he were ſo: He is a Man of great Learning, and, I believe, moſt People admit him the beſt Anatomiſt in *Europe.* Mr. *Cowper*, pray will you give your Opinion of this Matter?

Mr. *W. Cowper.* My Lord, I hope what I ſhall ſay will not be ſuſpected becauſe I am of the ſame Name, for this Gentleman is an utter Stranger to me.

Mr. Bar. *Hatſell.* Pray, Mr. *Cowper*, without any Apology, give your Opinion concerning Perſons drowned, and how 'tis with them in their inward Parts.

Mr. *W. Cowper.* I will give you a ſhort Account, I hope to your Satisfaction too, my Lord. I will not only ſpeak from Reaſon, but give you the Teſtimony of the Experiments I have made upon this Occaſion. My Lord, I heard it made a mighty Argument, that this Perſon had no Water that ſeemed to flow out; but the Witneſſes agree that there was a Froth. Now, my Lord, it was not reaſonable to expect any thing but Froth. My Lord, had ſhe been thrown into the Water, and made her utmoſt Efforts, which ſhe would then have done to have ſaved herſelf, and been often buoyed up to the top of the Water, no doubt but ſhe would have ſwallowed a conſiderable quantity of Water before ſhe had been drowned; and it may be expected to flow from her, if her Head had been inclined downwards.

This is a Truth that no Man can deny, who is acquainted with any Thing of this nature, That when the Head of an Animal is under Water, the firſt time 'tis obliged to inſpire (or draw in Air) the Water will neceſſarily flow into its Lungs, as the Air would do if it were out of the Water; which quantity of Water (if the Dimenſions of the Windpipe, and its Branches in the Lungs, be conſidered) will not amount to three Inches ſquare, which is about three Ounces of Water. Nor is a greater quantity of Water in the Windpipe neceſſary to choak any Perſon, if we do but reflect what an Ebullition is cauſed by its meeting with the Air which remained in the Lungs, whereby a ſmall quantity of Water is converted into Froth, and the Channel of the Windpipe, and thoſe of the *Bronchia*, are filled with it, inſomuch that no Air can enter the Lungs for the Office of Reſpiration. After a Suffocation is thus commenced (I am apt to think) all regular animal Actions are perverted, and particularly that of ſwallowing (or Deglutition); and what Water flows into the Lungs at the Inſtant, or after this Suffocation, is from its own Weight, which is more or leſs as the Body is farther under, or nearer the Surface of the Water. My Lord, I don't ſpeak this by way of Conjecture or Hypotheſis, but I have made Experiments, which have ſuggeſted what I here offer. I ſhall by the bye tell you how fallacious the firſt Experiment was, when I propoſed to ſatisfy myſelf, whether a dead Body would float in Water? It happened that a Spaniel, that had a great deal of long Hair, was hanged for this purpoſe, which I found to ſwim on the Surface of the Water; but when I conſidered that his Hair might buoy him up, I cauſed another Dog, which had ſhorter and leſs Hair, to be hanged and put into the Water, which (agreeable to what I had always conceived of a Human Body) ſunk directly to the Bottom. In order to ſatisfy myſelf what quantity of Water was neceſſary to enter the Body of an Animal, and cauſe a Suffocation in Water, I cauſed three Dogs, when alive, to be ſuddenly plunged under Water till they were ſtifled; one was before I left *London*; the other two I made the Experiment on laſt Night, in the Preſence of Dr. *Sloane* and Dr. *Morley*, and we could not compute there was more than three Ounces of Water in their Lungs, and none that we could perceive in their Stomachs.

Dead Bodies neceſſarily ſink in Water, if no Diſtention of their Parts buoy 'em up; this Diſtention ſometimes happens before Death, at other times ſoon after, and in Bodies that are drowned after they lie under Water: This Enlargement of them is cauſed by a Rarefaction of the Humours within the Cavities, and the Bodies neceſſarily riſe to the Surface of the Water. Your Lordſhip may infer this from what the Seaman told you; and the great Weight they uſe to faſten to their Bodies that die of Diſeaſes, was not of ſuch uſe to ſink them, as it was to prevent their floating afterwards; ſo that the Weight was neceſſary for thoſe that were killed, as well as thoſe that died of Diſeaſes.

It is ſo commonly known, that the Contents in the Stomach of a dead Body are diſcharged by the Mouth and Noſtrils, ſo ſoon as it begins to ferment, and the Belly becomes diſtended, that it is no Wonder that Water, if the greateſt quantity of that had been in the Stomach, or any thing elſe that was fluid, muſt be forced from them ſix Weeks after Death.

My Lord, I can't but think it ridiculous to expect Water in the Cavity of the *Thorax*; 'tis ſuch a Conceit as nothing in Nature can account for, unleſs the Lungs had ſuffered ſome Apoſtumation, or the like, whereby the Water may paſs their outward Membranes into that Cavity.

Mr. *Cowper.* With your Lordſhip's Favour, I now think it a proper Time to make this Obſervation. The Witneſſes that have given Evidence for the King do ſay, They believe ſhe was not drowned; but they have not pretended to ſay how ſhe died otherwiſe.

Mr. Bar. *Hatſell.* That is very true.

Mr. *Cowper.* Dr. *Crell*, I deſire you will be pleaſed to give an Account of this Matter.

Dr. *Crell.* My Lord, I have little to ſay in this Affair, the Phyſicians that have been examined already having made it out, that Perſons who are drowned may have but little Water in their Bodies; but I have taken what Pains I could, upon ſo ſhort Warning, and I will tell you the Opinion of ſeveral eminent Authors. My own Opinion is, That a very ſmall quantity of Water, not exceeding three Ounces, is ſufficient to drown any Body; and I believe that the Reaſon of the Suffocation, or of any Perſon's being ſtifled under Water, is from the intercepting of the Air, that the Perſon can't breathe, without which he cannot live. Now, my Lord, I will give you the Opinion of ſeveral ancient Authors.

Mr. Bar. *Hatſell.* Pray, Doctor, tell us your own Obſervations.

Dr. *Crell.* My Lord, it muſt be Reading, as well as a Man's own Experience, that will make any one a Phyſician; for without the reading of Books of that Art, the Art itſelf cannot be attained to; beſides, my Lord, I humbly conceive, that in ſuch a difficult Caſe as this, we ought to have a great Deference for the Reports and Opinions of learned Men: Neither do I ſee any Reaſon why I ſhould not quote the Fathers of my Profeſſion in this Caſe, as well as you Gentlemen of the Long-Robe quote *Coke* upon *Littleton* in others: But I ſhall not trouble the Court long; I ſhall only inſiſt upon what *Ambroſe Parey* relates in his Chapter of Renunciations. He was chief Surgeon to *Francis* the Firſt, employ'd by him in moſt of his Sieges and Battles againſt the Emperor *Charles* the Fifth, and conſequently muſt obſerve, and could not be ignorant of ſuch like Caſualties in ſuch great Bodies of Men. He tells us, That the certain Sign of a Man's being drowned, is an Appearance of Froth about his Noſtrils and Mouth. Now, my Lord, I think that every one of the King's Evidences obſerved it in the preſent Caſe, and a Woman ſwore, that ſhe ſaw her purge at the Noſe; which could not be, as he declares, if the Perſon had been ſtrangled, or otherwiſe killed before.

As to the Quantity of Water requiſite to drown a Perſon, I believe that three Ounces, or leſs, is enough; to wit, as much as will fill the Windpipe, and ſo ſtop the breathing of the Perſon drowning. I am not now to deſcant upon Matter of Fact, whether ſhe drowned herſelf; but my firm Opinion is, that ſhe was drowned; for tho' ſometimes, not always, there is Water found in the Bodies of ſuch Perſons; yet whereever it be, beſides the Lungs, it is ſuperfluous as to this End, and accidental upon violent Strugglings.

Mr. *Cowper.* I deſire Mr. *Harriot* may be aſked what Obſervations he hath made concerning this Matter.

Mr. *Harriot.* My Lord, when I was a Surgeon in the Fleet, I made it always my Obſervation, when we threw Men over-board that were killed, ſome of them ſwam, and ſome ſunk; and I remember particularly, when the *Sandwich* was burnt, we ſaw abundance leap off from on board, and they ſunk directly, but in a little time I obſerved ſome ſwim again.

Mr. Bar. *Hatſell.* When a dead Body is thrown over-board, does it ſink or ſwim?

Mr. *Harriot.* I always obſerved that it did ſink: When we were in the Channel, and in Time of Peace, we never threw any over-board but we put ſome Weight to them; but it was not to make them ſink, but for Decency ſake, that they might not be driven to Shore when they began to float.

Mr. *Cowper.* I deſire that Mr. *Bartlet* may be aſked to the ſame Purpoſe.

Mr. *Bartlet.* I have been in ſeveral of the King's Ships of War that have been diſabled and forced to lie by, in ſeveral Engagements between the *French* and *Engliſh*, and I never ſaw any Bodies float, either of the Men that were killed in our Ship, or in the Ships that have been near us; I have not ſeen a Body upon the Surface of the Water.

Mr. Bar. *Hatſell.* Another Witneſs ſaid, That after an Engagement he ſaw them ſwimming.

Mr. *Bartlet.* I can't tell what he ſaw, my Lord; but what I ſay I am ready to make Oath of.

Mr. *Cowper.* Dr. *Camlin*, will you pleaſe to give my Lord and the Jury an Account whether you were employ'd by the Coroner's Inqueſt to view the Body of Mrs. *Stout* after ſhe was drowned, and the Marks upon it, and tell my Lord your Opinion of it?

Mr *Camlin.* I was ſent for by the Coroner and the Jury that ſat upon the Body of Mrs. *Sarah Stout*, the Coroner being then at her Mother's Houſe, and the Coroner deſired Mr *Dimſdale* and me to go and take notice of the Marks upon her Neck, and upon her Breaſt: We view'd all about, and perceiv'd a Mark under her left Ear; we look'd to ſee if there was any Contuſion, and we perceiv'd a Settlement of Blood upon her Breaſt, and another upon her Arm; and when we came back, Mr. *Dimſdale* made a Report, I ſtood by him at that time, That it was only a common Settlement.

Mr. *Cowper.* Pray, Mr. *Camlin*, was the Spot above or below the Collar-bone?——Mr. *Camlin.* Below the Collar-bone.

Mr. *Cowper.* What did Mr. *John Dimſdale* ſay then concerning this Matter?

Mr. *Camlin.* I underſtood that he was of Opinion, that it was only a common Stagnation of Blood, that happens in the Caſe of drowned People.

Mr. Bar. *Hatſell.* Did he ſay ſo to the Jury?

Mr. *Camlin.* Mr. *Dimſdale* ſpake for us both, and I underſtood him, that it was a Stagnation that did commonly happen to drowned People; and that was my Opinion of it too.

Mr. *Cowper.* And that you agreed to be your Report?

Mr. *Camlin.* Yes.

Mr. *Cowper.* Pray, Mr. *Camlin*, was you preſent when the Child that was drowned in the ſame Place was taken up?

Mr. *Camlin.* Yes; it was taken up ſome time after, near the ſame Place, as I was told, and there was more and greater Signs of the Stagnation of Blood on the Body of this Child, than on the Body of Mrs. *Stout*; the Child's Face was black and diſcolour'd.

Mr. Bar. *Hatſell.* How old was the Child?

Mr. *Camlin.* Between Ten and Eleven, as near as I could gueſs.

Mr. Bar. *Hatſell.* Had Mrs. *Stout* any Signs of being ſtrangled when you ſaw her firſt?

Mr. *Camlin.* Nothing at all, that I could diſcern.

Mr. *Cowper.* My Lord, I will give you no more Trouble upon this Head; I ſhall go now to the next Thing I opened, and ſhall prove ſubſtantially, that this Gentlewoman is not only more to be ſuſpected to have murder'd herſelf, than to be murder'd by any Body; but 'tis almoſt a Certainty that ſhe was the Cauſe of her own Death. Mr. *Firmin* I would begin withal, if he be here.

(But he not preſently appearing)

Mr. *Cowper.* Then, my Lord, if you pleaſe, I will deſire Mr. *Bowd* in the mean time to give your Lordſhip an Account of what he knows of the Melancholy of this Gentlewoman.

Mr. *Bowd.* 'Twas much about this Time Twelve-month I had ſome Buſineſs in *London*, and ſhe ſent to me, to know when I ſhould go to *London*; and I waited upon her before I went, and ſhe deſired me to do ſome Buſineſs for her; and when I return'd, I acquainted her with what I had done; and ſitting together in the Hall, I aſked her, What's the Matter with you? Said I, There's ſomething more than ordinary; you ſeem to be melancholy. Saith ſhe, You are come from *London*, and you have heard ſomething or other: Said I, I believe you are in Love. In Love! ſaid ſhe. Yes, ſaid I, *Cupid*, that little Boy, hath ſtruck you home: She took me by the Hand; Truly, ſaid ſhe, I muſt confeſs it; but I did think I ſhould never be guilty of ſuch a Folly: and I anſwered again, I admire that ſhould make you uneaſy; if the Perſon be not of that Fortune as you are, you may, if you love him, make him happy, and yourſelf eaſy. That can't be, ſaith ſhe; the World ſhall not ſay I change my Religion for a Huſband. And ſome time after I had been in *London*, having bought ſome *India* Goods, ſhe came to my Shop and bought ſome of me for a Gown, and afterwards ſhe came to pay me for it; and I aſked her, How do you like it? Have you made it up? No, ſaid ſhe, and I believe I ſhall never live to wear it.

Mr. *Cowper.* Pray how long is it ſince?

Mr. *Bowd.* It was about *February* or *January* before her Death. I aſk'd her, why ſhe did not come to my Houſe oftner? She ſaid, She had left off all Company, and apply'd herſelf to Reading; and Company was indifferent to her.

Mr. *Cowper.* Mr. *Firmin*, will you pleaſe to inform my Lord and the Jury what you know of Mrs. *Sarah Stout*'s being melancholy?

Mr. *Firmin.* I did obſerve about three quarters of a Year ago, that ſhe was melancholy; I can't ſay that ſhe acknowledg'd herſelf to be ſo, but I have charg'd her with it.

Mr. *Cowper.* Did you believe ſhe was melancholy when you charg'd her with it?——Mr. *Firmin.* Yes, I did.

Mr. *Cowper.* Mrs. *Bendy*, if you pleaſe to inform the Court what you know of this Gentlewoman's being melancholy.

Mrs. *Bendy.* Sir, I can ſay ſhe always acknowledg'd herſelf extremely melancholy; and when I have aſk'd her how ſhe did, ſhe has ſaid, Pretty well in Health, but ſo much troubled with Melancholy ſhe could not tell what to do with herſelf.

Mr. *Cowper.* Did ſhe tell you any Thing particularly?

Mrs. *Bendy.* It diſorder'd her ſo, ſhe ſaid, that ſhe had rather have choſen Sickneſs than ſo much Diſorder in her Mind.

Mr. *Cowper.* Have you any Thing more to recollect?

Mrs. *Bendy.* Nothing but what I heard from Mrs. *Cowper*.

Mr. Bar. *Hatſell.* How old was this Gentlewoman?

Mrs. *Bendy.* About Six-and-twenty.

Mr. *Cowper.* Call Mrs. *Jane Low*, *Martha Grub* and Mrs. *Cowper*. Mrs. *Low*, pray do you inform my Lord and the Jury what you know concerning the Melancholy of Mrs. *Sarah Stout*, and when you firſt obſerv'd it.

Mrs. *Low.* 'Twas a Week before *Whitſuntide* was Twelve-month.

Mr. *Cowper.* What did ſhe ſay then?

Mrs. *Low.* She often complain'd to me, that ſhe was very melancholy and uneaſy; one Time particularly, as we were walking together in the Fields, I aſk'd her the Occaſion of it; and ſhe told me, That was a Secret; but ſhe ſaid, ſhe led a very melancholy Life: Said I, I am apt to believe you are in Love; ſhe did not diſown it, and with a little more ſpeaking ſhe own'd ſhe was. I aſk'd her who the Perſon was; ſhe ſaid, That ſhould be a Secret, but it would end her Days: Said I, A Woman of your Fortune may command any Body: She ſhook her Head and ſaid, No: Perhaps, ſaid I, he may not be a *Quaker*, and you may be afraid of diſobliging your Mother; but if you tell your Mother that your Life depends upon it, your Mother (rather than loſe her only Child) will conſent to it: She ſaid, No; 'twas a Perſon ſhe could not marry; and ſhook her Head, and look'd very melancholy.

Mr. *Cowper.* When was this?

Mrs. *Low.* This was the Week before *Whitſuntide*; and in *Whitſun*-week ſhe ſaw me often, and ſaid, She would take her full ſwing of Melancholy when her Mother was away; and ſhe uſed to lie a-Bed that Week.

Mr. *Cowper.* Have you obſerv'd any Melancholy in her ſince?

Mrs. *Low.* Yes, at ſeveral times.

Mr. *Cowper.* Do you remember any thing of an intermitting Fever?

Mrs. *Low.* Yes; ſhe told me her Melancholy had occaſion'd an intermitting Fever; and I mention'd Dr. *Eales* to her, and ſhe ſaid her Diſtemper lay in her Mind, and not in her Body, and ſhe would take nothing, and the ſooner it did kill her the better.

Mr. *Cowper.* Did ſhe ſay any thing of her Diſpoſition to Reading?

Mrs. *Low.* She ſaid, nothing delighted her now, neither Reading nor any thing elſe.

Mr. *Cowper.* My Lord, *Sarah Walker*, when I aſk'd her if ſhe did not obſerve the Melancholy of her Miſtreſs, and whether ſhe had not ſaid that her Miſtreſs had been melancholy? deny'd that ſhe had ſaid ſo: Pray have you heard her ſay any thing to that Purpoſe?

Mrs. *Low.* I have often aſk'd her how her Miſtreſs did, and ſhe would anſwer, Very much indiſpoſed, but not otherwiſe.

Mr. *Cowper.* Mrs. *Cowper*, what do you know of Mrs. *Stout*'s Melancholy?

Mr. *Cowper.* My Lord, this is my Brother's Wife.

Mrs. *Cowper.* About Spring was Twelve-month ſhe came up to *London*, and I believe it was not leſs than once or twice a Week I ſaw her; and I never had an Opportunity to be an Hour alone with her at any time, but I perceiv'd ſomething of her Melancholy. I have aſk'd her the Reaſon of it ſeveral times, and ſometimes ſhe ſeem'd to diſlike her Profeſſion, being a *Quaker*; and ſometimes ſhe would ſay, that ſhe was uneaſy at ſomething that lay upon her Spirits, which ſhe ſhould never out-live; and that ſhe ſhould never be well while ſhe was in this World. Sometimes I have endeavour'd to perſwade her out of it ſeriouſly, and ſometimes by Raillery, and have ſaid, Are you ſure you ſhall be better in another World? And particularly I remember I have ſaid to her, I believe you have Mr. *Marſhall* in your Head; either have him, or do not trouble yourſelf about him; make yourſelf eaſy either one way or another; and ſhe hath ſaid No, in an indifferent way, I cannot make myſelf eaſy: Then I have ſaid, Marry him; No, ſaith ſhe, I can't. Sometimes with Company ſhe would be diverted, and had frequently a way of throwing her Hands, and ſhew'd great Diſturbance and Uneaſineſs. This time Twelvemonth, at the Summer Aſſizes, I was here ſix Days, and I ſaw her every Day; and one time, among other Diſcourſe, ſhe told me ſhe had receiv'd great Diſturbance from one *Theophilus*, a Waterman and a *Quaker*, who coming down to old Mrs. *Stout*, that was then lame, ſhe had gather'd about 20 or 30 People together to hear him preach; and ſhe ſaid he directed his Diſcourſe to her, and exaſperated her at that rate, that ſhe had thoughts of ſeeing nobody again, and ſaid, ſhe took it heinouſly ill to be ſo us'd; and particularly, that he told her that her Mother's falling outwardly in the Fleſh ſhould be a Warning that ſhe did not fall inwardly; and ſuch *Canting Stuff*, as ſhe call'd it; and ſhe ſaid, that *Theophilus* had ſo uſed her, that ſhe was aſham'd to ſhew her Head. Another time, the ſame Week, ſhe had a Fever, and ſhe ſaid, ſhe was in great hopes it would end her Days; and that ſhe neglected herſelf in doing thoſe Things that were neceſſary for her Health, in hopes it would carry her off, and often wiſh'd herſelf dead. Another time, which I think was the laſt time I ſaw her, 'twas at my Siſter's Lodgings, and I ſent for her to drink a Diſh of Tea with us, and ſhe came in a great Toſs and Melancholy: Said I, What is the Matter you are always in this Humour? Saith ſhe, I can't help it, I ſhall never be otherwiſe. Saith my Siſter, For God-ſake keep ſuch Thoughts out of your Head as you have had, don't talk any more of throwing yourſelf out of Window: Saith ſhe, I may thank God that ever I ſaw your Face, otherwiſe I had done it, but I can't promiſe I ſhall not do it.

Mr. Bar. *Hatſell.* What is your Name, Madam?

Mr. *Cowper.* 'Tis my Brother's Wife, my Lord. I deſire Mrs. *Toller* may give an Account of what ſhe knows as to her being melancholy.

Mrs. *Toller.* My Lord, ſhe was once to ſee me, and ſhe look'd very melancholy, and I ask'd her what was the Matter? and ſhe ſaid, Something had vex'd her that Day; and I ask'd her the Cauſe of it; and ſhe ſtopp'd a little while, and then ſaid, She would drown herſelf out of the Way.

Mr. Bar. *Hatſell.* How long ago was this?

Mrs. *Toller.* About three quarters of a Year ago.

John Stout. I deſire to know whether ſhe has always ſaid ſo, or not told another Story.

Mrs. *Toller.* I told you no Story; it may be I did not ſay ſo much to you, but I ſaid ſhe talk'd ſomething of drowning. I have been with her when Mr. *Cowper*'s Converſation and Name has been mention'd, and ſhe ſaid ſhe kept but little Company; that ſometimes ſhe went to Mrs. *Low*'s, and that ſhe kept none but civil modeſt Company, and that Mr. *Cowper* was a civil modeſt Gentleman, and that ſhe had nothing to ſay againſt him.

Mr. *Cowper.* This is Mrs. *Eli*[illegible]*Toller*, my Lord.

Mrs. *Eliz. Toller.* My Lord, ſhe came to ſee me ſome time after *Chriſtmas*, and ſeem'd not ſo cheerful as ſhe us'd to be; ſaid I, What is the matter? Why are you not ſo merry as you us'd to be? Why do you not come often to ſee me? Saith ſhe, I don't think to go abroad ſo much as I us'd to do, and ſaid, It would be as much a Rarity to ſee her go abroad, as to ſee the Sun ſhine by Night.

Mr. *Cowper.* Mrs. *Grub*, what do you know concerning Mrs. *Stout*'s pulling out a Letter at her Brother, Mr. *John Stout*'s? Give an Account of it, and what ſhe ſaid upon that Occaſion.

Mrs. *Grub.* I have a Daughter that lives at *Guernſey*, and ſhe ſent me a Letter, and I pray'd Mrs. *Sarah Stout* to read the Letter; and while ſhe was reading it I cry'd; ſaith ſhe, Why do you cry? Said I, Becauſe my Child is ſo far off. Said ſhe, If I live till Winter is over, I will go over Sea as far as I can for the Land.

Mr. Bar. *Hatſell.* What was the Occaſion of her ſaying ſo?

Mrs. *Grub.* I was waſhing my Maſter's Study, Mrs. *Sarah Stout* came in, and I had a Letter from my Daughter at *Guernſey*, and I pray'd Mrs. *Sarah Stout* to read it, and ſhe read my Letter, and I cry'd, and ſhe aſk'd me, why I cry'd? Said I, becauſe my Child is ſo far off: Saith ſhe, If I live to Winter, or till Winter is over, I will go over Sea as far as I can for the Land.

Mr. *Cowper*. Now, my Lord, to bring this Matter of Melancholy to the Point of Time, I will call one Witneſs more, who will ſpeak of a remarkable Inſtance that happen'd on *Saturday* before the *Monday* when ſhe did deſtroy herſelf.

Call Mr. *Joſeph Taylor*. Pray, will you inform the Court and Jury of what you obſerv'd on *Saturday* before the *Monday* on which Mrs. *Stout* deſtroy'd herſelf.

J. Taylor. I happen'd to go in at Mr. *Firmin*'s Shop, and there ſhe ſat the *Saturday* before this Accident happen'd, the former Aſſizes, and I was ſaying to her, Madam, I think you look ſtrangely diſcontented; I never ſaw you dreſs'd ſo in my Life: Saith ſhe, The Dreſs will ſerve me as long as I ſhall have occaſion for a Dreſs.

Mr. *Cowper*. In what Poſture did ſhe appear in the Shop?

J. Taylor. She appear'd to be very melancholy.

Mr. *Cowper*. What Part of her Dreſs did you find fault with?

J. Taylor. It was her Head cloaths.

Mr. *Cowper*. What was the Matter with them?

J. Taylor. I thought her Head was dawb'd with ſome kind of Greaſe or Charcoal.

Mr. *Cowper*. What Anſwer did ſhe make?

J. Taylor. She ſaid, they would ſerve her Time.

Mr. *Cowper*. As to this Piece of Evidence, if your Lordſhip pleaſes, I deſire it may be particularly taken notice of; 'twas her Head-dreſs that ſhe ſaid would ſerve her Time.

Pray, Mr. *Taylor*, was you at Mr. *Barefoot*'s when I came there on *Monday* Morning?

J. Taylor. Yes; I went up Stairs with you into your Chamber.

Mr. *Cowper*. Pray, what did I ſay to Mr. *Barefoot?*

J. Taylor. You aſk'd him if they had received a Letter from your Brother, and he ſaid, No, not that he knew of, but he would call his Wife; and he did call his Wife, and aſk'd her if ſhe had receiv'd a Letter, and ſhe ſaid, No; then ſaid you, I will take up this Lodging for mine; and accordingly you went up Stairs, and I went with you, and ſtaid there about four times as long as I have been here.

Mr. *Cowp*. Are you very ſure that I ſaid, I would take up my Lodgings there?

J. Taylor. Yes, I am very ſure of it.

Mr. Baron *Hatſell*. What Time of the Day was it?

J. Taylor. It was the fore Part of the Day: while I was there, my Lord, Mrs. *Sarah Stout*'s Maid came to invite Mr. *Cowper* to her Houſe to Dinner.

Mr. *Cowp*. Did you know any Thing of my ſending to the Coffee-houſe?

J. Taylor. You ſent to the Coffee-houſe for your Things.

Mr. Baron *Hatſell*. Did Mr. *Cowper* uſe to lie at Mrs. *Barefoot*'s?

J. Taylor. His Brother did, but I do not know whether this Gentleman did; but at that Time he took up that Place for his Lodging; and ſaid, it was all one, my Brother muſt pay for't, and therefore I will take it up for myſelf.

Mr. *Cowper*. Call Mrs. *Barefoot* and her Maid.

[*But they not preſently appearing*]

Mr. *Cowper*. My Lord, in the mean time I will go on to the other Part of my Evidence, in opening of which I ſhall be very ſhort.

My Lord, my Wife lodging at *Hertford*, occaſioned me frequently to come down. Mrs. *Stout* became well acqainted with her: When Buſineſs was over in the long Vacation, I reſided pretty much at *Hertford*, and Mr. *Marſhall* came down to pay me a Viſit, and this introduced his Knowledge of Mrs. *Stout*. When ſhe was firſt acquainted with him ſhe receiv'd him with a great deal of Civility and Kindneſs, which induced him to make his Addreſſes to her, as he did, by way of Courtſhip. It happen'd one Evening that ſhe and one Mrs *Crook*, Mr. *Marſhall* and myſelf, were walking together, and Mr. *Marſhall* and Mrs. *Crook* going ſome little Way before us, ſhe took this Opportunity to ſpeak to me in ſuch Terms, I muſt confeſs, as ſurpriz'd me. Says ſhe, Mr. *Cowper*, I did not think you had been ſo dull. I was inquiſitive to know in what my Dulneſs did conſiſt. Why, ſays ſhe, do you imagine I intend to marry Mr. *Marſhall?* I ſaid, I thought ſhe did, and that if ſhe did not, ſhe was much to blame in what ſhe had done: No, ſays ſhe, I thought it might ſerve to divert the Cenſure of the World, and favour our Acquaintance. My Lord, I have ſome original Letters under her own Hand which will make this fully manifeſt: I will produce the Letters after I have call'd Mr. *Marſhall*. Mr. *Marſhall*.

Mr. *Marſhall*. If your Lordſhips pleaſes, it was in the long Vacation I came down to ſpend a little of my leiſure Time at *Hertford*; the Reaſon of my going thither was, becauſe Mr. *Cowper* was there at that Time. The firſt Night when I came down I found Mrs. *Sarah Stout* viſiting at Mr. *Cowper*'s Lodgings, and there I firſt came acquainted with her; and ſhe afterwards gave me frequent Opportunities of improving that Acquaintance: And by the Manner of my Reception by her, I had no Reaſon to ſuſpect the Uſe it ſeems I was deſign'd for. When I came to Town, my Lord, I was generally told of my courting Mrs. *Stout*, which I confeſs was not then in my Head; but it being repreſented to me as a Thing eaſy to be got over, and believing the Report of the World as to her Fortune, I did afterwards make my Application to her; but upon very little Trial of that ſort, I receiv'd a very fair Denial, and there ended my Suit; Mr. *Cowper* having been ſo friendly to me, as to give me notice of ſome Things, that convinc'd me I ought to be thankful I had no more to do with her.

Mr. Baron *Hatſell*. When did ſhe caſt you off?

Mr. *Marſhall*. I can't be poſitive as to the Time, my Lord, but it was in Anſwer to the only ſerious Letter I ever writ to her; as I remember, I was not over-importunate in this Affair, for I never was a very violent Lover.

Mr. Baron *Hatſell*. Well, but tell the Time as near as you can.

Mr. *Marſhall*. I believe 'twas a ſecond or third time I came down to *Hertford*, which is about a Year and half ſince; and, during the Whole of my Acquaintance with her, I never till then found her averſe to any Propoſal of mine; but ſhe then telling me, her Reloſolution was not to comply with what I deſir'd, I took her at her Word, having partly by my own Obſervation, but more by Mr. *Cowper*'s Friendſhip, been pretty well able to gueſs at her Meaning.

Mr. *Cowp*. Becauſe what you ſay may ſtand confirm'd beyond Contradiction, I deſire you to ſay whether you have any Letters from her to yourſelf?

Mr. *Marſhall*. Yes, I have a Letter in my Hand which ſhe ſent me, upon occaſion of ſome Songs I ſent her when I came to Town, which ſhe had before deſired of me; and this is a Letter in Anſwer to mine; 'tis her Handwriting, and directed to me.

Mr. Baron *Hatſell*. How do you know 'tis her Hand-writing?

Mr. *Marſhall*. I have ſeen her write, and ſeen and receiv'd ſeveral Letters from her.

Mr. *Cowper*. Pray, ſhew it Mr. *Beale*.

Mr. *Beale*. I believe it to be her Hand; I have ſeen her write, and have a Receipt of hers.

Clerk of Arr. 'Tis directed to Mr. *Thomas Marſhall* at *Lyons-Inn*, and dated *Sept.* 26, 1697.

'SIR, *Sept.* 26, 1697.

'YOURS came very ſafe; but I wiſh you had explain'd your Meaning a little more about the Accident you ſpeak of; for I have been puzzling my Brains ever ſince; and without I ſhall ſet myſelf to conjuring, I cannot imagine what it ſhould be, for I know of nothing that happen'd after you went away, nor no Diſcourſe about you, only when we were together, the Company would ſometimes drink your Health, or wiſh you had been there, or the like; ſo that I fancy it muſt be ſomething Mr. —— has invented for Diverſion; tho' I muſt confeſs we have a ſort of People here, that are inſpir'd with the Gift of Foreknowledge, who will tell one as much for nothing as any Aſtrologer will have a good Piece of Money for. But to leave jeſting, I cannot tell when I ſhall come to *London*, unleſs it be for a Night and away, about ſome Buſineſs with my Brother, that I muſt be obliged to attend his Motions; but when I do, I ſhall remember my Promiſe, altho' I do not ſuppoſe you are any more in earneſt than myſelf in this Matter. I give you Thanks for your Songs and your good Wiſhes, and reſt Your Loving Duck.'

Mr. *Cowper*. Have you any more Letters?

Mr. *Marſhall*. Yes, I have another Letter here; but before 'tis read, I think 'twill be proper to give the Court an Account of the Occaſion of its being writ. I waited on Mrs. *Stout* one Evening at her Lodgings in *Houndſditch*, and at our parting ſhe appointed to meet me the next Day; and to excuſe her not coming according to that Appointment, ſhe ſent me this Letter.

Cler. of Arr. 'Tis directed to Mr. *Thomas Marſhall*; 'tis without Date.

'Mr. *Marſhall*,

'I MET unexpected with one that came from *H---d* laſt Night, who detain'd me ſo long with relating the moſt notorious Inventions and Lyes that are now extant amongſt thoſe People, that I could not poſſibly come till 'twas late; and this Day was appointed for Buſineſs, that I am uncertain when it will be finiſhed; ſo that I believe I cannot ſee you whilſt I am in Town. I have no more at preſent, but that I am

'Your obliged Friend.'

Mr. *Cowper*. Now, my Lord, if your Lordſhip pleaſe, I proceed to ſhew you, that I went not ſo much voluntarily as preſs'd by her to come to this Houſe, and for that I will produce one Letter from her to myſelf; and, my Lord, I muſt a little inform you of the Nature of this Letter. It is on the Outſide directed to Mrs. *Jane Ellen*, to be left for her at Mr. *Hargrave*'s Coffee-houſe. For her to direct for me at a Coffee-houſe, might make the Servants wonder, and the Poſt-man might ſuſpect, and for that Reaſon ſhe directed it in that Manner. There was Mr. *Marſhall* by when I received it, and I can prove the Hand by Mr. *Beale*.

Mr. *Marſhall*. My Lord, I verily believe I was by, and that Mr. *Cowper* ſhew'd me this Letter immediately on receipt of it, as he had done ſeveral others from the ſame Hand.

Cl. of Arr. This is directed for Mrs. *Jane Ellen*. 'Tis dated *March* the 5th, without any Year.

'SIR, *March* the 5th.

'I AM glad you have not quite forgot that there is ſuch a Perſon as I in being; but I am willing to ſhut my Eyes, and not ſee any Thing that looks like Unkindneſs in you, and rather content myſelf with what Excuſes you are pleaſed to make, than be inquiſitive into what I muſt not know. I ſhould very readily comply with your Propoſition of changing the Seaſon, if it were in my Power to do it, but you know that lies altogether in your own Breaſt: I am ſure the Winter has been too unpleaſant for me to deſire the Continuance of it; and I wiſh you were to endure the Sharpneſs of it but for one Hour, as I have done for many long Nights and Days; and then I believe it would move that rocky Heart of yours, that can be ſo thoughtleſs of me as you are: But if it were deſign'd for that End, to make the Summer the more delightful, I wiſh it may have the Effect ſo far, as to continue it to be ſo too, that the Weather may never overcaſt again; the which if I could be aſſur'd of, it would recompenſe me for all that I have ever ſuffer'd, and make me as eaſy a Creature as I was the firſt Moment I receiv'd Breath. When you come to *H---d* pray let your Steed guide you, and don't do as you did the laſt time; and be ſure order your Affairs to be here as ſoon as you can, which cannot be ſooner than you will be heartily welcome to Your very ſincere Friend.'

For Mrs. Jane Ellen, at Mr. Hargrave'*s, near* Temple-Bar, London.

Mr. *Cowper*. Tho' it is directed to Mrs. *Jane Ellen*, it begins in the Inſide, Sir; and 'tis dated the 5th of *March*, next before the 13th.

Mr. Baron *Hatſell*. What *March* was it?

Mr. *Marſhall*. I kept no Account of the Time, but I am very poſitive, by the Contents, that Mr. *Cowper* ſhewed me this Letter, and I read it, but by my now Remembrance, it ſhould be longer ſince than *March* laſt.

Mr. *Cowper*. It was *March* laſt. That which will ſet Mr. *Marſhall*'s Memory to rights is this other Letter, which I received at the *Rainbow*, when he was by, and he read it; and it importuning me to a Matter of this kind, I did produce it to my Brother and him; they both knew of it, and both read it, and that will refreſh his Memory concerning the Date of the other.

Mr. *Marſhall*. My Lord, I was in the Coffee-houſe with Mr. *Cowper* when he receiv'd this Letter; and he afterwards ſhew'd it to Mr. *William Cowper*, at the *Covent-Garden* Tavern, when I was by.

Cl. of the Arr. This is dated the 9th of *March*, and directed to Mrs. *Jane Ellen*, at Mr. *Hargrave*'s.

'SIR,

‘ S I R, *March* 9.

‘ I WRIT to you by *Sunday*'s Poſt, which I hope you have received; however, as a Confirmation, I will aſſure you I know of no Inconveniency that can attend your cohabiting with me, unleſs the Grand Jury ſhould thereupon find a Bill againſt us; but I won't fly for't, for come Life, come Death, I am reſolved never to deſert you; therefore according to your Appointment I will expect you, and till then I ſhall only tell you, that I am

For Mrs. *Jane Elken* at Mr. *Hargrave*'s, *Yours*, &c.’
near *Temple-Bar*, *London.*

Mr. *Cowper*. If your Lordſhip pleaſe, I will further prove this Letter by my Brother.

Mr. *W. Cowper*. I can bear my Brother Witneſs, that when he has been adviſed to make theſe Letters Part of his Defence, he hath expreſſed great Unwillingneſs, and has ſaid, nothing but the Life of theſe Gentlemen could incline him to it.

My Lord, all I can ſay to this Matter is this: I do remember, that when ſhe was one time in *London*, I think it was about a Year and a half ſince, I am not poſitive as to the Time, but when ſhe was in *London*, my Brother came in the Morning to my Chamber in the *Temple*, and after ſome Diſcourſe, he told me he had receiv'd a Letter from Mrs. *Stout* that Day, wherein he ſaid, ſhe intended him a Viſit at his Chamber that Afternoon; he told me at the ſame time, that his Friend Mr. *Marſhall* had ſome Thoughts of her, and therefore for that, as well as other Reaſons, he would decline receiving the Viſit intended him; and upon Conſideration, this was the Method agreed upon: At that Time I lived with my Father in *Hatton-Garden*; and this Gentlewoman having writ in the ſame Letter I now ſpeak of, that ſhe deſigned to dine there, and to come from thence in the Afternoon; ſays my Brother, You may caſually, as it were, take occaſion to ſay at Dinner, that my Buſineſs obliges me to go to *Deptford* in the Afternoon, as in good earneſt it did, as he then told me; and from that ſhe may take a Hint of my not being at home, and ſo ſave herſelf the Diſappointment of coming to my Chamber. I told him I would find an Opportunity of doing it if I could. At Dinner my Father happen'd to aſk me, as he often did, when I ſaw my Brother? I took this Hint, and ſaid I had ſeen him at my Chamber in the Morning, and that he was gone to *Deptford* that Afternoon about ſome Law Buſineſs. My Lord, Mrs. *Stout* was then at the Table. I no ſooner ſaid it, but I obſerv'd ſhe chang'd Colour preſently, and roſe with her Napkin, and went into the Back-yard, and we ſaw her through a Saſh-window fall into a Woman's Fit of Swooning; and they gave her the Aſſiſtance that is uſual in ſuch Caſes.

My Lord, the next Thing I can ſpeak to is this: The Parliament ſitting late the *Friday* before the *Monday* of the laſt Aſſizes at *Hertford*, I came late from Dinner, I had din'd about Seven a-Clock, as I remember; and having occaſion to ſpeak with my Brother, I found him out by Enquiry at the *Covent-Garden* Tavern, and there was Mr. *Marſhall* of *Lion's-Inn* with him. I had not drunk above a Glaſs or two of Wine, but my Brother began with me, and ſaid, I ſeldom trouble you with Affairs of mine, but now I do not know well how to avoid it. I have receiv'd an importunate Letter, which I will ſhew you; it came from a Lady, whoſe Name I believe you will gueſs; ſo he pull'd it out of his Pocket and read it ſo often, becauſe of the Oddneſs of the Expreſſion, that I can ſay, I am ſure this is the very Letter he ſhew'd me at the *Covent-Garden* Tavern the *Friday* before the laſt Aſſizes; ſaith he, The Occaſion of my ſhewing it, is not to expoſe a Woman's Weakneſs, but I would not willingly lie under too many Obligations, nor engage too far; nor on the other hand, would I be at an unneceſſary Expence for a Lodging. Upon this Subject there was ſome Diſcourſe, I think, foreign to this Purpoſe, and therefore I would not trouble your Lordſhip with a Repetition of it; that which is material is this; I did undertake to write to Mr. *Barefoot*'s to diſpoſe of his Lodgings, where I us'd to be at the Time of the Aſſizes, and my Brother with me. I ſaid I would write the next Day, being *Saturday*; but when I ſhould have writ, it was very late, and I was weary, being then tied down to the Buſineſs of Parliament; and partly for that Reaſon, and partly in point of Diſcretion, which I had upon my ſecond Thoughts, that 'twould be better for my Brother's Buſineſs to be at Mr. *Barefoot*'s, which is near the Court, and in the Market-place, I did neglect writing; and tho' I thought of it about Eleven o'Clock, yet, as I ſaid, partly for one Reaſon, and partly for the other, I did not write that Time. My Lord, my Brother could know nothing of this Matter; for I did not ſee him from the *Friday* he ſhew'd me the Letter, till he went to the Aſſizes; ſo that he could not know before he was at *Hertford*, that I had not writ. My Lord, I ſay as to this Letter, I am ſure he ſhew'd me the *Friday* next before the laſt Aſſizes.

Mr. Baron *Hatſell*. Let me ſee that Letter. (*Which was ſhewn his Lordſhip.*)

Mr. *Cowper*. My Lord, one or two of the Jury ſeem to queſtion whether the Letters are ſufficiently prov'd; for their Satisfaction, I will further prove them. Call Mr. *John Beale*, *William Oaker*, and Mrs. *Low*. My Lord, Mr. *Beale* is one of their own Sect.

[*The Witneſſes prov'd her Hand.*]

Jury. My Lord, we are ſatisfied.

Mr. Baron *Hatſell*. I believe you may aſk her Mother, ſhe will tell you whether it be her Daughter's Hand.

Mrs. *Stout*. How ſhould I know! I know ſhe was no ſuch Perſon, her Hand may be counterfeited.

Mr. Baron *Hatſell*. But if it were written in a more ſober Stile, what would you ſay then?

Mrs. *Stout*. I ſhan't ſay it to be her Hand, unleſs I ſaw her write it.

[*Then the Letter was ſhewn to Mr.* Stout.]

Mr. *Stout*. 'Tis like my Siſter's Hand.

Mr. Baron *Hatſell*. Do you believe it to be her Hand?

Mr. *Stout*. No, I don't believe it; becauſe it don't ſuit her Character.

Mr. Baron *Hatſell*. But do you think ſhe might not conceal from you what were her inward Thoughts?--Mr. *Stout*. Not in ſuch a Degree as this.

Mr. *Cowper*. Call Mrs. *Barefoot* and her Maid. I deſire they may be aſk'd what they know about my taking of Lodgings at their Houſe.

Mr. Baron *Hatſell*. This is taken for granted.

Mrs. *Barefoot*. When you came to my Houſe, you aſk'd me, if I had receiv'd a Letter from your Brother? And I told you, No.

Mr. *Cowper*. What did I ſay to that?

Mrs. *Barefoot*. Then you aſk'd me, if I expected you? And I told you, Yes, by reaſon I had heard nothing from you.

Mr. *Cowper*. Where did I lodge that Night?

Mrs. *Barefoot*. I had prepar'd the Lodging before you came, expecting you or Mr. *Cowper* your Brother.

Mr. *Cowper*. And I did come?

Mrs. *Barefoot*. Yes, as you us'd to do.

Mr. *Cowper*. Did I ſend for my Things from the Coffee-houſe?

Mrs. *Barefoot*. Yes, you did; and I carried them up in your Chamber as I us'd to do.

Mr. Baron *Hatſell*. Where did Mr. *Cowper* dine that Day?

Mrs. *Barefoot*. Mrs. *Stout* ſent her Maid to deſire him to come to Dinner at their Houſe; whether he went thither or no, I can't ſay, but he went out.

Mr. *Cowper*. What Time did I come into my Lodging that Night?

Mrs. *Barefoot*. It was a little after Eleven.

Mr. *Cowp.* You are ſure I came in a little after Eleven.--Mrs. *Baref.* Yes.

Mr. *Jones*. By what Clock? By the Town Clock?---Mrs. *Baref.* Yes.

Mr. *Cowper*. Did I go out any more that Night?

Mrs. *Baref.* No.

Mr. *Cowper*. Is your Maid there?---Mrs. *Barefoot*. Yes.

Mr. Baron *Hatſell*. What is your Name?

Mrs. *Hanwell*. *Mary Hanwell.*

Mr. *Cowper*. Pray, what Time was it I came to my Lodging?

Mrs. *Hanwell*. You came in a little after Eleven a-Clock.

Mr. *Cowper*. Are you very poſitive in that?

Mrs. *Hanwell*. Yes, I am very poſitive.

Mr. *Cowper*. What was done before I went to Bed?

Mrs. *Hanwell*. My Lord, I went up, and made a Fire, and then I came down again, and then I went up and warm'd Mr. *Cowper*'s Bed, and then he deſir'd another Blanket, and I came down for it; and all this took up a conſiderable Time: and Mr. *Cowper* was in Bed before Twelve a-Clock.

Mr. *Cowper*. Did I go out again that Night?

Mrs. *Hanwell*. No, you went out no more.

Mr. *Cowper*. Now, if your Lordſhip pleaſes, I would explain that Part of *Sarah Walker* the Maid's Evidence, where ſhe ſays her Miſtreſs order'd her to warm the Bed, and I never contradicted it. Your Lordſhip obſerves the Words in the laſt of the two Letters, *No Inconvenience can attend your cohabiting with me*; and afterwards, *I won't Fly for it: For come Life, come Death, I am reſolv'd, and ſo on*——I had rather leave it to be obſerved, than make the Obſervation myſelf, what might be the Diſpute between us at the Time the Maid ſpeaks of. I think it was not neceſſary ſhe ſhould be preſent at the Debate; and therefore I might not interrupt her Miſtreſs in the Orders ſhe gave; but as ſoon as the Maid was gone, I made uſe of theſe Objections; and I told Mrs. *Stout*, by what Accident I was obliged to take up my Lodging at Mr. *Barefoot*'s, and that the Family was ſitting up for me: That my ſtaying at her Houſe under theſe Circumſtances, would in Probability provoke the Cenſure of the Town and Country; and that therefore I could not ſtay, whatever my Inclination otherwiſe might be; but, my Lord, my Reaſons not prevailing, I was forced to decide the Controverſy by going to my Lodging; ſo that the Maid may ſwear true, when ſhe ſays I did not contradict her Orders.

Mr. Baron *Hatſell*. I believe you have done now, Mr. *Cowper*?

Mr. *Cowper*. No, my Lord, I have more Evidence to give. Call *Elizabeth Spurr*.

If your Lordſhip pleaſes to obſerve, I have already proved by two Witneſſes, that I was actually at Mr. *Barefoot*'s a little after Eleven; ſo that if I was to reſt upon this Proof, here is not the leaſt Article of Time, in which it can be ſuppoſed I was employ'd in this Matter: But, ſays *Sarah Walker*, the Maid, to obviate (I preſume) this Evidence of mine, our Houſe-Clock went faſter than the Town-Clock. Now, to anſwer this too, I ſhall further prove to your Lordſhip, that before I came to my Lodging, I was at the *Glove* and *Dolphin* Inn, where I had a little Account of about ſix or ſeven Shillings, as I remember, for Horſe-keeping, and which I then paid.

Mr. *Cowper*. Do you remember my coming to your Houſe, and at what Time?

E. Spurr. The Clock ſtruck Eleven, juſt as you came into the Door.

Mr. *Cowper*. How long did I ſtay at the *Glove*?

E. Spurr. About a Quarter of an Hour.

Mr. *Cowper*. How far is it from the *Glove* and *Dolphin* to Mrs. *Stout*'s Houſe?

E. Spurr. About a Quarter of a Mile, or not quite ſo far.

Mr. *Cowper*. Call *Mary Kingitt*, and *George Man*, (*who not then appearing*) in the mean time, I would obſerve to your Lordſhip, that to go from Mrs. *Stout*'s Houſe to the Place where ſhe was drown'd, and to return from thence to the *Glove* and *Dolphin*, will take up at leaſt half an Hour, as I ſhall prove, and then the Matter will ſtand thus: Says *Sarah Walker*, You went about a Quarter after Eleven; but our Clock went half an Hour too faſt: Then according to her Account, I went three Quarters after Ten by the Town-Clock; and if it requires (as I ſay, I ſhall prove it does) half an Hour to go to the Place where ſhe was drown'd, and to return from thence to the *Glove* Inn, that would make it a Quarter paſt Eleven when I came to the Inn by the Town Clock, which it was not; and if I ſtaid there a Quarter of an Hour (which is proved I did not), it muſt be half an Hour after Eleven when I came to my Lodging by the ſame Clock, which it was not; ſo that I think this Matter as to the Time is very clear. My Lord, to prove the Time it requires to go from Mrs. *Stout*'s to the Place where ſhe drown'd herſelf, and to return to the *Glove*, I deſire Sir *William Aſhurſt* may be called.

Sir *William Aſhurſt*. My Lord, I can't ſay I walk'd as faſt as I could, but I went with a Gentleman I ſee here to ſatisfy myſelf about the Probability of this Matter; I walk'd as People uſually do, and I found it took up half an Hour and a Minute, when I walk'd with that Gentleman.

Mr. Baron *Hatſell*. Who was with you, Sir?

Sir *William Aſhurſt*. Mr. *Thompſon* was with me the Time I mention. I walk'd it before with Sir *Thomas Lane*.

Mr. *Thompſon*. My Lord, indeed it will take a compleat half Hour.

Mr. *Cowper*. I deſire Sir *Thomas Lane* may give you an Account of the Diſtance between one Place and the other.

Sir *Thomas Lane*. Sir *William Aſhurſt* and I did walk to the Place mentioned, and we were careful to take notice of the Time, and it took up about three Quarters of an Hour, according to my Obſervation; and we did not ſtay at all by the Way, except juſt to look upon the Hoſpital.

Mr. *Cowper*. Now, my Lord, *Mary Kingitt* and *George Man*, the Servants at the *Glove*, are come: Pray, Mrs. *Kingitt*, do you remember my coming into the *Glove and Dolphin* ?-----*Mary Kingitt*. Yes.

Mr. *Cowper*. How long did I ſtay there?

Mary Kingitt. About a quarter of an Hour.

Mr. *Cowper*. What was my Buſineſs there?

Mary Kingitt. You came and enquir'd what you ow'd.

Mr. Baron *Hatſell*. What a-Clock was it then?

Mary Kingitt. I thought it was about Eleven; our t'other Maid told it Eleven.

Mr. *Jones*. How came you to take Notice of the Time?

Mary Kingitt. She heard the Clock go Eleven, but I did not.

Mr. *Cowper*. Was there any Diſpute about the Account?

Mary Kingitt. You aſk'd the Hoſtler how that came to ſtand in the Book concerning the Horſe; for you told him, You thought you had paid ſome Part of it; and he told you, You had not.

Mr. *Cowper*. My Lord, with your Lordſhip's Favour, I would aſk *George Man* a Queſtion to the ſame Point. Do you remember my coming into the *Glove and Dolphin* ?----*G. Man*. Yes.

Mr. *Cowper*. How long did I ſtay there?

G. Man. You ſtaid but a quarter of an Hour, as near as I can gueſs.

Mr. *Cowper*. I will now call a Witneſs to prove that this Maid, *Sarah Walker*, is not ſo cautious and careful how ſhe ſwears, as I think ſhe ought to be.

(*Call Mrs.* Mince.)

Mr. Baron *Hatſell*. Pray, wherein hath *Sarah Walker* ſaid any Thing that is falſe?

Mr. *Cowper*. In this; I aſk'd her when ſhe gave Evidence, Whether ſhe went out to ſee for her Miſtreſs all that Night, and whether her Miſtreſs did not uſe to ſtay out a-Nights, and whether ſhe herſelf had not uſed to ſay ſo? If your Lordſhip pleaſes to remember, ſhe ſaid No. Pray, Mrs. *Mince*, what have you heard Mrs. *Stout*'s Maid ſay concerning her Miſtreſs, particularly as to her ſtaying out all Night?

Mrs. *Mince*. She hath ſaid, That her Miſtreſs did not love to keep Company with *Quakers*; and that ſhe paid for her own Board and her Maid's; and that, when ſhe entertain'd any Body, 'twas at her own Charge. And ſhe hath ſaid, that Mrs. *Stout* uſed to aſk, Who is with you, Child? and ſhe would not tell her; and that ſhe did entertain her Friends in the Summer-houſe now and then with a Bottle of Wine; and when her Mother aſk'd Who was there? her Miſtreſs would ſay, Bring it in here, I ſuppoſe there is none but *Friends*: And after the Company was gone, ſhe uſ'd to make her Mother believe that ſhe went to Bed; but ſhe uſ'd to go out and take the Key with her, and ſometimes ſhe would go out at the Window; and ſhe ſaid particularly, One time ſhe went out at the Garden Window, when the Garden Door was lock'd, and that ſhe bid her not ſit up for her, for ſhe would not come in at any Time.

Mr. Baron *Hatſell*. Did ever *Sarah Walker* tell you that Mrs. *Stout* ſtaid out all Night?

Mrs. *Mince*. She hath ſaid, She could not tell what Time ſhe came in, for ſhe went to Bed.

Mr. *Cowper*. Now, if your Lordſhip pleaſe, I will prove to you, if it may be thought material, that *Gurrey*, at whoſe Houſe theſe Gentlemen lodg'd, ſhould ſay, That if I had viſited Mrs. *Stout*, none of all this had been (upon ſo little an Omiſſion it ſeems did this Proſecution depend). To which I give this Anſwer, my Lord; I never did once go to viſit her in my Life, ſhe knows it. Now, for a Man officiouſly to make a new Viſit in the Time of the Aſſizes, one engag'd in Buſineſs as I was, and eſpecially upon ſo melancholy an Occaſion; I ſay, for me to go officiouſly to ſee a Woman I never had the leaſt Knowledge of, would have been thought more ſtrange (and juſtly might have been ſo) than the Omiſſion of that Ceremony. For my Part, I cannot conceive what Mr. *Gurrey* could mean, this being the Caſe, by ſaying, That if I had viſited Mrs. *Stout*, nothing of this had happen'd.

Mr. Baron *Hatſell*. Mr. *Cowper*, he is not the Proſecutor, I think 'tis no matter what he ſaid.

Mr. *Cowper*. I take it, my Lord, with humble Submiſſion, 'tis material, as he is a principal Witneſs againſt theſe Gentlemen; and the rather, for that he now pretends, that what he did was out of Conſcience. My Lord, I have only one Thing more to ſay, I know not whether 'twill be requiſite for me, or no, to give ſome Account of myſelf. Sir *William Aſhurſt*, if you pleaſe.

Sir *William Aſhurſt*. My Lord, if I had not had a good Opinion of this Gentleman, I had not come on purpoſe to hear this Cauſe, which has made ſo great a Noiſe all *England* over.

Mr. Baron *Hatſell*. But what do you ſay as to Mr. *Cowper*'s Reputation, for which you are call'd?

Sir *William Aſhurſt*. I always thought Mr. *Cowper* to be a Gentleman of ſingular Humanity and Integrity; he is an Officer in *London*, and as to his Management of his Office, I think no Man ever perform'd it better, or has a better Reputation in the Place where he lives.

Sir *Thomas Lane*. My Lord, I came hither on purpoſe to own this Gentleman, and indeed he deſerves to be own'd by his Friends, and thoſe that know him; his Character is altogether untainted with us, he has gain'd a good Reputation in the Buſineſs wherein he is concern'd, he has behav'd himſelf in his Office which he holds of the City of *London* very honeſtly and well; I never knew him diſcover any ill Nature in his Temper; I think he can't be ſuſpected of this or any other Act of Barbarity.

Mr. *Cowper*. My Lord, in the next place I would call Mr. *Cox*, who has the Honour to ſerve in Parliament for the Borough of *Southwark*, and has been my near Neighbour theſe eight or nine Years. If you pleaſe, Mr. *Cox*, give an Account what Reputation and Character I have in that Place.

Mr. *Cox*. My Lord, I live in *Southwark*, where Mr. *Cowper* lives: I have liv'd by him eight or nine Years; I know him to be a Perſon of Integrity and Worth, all the Neighbours court his Company. I take him to have as much Honour and Honeſty as any Gentleman whatſoever; and, of all Men that I know, he would be the laſt Man that I ſhould ſuſpect of ſuch a Fact as this is: I believe nothing in the World could move him to entertain the leaſt Thought of ſo foul an Act.

Mr. *Cowper*. Mr. *Thompſon*, I deſire you would be pleas'd to give an Account of what you know of me?

Mr. *Thompſon*. If you pleaſe, my Lord, the firſt Acquaintance I had with Mr. *Cowper* was in our Childhood, I had the Honour to go to *Weſtminſter* School with him; I did not renew my Acquaintance with him till about five Years ago; ſince that Time I have been often with him, and have ſeveral Times had Occaſion to aſk his Advice in Matters relating to his Profeſſion; and I think no Man more faithful in the Service of his Client than he is, and I am ſure he is very deſerving of the Eſteem of any Man, and I believe he never entertain'd a Thought of ſo foul and barbarous a Fact as this, of which he is accuſed.

Mr. Baron *Hatſell*. Mr. *Marſon*, you have heard the Evidence, what do you ſay to it?

Mr. *Marſon*. My Lord, our Buſineſs at *Hertford* was this: Mr. *Ellis Stephens* and I went down, he is Clerk of the Papers of the *King's-Bench*, and Mr. *Rogers* is Steward of the *King's-Bench*, and it was their Duty to wait upon my Lord Chief-Juſtice, with the Marſhal of the *King's-Bench*, out of Town; and on *Monday* Morning we went to my Lord Chief-Juſtice's Houſe in *Lincoln's-Inn-Fields*, as we uſ'd to do, and there ſet out; but I, being an Attorney of the Borough Court, could not with any Convenience go farther with them than to a Place which I think is called *Kingsland*, and therefore I return'd to my Buſineſs in *Southwark*, where I attended the Court, as was cuſtomary and neceſſary for me to do, and ſet forth from thence at paſt Four in the Afternoon: By the way, as I remember, about *Waltham-Croſs*, I met one Mr. *Hanks*, a Clergyman of my Acquaintance, who had been likewiſe to attend my Lord Chief-Juſtice to *Hertford*, and was returning from thence; with ſome Perſuaſion I prevail'd with him to go back again with me to *Hertford*, telling him, I did not know the Way; and we gallop'd every Step of it, becauſe Night was coming on; it was about Eight a-Clock when we came in. Mr. *Hanks* and I found the Marſhal, Mr. *Stephens*, Mr. *Rogers*, Mr. *Rutkin*, and others of the Marſhal's Acquaintance, at the Coffee-houſe; and truly when I came in, I might, for aught I know, be in a Sweat with riding ſo hard as we did, but even then I was not in ſuch a Sweat as the Witneſs would have it. My Lord, we went from thence to the *Glove and Dolphin*, and ſtay'd there till about Eleven a-Clock. Mr. *Rogers* and I had a Diſpute who ſhould lie with Mr. *Stephens* at the now Witneſs Mr. *Gurrey*'s; at laſt 'twas agreed between us to go to *Gurrey*'s to ſee what Convenience he could make for us, and to drink a glaſs of Wine at our Lodging; but afterwards it came in Mr. *Rutkin*'s Head that he was to lie with the Marſhal, and for that reaſon, he ſaid, he would go back again; and accordingly he went, and Mr. *Hanks* with him, after they had ſeen us into our Lodgings, and Mr. *Stephens*, Mr. *Rogers* and I drank three Bottles of Wine together, Mr. *Gurrey*, our Landlord, was ſent to fetch it; and afterwards in jocular Converſation, I believe Mr. *Stephens* might aſk Mr. *Gurrey* if he knew one Mrs. *Sarah Stout*? And the Reaſon why he aſk'd that Queſtion our Witneſs will explain. I believe he might likewiſe aſk, What ſort of Woman ſhe was? and poſſibly I might ſay the Words, *My Friend may be in with her*, tho' I remember not I did ſay any thing like it; but I ſay there is a Poſſibility I might, becauſe I had heard ſhe had deny'd Mr. *Marſhal*'s Suit, and that might induce me to ſay, *My Friend may be in with her*, for all that I remember. I confeſs Mr. *Rogers* aſk'd me what Money I had got that Day, meaning at the Borough-Court? I anſwer'd, Fifty Shillings; ſaith he, We have been here a ſpending our Money. I think you ought to treat us, or to that purpoſe. As to the Bundle mention'd, I had no ſuch, except a Pair of Sleeves and a Neckcloth. As to the Evidence which goes to Words ſpoken, the Witneſſes have fruitful Inventions; and as they have wreſted and improv'd the Inſtances I have been particular in, ſo have they the reſt, or otherwiſe forg'd them out of their own Heads.

Mr. Baron *Hatſell*. Mr. *Rogers*, what do you ſay to it?

Mr. *Rogers*. We came down with the Marſhal of the *King's-Bench*, it rain'd every Step of the Way, ſo that my Spatterdaſhes and Shoes were fain to be dry'd; and it raining ſo hard, we did not think Mr. *Marſon* would have come that Day, and therefore we provided but one Bed, tho' otherwiſe we ſhould have provided two, and were to give a Crown for our Night's Lodging. We went from the Coffee-houſe to the Tavern, as Mr. *Marſon* has ſaid, and from the Tavern the next Way to our Lodging, where there was ſome merry and open Diſcourſe of this Gentlewoman; but I never ſaw her in my Life, nor heard of her Name before ſhe was mention'd there.

Mr. *Stephens*. We never ſtirr'd from one another, but went along with the Marſhal of the *King's-Bench*, to accompany my Lord Chief-Juſtice out of Town, as is uſual.

Mr. Baron *Hatſell*. I thought it had been as uſual for him to go but half the Way with my Lord Chief-Juſtice.

Mr. *Rogers*. They generally return back after they have gone half the Way, but ſome of the Head-Officers go throughout.

Mr. *Stephens*. 'Twas the firſt Circuit after the Marſhal came into his Office, and that's the Reaſon the Marſhal went the whole Way.

Mr. Baron *Hatſell*. Did not you talk of her Courting-days being over?

Priſoners. Not one Word of it; we abſolutely deny it.

Mr. *Stephens*. I never ſaw her.

Mr. *Jones*. Mr. *Marſon*, did you ride in Boots?---Mr. *Marſon*. Yes.

Mr. *Jones*. How came your Shoes to be wet?

Mr. *Marſon*. I had none.

Call Mr. Heath, *Mr.* Hunt, *and Mr.* Foſter.

Mr. *Marſon*. Mr. *Hunt*, will you pleaſe to acquaint my Lord and the Jury with what Diſcourſe we had on *Sunday* Night before the Aſſizes, at the *Old Devil Tavern* at *Temple-Bar*?

Mr. *Hunt*. On *Sunday* Night I happen'd to be in Company with Mr. *Marſon*, and three or four more of *Clifford's-Inn*, and there was a Diſcourſe of the Marſhal's attending my Lord Chief-Juſtice out of Town to *Hertford*, and Mr. *Marſon* ſaid, *It may be the Marſhal may require my waiting upon him too*; and the whole Company being known to Mr. *Marſhall*, and there being a Diſcourſe of Mr. *Marſhall's* courting of Mrs. *Stout*, ſaith one of the Company, *If you do go to* Hertford, *pray enquire after Mr.* Marſhall's *Miſtreſs, and bring us an Account of her.*

Mr. *Jones*. Who was in Company?

Mr. *Hunt*. There was Mr. *Heath*, Mr. *Foſter*, Mr. *Marſon*, Mr. *Stephens*, Mr. *Bevor*, and Mr. *Marſhall*.

Mr. *Marſon*. Now 'twas this Diſcourſe that gave us an Occaſion to talk of this Woman at *Gurrey*'s Houſe, which we did openly and harmleſly. Mr. *Forſter*, do you remember any Thing of our talking of this Gentlewoman on *Sunday* Night?

Mr. *Foſter*. Yes; I and they were talking, that they ſhould go to *Hertford* the next Day, to wait on the Marſhal, in Compliment to my Lord Chief-Juſtice, and go as far as *Hertford*; and there being a Report, that Mr.

Marſhal

Marſhall courted this Woman, we put it in a jeſting Way, *Pray, enquire after Mr.* Marſhall'*s Miſtreſs, how the Match goes on ; for there was ſome Wagers between him and the Company, who ſhould be married firſt?* And ſo, in a jocular way it went about, and Mr. *Marſon* or Mr. *Stephens* ſaid, *They would do their Endeavour, and they would enquire after the Lady, and give as good an Account of her as they could.*

Mr. *Stephens.* If you pleaſe, my Lord, we will call another to this Purpoſe.

Mr. Bar. *Hatſell.* No, I think you need not, for it ſeems not material.

(*Then Mr.* Hanks *was call'd.*)

Mr. *Hanks.* I came as far as *Waltham's-Croſs* to wait upon my Lord Chief-Juſtice; I ſtay'd there 'till about Four or Five a-Clock, and then ſet out for *London*; and I met with Mr. *Marſon*, who importun'd me to go back with him to *Hertford*; and accordingly I did ſo, and we came in about Seven or Eight at Night, and we enquir'd after the Marſhal of the *King's-Bench*, and where he had ſet up his Horſes, and we found him in the Coffee-houſe juſt by the Court, and we went and ſet up our Horſes, and came again to him; from thence we went to the *Glove* and *Dolphin* Tavern; theſe three Gentlemen and the Marſhal, and one Mr. *Rutkin* came afterwards to us, and we ſtay'd till about Eleven at the *Glove* and *Dolphin*.

Mr. *Marſon.* Do you remember how we rid?

Mr. *Hanks.* Yes, very hard.

Mr. Bar. *Hatſell.* What Time did you come into the Tavern?

Mr. *Hanks.* Between Seven and Eight, as I remember.

Mr. Bar. *Hatſell.* And did you ſtay there till paſt Eleven?

Mr. *Hanks.* 'Till about Eleven, little more or leſs; we went away together in order to drink a Glaſs of Wine with them at their Lodging; but Mr. *Rutkin* conſidering that he was to drink a Glaſs of Wine, and lie with the Marſhal, thought it would diſturb the Marſhal; *So*, ſaith he, *I will not go in*; but we ſaw them go into their Lodgings, and return'd to the *Bull*, where we eat Part of a Fowl, and I was never out of Mr. *Marſon*'s Company all that Time.

Mr. *Marſon.* When you took your leave of me, don't you remember that the Door was clapp'd to?

Mr. *Hanks.* I can't remember that.

Mr. *Marſon.* Mr. *Gurrey* ſaith, I never went out after I came home. Mr. *Rutkin*, pray, give an Account to my Lord, and the Gentlemen of the Jury, of what you know of my coming to *Hertford?*

Mr. *Rutkin.* My Lord, I came to wait on the Marſhal of the *King*'s-*Bench* to *Hertford*, and when we were come to *Hertford* we put up our Horſes at the *Bull*, and made ourſelves a little clean; we went to Church, and dined at the *Bull*, and then we walk'd in and about the Court, and diverted ourſelves till about Seven a-Clock; and between Seven and Eight a-Clock came Mr. *Marſon* and Dr. *Hanks* to Town, and then we agreed to go to the *Dolphin* and *Glove* to drink a Glaſs of Wine: The Marſhal went to ſee an ancient Gentleman, and we went to the *Dolphin* and *Glove*, and ſtay'd there till paſt Ten a-Clock, and after the Reckoning was paid we went with them to their Lodging, with a Deſign to take a Glaſs of Wine; but then I conſider'd I was to lie with the Marſhal, and for that Reaſon I reſolv'd not to go in, but came away, and went to the *Bull-Inn*, and drank Part of a Pint of Wine, and afterwards went to the next Door to the *Bull-Inn*, where I lay with the Marſhal.

Mr. *Jones.* What Time did the Gentlemen go to their Lodging?

Mr. *Rutkin.* I am not poſitive as to that, but I believe 'twas about Eleven a-Clock.

Mr. *Marſon.* If your Lordſhip pleaſes, now I'll call ſome Perſons to give an Account of me. Mr. *Cox.*

Mr. *Cox.* I have known Mr. *Marſon* a long time, and had alway a good Opinion of him; I don't believe 5000*l.* would tempt him to do ſuch a Fact.

Mr. *Marſon.* Captain *Wiſe*, I deſire you would pleaſe to ſpeak what you know of me.

Mr. *Cowper.* My Lord, becauſe theſe Gentlemen are Strangers in the Country, I think, if in taking an Account of any Evidence for myſelf there is any Thing occurs to me that they may have a juſt Advantage of, I think I ought not to conceal it, for I am as much concern'd to juſtify their Innocence as my own. The principal Witneſs againſt them is one *Gurrey*; and I will prove to you, that ſince he appear'd in this Court, and gave his Evidence, he went out in a triumphant Manner, and boaſted, That he, by his Management, had done more againſt theſe Gentlemen than all the Proſecutor's Witneſſes could do beſides. To add to that, I have another Piece of Evidence that I have been juſt acquainted with: My Lord, 'tis the Widow *Davis*, *Gurrey's* Wife's Siſter, that I would call.

Major *Lane.* My Lord, I have known Mr. *Marſon* ever ſince he was two Years old, and never ſaw him but a civiliz'd Man in my Life; he was well bred up among us, and I never ſaw him given to Debauchery in all my Life.

Mr. Baron *Hatſell.* Where do you live?

Major *Lane.* In *Southwark*, my Lord.

Mr. Baron *Hatſell.* Well, what do you ſay, Mrs. *Davis?*

Mrs. *Davis.* I came to the Houſe where theſe Gentlemen lodg'd; I was in about half an Hour, and my Siſter aſk'd me to air two or three Pair of Sheets: When I had air'd the Sheets, ſhe aſk'd me to go up and help to lay them on; and before I had laid them on, theſe Gentlemen came into the Room.

Mr. Baron *Hatſell.* What Hour?

Mrs. *Davis.* By the Time of my going out again, I believe it might be about Ten, or ſomething better, and they drank three Quarts of Wine, and they had ſome Bread and Butter and Cheeſe carried up, and ſo they went to Bed; and after my Brother went to fetch Mr. *Gape*, that lay at his Houſe, from *Hockley*'s.

Mr. *Cowper.* I only beg leave to obſerve, that *Gurrey* deny'd that he went for him.

Mr. Baron *Hatſell.* Ay; but this ſignifies very little, whether it be true or falſe.

Mrs. *Davis.* The next Day after, theſe Gentlemen were about the Town; and ſhe ſaid, She did believe they were come to clear a young Man (a Miniſter's Son) that was try'd at the Bar for robbing the Mail: I aſk'd why ſhe thought ſo? She ſaid, She was ſure of it: And I aſk'd her, How ſhe could be ſure of it, when ſhe was never told ſo? Why, ſaid I, do they accuſe theſe Gentlemen? They ought rather to take up the Gentleman that was with Mrs. *Stout*'s Maid; and ſhe ſaid, If they took up Mrs. *Stout*'s Maid, they ſhould have never a Witneſs.

Mr. Bar. *Hatſell.* Who was That that was talking with Mrs. *Stout*'s Maid?

Mrs. *Davis.* I don't know, but ſhe ſaid ſhe did not like their Actions; and therefore ſhe ought to have been examined who ſhe was with.

Capt. *Wiſe.* I have known Mr. *Marſon* ſeveral Years, and he is a Perſon of as fair Reputation as any in the *Borough*.

Mr. *Reading.* I have been acquainted with Mr. *Marſon* Twenty Years, he lives near the Houſe where I now do: He has a general good Character among his Neighbours, for a fair Man in his Practice, an honeſt Man, and a Man of good Converſation.

Mr. Baron *Hatſell.* Well, Mr. *Stephens*, What do you ſay?

Mr. *Stevens.* I deſire Sir *Robert Auſtin* to give an Account of me.

Sir *Robert Auſtin.* I have known Mr. *Stephens* many Years; his Brother is Captain in a neighbouring Country; he is reckon'd not only an honeſt Man in his Practice, but has the general Character of a good-natur'd Man; and he is ſo far from being a Perſon likely to do ſuch an Action, that, for a younger Brother, he was very well provided for; his Father left him a Thouſand Pounds, and he is Clerk of the Papers, which is reputed worth a Hundred Pounds a Year, and is in good Practice beſides.

Juryman. I have known him ſeveral Years, and he has the ſame Reputation Sir *Robert* has given him.

Sir *John Shaw.* I know Mr. *Stephens*, and his Brother Captain *Stephens*: As to this Gentleman, he hath always behav'd himſelf well in our Country, and hath the Character of an honeſt Gentleman.

Mr. *Evans.* I have known him for theſe eight Years, and to be a very civil Perſon, and well educated, and never heard but a good Character of him: I have alſo known Mr. *Marſon* theſe ten Years, and never ſaw any Ill by him, and do believe, that he or the other would not have done ſuch an ill thing to have gain'd this Country.

Mr. *Menlove.* My Lord, Mr. *Stephens* was my Clerk, and he behav'd himſelf very honeſtly with me. And ſince that, I have kept a Correſpondence with him, and I believe he would not do ſuch a Thing for all the World.

Mr. Bar. *Hatſell.* Call ſome Body to ſpeak for Mr. *Rogers*, if there be any.

Mr. *Evans.* My Lord, Mr. *Rogers* hath a general Character in *Southwark*, for a very honeſt Man.

Mr. *Rogers.* Pray call Mr. *Lygoe.* Sir, pleaſe to give my Lord and the Court an Account what you know of me.

Mr. *Lygoe.* My Lord, I have known all the three Gentlemen at the Bar, but particularly Mr. *Rogers* and Mr. *Stephens*, from their Infancy. I have employ'd them both in Buſineſs ſeveral times, and always found them fair Practiſers; and believe neither of them would be guilty of doing an ill Act.

Mr. *Rogers.* Call Mr. *Thurlby.* Sir, Pray give the Court an Account how I behaved myſelf in your Service.

Mr. Bar. *Hatſell.* Come, Mr. *Thurlby*, What do you ſay of Mr. *Rogers?*

Mr. *Thurlby.* My Lord, Mr. *Rogers* lived with me about eight Years, in which Time I frequently truſted him with very great Sums of Money; I ever found him juſt and faithful, and can't believe, that any Money could tempt him to do an Act of this Kind.

Mr. *Jones.* My Lord, we inſiſt upon it, That Mr. *Cowper* hath given a different Evidence now from what he did before the Coroner; for there he ſaid he never knew any Diſtraction, or Love-fit, or other Occaſion ſhe had to put her upon this extravagant Action. Now, here he comes, and would have the whole Scheme turn'd upon a Love-fit. Call *John Maſon.* (*Who was ſworn.*)

Mr. Bar. *Hatſell.* What do you ſay, Sir, to this Matter?

Mr. *Stout.* When Mr. *Cowper* was examin'd before the Coroner, he was aſk'd, If he knew any Reaſon why ſhe ſhould do ſuch a Thing? and he ſaid, She was a very modeſt Woman, and he knew no Cauſe why ſhe ſhould do ſuch a Thing as this. *John Maſon*, Was you by when Mr. *Cowper* gave Evidence before the Coroner?——*Maſon.* Yes.

Mr. *Jones.* What did he ſay?

Maſon. He ſaid he did not know any Thing was the Cauſe of it, but ſhe was a very modeſt Perſon.

Mr. *Jones.* Was he upon his Oath?——*Maſon.* Yes, he was.

Mr. Baron *Hatſell.* When did he ſay this?

Maſon. It was the ſame Day ſhe was found.

Mr. *Jones.* Did they aſk him any Queſtion, if he knew any Perſon that ſhe was in Love with?

Maſon. He ſaid he knew but of one, and his Name was *Marſhall*, and Mr. *Marſhall* told him, That he was always repulſed by her.

Mr. *Stout.* I deſire *John Archer* may be aſked the ſame Queſtion. (*Who was ſworn.*)

Mr. *Jones.* Was you preſent with the Coroner's Inqueſt?

J. Archer. Yes.

Mr. *Jones.* Was Mr. *Cowper* examin'd by them?

J. Archer. Yes, he was.

Mr. *Jones.* What did he ſay concerning Mrs. *Stout* then?

J. Archer. They aſk'd him, If he knew any Occaſion for Mrs. *Stout*'s Death? And he ſaid, He knew nothing of it, or of any Letters.

Mr. *Cowper.* Then I muſt call over the whole Coroner's Inqueſt to prove the contrary.

Mr. Baron *Hatſell.* Did they aſk him concerning any Letters?

J. Archer. They aſk'd him, if he knew of any Thing that might be the Occaſion of her Death?

Mr. Baron *Hatſell.* I aſk you again, if they aſk'd him if he knew of any Letters?——*J. Archer.* My Lord, I don't remember that.

Mr. *Stout.* I would have called ſome of the Coroner's Inqueſt, but I was ſtopp'd in it.

Juryman. We have taken Minutes of what has paſs'd: If your Lordſhip pleaſe we will withdraw.

Mr. Baron *Hatſell.* They muſt make an End firſt.

Mr. *Jones.* If your Lordſhip pleaſe, we will call one Witneſs to falſify one Piece of their Evidence, and that is one Widow *Larkin.* (*Who was ſworn.*)

Mr. *Jones.* Do you remember one Mr. *Rutkin* being at your Houſe?

Larkin. Yes.

Mr. *Jones.* At what Time did he come in?

Larkin. Between Nine and Ten of the Clock.

Mr. *Jones.* Was the Marſhal then in the Houſe?

Larkin. No; the Marſhal did not come till near an Hour after.

Mr. *Jones.* Did not he go out afterwards?

Larkin. Not that I know of.

Mr. *Rutkins.* I am ſatisfied it was paſt Eleven when I came in.

Mr. Baron *Hatſell.* It is likely it may be true; for I believe they did not keep very good Hours at that Time.

Mr. *Stout.* I deſire to call ſome Witneſſes to my Siſter's Reputation.

Mr. *Jones.* My Lord, they would call Witneſſes to this Gentlewoman's Reputation; I believe the whole Town would atteſt for That, that ſhe was a Woman of a good Reputation. Indeed they have produced ſome Letters without a Name, but if they inſiſt upon any thing againſt her Reputation, we muſt call our Witneſſes.

Mr. Baron *Hatſell.* I believe nobody diſputes That; ſhe might be a virtuous Woman, and her Brains might be turn'd by her Paſſion, or ſome Diſtemper.

Gentlemen of the Jury, you have heard a very long Evidence. I am ſure that you can't expect that I ſhould ſum it up fully; but I will take Notice of ſome Things to you, that I think are moſt material; and if I omit any Thing that is material, I would deſire Mr. *Jones* (that is Counſel for the King) and Mr. *Cowper* to put me in mind of it.

The Indictment againſt the Priſoners at the Bar is for a very great Crime, it is for Murder, which is one of the moſt horrid of all Crimes: You are to conſider firſt what Evidence you have heard to prove it; and though there be no direct Proof, you are to conſider what is circumſtantial.

They do begin with *Sarah Walker*, who was Mrs. *Sarah Stout*'s Maid; and ſhe tells you, that Mr. *Cowper*, when he came to this Town on *Monday* the 13th of *March* laſt, came to Mrs. *Stout*'s Houſe and dined there, and went away about Four of the Clock in the Afternoon; but ſhe tells you, that the *Friday* before, there came a Letter from Mr. *Cowper*'s Wife to Mrs. *Stout*, to let her know that Mr. *Cowper* would come and lodge at their Houſe at *Hertford* at the Aſſizes; ſo that when he came, ſhe thought that he had intended to have done according to that Letter. She ſaith, that after Dinner Mr. *Cowper* went away, and came again at Nine at Night, and there he ſupped; he was deſir'd ſo to do, (and indeed had been invited to Dinner alſo that Day) and ſhe doth ſay, that after Supper there was a Fire made in his Chamber (for this young Gentlewoman, Mrs. *Stout*, preſs'd him to lie at their Houſe), and ſhe order'd the Maid to warm his Bed; and I believe, ſays ſhe, Mr. *Cowper* heard her ſay ſo, for he was nearer to her than I at that time, and he doth not deny but that he heard it. She ſays, that accordingly ſhe went up to warm the Bed; and having ſtayed there a while, ſhe heard the Door clap; and when ſhe came down into the Parlour, where ſhe had left them, they were both gone, and that ſhe could not tell what the Meaning of it was; and they waited for her all Night, old Mrs. *Stout* and this Maid, and ſhe did not come in all Night, nor was afterwards ſeen alive; but Mr. *Cowper* was the laſt Perſon ſeen in her Company.

The other Witneſſes that came afterwards, ſpeak concerning the finding of the Body in the River, and tell you in what Poſture it was. I ſhall not undertake to give you the Particulars of their Evidence; but they tell you ſhe lay on her right Side, the one Arm up even with the Surface of the Water, and her Body under the Water; but ſome of her Cloaths were above the Water; particularly one ſays, the Ruffles of her left Arm were above the Water. You have heard alſo what the Doctors and Surgeons ſaid on the one ſide and the other, concerning the Swimming and Sinking of dead Bodies in the Water; but I can find no Certainty in it; and I leave it to your Conſideration.

Another Circumſtance they build on, and which ſeems to be material is, of her Belly being lank, and that there was no Swelling; whereas, ſay they, when a Perſon is drown'd, there is a great deal of Water goes in, and makes the Belly to ſwell; but here was no Swelling that Morning ſhe was taken out, and no Water came out of her Mouth and Noſtrils, only a little Froth there was, and her Belly was lank. But, ſay they, on the other Side, That may very well be; for, perhaps ſhe might be choak'd immediately, as ſoon as ſhe was in the Water; and, ſay they, you may not wonder at That; for if ſhe went to drown herſelf, ſhe would endeavour to be choak'd as ſoon as ſhe could; for thoſe Perſons that are drown'd againſt their own Conſent do ſwallow a great deal of Water, but thoſe that drown themſelves don't ſwallow much Water, for they are choak'd immediately by the Water going into the Windpipe; that we commonly call going the wrong Way. The Doctors and Surgeons have talk'd a great deal to this Purpoſe, and of the Water's going into the Lungs or the *Thorax*; but unleſs you have more Skill in Anatomy than I, you won't be much edified by it. I acknowledge I never ſtudied Anatomy; but I perceive that the Doctors do differ in their Notions about theſe things. But, as to Matter of Fact, 'tis agreed to by all the Witneſſes for the King, that her Body was lank, her Belly was thin, and there was no Sign of any Water to be in it: They on the other Side tell you, that her Stays was on, and ſhe was ſtrait-laced, and that might occaſion her Belly's being ſo ſmall, and hinder the Water from going in.

Gentlemen, I was very much puzzled in my Thoughts, and was at a Loſs to find out what Inducement there could be to draw in Mr. *Cowper*, or theſe three other Gentlemen, to commit ſuch a horrid, barbarous Murder. And, on the other hand, I could not imagine what there ſhould be to induce this Gentlewoman, a Perſon of a plentiful Fortune, and a very ſober good Reputation, to deſtroy herſelf.

Now, Gentlemen, I muſt confeſs, the Evidence that the Defendants have given by theſe Letters, if you believe them to be this Gentlewoman's Hand-writing, do ſeem to fortify all that Mr. *Cowper*'s Witneſſes have ſaid, concerning her being melancholy: It might be a Love-diſtraction, and ſhe might have been a virtuous Woman for all that; for it might be a Diſtemper which came upon her, and turn'd her Brains, and diſcompoſed her Mind; and then no Wonder at her writing thus, in a Manner different from the reſt of the Actions of her Life. Gentlemen, you are to conſider and weigh the Evidence, and I will not trouble you any more about that Matter.

As to theſe three other Gentlemen that came to this Town at the Time of the laſt Aſſizes, what there is againſt them you have heard: They talk'd at their Lodging at a ſtrange rate, concerning this Mrs. *Sarah Stout*; ſaying, Her Buſineſs is done, and that there was an End of her Courting-Days, and that a Friend of theirs was even with her by this Time. What you can make of it, That I muſt leave to you; but they were very ſtrange Expreſſions; and you are to judge, whether they were ſpoken in jeſt, as they pretend, or in earneſt. There was a Cord found in the Room, and a Bundle ſeen there, but I know not what to make of it. As to Mrs. *Stout*, there was no Sign of any Circle about her Neck, which, as they ſay, muſt have been, if ſhe had been ſtrangled: Some Spots there were; but it is ſaid, Poſſibly thoſe might be occaſion'd by rubbing againſt ſome Piles or Stakes in the River. Truly, Gentlemen, theſe three Men, by their Talking, have given great Cauſe of Suſpicion; but whether They, or Mr. *Cowper*, are guilty or no, that You are to determine. I am ſenſible I have omitted many Things; but I am a little faint, and cannot repeat any more of the Evidence.

Jury. We have taken Minutes, my Lord.

Mr. Baron *Hatſell.* Well then, Gentlemen, go together, and conſider your Evidence; and I pray God direct you in giving your Verdict.

[*Then One was ſworn to keep the Jury, and in about half an Hour the Jury return'd.*]

Cl. of Arr. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Cl. of Arr. Who ſhall ſay for you?—*Omnes.* Foreman.

Cl. of Arr. Spencer Cowper, hold up thy Hand. (*Which he did.*) Look upon the Priſoner. How ſay you? Is he guilty of the Felony and Murder whereof he ſtands indicted, or not guilty?—*Foreman.* Not guilty.

[*In like Manner the Jury did give their Verdict, that* John Marſon, Ellis Stephens, *and* William Rogers *were not guilty* *.]

CLXVII. *The Trial of* Mary Butler *alias* Strickland, *at the* Old Bailey, *for* Forging *a Bond of* 40,000 *l. in the Name of* Robert Clayton, October 12, 1699. 11 Will. III.

Cl. of Arr. BRING *Mary Butler* to the Bar.

[*Accordingly ſhe was brought.*]

‘ *Mary Butler* alias *Strickland*, you ſtand indicted by the Name of *Mary Butler* alias *Strickland*, late of *London*, Widow; for that you endeavouring, and maliciouſly intending, to deceive and oppreſs Sir *Robert Clayton*, Knight and Alderman of *London*, the Firſt Day of *December*, in the Seventh Year of his now Majeſty's Reign, at *London* aforeſaid, in the Pariſh of St. *Mary Woolnoth*, in the Ward of *Langborne*, a certain falſe Writing, ſealed in Form of a Bond, bearing Date the Fourteenth Day of *April*, 1687, in the Name of the ſaid Sir *Robert Clayton*, for the Payment of the Penal Sum of Forty Thouſand Pounds, to be made by the ſaid Sir *Robert Clayton* to you *Mary Butler* alias *Strickland*, with Condition there under-written; concerning, among other Things, the Payment of Twenty Thouſand Pounds, to be made to you *Mary Butler* alias *Strickland*, after the Death of the ſaid Sir *Robert Clayton*, by his Heirs, Executors, and Adminiſtrators; falſely, knowingly, unlawfully, and ſubtilly did make, counterfeit and write, and cauſe to be made, counterfeited and written: And further, that you *Mary Butler* alias *Strickland*, afterwards, *viz.* the Firſt Day of *December*, in the Seventh Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, a certain falſe and forged Writing, ſealed in Form of a Bond, in the Name of the ſaid Sir *Robert Clayton*, for the Payment of the penal Sum of Forty Thouſand Pounds by the ſaid Sir *Robert Clayton*, to you *Mary Butler* alias *Strickland*, with Condition under-written, concerning, among other Things, the Payment of Twenty Thouſand Pounds, to be made to you *Mary Butler* alias *Strickland*, after the Death of the ſaid Sir *Robert Clayton*, by his Heirs, Executors, or Adminiſtrators, as a true Bond of the ſaid Sir *Robert Clayton*, as if really made by him; falſely, ſubtilly, and deceitfully, did publiſh, you *Mary Butler* alias *Strickland* well knowing the ſaid Writing to be falſe, forged and counterfeited, and not the Deed of the ſaid Sir *Robert Clayton*, to the great Damage of the ſaid Sir *Robert Clayton*, to the evil Example of all others in the like Caſe offending againſt the Peace of our Sovereign Lord the King, his Crown and Dignity.’

Cl. of Arr. How ſay'ſt thou, *Mary Butler* alias *Strickland*, art thou guilty of this Forgery whereof thou ſtandeſt indicted, or not guilty?

Priſoner. Not guilty.

Cl. of Arr. Priſoner, look to your Challenges. Cryer, ſwear the Jury, which follow:

JURY ſworn.

William Clark,
William Chriſtopher,
Thomas Wharton,
George Kimble,
James Church,
John Whiſtler,
George Ludlam,
Richard Kemble,
John Clarke,
Stephen Broughton,
Joſeph Sheppard,
Thomas Wickham.

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* See the Caſe of *Spencer Cowper*, Eſq. *John Marſon*, *Ellis Stephens*, and *William Rogers*, Gentlemen, in the *State Trials*, Vol. VIII. p. 466, 467, 468, and Mrs. *Stout*'s Caſe, 469, 470, 471, and ſeveral Obſervations relating to this Trial.

Clerk of Arr. You of the Jury that are ſworn, look upon the Priſoner, and hearken to her Cauſe. She ſtands indicted, *&c.*

Mr. *Montagu* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this Indictment does charge the Priſoner at the Bar, *Mary Butler*, alias *Strickland*, with a Fraud and intended Cheat. It ſets forth, that the Priſoner at the Bar, intending to cheat Sir *Robert Clayton*, did counterfeit a certain Writing, purporting to be the Bond of Sir *Robert Clayton*, for payment of Twenty Thouſand Pounds, and that it was to be paid to the ſaid *Mary Butler*, alias *Strickland*, after the Death of the ſaid Sir *Robert Clayton.* Likewiſe, that ſhe did publiſh this Writing as Sir *Robert Clayton*'s Deed. To this Indictment ſhe has pleaded not guilty. If we prove the Fact, I do not queſtion but you will find her guilty, that ſhe may have her due Puniſhment.

Mr. Serj. *Wright.* My Lord, I am Counſel for the King in this Cauſe. You hear what ſort of Crime it is that is charged on the Priſoner. It is for Forging a Bond of no leſs Penalty than Forty Thouſand Pounds, for the Payment of Twenty Thouſand Pounds. This is made in the Name of Sir *Robert Clayton*, and the Twenty Thouſand Pounds were to be paid a little after his own Death, by his Executors or Adminiſtrators: And that in the mean time Twelve Hundred Pounds a Year were to be paid for the Intereſt of this Sum. But, my Lord, the Priſoner did not reſt here, (a ſecond Contrivance will be opened to you). That which ſhe is now charged with, is the Forging of a Bond of the Penalty of Forty Thouſand Pounds.

My Lord, the Priſoner for ſome Years had a great Intimacy with a great Peer, the late Duke of *Buckingham.* And ſhe either had, or pretended to have, a Bond from him for Five Thouſand Pounds, payable to herſelf after his Death, and an Annual Intereſt in the mean time, till the Principal was paid. Sir *Robert Clayton* being a Truſtee of the Duke's Eſtate for the Payment of his Debts, the Priſoner came frequently to Sir *Robert Clayton*, to ſollicit his Favour and Intereſt for the Payment of this Debt. On this Account ſhe inſinuated herſelf into his Company and into his Family. Sometimes ſhe pretended to be a great Penitent, and that ſhe was ſorry for the Converſation ſhe had with the Duke; that her own Relations were Papiſts, and if ſhe ſhould go to them, they would ſend her into a Nunnery. All which was but counterfeit, and in order to win upon Sir *Robert Clayton*; and he finding ſhe was an ill Woman, notwithſtanding all her Pretences, he at laſt, about twelve Years ago, forbid her his Houſe; and ſince that ſhe never was there.

About the Year 1695, Sir *Robert Clayton* had ſome private Intimation given him, that the Priſoner had a great Demand on him, no leſs than Twenty Thouſand Pounds. Upon this Sir *Robert Clayton* took the beſt Courſe he could to find it out, and exhibited a Bill in *Chancery* againſt her, and ſome of her Accomplices, to diſcover whether they had any Pretences upon him or his Eſtate. To this Bill the Priſoner put in an Anſwer, that ſhe had no Claim or Demand againſt him upon any Account whatſoever. While this was in Agitation, the Priſoner came to Mr. *Woodward*, an Attorney of this City, and brought him a Writing, purporting a Bond, with the Name *Robert Clayton* ſubſcribed to it, ſealed and atteſted by four Witneſſes, as the Bond of Sir *Robert Clayton*; and told Mr. *Woodward*, "That Bond was given to her by Sir *Robert Clayton*, upon ſome good "Conſiderations; but it having taken Air, ſome Uneaſineſs had riſen "about it in Sir *Robert Clayton*'s Family; and (as ſhe pretended) "upon this Account he had exhibited a Bill in Equity againſt her, "therefore this Bond muſt be delivered up; and Sir *Robert* had promiſed "to give her a new Bond for Twenty Thouſand Pounds, and that all "the Money in Arrears for Intereſt, was to be turned to Principal, and "put into the new Bond: But this was to be done very privately, ſo as "not to be known by any of Sir *Robert Clayton*'s Family; and therefore "none of his Servants were to be privy to it." Thereupon ſhe gives to Mr. *Woodward* the Bond, deſiring him to make a new Bond by it, and to turn all the Intereſt that was due into Principal. Upon this Mr. *Woodward* made her a Bond of the Penalty of Fifty-four Thouſand Pounds, conditioned for Payment of Twenty-ſeven Thouſand Pounds after Sir *Robert Clayton*'s Death, and Intereſt in the mean time. This Bond ſhe took away with her, and likewiſe the firſt Bond; but what ſhe did with them ſince, we are not privy to. And a great Charge ſhe laid upon Mr. *Woodward*, to carry it with all poſſible Privacy, that no Notice might be taken by Sir *Robert*'s Family.

Some few Months ago there was another Intimation ſent to Sir *Robert Clayton*, that this Gentlewoman pretended to have a great Claim upon him of a great Sum of Money that was to be paid her, either at preſent, or after his Death; and that Mr. *Woodward* made the Bond, and he could give an Account of it. Upon this Sir *Robert Clayton* ſent to Mr. *Woodward*, who, like a very honeſt Man, told the whole Buſineſs, in what manner it was the Priſoner came to him, and how he came to make the Bond; and that he was deſired to be ſilent in it, Sir *Robert Clayton* having deſired this Bond ſhould be made out of his own Houſe, that none of his Family might take notice of it. Sir *Robert Clayton* having this Notice, and finding from Mr. *Woodward*, the Priſoner had taken this Courſe to carry on this Deſign to charge his Eſtate, he got a Warrant from the Lord Chief Juſtice to have her before him, to be examined before his Lordſhip: Where being brought, ſhe, upon her Examination, has confeſs'd the whole Matter, her having the firſt Bond, and where it was made. What is become of the latter Bond, we cannot get out of her, nor whether ſhe ever affixed the Name of Sir *Robert Clayton* to that. But we will produce credible Witneſſes to prove her guilty of Forging the firſt Bond for the Payment of Twenty Thouſand Pounds; and that it had the Name and Seal of Sir *Robert Clayton* affixed to it; and that ſhe affirmed it to be a good Bond, well executed by Sir *Robert Clayton*, and that there was Intereſt due upon it from Sir *Robert Clayton*; and that the Intereſt was in the ſecond Bond to be turned into Principal. We will call Witneſſes to prove this, and then I hope ſhe ſhall have ſuch Puniſhment as ſhe deſerves.

Mr. *Northey.* My Lord, what the Nature of our Evidence will be, I ſhall inform you. It cannot be expected from us to produce the Bond, for that ſhe carried away from Mr. *Woodward*; ſo that we cannot give the Writing itſelf in Evidence; but, if ſhe inſiſt on it, we hope ſhe will produce the Bond. We have the Copy (taken by Mr. *Woodward*) of the firſt Bond, which he had from her, that he might draw the Second Bond by it. But we can prove from that, which agrees with our Record, that ſhe affirmed, that the firſt Bond that ſhe produced was Sir *Robert Clayton*'s: That that Bond which ſhe produced, of which this is the Copy, ſhe affirmed to be Sir *Robert Clayton*'s Deed. We ſhall do that, and afterwards prove her publiſhing it; for our Indictment is againſt her for Forging a Bond, and publiſhing that forged Bond, knowing it to be ſuch, and cloſe all with her own Confeſſion. And, my Lord, there is this to ſhew there could be nothing in the Bond; that from the Time ſhe pretended to have this Bond, when ſhe was to have Twelve Hundred Pounds a Year, ſhe remained a Priſoner all that Time, and got herſelf out by ſwearing ſhe was not worth Five Pounds in all the World. Call Mr. *Woodward.*

(*Who appeared, and was ſworn.*)

Mr. Serj. *Wright.* Mr. *Woodward*, you hear what the Charge is; pray give an Account of what you know in reference to it.

Mr. *Woodward.* My Lord, Mrs. *Butler* has been my Client many Years. About two or three Years ago, more or leſs, Mrs. *Butler* came to me, and brought me a Bond; ſhe gave it me to peruſe, and told me another muſt be drawn by it. When I had peruſed the Bond, I found it was ſigned *Robert Clayton*, and four Witneſſes Names ſet to the Bond. It was a Bond of the Penalty, as I remember, of Forty Thouſand Pounds, and I think it was in the Year 1687, for to pay, I think, Twelve Hundred Pounds a Year, by four quarterly Payments yearly, during Sir *Robert Clayton*'s Life, and Twenty Thouſand Pounds within ſix Months after his Death. There were ſome other Things in that Bond, which will appear by the Copy, which indeed I did take; for Mrs. *Butler* deſired it might be a Secret, being of a very great Concern. And I aſked her why ſuch a Bond ſhould be given? I thought it muſt be great Generoſity, and not for Money lent. But ſhe told me the Forty Thouſand Pound Bond was to be delivered up to Sir *Robert.* I aſked her, why, ſince ſhe had it, ſhe did not keep it? She ſaid, that he would give her another Bond. She told me it had taken Air, and my Lady *Clayton* had ſome Diſquiet about it; and for my Lady's Satisfaction, a Bill in *Chancery* was exhibited againſt her, to which ſhe was to put in her Anſwer, and thereby diſclaim any ſort of Bond, or Intereſt, or any Pretence that ſhe had upon Sir *Robert Clayton.*

Mr. Serj. *Wright* She told you this herſelf?

Mr. *Woodward.* Yes; and when ſhe gave me the Bond, ſhe told me it was Sir *Robert Clayton*'s Bond, or to that Purpoſe. But there being about nine or ten Years Arrears of Intereſt, ſhe deſired me to caſt up the Intereſt that was in Arrear, and that it might be put to the Principal in the new Bond, ſaying, that Sir *Robert* would give her a Bond for the Whole together.

Mr. Serj. *Wright.* Was the whole Intereſt pretended to be in Arrear?

Mr. *Woodward.* I cannot ſay, all the Intereſt.

Mr. Serj. *Wright.* How did you compute it, from the Date of the Bond, or from what ſhe told you?

Mr. *Woodward.* She ſaid ſhe had received ſome Money, and I computed the reſt, rather under than over, and ſo made the Intereſt to come to Seven Thouſand Pounds (the Intereſt payable by the Bond being Twelve Hundred Pounds a Year). Whereupon ſhe deſired I would draw a Bond for it myſelf; and accordingly ſhe left the firſt Bond with me. I took ſome Time, and drew it; and made the Penalty thereof Fifty-four Thouſand Pounds, conditioned for the Payment of Twenty-ſeven Thouſand Pounds. And it was to be made in the ſame Nature as the former was, in reſpect of the Principal, and in the mean time to continue the Payment of the Intereſt yearly, by proportionable Quarterly Payments.

Mr. *Montagu.* What Diſcourſe had you with her about it?

Mr. *Woodward.* I did draw a Bond, and did take Notice, That whereas Sir *Robert Clayton* had given her this Bond of Forty Thouſand Pounds, and at his Requeſt ſhe had delivered it up to him; and upon an Account ſtated, there did remain Seven Thouſand Pounds in Arrears for Intereſt, which in all amounted to Seven-and-Twenty Thouſand Pounds, or thereabouts; when I gave it her, I ſaid, it was a very great Sum, it concerns you to have Witneſſes of Credit, for nobody will believe Sir *Robert Clayton* did give you this Bond, eſpecially after his Death, unleſs it be very well atteſted. I told her, if ſhe pleaſed, I would go and be a Witneſs for her to ſee it executed. So ſhe went away. And when ſhe came to me again, ſhe told me, that Sir *Robert* knew me very well, but did not think fit to have me for a Witneſs. I anſwered, I do not care; but it being a very great Sum, take care it be well executed. I gave her both the Bonds, and from that Time heard no more of it till about two Months ſince.

Mr. *Northey.* Was there any body came to diſcourſe with you of making a new Bond, beſides herſelf?

Mr. *Woodward.* Not that I know of, I do not remember any. It was an extraordinary Sum, I did take a Copy of the Bond.

Mr. *Northey.* Have you it here?

Mr. *Woodward.* Yes, I have it here.

Mr. *Northey.* He ſwears he took a Copy of it, and delivered it to the Priſoner again. We deſire it may be read.

Mr. *Mallet.* Is it a true Copy?

Mr. *Woodward.* I cannot ſay I examined it.

Mr. *Northey.* Did you write it from the Bond?—Mr. *Woodward.* I did.

Mr. *Northey.* Do you believe it is a true Copy?

Mr. *Woodward.* I believe it is. The Reaſon why I did not examine it, was becauſe it was to be a Secret.

Mr. *Mallet.* Do you look upon yourſelf to be infallible?

Mr. Serj. *Wright.* Had you any Direction from the Priſoner to take a Copy?——Mr. *Woodward.* I cannot ſay that.

L. C. J. Holt. Why did you write it out; for your Direction to draw the new Bond?

Mr. *Woodward.* I did write it out, becauſe it is a ſpecial Condition, more than is uſual in Bonds: for it is expreſſed, that there ſhould be no Proſecution againſt her by Sir *Robert Clayton*, or his Executors, either at Law or in Equity, for the 20000*l.* or the Intereſt, or to do any Act to obſtruct her in receiving the ſame.

L. C. J. Holt. When did you take a Copy of it?

Mr. *Woodward.* At the ſame time, and before I returned it.

L. C. J. Holt. Did you make the new Bond by this Copy, or by the former Bond?

Mr. *Woodward.* Very likely I might uſe both.

L. C. J. Holt. Did you keep them both?

Mr. *Woodward.* I did keep 'em both by me till I deliver'd the new Bond.

Mr. Serj. *Wright.* Is the Copy your own Hand-writing?

Mr. *Woodward.* Yes.

Mr. *Montagu.* What did you take it from?

Mr. *Woodward.* From the Original.

Mr. *Wright.* And do you take that to be a true Copy?

Mr. *Woodward.* I believe it is a true Copy.

Mr. *Hall.* Did you read it over at that Time?

Mr. *Woodward.* I did read it over.

L. C. J. Holt. Did you write it?---Mr. *Woodward.* I did write it.

Mr. *Mallet.* And did you examine it afterward?

Mr. *Woodward.* No, I did not examine it; it was not to be taken Notice of.

Mr. *Hall.* Can you ſay you read it carefully over at that Time?

Mr. *Cutts.* It may not be the very ſame Bond, if he did not examine it by the Original, ſign'd by Sir *Robert Clayton.*

Mr. *Northey.* They may ſhew the Bond.

Mr. *Mallet.* Did the Priſoner bring the Bond to you, of which this is the Copy, and tell you, This was her Bond?

Mr. *Northey.* We will prove it by her own Confeſſion.

Mr. *Mallet.* If it be not the ſame Bond, ſhe cannot be convicted.

Mr. *Northey.* No doubt of it.

Mr. Serj. *Wright.* Produce the Copy; and, if your Lordſhip pleaſe, it may be read.-----*L. C. J. Holt.* Let it be read.

> ‘NOverint Univerſi per preſentes me *Robertum Clayton*, Militem & Decurionem, Anglice Kt. & Alderman de *London*, teneri & firmiter obligari *Mary Butler* alias *Strickland*, de *South-Street* in Parochia de *Edmonton*, in Comitatu *Middleſex*, vidue, Quadraginta mille libris bone & legalis monet' *Anglie*, ſolvend' eidem *Mary Butler* alias *Strickland*, aut ſuo certo Attornat' Executor' vel Adminiſtrator' ſuis, ad quam quidem ſolutionem bene & fideliter faciendam obligo me, hæredes, Executores et Adminiſtratores meos, firmiter per preſentes. Sigillat' dat' decimo quarto Dei Aprilis, Anno Regni Domini noſtri *Jacobi* Secundi, Dei gratia *Anglie*, &c. Regis, tertio, Annoq; Domini 1687.’

THE Condition of this Obligation is ſuch, that if the above bounden Sir *Robert Clayton*, or his Aſſigns do, and ſhall well and truly pay, or cauſe to be paid unto the above-named *Mary Butler* alias *Strickland*, her Executors, Adminiſtrators, or Aſſigns, or any of them, yearly and every Year, during the Term of his natural Life, the full and juſt Sum of 1200*l.* of lawful Money of *England*, by four equal Quarterly Payments, being the juſt and legal Intereſt, to grow due of and for the Principal Sum of Twenty Thouſand Pounds herein after-mentioned, in Manner and Form following; that is to ſay, 300*l.* on the 14th of *July* next enſuing the Date of theſe Preſents; 300 *l.* on the 14th of *October* next coming; 300*l.* on the 14th of *January*, which ſhall be in the Year of our Lord 1688, and 300*l.* on the 14th of *April* following; and ſo on every the ſaid 14th Day of the ſaid Months in every Year, one next, and conſequently coming after another, the like Sum of 300*l.* during the Time and Term of the natural Life of the ſaid Sir *Robert Clayton*: And alſo, if the Heirs, Executors, and Adminiſtrators of the ſaid Sir *Robert Clayton* do, and ſhall, on or before the End and Expiration of Six Months next after the Death or Deceaſe of him the ſaid Sir *Robert Clayton*, not only well and truly pay, or cauſe to be paid, unto the ſaid *Mary Butler* alias *Strickland*, her Executors, Adminiſtrators, or Aſſigns, the full and juſt Sum of Twenty thouſand Pounds of lawful Money of *England*, above expreſs'd; but alſo all ſuch Intereſt thereof, after the Rate aforeſaid, as ſhall be in arrear and unpaid at the Death of the aforeſaid Sir *Robert Clayton*, and alſo all ſuch as ſhall grow due to be paid for the ſame, for ſo long time of the ſaid Six Months as the ſaid Sum of Twenty thouſand Pounds ſhall be unſatisfied and unpaid after the Death or Deceaſe of the ſaid Sir *Robert Clayton*, without Coven, Fraud, or Deceit; nor ſhall not commence any Suit, either in Law or Equity, againſt the ſaid *Mary Butler* alias *Strickland*, her Heirs, Executors, or Adminiſtrators, for, concerning, or in reſpect of the ſaid Twenty thouſand Pounds and Intereſt, or any Part thereof; and ſhall not do any Act or Thing to obſtruct, moleſt, or hinder her, them, or any of them, from receiving, having, or enjoying the ſame; then this Obligation to be void, and of none effect, or elſe to remain in full Force.

Robert Clayton.

Seal'd and delivered in the Preſence of us,

J. Pennington, *John Hebden*,
Edw. Spencer, *Eliz. Rivers.*

Mr. Serj. *Wright.* Did the Priſoner bring you the Bond, of which this is a Copy, as a true Bond?---Mr. *Woodward.* Yes, my Lord.

Mr. Serj. *Wright.* I aſk you this, Had you a Charge from her to keep this Matter ſecret?

Mr. *Woodward.* Yes; and that I would write the Bond with my own Hand.

Mr. Serj. *Wright.* She giving you this Charge, how came this Matter to be known then?

Mr. *Woodward.* Mr. *Nicholas Baker* came to me from Sir *Robert Clayton*, and aſk'd me, if I did not know the Priſoner, and particularly about a Bond; and whether I did not make one for her. It was not in my Memory at firſt, till further Diſcourſe occaſioned me to remember it; and I told him, that I did do ſome Buſineſs for her. He told me Sir *Robert Clayton* had ſome Information given him, that there was ſuch a Bond drawn by me: Then I told him, I did remember there was ſuch a Bond brought to me, and that I had made a Bond for Mrs. *Butler*, and had taken a Copy of the firſt Bond, which I had by me; and alſo of the ſecond Bond, in which I had left out a material Word in the Obligation, and was fain to write it over again, and had the firſt Draught by me till about a Month before that Time, when meeting with it among my Papers, I threw it into the Fire in my Cloſet; but this Copy did remain by me.

Mr. *Hall.* You ſay this Copy is all your own Hand-writing?

Mr. *Woodward.* Yes, it is.

Mr. *Hall.* Was it Seal'd, or Cancell'd?

Mr. *Woodward.* No; 'twas Seal'd, I am very poſitive.

Mr. *Hall.* Are you poſitive the Seal was on it at that Time?

Mr. *Woodward.* Yes, Sir.

Mr. *Mallet.* Did ſhe tell you that Bond was to be cancell'd?

Mr. *Woodward.* She told me, ſhe was to deliver up that Bond to Sir *Robert Clayton*; and that he would give her another inſtead of it.

Mr. *Mallet.* Was the Bond then deliver'd up, or no?

Mr. *Woodward.* I cannot ſay ſhe did.

Mr. *Cutts.* Did you never hear any Bill in *Chancery*? To what End was this Bond deliver'd to you? For what Reaſon?

Mr. *Woodward.* I aſk'd her why the Bond was to be deliver'd up, and ſhe told me, There was ſome Uneaſineſs in the Family, and my Lady *Clayton* had got the Air of it; and therefore, to ſatisfy her, there was a Bill preferr'd againſt her in *Chancery*, and ſhe was to put in her Anſwer; and that he would give her another Bond, and that was to be deliver'd up.

Mr. *Northey.* We have other Witneſſes to prove the Forging of it. Call Mr. *Baker.* (*Who appear'd and was ſworn.*)

Mr. Serj. *Wright.* Mr. *Baker*, were you preſent when the Priſoner Mrs. *Butler* was before my Lord Chief-Juſtice concerning this Bond? Look on that Copy.

Mr. *Baker.* I was preſent at my Lord Chief-Juſtice's Chamber when the Priſoner was brought before his Lordſhip; and ſhe did there acknowledge, that the Bond, of which ſhe was accus'd, ſhe had order'd to be made.

Mr. Serj. *Wright.* Was that the Bond in queſtion?

Mr. *Baker.* Yes, ſhe did confeſs ſhe cauſed Sir *Robert Clayton*'s Name to be ſet to it, and the Witneſſes Names; and that it was done by one Mr. *Lewkar*, a Scrivener in *Biſhopſgate-ſtreet.*

Mr. Serj. *Wright.* She ſaid ſo?—Mr. *Baker.* Yes, Sir.

Mr. *Hall.* Did ſhe confeſs it? Where was it?

Mr. *Baker.* At my Lord Chief-Juſtice's Chamber; ſhe confeſs'd it was her own Act; ſhe cauſed it to be made, and directed the Scrivener to ſet Sir *Robert Clayton*'s Name, and the Witneſſes Names to it.

Mr. *Mallet.* Was there not at that Time a Diſcourſe of a Bond that ſhe had on the late Duke of *Buckingham*?

Mr. *Baker.* I cannot be poſitive in that; but this was the Fact ſhe was charg'd with; and ſhe did confeſs that ſhe cauſed it to be done, and that the Perſons as Witneſſes were innocent of it, and that ſhe did direct Mr. *Lewkar* to ſet Sir *Robert Clayton*'s Name to it.

Mr. *Hall.* How do you know this is the very ſame Bond?

Mr. *Baker.* Mr *Woodward* ſhew'd me this very Bond when I went to him from Sir *Robert Clayton*, to know whether he was acquainted with the Priſoner; who, after ſome Diſcourſe with him relating to this Bond, very frankly and ingenuouſly told me the whole Matter of Fact, as he has done here.

Mr. *Mallet.* But we aſk you about her Confeſſion; Did you ſhew her that Copy? Did ſhe confeſs that?

L. C. J. Holt. What was the Diſcourſe of at that Time?

Mr. *Baker.* It was about the Bond of Forty thouſand Pounds, with which ſhe was charg'd before your Lordſhip to have counterfeited.

Mr. *Northey.* Did he give an Account then of this Bond?

Mr. *Baker.* Yes; Mr. *Woodward* produced this Copy before my Lord Chief-Juſtice, and ſhe own'd ſhe had order'd Mr. *Lewkar* to make it, and to put Sir *Robert Clayton*'s Name to it.

Mr. Serj. *Wright.* Now, my Lord, we will ſhew you, that ſhe is going on ſtill, and that very lately ſhe has own'd it, and that ſhe is going about to make the Bond of 50,000 *l.* a very good Bond.

Mr. *Mallet.* When it is in Queſtion, you may then invalidate it.

Mr. Serj. *Wright.* Mr. *Woodward* has told you he did make the Bond of 54,000*l.* but, I think, we have no need of it.

Mr. *Hall.* They have fail'd in the Indictment, ſo that it can't be ſupported by this Bond; it ſhould be laid ſpecially, according to the Condition of the Bond to be paid; for it is a Bond of Forty thouſand Pounds, to be paid by his Heirs after his Death Twenty thouſand Pounds. Now the Bond, whereof they produce a Copy, is of other Things.

Mr. *Northey.* It is for the ſame.

Mr. *Hall.* It is a different Thing.

L. C. J. Holt. Not at all.

Mr. *Mallet.* It is laid in the Indictment, to be paid by Sir *Robert Clayton*: In the Bond 'tis ſaid, it is not to be paid till after his Death.

Mr. Serj. *Wright.* 'Tis laid in the Indictment, that the Bond was of the Penalty of Forty thouſand Pounds to be paid by Sir *Robert Clayton*, with Condition thereto under-written, concerning, among other Things, the Payment of Twenty thouſand Pounds to the Priſoner, after the Death of Sir *Robert Clayton*, by his Executors.

L. C. J. Holt. Let your Exceptions proceed from the Indictment; it is to be paid after the Death of Sir *Robert* by his Executors.

Mr. Serj. *Wright.* Have you any more to ſay for yourſelves?

Mr. *Hall.* We have a great many Witneſſes here to prove her Reputation. 'Tis a ſtrange Thing any one ſhould go to forge a Bond on ſuch an eminent Perſon.

L. C. J. Holt. It is ſtrange indeed; but the Queſtion is, Whether it be true?

Mr. *Hall.* Her Confeſſion is prov'd by Mr. *Baker*; but we have many Witneſſes as to her Reputation.

Mr. *Mallet.* This Bond is not in the Indictment. The Bond of Forty thouſand Pounds is ſeveral Years ſince. Now there are two Bonds. Now that of Fifty-four thouſand Pounds is not in this Indictment, and this of Forty thouſand Pounds is ſeveral Years ſince that it was ſhewn to him. It is ſtrange he ſhould be ſo very exact, and yet did not examine it. And probably he might miſtake in the Copy, and it may not be the very Bond in the Indictment. Now, as to Mr. *Baker*; 'tis true, we have a Bond of Five thouſand Pounds from the Duke of *Buckingham*, and we are ſuing Sir *Robert Clayton* for this Money, and hope to have it, now after ſo many Years. And Sir *Robert Clayton* did prefer a Bill in *Chancery* againſt us, and we in Anſwer did diſclaim having any ſuch Bond. And now, when we are like to have a Decree for this Sum againſt the Truſtee of the Duke of *Buckingham*'s Eſtate, he comes and would take off our Credit in this Matter. We did, in the Year 1695, diſclaim any ſuch Bond.

Mr. *Northey.* Then you do admit that ſhe own'd the Bond.

[*Then her Witneſſes were call'd.*]

Mr. *Mallet.* Mr. *Glover*, do you know Mrs. *Butler?*——Mr. *Glov.* Yes.

Mr. *Mallet.* Give an Account of what you know as to her Reputation.

Glover. I have known her fifteen or ſixteen Years. All that I know of her is fair and clear.

L. C. J. Holt. Where do you live?—-*Glov.* In *Red-Lyon-ſtreet.*

L. C. J. Holt. What Profeſſion are you of?

Glover. I belonged to *Lincoln*'s-*Inn.*

L. C J. Holt. A Gentleman of *Lincoln*'s-*Inn.*

Glover. I was brought up at the Univerſity, but have not reſided there lately.

L. C. J. Holt. Hou do you live? Are you a Houſe-keeper?

Glover. I live privately at preſent.

L. C. J. Holt. Who knows you?

Glover. I cannot tell who knows me here. I believe Mr. *Northey* does.

Mr. *Northey.* I do not intend to give any Character of you, I do not uſe to give Characters of my Clients.

L. C. J. Holt. How long have you lived in *Red-Lyon-ſtreet?*

Glover. Ten or Eleven Years.

Mr. *Mallet.* How did ſhe live?

Glover. I knew her live in *Devonſhire-Square* very reputably; I always thought ſo.

Mr. Serj. *Wright.* Had ſhe any Eſtate of her own?

Glover. I cannot ſay ſo certainly; it was thought ſo. She paid every body very punctually.

Mr. *Hall.* Acquaint my Lord how long you have known her, and whether you think ſhe would be guilty of ſuch a Forgery?

Glover. I have known her fourteen or fifteen Years. I cannot believe ſhe would.

Mr. *Montagu.* Have you heard the Evidence?———*Glover.* Yes.

Mr. *Montagu.* What do you think of it then?

Glover. I know not what to think.

Mr. *Montagu.* Do you think ſhe would confeſs herſelf guilty of a Forgery, if ſhe were not?

Glover. I cannot tell what to ſay to that. I ſuppoſe nobody would confeſs, if they were not guilty.

Mr. Serj. *Wright.* Do you know one *Hebdon?*

Glover. I know *Hebdon.*

Mr. Serj. *Wright.* He is a Witneſs to the Bond. Was he Sir *John Hebdon*'s Son?

Glover. I can give no Account of that; but he has had a very honourable Character.

[*Mrs.* Rodum *called, and appeared.*]

Mr. *Hall.* Mrs. *Rodum*, do you know Mrs. *Butler?*---*Rodum.* Yes.

Mr. *Hall.* How long have you known her?

Rodum. Five or Six Years.

Mr. *Hall.* What do you know of her Character?

Rodum. I am the Widow of one of them that killed one another by the *Temple.* I never knew of any Bond, nor never heard her lay claim to any ſuch Bond. She lived in good Reputation. She was in my Houſe when my Huſband was killed. She lived in my Houſe about a Year; I never heard ſhe made any ſuch Pretenſion. She lived honeſtly and decently. She owes me upwards of three hundred Pounds.

L. C. J. Holt. For what? How came ſhe to owe you three hundred Pounds?

Rodum. I kept a Shop in the *Exchange*, and my Huſband was a Broker. She owed it me partly for Goods out of my Shop, and partly for Goods out of *Scotland.* He was killed about half a Year ago, and I have kept the Shop ſtill. About three or four Months ago ſhe left me, and I never heard of any Bond.

Mr. Serj. *Wright.* Did you never hear of a Bill in *Chancery* againſt her?

Rodum. No, Sir.

Mr. *Mallet.* Did you hear of any Money that was due to her from the Duke of *Buckingham?*

Rodum. I was told ſhe was ſuing Sir *Robert Clayton* for Money that was to be paid her on the Duke of *Buckingham*'s Account, and upon the Credit of that I truſted her.

[Shaw *called.*]

Mr. *Hall.* How long have you known Mrs. *Butler?*

Shaw. About Sixteen Years.

Mr. *Hall.* Do you think ſhe would forge a Bond?

Shaw. Indeed I cannot give an Account of that.

Mr. *Hall.* How has ſhe behaved herſelf?

Shaw. I never knew her guilty of any Rudeneſs.

Mr. Serj. *Wright.* Put up more Witneſſes if you have any.

Mr. *Hall.* We have done.

L. C. J Holt. Mrs. *Butler*, will you ſay any Thing for yourſelf?

Mrs. *Butler*. I am altogether innocent in the Matter, I never wrong'd Sir *Robert Clayton*, nor any Body elſe, in my Life.

L. C. J. Holt. Gentlemen of the Jury, This Mrs. *Butler*, alias *Strickland*, ſtands indicted for forging a Bond in the Name of Sir *Robert Clayton*, in the Penalty of Forty thouſand Pounds, the Condition for the Payment of Twenty thouſand Pounds, among other Things, within ſix Months after the Death of Sir *Robert Clayton.* And alſo, That ſhe did publiſh this Bond as the true Bond of Sir *Robert Clayton.* You have heard what Evidence has been given, to prove her guilty of this Forgery, and the Publication of it.

It ſeems, ſome Time ſince, as is proved to you by Mr. *Woodward*, this Gentlewoman came to him with this Bond of Forty thouſand Pounds. And it was upon this Account, as ſhe ſaid: To wit, Sir *Robert Clayton* having given her this Bond, it had taken Air, and was come to the Lady *Clayton*'s Ear; which occaſioned ſome Difference between Sir *Robert Clayton* and his Lady. She ſaid, That this Bond, by Direction from Sir *Robert*, was to be deliver'd up to him to be cancell'd; and that Sir *Robert Clayton* had engaged to enter into a new Bond in the Penalty of Fifty-four thouſand Pounds, for the Payment of Twenty-ſix thouſand Pounds (there being at that Time ſuppoſed an Arrear of Intereſt for Twenty Thouſand Pounds) payable after Sir *Robert*'s Death, and Intereſt in the mean Time. She delivered this Bond to Mr. *Woodward.* He takes a Copy of it, which is produced and read. And ſo, according to her Direction, Mr. *Woodward* does draw another Bond, with the Penalty of Fifty-four thouſand Pounds. And ſhe then told Mr. *Woodward* Sir *Robert* would ſeal this Bond upon the Delivery up of the Bond of Forty thouſand Pounds. Mr. *Woodward* having conſidered, that it was an extraordinary Sum for Sir *Robert* to engage himſelf in, and he being a very conſiderable Man, he adviſed her to have this new Bond well atteſted; and to be ſure to get Witneſſes of unqueſtionable Credit to ſee it executed. And thereupon he offered himſelf to go with her to Sir *Robert*, to be a Witneſs to this new Bond. No, ſays ſhe, Sir *Robert* is not willing that this ſhould be known; you are not a proper Perſon to be a Witneſs to it; therefore, ſays ſhe, I will get ſome other Witneſſes to atteſt it. Whereupon he gives her this firſt Bond of Forty thouſand Pounds, which ſhe brought to him for the Payment of Twenty thouſand Pounds, and gave her alſo the Draught of the new Bond. He ſays, This Bond that ſhe brought to him was atteſted by four Witneſſes. Sir *Robert*, it ſeems, upon her Anſwer in *Chancery*, not imagining any Thing of this, ſhe having diſclaimed in *Chancery* the having of any; ſome Time after he had heard a Report, as if ſhe was ſetting up of a new Bond, and that Mr. *Woodward* could give an Account of it. Wherefore he ſends Mr. *Baker* to Mr. *Woodward*, who gave him the ſame Account that he has done here. Then Sir *Robert* makes a Complaint, and has her brought before me; and there was Mr. *Woodward* with this Copy. And this was objected to her, as if ſhe had forged this Bond. And it ſeems, when ſhe was there under Examination, and is proved to you by Mr. *Baker*, ſhe did plainly confeſs, that ſhe had forged this Bond of Forty thouſand Pounds, and that ſhe had procured one *Lewkar* to do it for her, who ſet Sir *Robert*'s Name to it; and ſaid, that the Witneſſes, whoſe Names were ſet to it, were innocent, and knew nothing of the Matter.

Now, what is ſaid for her on the other Side? They bring ſome Perſons for her, that ſay they have known her. One, that ſays he belonged to *Lincoln*'s-*Inn*, and had been acquainted with her fourteen or fifteen Years, and did look upon her as a civil Woman; and for his Part, he does not believe ſhe would be guilty of ſuch a Forgery. Another, who is a Woman, ſays, ſhe has known her ſome Time, and ſhe ſays, ſhe has truſted her much, and did never hear her ſay any Thing of this Bond, but ſhe behaved herſelf civilly, and ſhe took her to be a very ſober Perſon. Another Witneſs ſays, ſhe look'd on her to be a very honeſt Perſon. This is the Sum of the Evidence.

There is a very ſtrong Evidence to induce you to believe that ſhe did forge the Bond. Such a Bond ſhe had, that is plain. She does give no Account what is become of it; and ſhe does not ſhew any manner of Pretence of having ſo much Money from Sir *Robert Clayton* due to her; ſhe does not make it appear, why Sir *Robert* ſhould give her a Bond upon any Account. Now, for any to ſay that they knew her, and they do not believe ſhe would forge a Bond, that is no Evidence; nobody ought to believe Ill of Mrs. *Butler*, or any one elſe, unleſs it be made to appear. But the Queſtion is not, what they do believe; but whether the Matter be proved to you to your Satisfaction that ſhe has forged this Bond? And if you are ſatisfied that ſhe did forge it, you ought to find her guilty; and if you do not believe the Evidence to be ſatisfactory, you ought to acquit her.

[*Then the Jury withdrew, and being returned, gave their Verdict as follows:*]

Cl. of Arr. Are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Foreman.

Cl. of Arr. Bring *Mary Butler* to the Bar. How ſay ye? Is the Priſoner at the Bar guilty of the Forgery whereof ſhe ſtands indicted, or not guilty?

Foreman. Guilty.

[*The Judgment which the Court pronounced againſt her was, That ſhe ſhou'd pay a Fine of Five hundred Pounds to the King, and continue in Priſon till ſhe paid it.*]

CLXVIII. *The Proceedings in Parliament upon the* Bill *of* Divorce *between His Grace the Duke of* NORFOLK *and the Lady* MARY MORDANT, February *and* March, 1699. 12 Will. III.[*]

VIZ.

I. *The Journal of the Houſe of* LORDS, *together with the* BILL.
II. *The Depoſitions before their* LORDSHIPS.
III. *The Examination and Evidence of the* DUKE'*s Witneſſes.*
IV. *The State of the Caſe on both Sides.*
V. *Biſhop* Couſens'*s Argument, proving that* Adultery *cauſes a Diſſolution of Marriage.*
VI. *The Pleadings of the* Learned Counſel, *before the Honourable* Houſe of Commons *and the* Committee, *with other Matters thereto relating.*

Die Jovis 15 *Februarij*, 1699.

UPON Reading the Petition of *Henry* Duke of *Norfolk*, praying Leave to bring in a Bill to diſſolve his Marriage with the Lady *Mary Mordant*, and to enable him to Marry again, he having certain Proof of his Wife's living in Adultery with Sir *John Germaine*: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Petition ſhall be taken into Conſideration To-morrow, at Eleven of the Clock, and all the Lords ſummon'd to attend.

Die Veneris 16 *Februarij*, 1699.

After reading the Order for reſuming the Conſideration of the Duke of *Norfolk*'s Petition, and Debate thereupon;

Hodie prima vice lecta eſt billa, entitled, An Act to diſſolve the Duke of *Norfolk*'s Marriage with the Lady *Mary Mordant*, and to enable him to Marry again. In the Words following,

‘ Humbly ſheweth, and complaineth to Your moſt Excellent Majeſty, your true and faithful Subject *Henry* Duke of *Norfolk*, and Earl-Marſhal of *England*, That he did, ſome Years ſince, marry the Lady *Mary Mordant*, his now Wife; and, that ſhe hath, for divers Years, lived in Separation from the ſaid Subject, and hath had unlawful Familiarity and adulterous Converſation with Sir *John Germaine*, Bart. and is guilty of Adultery on her part, and hath broken the Bond of Matrimony: Foraſmuch therefore, as your ſaid Subject hath no Iſſue, nor can hope for any other than ſpurious Iſſue to ſucceed him in his Honours, Dignities, and Eſtate, unleſs the ſaid Marriage be declar'd void, and annull'd by Parliament, and your ſaid Subject be enabled to marry any other Woman. May it pleaſe Your moſt Excellent Majeſty, out of your Princely Goodneſs and Compaſſion to your ſaid Subject's Misfortune and Calamity, and for the future Support and Comfort of himſelf and Family, that it may be enacted: And be it enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and of the Commons in this preſent Parliament aſſembled, and by the Authority of the ſame, That the ſaid Bond of Matrimony being violated and broken by the manifeſt open Adultery of the ſaid Lady *Mary Mordant*, Be, and is hereby enacted, declared, and adjudged to be from henceforth wholly diſſolved, annulled, vacated, and made void to all Intents, Conſtructions, and Purpoſes whatſoever: And, that it ſhall and may be lawful to and for the ſaid *Henry* Duke of *Norfolk*, at any time or times hereafter, to contract Matrimony, and to marry (as well in the Life-time of the ſaid Lady *Mary*, as if ſhe were naturally dead) with any other Woman or Women with whom he might lawfully marry in caſe the ſaid Lady *Mary* was not living: And, that ſuch Matrimony, when had and celebrated, ſhall be a good, juſt, and lawful Marriage, and ſo ſhall be adjudged, deemed, and taken to all Intents, Conſtructions, and Purpoſes; and, that all and every Child and Children, born in ſuch Matrimony, ſhall be deemed, adjudged, and taken to be born in lawful Wedlock, and to be legitimate and inheritable, and ſhall inherit the ſaid Dukedom of *Norfolk*, Office of Earl-Marſhal of *England*, and all other Earldoms, Dignities, Baronies, Honours, and Titles of Honour, Lands, Tenements, and other Hereditaments from and by their Fathers, Mothers, and other Anceſtors, in like manner and form as any other Child or Children born in lawful Matrimony ſhall or may inherit or be inheritable, according to the Courſe of Inheritances uſed in this Realm; and to have and enjoy all Privileges, Pre-eminencies, Benefits, Advantages, Claims, and Demands, as any other Child or Children born in lawful Wedlock may have or claim by the Laws and Cuſtoms of this Kingdom. And be it further enacted, That the ſaid *Henry* Duke of *Norfolk* ſhall be entitled to be Tenant by Courteſie of the Lands and Inheritance of ſuch Wife whom he ſhall hereafter marry; and ſuch Wife as he ſhall ſo marry ſhall be entitled to Dower of the Lands and Tenements whereof the ſaid *Henry* Duke of *Norfolk* ſhall be ſeiſed of ſuch Eſtate whereof ſhe ſhall be dowable, as any other Huſband or Wife may or might claim, have, or enjoy. And the Child or Children born in ſuch Marriage ſhall and may derive and make Title by Deſcent or otherwiſe to and from any of their Anceſtors, as any other Child or Children may do, any Law, Statute, Reſtraint, Prohibition, Ordinance, Canon, Conſtitution, Preſcription, or Cuſtom had, made, exerciſed, or uſed to the contrary of the Premiſes, or any of them, in any wiſe notwithſtanding. And be it further enacted by the Authority aforeſaid, That the ſaid Lady *Mary* ſhall, and is hereby barred and excluded of and from all Dower and Thirds, and of and from all Right and Title of Dower and Thirds unto or out of any of the Honours, Manors, Lands, or Hereditaments of the ſaid Duke; and, That all Conveyances, Joyntures, Settlements, Limitations, and Creations of Uſes and Truſts of, into, or out of any Honours, Manors, Lands, or Hereditaments, at any time heretofore made by the ſaid Duke, or any of his Anceſtors or Truſtees, unto, or upon, or for the Uſe or Benefit of the ſaid Lady *Mary*, or any the Iſſue of her Body, or for eaſing, diſcharging, or counter-ſecuring any the Manors, Lands, or Hereditaments of the ſaid Lady *Mary*, or any of her Anceſtors, ſhall be from henceforth, ſo far as concerns the ſaid Lady *Mary*, or any Iſſue of her Body, or any Intereſt for her or them, utterly void and of none effect; and all and every the ſaid Honours, Manors, Lands, or Hereditaments of the ſaid Duke, or any of his Anceſtors or Truſtees, ſhall from henceforth remain, and be to and for the Uſe and Benefit of the ſaid Duke, and ſuch other Perſon or Perſons, and for ſuch Eſtates and Intereſts, and in ſuch manner and form as if the ſaid Lady *Mary* was now naturally dead without any Iſſue of her Body. And alſo, That all Limitations and Creations of any Uſe, Eſtate, Power, or Truſt, made by any of the Anceſtors of the ſaid Lady *Mary*, unto or for the Uſe or Benefit of the ſaid Duke, his Heirs or Aſſigns, out of any the Manors, Lands, or Hereditaments of any the Anceſtors of the ſaid Lady *Mary*, ſhall be from henceforth void, and of none effect. [†] And be it further enacted by the Authority aforeſaid, That the ſaid Duke of *Norfolk*, his Heirs, Executors, Adminiſtrators, or Aſſigns, ſhall, on or before the Five-and-twentieth Day of *March*, One thouſand ſeven hundred and one, pay, or cauſe to be paid, unto the ſaid Lady *Mary*, or her Aſſigns, the Sum of Ten Thouſand Pounds of lawful Money of *England*, which was the Portion in Money paid on her Marriage with the ſaid Duke; and on default of Payment of the ſaid Sum of Ten Thouſand Pounds, on or before the ſaid Five-and-twentieth Day of *March*, then, and in ſuch caſe, ſhe the ſaid Lady *Mary*, and her Aſſigns, during her Natural Life from the Deceaſe of the ſaid Duke, if ſhe ſhall ſurvive him, ſhall be entitled to, and ſhall and may have and enjoy ſuch Joynture and other advantages as ſhe might or may have or claim by vertue of a certain Indenture, *Quinquepartite*, made upon and in conſideration of the ſaid Marriage, bearing Date the Thirteenth Day of *June*, *Anno Domini* One thouſand ſix hundred ſeventy-ſeven, and made, or mention'd to have been made, between *Henry* late Duke of *Norfolk*, then Earl of *Norwich*, Father of the ſaid Duke, and the preſent Duke, by the Name of *Henry* Lord *Howard* of the firſt Part; *Henry* Earl of *Peterborow* and the ſaid Dutcheſs, by the Name of the Lady *Mary Mordant*, ſole Daughter and Heir apparent of the ſaid Earl of *Peterborow*, of the ſecond Part; *Henry* Marquis of *Worceſter*, *William* Earl of *Powis*, and *Henry* Lord *O-Brian*, of the third Part; *Arthur Onſlow*, Eſq; and *Thomas Dalmatroy*, Eſq; of the fourth Part; *Simon Fox*, Eſq; and *Thomas Weſt*, Gent. of the fifth Part: And by vertue of the Agreements contain'd in certain Articles bearing Date the eight-and-twentieth Day of *April*, in the Year of our Lord One thouſand ſix hundred ninety-four, made, or mention'd to have been made, between the ſaid Duke of the one Part, and the ſaid *Henry* Earl of *Peterborow* on behalf of the ſaid Dutcheſs; and the ſaid Dutcheſs of the other Part, according to the true Intent and Meaning of the ſaid *Quinquepartite* Indenture and Articles; and alſo, during the joint Lives of the ſaid Duke and Dutcheſs, ſhall and may enjoy Five hundred Pounds *per Annum*, by vertue of an Indenture *Quadrupartite*, dated the Fifteenth Day of *June*, One thouſand ſix hundred ninety-four, made, or mention'd to have been made, between the ſaid Duke of *Norfolk* of the firſt Part, the ſaid Earl of *Peterborow* and the ſaid Dutcheſs of the ſecond Part, *William* Lord *Lemſter* of the third Part, and Sir *John Mordant*, Knight and Baronet, and *William Longueville*, Eſq; of the fourth Part. And then, and in ſuch Caſe, the ſaid Duke of *Norfolk*, his Heirs, Executors, and Adminiſtrators, is and are diſcharg'd of and from the Payment of the ſaid Sum of Ten Thouſand Pounds, any Thing herein contained to the contrary thereof in anywiſe notwithſtanding. But on Payment of the ſaid Ten Thouſand Pounds in manner aforeſaid, ſhe the ſaid Lady *Mary* ſhall be wholly barred and excluded from her ſaid Joynture, and of and from all other Advantages out of the Real and Perſonal Eſtate of the ſaid Duke, as aforeſaid.’

Upon the firſt Reading of the Bill, entitled, *An Act to diſſolve the Duke of* Norfolk'*s Marriage with the Lady* Mary Mordant, *and to enable him to Marry again*; it is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, that the Dutcheſs of *Norfolk* may have a Copy of the ſaid Bill; and that his Grace the Duke of *Norfolk* ſhall be heard by his Counſel, to make good the Allegations of his Bill, on *Tueſday* next, at Eleven of the Clock in the Forenoon; and that the Dutcheſs of *Norfolk* may have Counſel to attend at the ſame time, if ſhe pleaſe.

Die Sabbati 17 *Februarij*, 1699.

Upon reading the Petition of *Mary* Dutcheſs of *Norfolk*, praying to be heard by her Counſel before any further Proceedings be made on the Bill, entitled, *An Act to diſſolve the Duke of* Norfolk'*s Marriage with the Lady* Mary Mordant, *and to enable him to Marry again*; it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that the Dutcheſs of *Norfolk* ſhall be heard by her Counſel as deſired, on *Tueſday* next, at Eleven of the Clock in the Forenoon.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *William Lane* and *John le Fountain*, Gent. do attend this Houſe on *Tueſday* the Twentieth Day of this Inſtant *February*, at Ten of the Clock in the Forenoon, as Witneſſes to be examined on the behalf of the Duke of *Norfolk*.

Die Lunæ 19 *Februarij*, 1699.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Mr. *Daniel Germaine*, Mr. *Simon Briane* alias *de Brienne*,

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[*] See *State Trials*, Vol. VIII. p. 7, and 27, &c. for Two former Trials relating to this Affair.

[†] This Clauſe was added after the Bill was brought into the Houſe of Lords.

Mrs. *Anna-Maria Briane* alias *de Brienne*, and Mrs. *Judith Poſſette* alias *Perſode*, do, and they are hereby requir'd, to attend this Houſe, as Witneſſes on the Behalf of his Grace the Duke of *Norfolk*, To-morrow at Eleven of the Clock in the Forenoon.

Die Martis 20 *Februarij*, 1699.

After hearing Counſel, upon the Petition of the Dutcheſs of *Norfolk*, purſuant to the order of the Seventeenth inſtant; as alſo Counſel for the Duke of *Norfolk*, the following Order was made; *viz.*

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will hear Witneſſes for the Duke of *Norfolk*, only to Matter of Fact, ſince the rejecting of the firſt Bill, except only Mr. *Daniel Germaine*, Mr. *Simon Briane* alias *de Brienne*, Mrs. *Anna-Maria Briane* or *de Brienne*, Mrs. *Judith Poſſette* or *Perſode*, Mrs. *Elianor Vaneſs*, who are at liberty to give Evidence to Matters of Fact before that Time, which were not then before the Houſe; and are hereby required to attend this Houſe, as Witneſſes on the Behalf of his Grace the Duke of *Norfolk*, To-morrow Morning at Eleven of the Clock.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That To-morrow at Twelve of the Clock, this Houſe will proceed to hear Counſel and Witneſſes for the Duke of *Norfolk*, to make good the Allegations in his Bill; at which Time the Dutcheſs of *Norfolk*'s Counſel ſhall be preſent.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *William Bayly* and *Edmund Davis* do, and they are hereby required to attend this Houſe To-morrow at Eleven of the Clock in the Forenoon, as Witneſſes to be examined on the behalf of the Duke of *Norfolk*.

Die Mercurii 21 *Februarij*, 1699.

The Houſe being inform'd, That Endeavours had been made to ſerve Orders upon the Duke of *Norfolk*'s Witneſſes, and ſeveral of them were ſick, and others could not be found:

Joſeph Whilley being call'd in and ſworn, ſaid as follows:

Daniel Germaine. I went to his Houſe, and was told by a Neighbour nobody was within; but they bid me go to the Alehouſe at the next Door, and I might hear of him; and enquiring there, I found one of his Journeymen, *Peter Hercules*, who told me, he had not been at home theſe ſix Months, nor could not tell when he would return: But I ſhewed him the original Order, and ſerv'd him with a Copy, and told him his Maſter was to appear at the Duke of *Norfolk*'s Lodgings, at the Houſe of Lords, To-morrow at Eleven a-Clock, as a Witneſs for him.

Mr. *Simon Briane.* I went to his Houſe in *St. James's-ſtreet*, and Mr. *Poſſette*'s Man, *Jer. Hoffman*, came to the Door, who told me Mr. *Briane* went to *Kenſington* that Afternoon; and no ſooner had he ſaid ſo, but Mr. *Poſſette* came in, who told me the ſame; and I aſk'd him to ſpeak with Mr. *Briane*'s Wife, and he told me ſhe was ſo weak, that I could not ſerve her with the Order. Then I aſk'd to ſee Mrs. *Poſſette*, his own Lady; he likewiſe told me ſhe was ſick, and could not be ſpoke to; ſo I ſhew'd him the original Order, and left the Copy with himſelf for his Lady and Mr. *Briane*'s Lady, and forthwith went to *Kenſington*, to ſerve the Order upon Mr. *Briane*; but not meeting with him, after a great deal of Enquiry, I left it with his Maid-ſervant at his Lodgings, and ſerv'd her with it, who told me ſhe would give it her Maſter that Night, who waited for the King's coming from *Hampton-Court*. This Morning I went again to his Houſe at *St. James's*, and ſent for his Servant, who told me his Maſter did not come to Town laſt Night; ſo I believe his Maid had given him the Order.

Mrs. *Elianor Vaneſs.* I enquired at every Houſe in *Kenſington*, where I was inform'd there were *Dutch* People, and could not know of any of them of any ſuch Woman; but the Earl of *Albemarle*'s Steward, and the Porter of the Lodge going into *Hide-Park (Kenſington)*, promis'd me they would enquire after her, and ſend me word if they heard of ſuch a Perſon.

Then *George Starkey* being call'd in and ſworn, ſaith as followeth: I ſerved *William Bayly* with the Order of this Houſe, to attend as a Witneſs this Day: He told me he was under a Courſe of Phyſick, and could not ſtir out without Danger of his Life; but any other Day he would attend.

Then a Certificate under the Hands of *John Hutton* and *Theodore Colladon*, Doctors of Phyſick, was produced and read, as follows:

We whoſe Names are under-written, Doctors of Phyſick, do certify, that *Mary* Wife of *Simon de Brienne*, and *Judith* Wife of *Peter Perſode*, have been for ſome time, and are at this preſent, ſo extraordinary ill in Bed, that neither of them can remove from thence without Danger of their Lives. Witneſs our Hands, at their Dwelling-houſe in *St. James's-ſtreet*, betwixt Ten and Eleven of the Clock in the Morning, the 21ſt Day of *February*, $\frac{1699}{1700}$.

John Hutton.
Theodore Colladon.

After which, the following Order was made; *viz.*

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Doctor *John Hutton* and Doctor *Theodore Colladon* (who ſign'd a Certificate delivered and read this Day, of the Illneſs of Mrs. *Mary*, Wife to *Simon de Brienne*, and *Judith* her Siſter, Wife to Mr. *Peter Perſode*) do attend this Houſe To-morrow at Eleven of the Clock, to atteſt upon Oath what they have certified.

Then the Form of the Oath formerly given to Witneſſes, being read out of the Journal, 23 *Jan.* 1691, the ſame was agreed to with ſome Alteration, and is as followeth:

> "YOU ſhall true Anſwer make to all ſuch Queſtions as ſhall be aſk'd you by this Honourable Houſe, in relation to the Charge of Adultery in the Bill brought in by the Duke of *Norfolk* againſt the Dutcheſs of *Norfolk* with Sir *John Germaine*. You ſhall declare your whole Knowledge of this Matter, and ſhall ſpeak the Truth, and nothing but the Truth, as well upon the Matter as you ſhall be examined on behalf of his Grace the Duke of *Norfolk*, as upon ſuch Interrogatories as ſhall be exhibited on behalf of the Dutcheſs of *Norfolk*, without Favour or Affection to either Party. So help you God, and by the Contents of this Book."

Then the Counſel being called in, they for the Duke having opened the Nature of their Evidence, Mrs. *Elianor Vaneſs* was ſworn; and being aſked ſome Queſtions by the Duke's Counſel, ſhe appeared to be a *Dutch* Woman, and could not well underſtand *Engliſh*; and an Interpreter being offered by the Duke's Counſel, Counſel withdrew, and the Houſe agreed, that the Dutcheſs's Counſel ſhould have an Interpreter alſo; and the Counſel being called in again, were told ſo by Order of the Houſe, and that they might proceed to any other Witneſs. The Duke's Counſel deſired that they might begin with Mrs. *Vaneſs*, and withdrew.

Then the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Agents for the Duke of *Norfolk* do forthwith deliver a Liſt of the Witneſſes they intend to examine on the behalf of the Duke of *Norfolk*, to the Dutcheſs of *Norfolk* or her Agents.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That To-morrow at Twelve of the Clock, this Houſe will proceed to hear Counſel and Witneſſes for the Duke of *Norfolk*, to make out the Allegations in his Bill; at which Time the Dutcheſs of *Norfolk*'s Counſel ſhall be preſent.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *Daniel Germaine*, *Simon Briane* alias *de Brienne*, *Anna-Maria Briane* alias *de Brienne*, *Judith Poſſette* alias *Perſode*, —— *Goutaken*, —— *Pontack*, *Suſannah Barrington*, —— *Hugonee*, Mrs. *Keemer*, *Joſeph Berger*, *William Lane*, *John le Fountaine*, *Jonathan Browne*, —— *Hatter*, and —— *Welburne* do, and are hereby required, to attend this Houſe To-morrow at Eleven of the Clock in the Forenoon, as Witneſſes to be examined on the behalf of the Duke of *Norfolk*.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *William Allen* and *John Maitland* do, and they are hereby required to attend this Houſe, on Service of this Order, as Witneſſes to be examined on behalf of the Duke of *Norfolk*.

Die Jovis 22 *Februarij*, 1699.

This Houſe being informed, that Sir *Theodore Colladon* and Doctor *Hutton* attended, as ordered yeſterday:

Sir *Theodore Colladon* being called in and ſworn, ſays, He ſaw Mrs. *de Brienne* yeſterday; ſhe was very ill, fainting in Bed, and ſcarce able to live. Mrs. *Perſode* he alſo viſited, who having miſcarried by a Fright, could not ſtir out of her Bed without hazard of her Life.

Doctor *Hutton* being called in and ſworn, ſays, He viſited Mrs. *Mary de Briane* this Morning; ſhe hath been ſick three Months, is in an ill Condition of Health, and will endanger her Life if ſhe comes abroad. Mrs. *Perſode* is very ill, ſhe cannot come out of her Bed without endangering her Life.

Then the Counſel were called for the Duke and Dutcheſs of *Norfolk*.

The Dutcheſs's Counſel moved to have the Witneſſes Chriſtian Names, and Place of their Abode, and ſaid they had not the Names till this Morning.

Then the two Interpreters took the following Oath.

You ſhall well, truly, and faithfully interpret between the Houſe and Elianor Vaneſs, *the Witneſs, touching the Matters ſhe ſhall give in Evidence.*

Counſel being withdrawn, the Houſe agreed to tell the Duke's Counſel, that they might proceed to examine Witneſſes that were named the Day before: And that if the Dutcheſs's Counſel had any Exception, they might now make it againſt them or their Teſtimony; and that the Duke's Agents ſhould give the Chriſtian Names of their Witneſſes, and as much as they can of the Places of their Abode to the Agents of the Dutcheſs.

The Counſel being called in again, were told what was agreed on by the Houſe touching the Witneſſes: Then the Duke's Counſel proceeded and called in *Elianor Vaneſs*, who being aſk'd ſeveral Queſtions by the Duke's Counſel, the Interpreter aſk'd them of her in *Dutch*, and ſhe anſwered again to the Interpreter; and he declared her Anſwers to the Houſe in *Engliſh*.

Nicholas Hauſier being ſworn in like manner, gave his Teſtimony in *French* by an Interpreter.

Then Counſel being withdrawn, the following Orders were made; *viz.*

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Short-hand Writers, who took the Witneſſes Evidence, do dictate to a Clerk, in order to be tranſcribed what the Witneſſes have ſaid; That the Examinations with the Short-hand Writers Book and Papers are to be ſealed up and kept by the Clerk until the next Day the Houſe ſhall proceed on this Matter, and then what is tranſcribed ſhall be read at the Bar in the Preſence of the Witneſs.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That on *Saturday* next, at Twelve of the Clock, this Houſe will proceed to hear Counſel and Witneſſes for the Duke of *Norfolk*, to make out the Allegations of his Bill; at which Time the Dutcheſs of *Norfolk*'s Counſel ſhall be preſent.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *Simon Briane* alias *de Brienne* ſhall be, and is hereby required, to attend this Houſe on *Saturday* next at Eleven of the Clock in the Forenoon, to be examined as a Witneſs on behalf of the Duke of *Norfolk*.

Die Veneris 23 *Februarij*, 1699.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *James Berger*, *Suſannah Barrington*, *Frances Knight*, and *James Macdonnell*, ſhall, and they are hereby required to attend this Houſe To-morrow at Eleven of the Clock in the Forenoon, as Witneſſes to be examined on the behalf of the Duke of *Norfolk*.

Die Sabbati 24 *Februarij*, 1699.

The Houſe being moved, That Mr. *Simon Briane* or *de Brienne* may be ſent for in Cuſtody, for not having attended according to the Order of this Houſe, as a Witneſs for the Duke of *Norfolk*:

Hereupon *Thomas Kellett* was called in; and being ſworn, ſaid to this Effect, *viz.*

I went to the Houſe of the Dutcheſs of *Norfolk*, and enquired for Mrs. *Suſannah Barrington*, and if ſhe lived there? A Man ſaid, No: I aſked if he could tell me where ſhe was? He ſaid, No.

Then I went to ſerve Mr. *Simon Briane* or *de Brienne*; and being at his Houſe, enquired for Him: His Man ſaid, his Maſter was gone to *Kenſington*. He took the Order, and ſaid he would give it his Maſter.

I went to the Lord *Cutt*'s Houſe, and aſk'd for one Mr. *Berger*, but could not hear of him; I went to my Lord's Stables, and aſked his Coachman for Mr. *Berger*, he ſaid he lived in *Hedge-Lane*; there I went and found his Wife, and delivered the Order to her; ſhe ſaid, ſhe would have nothing to do with it, and that Mr. *Germaine* gave him Bread. I ſaw him Yeſterday, and he told me he had been with the Duke of *Norfolk*, and would attend him again.

I went again to the Dutcheſs of *Norfolk*'s Houſe to ſerve Mrs. *Barrington*; and one told me ſhe was ſeen to look out of a Window, and another told me ſhe was at Home; ſo I could not ſerve the Order on her.

The Houſe being informed upon Oath, That a Copy of the Order for Mr. *Simon Briane* or *de Brienne* to attend this Houſe, as a Witneſs for the Duke of *Norfolk*, was left with his Servant at his Dwelling-place, and he not attending this Houſe, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Serjeant at Arms, attending this Houſe, do forthwith attach the Body of the ſaid *Simon Briane* or *de Brienne*, and bring him to the Bar of this Houſe to anſwer for his Offence: And this ſhall be a ſufficient Warrant on that behalf.

To the Serjeant at Arms attending this Houſe, his Deputy or Deputies, and every of them.

The Houſe was informed that one *Hugonee*, Servant to the Lord *Haverſham*, being ſummoned, was ſince gone away. Of which the Lord *Haverſham* gave the Houſe an Account to this Effect; That he received a Letter from the Duke of *Norfolk*, wherein he deſired his Servant might attend the Houſe this Day. And his Lordſhip writ an Anſwer that he ſhould. But when his Lordſhip aroſe in the Morning, his Servant was gone away, and told the Laundry-woman or Servants, he had a Quarrel, and was going for *Holland*.

The Counſel and Witneſſes being called in for the Duke of *Norfolk*, the Dutcheſs's Counſel preſent, and Mrs. *Vaneſs* at the Bar, the tranſcribed Depoſitions from the Short-hand Writer were read to her, and ſhe ſigned them.

In like manner *Nicholas Hoſier*'s Depoſition was read, and he ſigned it.

Then the Counſel proceeded, and examined *William Bayly*, and his Depoſitions were taken in Short-hand, was left with the Clerk to be tranſcribed, in order to be read to him on *Monday* next.

Counſel withdrew, and it was ordered that *William Bayly* do attend this Houſe on *Monday* next.

Then the following Orders were made.

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That on *Monday* next at Twelve of the Clock this Houſe will proceed to hear Counſel and Witneſſes for the Duke of *Norfolk*, at which Time the Dutcheſs of *Norfolk*'s Counſel ſhall be preſent.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Mr. Secretary *Vernon* be deſired to ſend to this Houſe, on *Monday* next at Eleven of the Clock, the Books wherein the Entries of Paſſes are in the Months of *January*, *February*, and *March*, One thouſand Six hundred Ninety-one.

Die Lunæ 26 *Februarij*, 1699.

The Counſel for the Duke and Dutcheſs of *Norfolk* were called in, and the Examination of *William Bayly* was read to him; and he being croſs-examined by the Dutcheſs's Counſel, and that Examination read to him, he ſigned them.

Then *John Curry* was called in and ſworn, ſaid, I went to ſerve Mr. *La Fountaine* and Mr. *Lane* with the Order for their Attendance.

Mr. *La Fountaine*'s Wife lay in; he ſaid he could not be forced to come, he was not a Subject of *England*, and is the Lady Dutcheſs's Servant.

Mr. *Lane* gave me a Letter to the Clerk of the Parliament, which was read, and in it he deſired further Time, not having Horſes, nor could ride faſt.

The Dutcheſs's Counſel moved for Copies of the Depoſitions taken, and Time for the Dutcheſs to be heard, and withdrew. Then the following Orders were made, (*viz.*)

An Order for both Parties to have Copies of the Depoſitions, and ſo much as relates to that Matter in the Journal.

The other for hearing the Dutcheſs by her Counſel, on *Monday* next, and the Duke's Counſel then to be preſent.

Depoſitions of *Elianor Vaneſs*.

Die Jovis 22 *Februarij*, 1699.

Elianor Vaneſs ſworn, Depoſeth as followeth, (*viz.*)

Queſt. D'ye know Sir *John Germaine* and the Dutcheſs of *Norfolk?*

Anſw. Yes.

Q. How long have you known them?---*A.* Two Years.

Q. When did you firſt come acquainted with them?

A. Sir *John Germaine*'s Siſter hired me for a Cook-maid the Summer after the King came for *England*.

Q. In what Month of that Year?---*A.* In *May*.

Q. Did you live with either of them as a Servant-maid?

A. I lived two Months with my Lady Dutcheſs, in Sir *John Germaine*'s Houſe.

Q. How long did you live in the Houſe with them?

A. Till they went to *Vaux-hall*.

Q. How long was the Dutcheſs in the Houſe before they went to *Vaux-Hall?*---*A.* Two Months.

Q. Where was that Houſe?---*A.* Juſt over *Spring-Garden*.

Q. At the Time when the Lady Dutcheſs lived with Sir *John Germaine*, what Company and Converſation did they keep with one another? And in what Manner?---*A.* Like Man and Wife.

Q. Where was it the Lady Dutcheſs lived when you came firſt into *England?*---*A.* In Sir *John Germaine*'s Houſe.

Q. Where did ſhe live then?----*A.* The Dutcheſs lived there then.

Q. How long continued ſhe there?---*A.* About two Months.

Q. How did they live together during that Time?

A. Like Man and Wife.

Q. Saw you them in Bed together at any Time, at that Place in the *Cockpit?*---*A.* Yes.

Q. How often?

A. Many times; as often as Man and Wife ſhe ſaw them in Bed, but did not put them in Bed in thoſe two Months.

Q. Did you think any otherwiſe, but that they had been Man and Wife?

A. She did not at firſt, but afterwards ſhe did; and then they kept her within Doors, for fear ſhe ſhould tell it.

Q. Whither did the Dutcheſs go after that two Months?

A. To *Vaux-Hall*.

Q. How long did ſhe live there?---*A.* About two Years.

Q. Did Sir *John Germaine* uſe to come and keep Company with the Dutcheſs there?

A. Yes; he uſed to come and dine with her ſometimes; and he lay there ſometimes.

Q. What Converſation had Sir *John Germaine* with the Dutcheſs at *Vaux-Hall?*----*A.* They convers'd together as Man and Wife.

Q. How long?---*A.* Sometimes one Night, ſometimes two.

Q. How often did he uſe to come thither?

A. Sometimes twice, ſometimes three times a Week, and ſometimes but once.

Q. Had they one Bed, or two?-----*A.* But one.

Q. What name did the Dutcheſs go by at *Vaux-Hall?*

A. By the Name of the Lady *Beckman*.

Q. What Kin was Sir *John Germaine* pretended to be to the Lady Dutcheſs?---*A.* Her Brother: my Lady Dutcheſs ſaid ſo.

Q. Did you go with them to *Vaux-Hall*, or not?

A. She went with the Lady Dutcheſs.

Q. Whoſe Servant was you there?---*A.* Lady Dutcheſs's.

Q. How long did you ſerve the Lady Dutcheſs?

A. She ſtaid with her till ſhe went to *Mill-bank*.

Q. How came you to leave their Service?

A. They ſent her away upon the Account of the late Trial.

Q. Who went with you?

A. Mrs. *Suſannah*, Chambermaid to the Lady Dutcheſs; and Mr. *Nicholas*, that was Gentleman to Sir *John Germaine*.

Q. What's his Name?---*A.* *Nicholas Hoſier*.

Q. Who took care of your Paſſage?---*A.* *Nicholas Hoſier*.

Q. Whither was you order'd to go?---*A.* To *Holland*, to the *Hague*: They paid her in full, and promiſed fifty Livres beſides.

Q. Was any Part of it paid? and by whom?

A. She receiv'd it in four Quarters, from his Brother *Philip*, at the *Hague*.

Q. Whoſe Brother?---*A.* Sir *John Germaine*'s Brother.

Q. Who hired you when you came to *England?*

A. Mr. *Briane*'s Wife.

Q. What Kin is ſhe to Sir *John Germaine?*

A. His Siſter; and they promiſed, if Matters did not go for the Dutcheſs, ſhe would come to *Holland* herſelf, and take her into her Service again.

Q. Have you ſeen Sir *John Germaine* and the Dutcheſs in Bed together at *Mill-bank?*---*A.* Once or twice.

Q. How long had the Lady Dutcheſs lived at *Mill-bank* ere you left her Service?---*A.* Nine or ten Weeks.

Q. How came you to ſee them in Bed together?

A. By reaſon none was ſuffer'd to come into the Room, the Bedchamber, but ſhe and another Maid, to bring Neceſſaries, as Water to waſh their Hands, and to clean the Room.

Q. Did you ſee them at their undreſſing, when they went to Bed?

A. She undreſs'd them herſelf, and ſaw them in Bed.

Q. Give an Account how you two came to be admitted into the Chamber, and what you ſaw there.

A. She help'd them to Bed, and ſaw them go to Bed together.

Q. Saw you them next Morning?---*A.* Yes.

Q. On what Occaſion came you into the Chamber in the Morning?

A. She came with Chocolate, and Water to waſh their Hands.

Q. Did you ever ſee Mr. *Nicholas Hoſier* there?

A. Yes; he did the buſineſs that ſhe did when ſhe could not be preſent; he was *Valet de Chambre*.

Q. Was he *Valet de Chambre* to Sir *John Germaine*, or to the Dutcheſs?

A. He belong'd to the Dutcheſs at *Vaux-Hall*, and afterwards to Sir *John Germaine*.

Q. Came he to Sir *John Germaine* before the Lady Dutcheſs went to *Vaux-Hall*, or not?

A. The Dutcheſs was at *Vaux-Hall* when he came to Sir *John Germaine*.

Q. Who lived with the Dutcheſs at *Vaux-Hall?*

A. Sir *John Germaine*'s Siſter.

Q. Who hired you?---*A.* Mrs. *Briane*, Mr. *Briane*'s Wife.

Q. Was there no other Relation of Sir *John Germaine*'s that lived there beſides?---*A.* Mrs. *Judith*.

Q. What Mrs. *Judith?* What's her Name?

A. She does not know.

Q. What Kin was Mrs. *Judith* to Sir *John Germaine?*---*A.* His Siſter.

Q. Did the Dutcheſs uſe to go to no other Place?

A. None but to the neighbouring Gardens, to gather Flowers.

Q. When you were at *Mill-bank*, did you ever ſee the Dutcheſs's Father?

A. She hath been ſeveral times at the Dutcheſs's Father's; and the Lady Dutcheſs told her Father and Mother, that ſhe brought her from *Holland*; ſhe dreſs'd three Diſhes of Meat by Order of the Dutcheſs.

Q. Who was the Lady Dutcheſs's Father? Where did he live?

A. He lived at *Mill-bank*, but could not tell his Name; the Lord *Peterborough*, ſhe ſays, but could not think on't before now.

Q. When ſhe lived with *Germaine* at the *Cockpit*, was there no other that lived with them at that Time?—*A.* Nobody.

Q. Did Sir *John Germaine*'s Brother-in-Law or Siſter lie in the Houſe at any time?

A. Yes; when they came firſt to *England* they uſed to lie there.

Q. Name them?

A. Mr. *Briane*, and his Wife.

Q. Did you ſee any of Sir *John Germaine*'s Relations, at any time, in the Room during the Time that the Dutcheſs was in Bed with him?

A. Yes; Mr. *Briane* and his Wife.

Q. Was Sir *John Germaine* in Bed at that time with the Dutcheſs?

A. Yes.

Elianor Vaneſs *croſs-examin'd.*

Q. Was it at *Vaux-Hall* that the Lady Dutcheſs ſaid, That *Germaine* was her Brother?—*A.* Yes.

Q. Did the Dutcheſs tell you, that Sir *John Germaine* was her Brother?

A. She gave it out among the Neighbours, but never told her ſo.

Q. Was you Cookmaid?—*A.* She was hired for Cookmaid.

Q. Did you continue to act as Cookmaid?—*A.* Yes, at *Vaux-Hall.*

Q. Was you at the Cockpit?

A. She uſed to clean the Rooms, and nobody was ſuffer'd to come into the Room but ſhe, Mrs. *Suſannah*, and *Nicholas.*

Q. Was there no other Woman in the Houſe but you?

A. Yes, Mrs. *Suſannah.*

Q. Where did you ſee Sir *John Germaine* and the Dutcheſs in Bed?

A. At *Vaux-Hall.*

Q. When came you from *Holland?*—*A.* About five or ſix Weeks ago.

Q. Where have you been ſince?

A. She does not know no Place nor Street in *London.*

Q. How came you over?

A. About a Year and half ago ſhe met *Nicholas* at *Amſterdam*; ſhe aſk'd him how he did, and if he had got a Place. He anſwer'd, No; but he believ'd he ſhould very ſoon have one in *England.*

Q. Who ſent for you, or brought you over from *Holland* this laſt Time?

A. She met Mr. *Nicholas* about a Year ago, and ſaid, She had a great Mind to go and live in *England* again; and he ſaid, He would get a Place for her.

Q. Who ſent for her?—*A.* Does not know.

Q. When you came over, who paid your Paſſage, and firſt took Care of you?—*A.* *Nicholas* hath given her what ſhe ſpent ſince.

Q. Who brought you to Town? And who furniſh'd you with Money? And where did you land? What Houſe did you firſt come to?

A. She landed at *Graveſend.*

Q. Who receiv'd her there; or, when ſhe came to Town, brought her to any Place to lodge at?

A. *Nicholas* brought her to a Place where ſhe was ſecure.

Q. What Place is it?—*A.* She does not know, ſhe never was in *London.*

Q. Did you not live at *Vaux-Hall*, and at Sir *John Germaine*'s Houſe in the Cockpit?—*A.* She was no further than thoſe Houſes; ſhe means, ſhe was never in the City of *London.*

Q. Where is the Houſe ſhe has been at theſe ſix Weeks?

A. She can't tell whereabouts it is.

Q. Was you not ſent for back from *Holland* to be a Witneſs?

A. No, knew nothing of it till about——Now about eight or nine Weeks ago.

Q. In what Street is the Houſe you have been at?—*A.* I can't tell.

Q. How long is it ſince you went into *Holland*, ſince you left the Dutcheſs's Service?—*A.* About eight Years ago.

Q. Did you never tell any body the Occaſion of your going over?

A. Yes, in *Holland*, but not here.

Q. To whom did you tell it?—*A.* To a great many.

Q. Know you any of thoſe to be in *England* that you did tell it to?

A. Does not know any.

Q. Did you ever diſcover this Matter of your own accord? or, Was you aſk'd to do it?

A. I ſaid, I would tell the Truth if I were aſked.

Q. Can you name the Perſon that aſk'd you?—*A.* Mr. *Nicholas.*

Q. Had you any Diſcourſe about this Matter about eight Weeks ago?

A. When I aſked Mr. *Nicholas* if he could get me a Place in *England*, I told him, I would ſay the Truth.

Q. What Diſcourſe had you with Mr. *Nicholas* about it?

A. I aſked Mr. *Nicholas*, whether there was any danger of any ſuch Thing? He ſaid, He knew nothing of it.

Q. Did you ever diſcover that you were ſent out of the Way, into *Holland?*—*A.* No.

Q. Whether you and this Gentleman that interprets have not talk'd moſt of this Matter before you came hither?—*A.* No.

Q. Who have you talk'd to about this Matter, ſince you came into *England*, beſides *Nicholas?*—*A.* Nobody.

Q. Are you a Single Woman, or a Married Woman?

A. A Single Woman.

The Duke's Counſel.

Q. Was it your Buſineſs to look after the Chamber, to keep the Door conſtantly, or on what Occaſion?

A. I uſed to waſh the Dutcheſs's Cloaths, and bring 'em to Sir *John Germaine*'s Houſe, and keep the upper Rooms clean, where Sir *John Germaine* lay.

Q. Did *Suſan* go over with you into *Holland*, and come back with you?

A. Mr. *Nicholas* brought me into a Room where ſhe was kept, and I ſtayed a while with her.

Q. Did *Suſan* go with you, and come with you again?

A. *Nicholas*, and *Suſan*, and I, were in a Room together, and Mr. *Germaine* came every Night when the Houſe was broke up, and told us what paſſed.

Q. Did *Suſan* go to *Holland* with you? Whether did you go before *Nicholas*, or with him?

A. Sir *John Germaine* ordered *Nicholas* and ſhe to go into *Holland*, and *Nicholas* went with her. *Signum*,

Elianor Vaneſs.

Depoſitions of *Nicholas Hoſier.*

Die Jovis 22 Februarii, 1699.

(*Nicholas Hoſier* ſworn.)

Q. WHETHER he knows Sir *John Germaine* and the Dutcheſs of *Norfolk?*

A. Yes, Sir, I underſtand, I know both.

Q. How long have you been acquainted with Sir *John Germaine*, and upon what Occaſion?

A. The firſt he came to know him was in *Suffolk-Street.*

Q. Whether ever he was a Servant to him?

A. Yes; I was a Servant to him there.

Q. When was it you firſt came into Sir *John Germaine*'s Service?

A. It was above half a Year before King *James* went away.

Q. Did you live with Sir *John* or the Dutcheſs?

A. With Sir *John Germaine.*

Q. Where did he dwell at that Time?

A. He had Lodgings at the *Golden Ball.*

Q. Was you with him afterwards when he was at the Cockpit?

A. Yes; and I lived with him at the Cockpit too.

Q. At that Time did you know the Dutcheſs of *Norfolk?*

A. I knew her, becauſe they told me ſhe was ſo.

Q. Was there any Lady that lived with Sir *John Germaine* at the Cockpit?

A. At that Time there was Mrs. *Briane*, Sir *John Germaine*'s Siſter.

Q. Was there any body elſe us'd to lodge there?

A. There was none there but her at firſt.

Q. Was there any other afterwards?

A. Yes, about two or three Months after he was there; but I don't juſtly know how long afterwards.

Q. Who was there then?

A. There was his Siſter, by Name Mrs. *Judith Germaine.*

Q. Do you know any thing about the Dutcheſs of *Norfolk* at that Time?

A. Yes.

Q. What Converſation had Sir *John Germaine* and the Dutcheſs of *Norfolk?*—*A.* She was in the Houſe, and they Eat and Drank together, and Lay together.

Q. Where was that?

A. At Sir *John Germaine*'s Houſe, next the Cockpit.

Q. How came you to know they lay together?—*A.* Becauſe I was his *Valet de Chambre*, and help'd to undreſs and put him to Bed.

Q. Where was the Dutcheſs at that Time?

A. The Dutcheſs was ſometimes a-Bed, and ſometimes not, according as he came home, early or late.

Q. How long was the Dutcheſs with Sir *John Germaine* at the Cockpit?

A. She was at the Cockpit before I came there.

Q. Whether he went from Sir *John Germaine*'s Service, after he came to live there?—*A.* He left his Service ſeveral times.

Q. When was the firſt time he went from Sir *John Germaine*'s Service?

A. The firſt time he left his Service was in *Suffolk-Street.*

Q. How long was it before he came to live with him again?

A. He came into his Service again, the Summer after this preſent King came into *England.*

Q. What Time of the Summer was it?—*A.* He can't juſtly tell that.

Q. Whether the Dutcheſs was there before he came to the Cockpit, or not?—*A.* She was there before.

Q. How long continued ſhe there?

A. About fifteen Days after he came to Sir *John Germaine.*

Q. In what manner did Sir *John Germaine* and the Dutcheſs live there during thoſe fifteen Days?

A. He ſays he hath already explained that before, he uſed to undreſs him and put him a-bed together with the Dutcheſs.

Q. Where did the Dutcheſs live after ſhe went from Sir *John Germaine*'s Houſe?—*A.* She went and dwelt at *Vaux-Hall.*

Q. By what Name did ſhe go when ſhe was at *Vaux-Hall?*

A. She went by the Name of my Lady *Beckman.*

Q. Whether he went with her, or continued in Sir *John Germaine*'s Service?

A. He went with my Lady Dutcheſs for ſome time, by Sir *John Germaine*'s Order; he was ſometimes with the one, and ſometimes with the other; ſometimes one paid him, and ſometimes the other.

Q. Whether Sir *John Germaine* went to *Vaux-Hall?*

A. He came there ſometimes; he has ſeen him there ſeveral Nights.

Q. Whether he ſtayed all Night there?—*A.* Sometimes.

Q. Whether he was alone, or any body was with him?

A. There was ſomebody lay with him.

Q. Who, upon his Oath?—*A.* Madam the Dutcheſs, Madam *Beckman.*

Q. How know you that?

A. Becauſe he undreſs'd him when they lay together.

Q. How often was that?

A. He can't juſtly ſay how often, but it was ſeveral times.

Q. What Service was he in when he went out of *England*, and upon what Occaſion?

A. He left Sir *John Germaine*'s Service at that Time when the Trial was depending between the Duke and the Dutcheſs of *Norfolk.*

Q. By whoſe Order did you leave that Service?

A. He deſired leave.

Q. How came you to leave that Service at that Time?

A. Becauſe he was afraid he ſhould be obliged to ſpeak the Truth of what he had ſeen.

Q. Whether any went with him, and who went from their Service when he went?

A. There were two Servants of the Dutcheſs's.

Q. What was their Names?

A. One is called *Suſannah Barrington*, and the other *Elianor Vaneſs.*

Q. Whither did they go?

A. He was ordered by Sir *John Germaine* to hire Lodgings for them, where they ſhould be unknown and private.

Q. What was the Reaſon why they ſhould be in private?

A. He knows no other Reaſon, but the Difference before the Parliament between the Duke and Dutcheſs of *Norfoik*; he was obliged to take the Lodgings, becauſe the Wind was contrary for them to go for *Holland*, and took private Lodgings for them by the Order of Sir *John Germaine.*

Q. What became of *Suſannah Barrington* after that?

A. She ſtay'd about three Weeks with him, and then Sir *John Germaine* came and fetch'd her back again, and where he carried her he does not know.

Q. What became of *Vaneſs*, and yourſelf afterwards?

A. When the Wind favoured, we paſſed the Seas.

Q. What time of the Year was it?

A. It was about *Eaſter* that he came into *Holland.*

Q. What Time he went from his Service, and was ordered to be private?

A. It was about the Time of the Trial.

Q. Whether he hath any Paper under Sir *John Germaine*'s Hand for his Diſcharge? We do not aſk it, but only to refreſh his Memory.

[*The Paper was dated* Eighth *of* February, *One thouſand ſix hundred ninety-two, reckoning the Year to begin the firſt of* January.]

Whether that was the Time he left the Dutcheſs's Service?

A. Yes, about ſix or eight Weeks after he went to Sea.

Q. Where did you ſtay in the mean time?

A. In the *Minories* near the *Tower.*

Q. How came you to ſtay there ſo long after you were out of Service, before you went beyond Sea?

A. Becauſe the Wind was contrary.

Q. Who went over with him? What became of *Elianor Vaneſs?*

A. She went with him to *Holland.*

Q. Who bare her Charges thither?

A. Sir *John Germaine* gave him ſeven Guineas to pay for the Expences that he was at here, and to croſs the Sea.

Q. How long after that he continued in *Holland*, before he came into *England?*

A. He did not ſtay long in *Holland*, but went into his own Country.

Q. How long was it before you returned to *England?*

A. The Summer following.

Q. Was he ſent for over into *England*, and by whom?

A. Yes, Sir *John Germaine* ſent to him often, by himſelf, and by his Brother in *Holland.*

Q. When he came over in the Summer following (in Ninety-two) whoſe Service did he come to?

A. He returned to Sir *John Germaine.*

Q. Where did he live at that Time?

A. Where he lives at preſent, at the *Cockpit.*

Q. Whether after he came back in the Year One thouſand ſix hundred ninety-two, he obſerved any Converſation between Sir *John Germaine* and the Dutcheſs?

A. Yes; he ſays he ſaw them come together at their Houſe.

Q. What more?---*A.* He again then ſaw them a-bed together.

Q. Where?---*A.* In the Houſe of Sir *John Germaine.*

Q. How often may that be?---*A.* He can't juſtly tell how often.

Q. Whether it was often or not?---*A.* No, he can't ſay very often.

Q. When was the laſt Time he ever ſaw them a-bed together?

A. The laſt Time he ſaw them a-bed was not at the *Cockpit.*

Q. Where then?

A. It was at the Dutcheſs's own Houſe, where, as he believes, ſhe lives ſtill.

Q. Whereabout in the Town?

A. It was upon a Corner of the Park, near my Lord of *Oxford*'s.

Q. How long ſince he ſaw them laſt a-bed together?

A. He can't juſtly tell the Time, it was about two or three Months before he went away.

Q. Did he mean the firſt, ſecond, or third Time?

A. It was two or three Months before he went away the laſt Time.

Q. In what Year did he go away the laſt Time?

[*Let him look upon any Note he hath to refreſh his Memory.*]

[*Accordingly he look'd upon a Paper.*]

A. 'Tis the Twenty-ſeventh of *April*, One thouſand ſix hundred ninety-ſix.

Q. Did you go away then the laſt Time?

A. Yes, he ſays, that 'twas the laſt Time he left his Service.

Q. How long before that did you ſee them a-bed together?

A. He ſays it was about two Months and a half before he left the Service.

Q. When my Lady Dutcheſs lived at *Vaux-Hall*, whether he can name any body elſe that was a Servant in the Houſe at that Time?

A. Yes, there was one *Elianor Vaneſs.*

Q. What Servant was ſhe?

A. She look'd to the Kitchen.

Q. Whether he has ſeen her in the Chamber when the Dutcheſs was a-bed there?---*A.* Yes, very often.

Q. How came ſhe that was Cook-maid to be in the Chamber?

A. He ſays he can't tell the Reaſon, or what Buſineſs ſhe had there; but there ſhe was for one Thing or other, beſt known to herſelf; he does not know.

Q. Whether when the Dutcheſs was at *Vaux-Hall*, any Relations of Sir *John Germaine* came to her there?

A. Yes, they would come and ſee her.

Q. Who were they?

A. Mrs. *Brienne* and Mrs. *Judith*; he ſays he does not remember that Mrs. *Brienne* has lain there, but Mrs. *Judith* has.

Q. Where it was, and upon what Occaſion he met with *Elianor Vaneſs* after he carried her over into *Holland?*

A. I met her in *Amſterdam.*

Q. Whether he came over into *England* with her, and upon what Occaſion?

A. I met her at *Amſterdam*; and ſhe aſk'd me what Buſineſs I had there, whether I had a Maſter; and I ſaid, No.

Q. When was that?

A. About a Year and a half, to his Remembrance.

Q. Whether he came over with her the laſt Time?

A. Yes; he came over into *England* with her in Company, about ſix or ſeven Weeks ſince.

Q. Where has ſhe been ſince he came into *England?*

A. She was in Lodgings.

Q. Where?

A. He put her into private Lodgings, that ſhe ſhould be ſecure.

Q. Why did you put her into private Lodgings?

A. Becauſe he was afraid, in the Circumſtances that he is now, that ſomebody might give them ſome Affront, or do them an Injury; and therefore he thought it beſt to be in ſome Place of Security.

Q. What particular Reaſon had he why he ſhould take private Lodgings, or have that Fear upon him?

A. He ſays, that when he was laſt here, Sir *John Germaine* came up one Night in a great Paſſion, and ſwore, and ſaid, ſomebody would betray him.

Q. I deſire he might repeat that again?

A. Sir *John Germaine* came one Night up Stairs and ſaid, that *Nicholas*, this Rogue, would betray him.

Q. Who was that?

A. He ſays 'twas one *Nicholas Ruſhett*, that ſerved him or both, he can't tell, but he was in his Service; that he heard theſe Words, and that he thought in theſe Circumſtances, the ſecureſt Way would be to take private Lodgings.

Q. What brought him into *England* the laſt Time? Whether he was ſpoke to to come, and for what Purpoſe?

A. He ſays, that about two or three Years ago he happened to meet with a Friend, and he deſired him if he heard of a good Place for him in *England*, to let him know of it, for he would go and ſerve there again.

Q. Whether he was ſpoke to to come over, or was *Elianor Vaneſs* ſpoke to, and what was the Occaſion?

A. My Lord aſk'd him if he would ſpeak the Truth, and do him any Service; and whether he would bring this Girl along with him.

Q. Who was it that ſpoke to him?

A. My Lord Duke and my Lord *Howard.*

Q. When was that?---*A.* It was about a Year ago.

Q. Where was he at that Time?---*A.* He was in *London.*

Q. Did he go over of his own Accord, or was he ſent into *Holland*; who it was that ſent him over, and for what?

A. It was a Friend of his Acquaintance, that he deſired, in caſe he heard of a Place, to ſend for him.

Q. Who ſent for *Elianor Vaneſs* over?

A. He ſays, that after he had promiſed my Lord Duke and Lord *Howard* to ſpeak the Truth of what he knew, they deſired him, that if he met with *Elianor Vaneſs*, to deſire her to come over, and ſpeak the Truth of what ſhe knew.

Q. How long after did you meet with *Elianor Vaneſs?*

A. 'Tis about twelve Months ſince I met with her.

Q. When was the firſt Time that he ſpoke to *Elianor Vaneſs* about her coming over to ſpeak the Truth?---*A.* 'Tis about a Year ſince.

Q. How long is it ſince they reſolved to come over?

A. About twelve Months.

Q. Whether he was acquainted with *Elianor Vaneſs* before he met with her in Sir *John Germaine*'s Service?

A. He ſays never.

Q. You ſay you went from Sir *John Germaine*'s Service in *Suffolk-ſtreet*, and you ſay when you came to him again he lived in the *Cockpit*; did you find *Elianor Vaneſs* there then?

A. He ſays he found her at the *Cockpit.*

Q. When he waited on Sir *John Germaine* in his Chamber, who waited on the Dutcheſs in her Chamber?

A. There was one *Suſannah Barrington*, and *Elianor Vaneſs.*

Q. But who waited upon her in her Chamber?

A. *Suſannah Barrington* did, to dreſs her.

Q. Whether he had ſeen any of Sir *John Germaine*'s Relations in the Chamber, when this Lady and Sir *John Germaine* were a-bed together?

A. Yes.

Q. Name them.

A. He ſays, he ſaw Mrs. *Brienne* and Mr. *Daniel Germaine* there.

Q. Did you ſee Mrs. *Judith* there?

A. He does not remember that he ſaw Mrs. *Judith* in the Room while they were a-bed together; but the other he hath ſeen when they were a-bed together, but at different Times.

Q. Whether ever he hath ſeen the Dutcheſs at any other Place?

A. He has been at the Chapel with her, and elſewhere.

Q. Where?

A. At my Lord *Peterborough*'s, and in her own Houſe?

Croſs Examined.

Q. I deſire he may reduce this to a Certainty, what time he went out of *England*, and look upon his Note again.

[*He look'd upon his Note, and 'twas dated Eighth* February, *One thouſand ſix hundred ninety-two.*]

Q. How long after this went he out of *England?*

A. He went away as ſoon as the Wind was favourable.

Q. Can he recollect the Time?

A. He ſays 'twas ſome time before *Eaſter*, for he came into *Holland* about *Eaſter*.

Q. When he told his Grace the Duke of *Norfolk* and Lord *Howard* he would be true to them, whether he was in any Service at that Time?

A. No, he was in no Service at that Time.

Q. How long had he been out of Employ?----*A.* He has none yet.

Q. But how long had he been out of Employ, or Service, before he made this Propoſal to the Duke, or my Lord *Howard?*

A. He ſays, he went away about the Twenty-ſeventh of *June*.

Q. Is it the ſame Year his Paper ſpeaks of, that he ſpake to my Lord Duke?

A. No, 'twas not; he ſpake to my Lord Duke about twelve Months ago.

Q. But how long had he been out of Service when he ſpake to my Lord Duke? When did he leave Sir *John Germaine* the laſt Time?

A. 'Tis about three Years and half ago; 'twill be four Years in *June* next.

Q. Has he been in any Service ſince that Time?

A. No, he hath not.

Q. How has he lived ſince then?

A. He ſays he has ſomething of his own in his own Country, upon which he may ſubſiſt ſome time.

Q. I think he ſaid, he ſaw Sir *John Germaine* and the Dutcheſs in Bed together, in the Houſe where ſhe now lives?----*A.* Yes.

Q. Then I deſire he will tell, if he knows any of the Dutcheſs's Servants that were about her at that time?----*A.* Yes, he does.

Q. Then, that he will name them?----*A.* *Henry Keemer*.

Q. What's become of him?

A. They told he was dead; and there was *Suſan Barrington*.

Q. I deſire he will tell of ſome of the Servants that lived with the Dutcheſs at that Time, beſides that Perſon that is dead, and the other which is gone beyond Sea, as they ſay?

Mr. Northey *anſwer'd.* We don't ſay ſhe is gone beyond Sea.

A. He does not know any other.

Q. Then, that he will tell what Month he ſaw them in Bed together?

A. He can't remember the Month, or the Day; but if they will aſk him the Reaſon why he remembers it, he will tell it them.

Q. If you can come to any Certainty about the Time of the Year, or the Month?

A. He can't ſay the Month, or any particular Time.

Q. What Servant he ſaw in the Houſe, or who let him in?

A. He had himſelf the Key of the lower Room, and could come in when he pleas'd.

Q. Whoſe Servant was he at this Time he ſpeaks of? Whether he was a Servant to the Dutcheſs or to Sir *John Germaine?*

A. He was Servant to Sir *John Germaine*.

Q. He was ſaying he could tell a Reaſon to fix the Time, let him recollect himſelf of the Time?

A. He can't remember the Time, but he came into the Room to bring a Clyſter, and he was deſired to ſtay a little till my Lady Dutcheſs got up.

Q. That he may be poſitive whether he had a Key to the lower Room of the Dutcheſs's Houſe?

A. He ſays he had a Key of the Door that goes into the Park, and he could come into the Houſe by it; for it was the Key of the Houſe.

Q. What Servant was it that brought him up, for that Key only let him into the lower Room?

A. Sometimes *Suſan Barrington*, and ſometimes *Henry Keemer*.

Q. What Room the Lady Dutcheſs lay in?

A. 'Tis a Room that looks into the Park.

Q. 'Tis not a Ground-Room, I ſuppoſe?----*A.* No, 'tis up Stairs.

Q. How many Stories?----*A.* He can't tell what Degree it was.

Q. Being aſk'd that Queſtion again upon the reading his Depoſitions, he ſays he can't tell how many Stories; but, if you pleaſe, he will deſcribe the coming into the Room as well as he can.

Q. Deſcribe the Coming into the Room.

A. That as you come upon the left Hand, there is a Way to go into the Dutcheſs's Room; when you have paſſed the little Chamber-door, you go into a Place full of *China*; and, after that, you come to the Dutcheſs's Bed-chamber. On the other ſide, going up Stairs, there is a little Room, where *Suſan* told him ſhe lay; and afterwards you come into a Room where the Chimney is, as he thinks, on the right Hand, and he thinks there are two Windows that look into the Street, he is not very certain; and in the Room upon the left Hand there is a Door into a great Room, and from that great Room you can go into the Lady Dutcheſs's Room. It was ſo at that Time, to the beſt of his Remembrance.

Q. How many Rooms are there upon a Floor?

A. There are a matter of 4 Rooms upon a Floor.

Q. Whether he has ſpoke with any body that he knows is acquainted with this Houſe ſince he was examined here before?

A. He ſays he has ſpoke to nobody ſince, that has given him any Account of the Houſe.

Q. Which Side of the Park does the Window of my Lady Dutcheſs's Room look into?---*A.* Towards the Pond where the Braſs Statue is.

Q. Does the Bed-chamber look towards the Braſs Statue?

A. He durſt not go to look out at the Window for fear of being diſcovered, but he could ſee the Water.

Q. Whether he knows the Horſe-Guards?----*A.* Yes.

Q. Whether he knows *Arlington-Houſe?*----*A.* Yes.

Q. Whether the Window does look towards *Arlington-Houſe*, or the Horſe-Guards?

A. He hath been there ſeveral times, but it was not his Buſineſs to go to the Window; but when he was in the Room he could ſee the Water.

Q. Whether he could tell which Way the Window look'd?

A. He did not live in the Houſe, but went there ſometimes upon Meſſages; and when he was there, 'twas not his Buſineſs to go to the Window, but he could ſee the Water when he was in the Room.

Q. Whether the Window was on that ſide of the little Door that he came in, or on t'other ſide?

A. Upon the left Hand coming in. He ſays he has explain'd himſelf as to the entering in, and he can ſay no more to it.

Q. Was it one or two Pair of Stairs that the Dutcheſs lay?

A. He can't be poſitive, whether one or two Pair of Stairs.

Q. Who brought him up that Time he brought the Clyſter?

A. *Suſan Barrington*.

Q. Who told him, at the *Cock-pit*, 'twas the Dutcheſs of *Norfolk?*

A. Sir *John Germaine*, herſelf, and the whole Houſe told him ſo.

Q. Did he before that Time know the Dutcheſs?----*A.* No.

Q. Did you never ſee other Women there beſides this Lady?--*A.* Yes.

Q. Did you know all the reſt that you ſaw there?

A. No, he did not know them all.

Q. Whether he was not told the reſt of the Women were of great Quality too?

A. He never was told ſo, nor did he inform himſelf whether they were or no.

Q. At *Vaux-hall*, and at the *Cock-pit*, I think, he ſpake as if he undreſs'd Sir *John Germaine* and the Dutcheſs; whether he undreſs'd them both?---*A.* Not the Dutcheſs.

Q. What Year was it they were at *Vaux-Hall?*

A. It was before he went to *Ireland*, and after he came from *Ireland*; but he can't preciſely tell the Time.

Q. Whether he has been in any Service ſince One thouſand ſix hundred ninety-ſix, when he left Sir *John Germaine*'s?---*A.* No.

Q. Whether when he came, about a Year ago, into *England*, there was Application made to him in order to make a Diſcovery? or, whether he offer'd of himſelf to make it?---*A.* He never did offer himſelf.

Q. Who was it that firſt aſk'd him the Queſtion?

A. 'Twas my Lord *Howard*.

Q. Where did you meet my Lord *Howard?* And upon what Occaſion?

A. He ſays, That 'twas that Perſon that he had addreſs'd himſelf to, to get him into Service here, that was the Occaſion of their meeting together.

Q. Did you know the Lord *Howard* before?----*A.* No.

Q. Where was the Place they met?

A. He call'd him to his Houſe.

Q. My Lord, or that Perſon?

A. He ſays, That Perſon to which he addreſs'd himſelf to get a Place, told him he had found one.

Q. Name that Perſon. ---*A.* *Richardſon*.

Q. Where does he live?---*A.* I don't know.

Q. Were you acquainted with him before?---*A.* Yes.

Q. Where had you been acquainted with him?

A. At *London*; 'tis a Woman.

Q. Whether he can deſcribe the Room, or the Furniture of the Room, where this Noble Lady and Sir *John Germaine* were a-bed together, where ſhe lives now?

A. He can't remember any thing of the Furniture.

Q. Was it hung or wainſcoted?

A. He ſays, he can't tell, and yet was there often.

Q. Pray, who was the Clyſter for?---*A.* For Mr. *Germaine*.

Q. Where was it to be adminiſtred?---*A.* A-bed.

Q. Who was a-bed?-- *A.* My Lady Dutcheſs was a-bed too.

Q. Was it to be adminiſtred at the ſame time as he and the Dutcheſs were a-bed together?---*A.* No.

Q. Was the Dutcheſs there?

A. He laid the Syringe to the Fire-ſide, till ſuch time as the Dutcheſs roſe.

Q. Apothecaries are exact in point of Time in making their Bills.

A. He ſays, I compoſed the Clyſter myſelf; but he did not compoſe it at the Dutcheſs's Houſe, but at Mr. *Germaine*'s.

Q. Did you ſtay with Sir *John Germaine* till all was over?

A. No; as ſoon as he had given it him, he went home to Mr. *Germaine*'s Houſe.

Q. Whether he pretends to ſpeak of any other Time he ſaw the Dutcheſs in Bed with him at her Houſe in *Duke-ſtreet*, but when he carried him the Clyſter?---*A.* Yes, my Lord, he ſays he has.

Q. Let him tell the Times and Circumſtances.

A. He ſays, he can't very well remember the Times, but he had ſometimes Buſineſs there, to bring and carry Letters.

Q. When was that Time of the Clyſter?

A. It was about two Months before he left them.

Q. Was that the laſt time he ſaw them together?

A. That was the laſt Time.

Q. How long before that did he ſee 'em together?

A. Long before that Time, in the ſame Houſe.

Q. He ſays, he has ſeen Sir *John Germaine* and the Dutcheſs in Bed together elſewhere. Did he never ſee them in Bed together at the *Mill-Bank?*

A. He has ſeen them there two or three Times a-bed together.

Q. When did your Maſter order you to prepare a Clyſter?

A. He had Order to come and wait for Mr. *Germaine* at the Dutcheſs's; and, that Mr. *Germaine* coming to the Dutcheſs's late, he ordered him to bring the Clyſter next Morning.

Q. At what Time he came the next Morning?

A. He had Order to bring it at 9 a-Clock, and he brought it at the appointed Hour, and waited in the little Room where *Suſan* was till he was call'd in.

Q. He ſays, he waited for Sir *John Germaine*, by his Orders, at the Dutcheſs's, 'till 'twas late; which of the Dutcheſs's Servants did he keep company with?

A. He ſays, he remembers very well it was Mr. *Keemer*.

Q. Whether that time that he ſaw Mr. *Germaine* and the Dutcheſs in Bed together at *Mill-bank*, if it was after the firſt time he was ſent out of *England*, when the Bill was depending before the Lords?

A. 'Twas after.

Q. What Year did you ſee them a-bed together at *Mill-bank?*

A. 'Twas a day or two before Mrs. *D'Avenant* died. A day or two before ſhe died Mr. *Germaine* came to *Mill-bank*, and ſtaid there about eight Days.

NICOLA HAUSEUR.

Depoſitions of *William Bayly.*

Die Sabbati 25 *Februarii*, 1699.

(William Bayly *ſworn.*)

Q. D'YE know Sir *John Germaine* and the Dutcheſs of *Norfolk?*

A. Yes.

Q. Was you Servant to Sir *John Germaine?*——*A.* Yes.

Q. In what Capacity?

A. Three Years I wore his Livery, and three Years I was his Steward.

Q. When did you firſt come to live with him?

A. Three Weeks before the King was Crown'd.

Q. Was there any Converſation between Sir *John Germaine* and the Dutcheſs of *Norfolk?* D'ye know that they liv'd together, or kept Company one with another?

A. No; I never knew them live together, but ſeen them keep Company together, but never ſaw any Incivility between them.

Q. Where ſaw you them in Company together?

A. I ſaw them in Company in my Maſter's Houſe.

Q. How long ago?——*A.* About five Years ago.

Q. Where did your Maſter then live?

A. He liv'd then where he does now.

Q. Did the Dutcheſs of *Norfolk* ever lie there?

A. Never to my Knowledge.

Q. What was the Time ſhe uſually came there?

A. Commonly in an Afternoon.

Q. How often have you ſeen her there?

A. Two or three times.

Q. At what Time did ſhe uſe to come? and, At what Time did ſhe uſe to go away?

A. She uſed to come there about Four or Five a-Clock in the Afternoon, and might ſtay there about two or three Hours.

Q. You are upon your Oath, and pray tell whether you ever ſaw them in Bed together?

A. By all that's good, I never ſaw them in Bed together.

Q. Did the Lady Dutcheſs uſe to come thither Maſk'd or Unmaſk'd?

A. She us'd to come Maſk'd but put it off when ſhe came into the Houſe.

Q. Who uſed to come with her?

A. There uſed to come Mr. *Keemer* with her.

Q. What Company? Did no other uſe to come with her to Sir *John Germaine's* Houſe?

A. Yes, another ſervant, Mr. *Carter.*

Q. Who was in the Room with them in Sir *John Germaine's* Houſe?

A. Mr. *Keemer* ſtay'd commonly with them all the Time they dined, and after Dinner; the other Servants and I were in the next Room to them; and commonly, when they had Occaſion, they would call Mr. *Keemer.*

Q. Was there no other Servant but Mr. *Keemer* that they uſed to call upon?

A. Yes; a Gentlewoman, Mrs. *Suſan Barrington.*

Q. Have you ſeen her lately?——*A.* No, not theſe ſix Months.

Q. D'ye know if your Maſter uſed to go to the Dutcheſs's Houſe?

A. Yes, I have heard ſo; but I can't ſay ſo poſitively.

Q. Did you ever go with them to the Dutcheſs's Houſe?

A. No; but I have gone with them as far as the *Horſe-Ferry.*

Q. When was the laſt Time you ſaw them together?

A. I can't tell; I have been out of my Maſter's Service theſe four Years.

Q. How long before you left your Maſter's Service, d'ye think it was that you ſaw them together?

A. I can't tell, but I think it might be about half a Year.

Q. He has gone with his Maſter as far as the *Horſe-Ferry*; pray then let him be aſk'd where he left his Maſter?

A. I left him at the *Horſe-Ferry.*

Q. What Orders did your Maſter give you when you left him?

A. He order'd me to go Home, and keep the Houſe.

Q. D'ye know whither your Maſter was gone then?

A. I may judge he went to the Dutcheſs, but I can't ſwear he went there.

Q. Did Sir *John Germaine* come home to Bed that Night?

A. Some Nights he came, and ſome he did not.

Q. Did you carry Cloaths to him at any Time?

A. I have carried Cloaths for him to Mr. *Keemer*, the Dutcheſs's Servant.

Q. Where did *Keemer* live when you carried Cloaths to him?

A. In a little Street going to the *Bowling-Alley.*

Q. Who did he live withal?

A. He told me he lived with the Dutcheſs; but he was a Houſe-keeper, and had a Houſe there.

Q. Did you always carry Cloaths to Mr. *Keemer* for your Maſter?

A. Sometimes I carried his Cloaths to Mr. *Keemer*, and ſometimes Mr. *Keemer* came to me for them.

Q. Did you apprehend that your Maſter was then at the Dutcheſs's, or at Mr. *Keemer's?*

A. I can't tell where he was: How can I tell? I anſwer as punctually as I can.

Q. When *Keemer* came to you for Cloaths, what Account did he give you where your Maſter was?

A. He gave no Account.

Q. Whether did you ever ſee the Dutcheſs and your Maſter together at any other Place but his own Houſe?——*A.* Never.

Q. When you carried the Cloaths to *Keemer's*, did your Maſterlie at Home that Night or not?

A. Sometimes he lay at Home, and ſometimes he did not: Many times my Maſter has been at the Dutcheſs of *Mazarine's* from Four a-Clock this Day till Twelve the next.

Q. Repeat it again, for that's material.

A. My Maſter has taken his Chair at his own Back-door at Four a-Clock on a *Saturday*, and not come Home till *Sunday* at Twelve a-Clock.

Q. Where has your Maſter been at that Time, when he ſtay'd out all Night?

A. At the Dutcheſs of *Mazarine's*; and when he loſt his Gold, he has ſent to me for more Gold.

Q. Did he ever ſend to you for any Cloaths when he was there?

A. Never.

Q. D'ye know where he was when he ſent to you for Cloaths?

A. No, indeed.

Q. D'ye know *Nicholas Hoſier?*

A. Yes, I know him very well; I ſaw him here juſt now.

Q. Did you know him when he waited on Sir *John Germaine?*

A. Yes, he ſucceeded me, and I ſucceeded him again.

Q. You was Footman when you went to Sir *John Germaine:* When was that? and, What Year did you leave off your Livery, and ſerve him as his Steward?----------*A.* I can't tell.

Q. He ſucceeded *Hoſier*, and *Hoſier* ſucceeded him: Pray let it be aſk'd him, at what Time he came into his Maſter's Service, when he ſucceeded *Hoſier?*

A. 'Twas about the ſame Time that the Trial was here before.

Q. How long was it e're *Hoſier* return'd again to ſerve Sir *John Germaine?*

A. To the beſt of my Knowledge, it was three Years; for I receiv'd and paid Money for my Maſter, and *Hoſier* was away all that Time: *Hoſier* won't deny it, if he were call'd in.

Q. You ſay that you ſucceeded *Hoſier* at the Time when the Trial was here: How long before that Time did you return to your Maſter's Service?

A. About three Weeks before the King was Crown'd I came to my Maſter, and ſerv'd him three Years, and wore his Livery; and he was pleas'd, after Mr. *Hoſier* went away, to make me lay out his Money, to be Caterer for him, and to keep his Gold; and to the beſt of my Knowledge 'twas three Years before *Nicholas* ſucceeded me again.

Q. How long was it before he came back again to ſerve Sir *John Germaine?*

A. Before I ſaw him in my Maſter's Houſe, and that he took my Place from me, 'twas three Years.

Q. Did you not ſee Mr. *Hoſier* in *England* before that Time that you went out of your Maſter's Service?

A. No; I beg your Lordſhip's Pardon, I will recollect my Memory for that; as I have a Soul to be ſav'd, now 'tis come into my Mind, my Maſter ſent for *Nicholas* into *Holland* about a Year before *Nicholas* did come over: My Maſter told me, before he came, that he would ſend for *Nicholas* again, and that I and *Nicholas* ſhould have the Charge of his Houſe. *Nicholas* came over, and we had the Play at our own Houſe: *Nicholas* ſtaid there ſome Time, but he did not like his Buſineſs, and ſo he went away again, becauſe he could not have all the Money.

Q. About what Time did *Nicholas* come into *England*, after the Trial was before this Houſe?

A. I can't reſolve you.

Q. Had you no Certificate of Leave, or Diſcharge, when you left your Maſter's Service?

A. No; my Maſter was ſo kind, that he brought me immediately into the Exciſe, as ſoon as I was out of his Service.

William Bayly *Croſs-examined, Lunæ* 26 *Februarii*, 1699.

Q. When you carried the Cloaths to Sir *John Germaine's*, was it the Time when you wore his Livery?

A. I carried no Cloaths to him when I wore his Livery.

Q. Had you no Diſcourſe with the Dutcheſs's Agents ſince *Saturday* Night?

A. No, I have not ſeen them, nor don't know them.

Q. He ſays, he ſaw the Dutcheſs of *Norfolk* at the Cockpit, at Sir *John Germaine's* Houſe where he now dwells: Pray, recollect yourſelf, that you may be poſitive as to the Time.

A. I can't reſolve you as to the Year, 'tis ſo long ago; I believe 'tis about five Years ago.

Q. Can you be poſitive that it is not more?

A. To the beſt of my Knowledge, 'twas about five Years.

Q. Can you be ſo far certain, that you can ſay 'twas not more?

A. I can't ſwear 'twas more, but I believe it may be five Years, more or leſs.

Q. You ſay you ſaw her two or three times there: Was it all in one Year, near the ſame Time or Month? Can you reduce it to any Certainty?

A. I believe it might be in Summer.

Q. All in one Summer?

A. Yes, I believe, all in one; to the beſt of my Knowledge there was never a Winter between the Time that I ſaw her firſt and laſt.

Q. Did you know the Dutcheſs of *Norfolk* before that Time that you ſaw her in your Maſter's Houſe, and took her to be the Dutcheſs of *Norfolk?*

A. I did not know her before the Trial was here.

Q. Did you know her any Time after that Trial, before the Time you ſaw her in Sir *John Germaine's* Houſe?

A. I was not ſure that it was ſhe, only as I had it from Mr. *Keemer.*

Q. Then you don't undertake of your own Knowledge to ſay that it was ſhe?

A. I can't ſwear that 'twas ſhe, but as Mr. *Keemer* told me; I don't know whether I ſhould know her now or not, 'tis ſo long ſince I ſaw her: I believe it is five Years, if not more.

Q. Did you ſee her before or after you ſaw her at Sir *John Germaine's* Houſe?

A. The firſt time they told me 'twas ſhe, I met her in her Coach in the *Pallmall*, with two other Gentlewomen with her, a little before the Trial was here: I followed the Coach, and the Dutcheſs went into ſome Lady's Houſe in *Dover-ſtreet*, and they told me the Dutcheſs was the firſt Woman that went out; this is the firſt time that e'er I ſaw her, that I know of, 'till ſuch time as *Keemer* told me 'twas ſhe.

Q. Whether do you know *Nicholas?*--------*A.* I know him very well.

Q. Can you tell how long it is ſince he came laſt into *England?*

A. No, he has been here two or three times in *England* ſince I left my Maſter.

Q. How long before this Examination ſaw you him, or ſpoke with him?

A. I did not ſee him above theſe three Years.

Q. How long before you came hither as a Witneſs did you ſee him?

A. I have not ſeen him theſe three Years till I came hither to be a Witneſs, and did admire to ſee him here, that a Man that had got his Bread under his Maſter ſhould appear here againſt him, it is ſo ungrateful a thing.

Q. How came it you had ſo much Curioſity as to follow the Dutcheſs's Coach?

A. I had a Mind to ſatisfy my own Humour.

Q. D'ye know how *Nicholas* lived ſince he was out of his Maſter's Service?

A. No; I never ſaw him, nor had any Account of him at all, nor have ſeen him theſe three Years till now.

Q. Did you know when *Nicholas* and *Elianor Vaneſs* went out of *England?*

A. No, I never knew when they went, nor when they came.

Q. Don't you know what Buſineſs he went out of *England* about, the Time you took his Place?

A. I know not the Buſineſs he went out of *England* upon.

Q. Did he at any Time tell you he was to get away to hide himſelf from coming hither?

A. No, I heard not one Word from him at the Time of his parting.

Q. What reaſon had you to ſay upon the firſt Sight of *Hoſier*, that he was ungrateful for coming hither?

A. I ſhould think myſelf ungrateful to eat a Gentleman's Bread ſeven Years, and do him all the Spite and Malice I could.

Q. Repeat thoſe Words.

A. I ſhould think myſelf very ungrateful to proſecute; if I ſhould do any Harm to a Maſter that I had ſerved ſo many Years, I ſhould think myſelf very ungrateful, let him think of himſelf what he pleaſes.

Q. He added ſome other Words.

A. For any thing I know, it is Spite and Malice.

Q. Where did you live when you followed the Dutcheſs's Coach?

A. At Mr. *Germaine*'s.

Q. This Man is a Witneſs, and ſo is *Hoſier*; let him explain himſelf what he means, and wherein there is any Difference between him and *Hoſier*, for both are Witneſſes?

A. I ſay, I ſhould think myſelf very ungrateful, if I would do any Harm to a Man whoſe Bread I did eat ſo long, and had got ſo much Money under him.

Q. What Harm does *Hoſier* do, being a Witneſs againſt the Dutcheſs of *Norfolk?* What Harm is that to Sir *John Germaine?*

A. I don't know.

Q. D'ye reckon it ungrateful to ſpeak the Truth to the Prejudice of a Maſter?

A. No, I would not ſpeak an Untruth for all the Maſters in the World.

Q. Where is there any Fault more in *Hoſier* than in you?

A. I know not.

Q. Whether did *Elianor Vaneſs* live with Sir *John Germaine* when you liv'd there?

A. I know not who ſhe is.

Q. This Woman that was here as a Witneſs?

A. Yes, ſhe liv'd there.

Q. What Time went ſhe away from Sir *John Germaine*'s Service?

A. I know not, I cannot tell, indeed.

Sign'd,

WILLIAM BAYLY.

Die Martis, 5° *Martii,* 1699.

Counſel and Witneſs being call'd in for the Dutcheſs of *Norfolk* (and the Duke's Counſel being preſent) the Examination of the Witneſſes, taken Yeſterday in Short-hand and tranſcribed, were read to them, and ſubſcribed, *(viz.)*

Die Lunæ, 4° *Martii,* 1699.

Thomas Hawkſworth *ſworn, depoſed as followeth:*

Queſt. DO you know *Elianor Vaneſs?* And did you live in the Dutcheſs of *Norfolk*'s Family?

Anſw. I came to live with the Dutcheſs about *October*, 1691. and left her in *September*, about two Years within two Months: *Elianor Vaneſs* lived there when I lived there, and was Cook-maid.

Q. When did ſhe leave the Dutcheſs's Service?

A. About the beginning of *January*, or the latter end of *December*, 1691.

Q. On what Occaſion went ſhe away?

A. She was turned away, to the beſt of my Remembrance, for keeping Company with *Dutchmen.*

Q. Whether uſed ſhe any other Office but in the Kitchen? or had ſhe Acceſs to the Dutcheſs's Chamber?

A. Never; ſhe was not allowed to come any higher than the firſt Floor: She uſed to clean that Room next the Street, one Pair of Stairs next the Door, and the Back-Parlour even with that, but was not ſuffered to come into the Dutcheſs's Chamber?

Q. Who waited upon the Dutcheſs in her Chamber?

A. *Frances Knight*; ſhe was conſtantly in the Dutcheſs's Chamber, and uſed to warm her Bed.

Q. You ſay that *Vaneſs* was allowed to come no higher than the firſt Floor; explain that.

A. The Kitchen is under-ground backward; that Room *Vaneſs* cleaned was even with the Street, a Ground-Room; the Laundry-maid clean'd the next Pair of Stairs.

Q. What was the Laundry-maid's Name?

A. *Suſan*; ſhe's dead.

Q. Do you know how long?

A. No.

Q. Did you ever ſee *Vaneſs* in the Dutcheſs's Chamber?

A. Never in my Life; I never heard ſhe was allowed to come there.

Q. How long is it ſince you liv'd with the Dutcheſs?

A. About ſix or ſeven Years, or very near it.

Q. D'ye remember the Bill that was brought into Parliament againſt the Dutcheſs, while you lived there?

A. I came to the Dutcheſs the *October* before that Bill was brought in.

Q. Was *Vaneſs* turned away before that?

A. She was gone a Month or thereabouts before that.

Q. D'ye remember the Month?

A. To the beſt of my Remembrance, 'twas about the latter End of *December*, or the Beginning of *January*.

Q. Was there any Stir about the *Dutch* Foot-Soldiers haunting *Vaneſs?*

A. I never ſaw any, but have heard the Servants ſay they did.

Q. Can you ſay what Time it was? Whether before or after the Bill?

A. Before I heard any thing of the Bill ſhe was gone.

Croſs-Examin'd.

Q. Where do you live now?

A. With Sir *Thomas Barnardiſton.*

Q. What Station were you in when you lived with the Dutcheſs?

A. A Footman.

Q. Do you know *Hoſier* then?

A. No.

Q. Where did the Dutcheſs live, when you came firſt to her?

A. Upon the Row between the *Horſe-Ferry* and *Mill-bank.*

Q. How long did you live there?

A. A Fortnight or thereabouts; not much more.

Q. Do you know where ſhe liv'd before?---*A.* No.

Q. Do you know Sir *John Germaine?* And, on the Oath you have taken, did he ever come to the Dutcheſs's Houſe while you liv'd with her?

A. I never ſaw him in the Houſe; I never ſaw any unhandſome Thing by the Dutcheſs all the Time I lived with her.

Q. Did you never ſee Sir *John Germaine* with her?

A. No, never; and I had the Privilege of the firſt Floor and the ſecond Floor, and help'd to rub the Rooms, and ſometimes I rubb'd the Lodging-Room.

Q. Had you the Privilege of going up Stairs in the Morning?

A. No, it was one *Peacock* that rubb'd the Room above Stairs.

Q. Did you know *Vaneſs?* Was ſhe Servant to the Dutcheſs when you liv'd there?

A. Yes, ſhe was.

Q. Can you be poſitive as to the Time of her going away?

A. As near as I can tell, it was in the beginning of *January*, 1692. I came in the *October* before, and ſhe went away the *January* following.

Q. Were you by, when ſhe was diſcharg'd?

A. No.

Q. Who paid her her Wages?

A. I can't tell.

Q. Did you never ſee *Vaneſs* in the Dutcheſs's Chamber?

A. Never.

Q. Did you attend at the Dutcheſs's Chamber in the Morning?

A. Not conſtantly; we took it by Turns.

Q. Did you never attend in her Chamber when ſhe was a-Bed?

A. No.

Q. Who was it of her Women that attended in her Chamber?

A. *Suſan* ——, *Frances Knight*, and *Suſan Barrington.*

Q. When did you ſee *Suſan Barrington* laſt?

A. About five Years ago.

Q. Did ſhe conſtantly attend in the Dutcheſs's Chamber?

A. She and Mrs. *Knight* carry'd Coals conſtantly to warm the Bed.

Q. How old was you when you liv'd with the Dutcheſs?

A. About eighteen Years old.

Q. How old are you now?

A. I think about Seven-and-twenty.

Thomas Hawkſworth.

Die Lunæ, 4 *Martii,* 1699.

John Peacock *ſworn, depoſeth as followeth:*

Queſt. DID you live with the Dutcheſs of *Norfolk* in 1691?

Anſw. 'Tis ſix Years ſince I left her Service, laſt *January*, or thereabouts; I liv'd two Years and a half with her, or thereabouts; I came in *Auguſt*, and ſtaid till *January* two Years following, or thereabouts.

Q. Did you live with the Dutcheſs, when the firſt Trial, as they call it, came on in Parliament?

A. Yes, I liv'd with her before and after.

Q. Did you know *Vaneſs?*

A. I knew one whoſe Name was called *Lena.*

Q. What was her Buſineſs?

A. Below Stairs in the Kitchen; I never ſaw her in any other Room, but the outer Room next to the Street, and I was there all the while ſhe was there, and after ſhe was gone.

Q. Did you ever ſee her in the Dutcheſs's Bed-Chamber?

A. No; the Work ſhe was employ'd about was dirty Work; I never ſaw her clean, but naſty, and could not eat the Victuals of her dreſſing.

Q. Was you there before *Vaneſs?*

A. Yes, I was in the Houſe ſome time before her Grace came over, to help the Upholder, and to carry Looking-Glaſſes and Stands.

Q. When did ſhe come over?

A. She came to *Mill-bank*, but I know not when ſhe came over: My Lady *Peterborough* order'd me to do what I did.

Q. Was you Servant there to the Dutcheſs before ſhe came over?

A. I never ſaw my Lady Dutcheſs before ſhe came there, except ſome Years before at *Drayton*, when he liv'd with her.

Q. Who hired you?

A. I came there by the Lady *Peterborough*'s Order, and had my Victuals at my Lord *Peterborough*'s.

Q. Who hired you?—*A.* I was not hired at all.

Q. How long did you live at *Mill-bank?*

A. I liv'd about two Years and a Quarter, or ſomewhat more.

Q. What was your proper Buſineſs, when you liv'd with the Dutcheſs?

A. When the Dutcheſs went abroad, I went with the Coach; and when ſhe ſupp'd or din'd at home, I laid the Cloth, Forks and Spoons.

Q. Did you ever wait above Stairs?

A. Yes, I have waited above Stairs.

Q. Who waited upon the Dutcheſs in her Chamber?

A. *Frances Knight*, one *Suſan*, and one *Suſannah*.

Q. Upon your Oath, did you ever ſee this Woman, *Helena*, go into the Dutcheſs's Bed-chamber?

A. I never once ſaw her there all the Time I ſtaid there; I rubb'd the Bed-chamber with a long Rubbing-bruſh; I never ſaw her there, nor above Stairs.

Q. Do you know at what Time it was ſhe came to live with my Lady Dutcheſs?—*A.* Yes; ſhe came while I was there.

Q. Did you live with the Dutcheſs before ſhe came to *Mill-bank?*

A. I liv'd at no other Place with the Dutcheſs, but at *Mill-bank*, and at *Drayton*.

Q. D'ye know how *Vaneſs* left the Dutcheſs's Service; and why?

A. Yes, upon Complaints of Diſorders, and her ill dreſſing the Victuals.

Q. What Diſorders?—*A.* There were Men came to the Door to enquire for her, twice, or more.

Q. Did you ſee the Fellows?

A. Yes, I ſaw the Fellows; they came to the Door in the Duſk of the Evening, and I acquainted the Dutcheſs with it, and told her Grace, I did not think it ſafe for her Houſe, becauſe I had the Charge of Silver Spoons and Forks.

Q. What ſort of Men were they?

A. One of them appear'd to be a Foot-Soldier in a blue Coat.

Q. In what manner was ſhe put away, or left the Houſe?

A. Upon theſe Complaints, the Dutcheſs ſaid ſhe wou'd turn her away.

Q. Did you hear the Dutcheſs ſay ſo?—*A.* Yes.

Q. Was that before the Trial at the Lords Houſe, or after?

A. To the beſt of my Remembrance, it was before the Trial, the latter End of *December*, or the Beginning of *January*, but I can't be poſitive; I think 'twas the latter End of *December*.

Q. Did ſhe go away before the Trial, or not?

A. I think, before the Trial, but I am not ſure: Yes, at the Time of the Trial, I remember another Cook.

Q. Are you ſure of that?

A. Yes, I am ſure of it; 'twas the Coachman's Wife, one *Goſling*.

Q. D'ye know *Hauſeur* or *Nicola?*—*A.* No.

Q. You lived at *Mill-bank* two Years; D'you know no ſuch Man?

A. I never heard his Name before; I had no Acquaintance with him, nor ever ſaw him about Houſe.

Croſs-Examined.

Q. Where do you live now?

A. Near *Huntingdon*; I board in a Houſe there.

Q. How long have you been out of Service?

A. Ever ſince I left my Lady Dutcheſs.

Q. How do you live then?

A. I board in a Houſe; I follow no Employment, but live on my own, except to teach Children, two, three or four, out of Charity.

Q. When came you to the Dutcheſs's Service firſt?

A. I ſerved her about ten or twelve Years ago; but I can't remember the preciſe Time, 'tis ſo long ſince.

Q. How long did you live with her then?

A. I lived with her about half a Year at *Drayton* in *Northamptonſhire*; I went about *November*, and ſtaid to *Lady-Day* following.

Q. How long was it before you came to live with her the laſt Time?

A. I can't tell.

Q. You ſay you came to live with her about two Years and a Quarter; what Time was that?

A. I can't tell, but that may be eaſily found; I liv'd with her about ſix Years ago, or thereabouts.

Q. How long did you leave the Dutcheſs, after the Hearing came on in this Noble Houſe?

A. I don't know; it was about a Year and three Quarters, or two Years, I can't be poſitive.

Q. Was it after the Trial began?—*A.* Yes, I think the Trial began in *January*, and 'twas a Year after it began.

Q. Can't you be poſitive what Time you came to live with the Dutcheſs

A. I came about *Auguſt* to *Mill-bank*, but the Dutcheſs was not come then; but the *October* following my Lady Dutcheſs came.

Q. Where did the Dutcheſs live then?

A. I don't know, I was at the Lady *Peterborough*'s; I help'd her Servants to carry Things, and to get Things ready.

Q. Did you know where the Dutcheſs liv'd then?—*A.* No; ſome ſaid ſhe liv'd in *Flanders*, others in *Holland*, and ſome in *France*.

Q. Was you never at *Vaux-Hall*, while the Dutcheſs liv'd there?

A. I was never there while the Dutcheſs lived there, if ſhe did live there.

Q. Was you never there where ſhe did live?—*A.* When nobody liv'd there, I have ſeen the Houſe where they ſaid ſhe did live.

Q. How long ago is that?

A. I know not how long ago, but 'twas in the Summer-time.

Q. How came you to take notice of that Houſe more than the reſt of the Houſes in *Vaux-Hall?* Who was it told you the Dutcheſs lived there?

A. I think it was one that was————

Q. You ſaid the Dutcheſs went ſometimes by Water; did you go along with her at that Time?

A. Yes, I did, with ſome other Company.

Q. Was you ever ſent to the Houſe, to fetch Goods from thence?

A. No.

Q. Who went with you, when you went with the Dutcheſs there?

A. One Mrs. *Boufflers*, and two or three other Ladies.

Q. D'ye know Sir *John Germaine?*

A. I never ſaw him, but in his Coach, as he was going along the Street; I never ſaw him in any Houſe, or any other Place, ſitting or going, but in his Coach.

Q. Was you never at his Houſe?

A. I never was at his Houſe, nor any Place where he lived.

Q. You ſay you were at the Dutcheſs's Chamber to rub the Room?

A. Yes, I was.

Q. Did you not ſee *Vaneſs* there?—*A.* No.

Q. Can you take it upon your Oath that you never ſaw her there?

A. No, I never ſaw her there; but I ſaw *Suſan Barrington* there.

Q. What Service did *Suſan Barrington* do there?—*A.* She help'd to dreſs and undreſs her Grace, and to mend Linnen, as I think.

Q. When ſaw you her laſt?—*A.* 'Twas about the 9th, 10th, or 11th of *Auguſt* laſt, at the *George*-Inn in *Huntingdon*.

Q. D'you know where ſhe lived then?

A. She was at *Huntingdon* then, and came with the Lady Dutcheſs to take a Stage-Coach for *London*; ſhe was at the *George*-Inn in *Huntingdon*, I think, about *Auguſt* laſt.

Q. You ſay you liv'd at the Dutcheſs's Houſe at *Mill-bank*, before the Dutcheſs came thither: Did *Vaneſs* come with her, or was ſhe hired after?

A. I think ſhe came with the Dutcheſs.

Q. D'ye know whence the Dutcheſs came, when ſhe came there?

A. As I have heard, ſhe came from *Vaux-Hall:* When my Lady Dutcheſs went thither by Water the Summer after, I was told, that my Lady liv'd at ſuch a Houſe in *Vaux-Hall*.

Q. Didn't you know that my Lady Dutcheſs liv'd at *Vaux-Hall?*

A. I never knew my Lady Dutcheſs till ſhe liv'd at *Mill-bank*.

Q. What Account had you at the Dutcheſs's Houſe where ſhe was then?

A. People ſaid ſhe was in *Flanders*.

Q. D'you know when *Vaneſs* came to live with the Dutcheſs?

A. I believe ſhe came to live with the Dutcheſs at *Mill-bank*.

Q. D'ye know when ſhe was diſcharg'd out of her Service?

A. I think 'twas the latter End of *December*, or the Beginning of *January*; I think ſo, but I don't ſpeak poſitively.

Q. Was you by when her Wages were paid?—*A.* No.

Q. Have you ever ſeen her ſince?

A. No, I never ſaw her from that Hour to this.

Q. Where have you liv'd ſince you left the Lady Dutcheſs's Service, and how? Have you any Eſtate?

A. I have a ſmall Matter to live on; I live near *Huntingdon*, I was born near there; 'tis my native Place; I have liv'd there about four or five Years, or within ſeven Miles of that Place, or thereabouts.

Q. Did *Vaneſs* dreſs the Dutcheſs's Dinner when ſhe lived there; for it ſeems ſhe was not good enough to ſerve you?

A. Yes, ſhe did dreſs the Dutcheſs's Dinner, but I did not care to eat Victuals of her Dreſſing.

Q. When did you firſt complain to the Dutcheſs, that Men follow'd *Vaneſs?* or, that you apprehended Danger by her being there?

A. I can't tell.

Q. Was ſhe diſcharg'd immediately after that?

A. I think ſhe was diſcharged immediately after that.

Q. You ſay there were ſome other Ladies that went with the Dutcheſs to *Vaux-hall*; can you name them?

A. Mrs. *Marſhal*, and ſome others; but I can't be poſitive.

Q. Did you know Mrs. *Briane?*

A. No, I never heard her Name before.

Q. Did the Dutcheſs eat always at *Peterborough-houſe*, or *Mill-bank-houſe*, as you call it?

A. Sometimes ſhe eat abroad, and ſometimes at home.

Q. Who dreſs'd her Victuals when ſhe eat at home?—*A.* *Lena*.

Q. What d'ye mean by *Mill-bank-houſe?*

A. *Peterborough-houſe*.

Q. Who did you hear ſay the Dutcheſs lived at that Houſe at *Vaux-hall?*

A. The Dutcheſs was going by Water, and told the Ladies then, that That was the Houſe ſhe had liv'd at, at *Vaux-hall*; and walking in the Garden of the ſaid Houſe, told 'em ſo.

JONAS PEACOCK.

Die Lunæ 4° *Martii*, 1699.

Frances Knight *ſworn, depoſeth as followeth:*

Queſt. HOW long have you liv'd in the Dutcheſs of *Norfolk*'s Family?

Anſw. Twenty-ſeven Years, or upwards.

Q. With whom did you live all that Time?

A. With the Lady Dutcheſs's Father, the Lady *Peterborough*, and the Dutcheſs.

Q. Did you live with the Dutcheſs when ſhe liv'd at *Mill-bank?*

A. Yes, I liv'd with her at her firſt coming there.

Q. Have you been with her ever ſince?—*A.* Yes.

Q. Did you know *Vaneſs* in the Dutcheſs's Family at *Mill-bank*, and what Employ had ſhe there?

A. Yes, I know her very well; ſhe was in the Kitchen.

Q. Did you uſe to be in the Dutcheſs's Bed-chamber, and about her Perſon?—*A.* Yes, I was the firſt in the Morning there, and the laſt at Night, conſtantly.

Q. Did you know *Elianor Vaneſs* there; and did ſhe uſe to come into the Dutcheſs's Chamber?

A. She never came there.

Q. Where uſed ſhe to employ herſelf?---*A.* In the Kitchen.

Q. Was ſhe well enough in Cloaths, cleanly enough, and fit to come into the Dutcheſs's Chamber?——*A.* No, ſhe was not.

Q. What Time went ſhe away; and upon what Account?

A. My Lady put her away, becauſe Soldiers came and aſk'd for her, and ſent for her to Alehouſes about Ten a-Clock at Night. I went up one Morning, and complain'd of her to my Lady Dutcheſs, and told her that the Soldiers haunted her, aſk'd for her, and ſent for her to Alehouſes at Ten a-Clock at Night: And my Lady Dutcheſs ſaid, ſhe would not keep a Servant that kept ill Hours.

Q. Was this before the Trial?

A. Yes; my Lady put her away upon my ſpeaking this.

Q. Do you know why ſhe was put away?

A. Yes, for having Soldiers haunt her Company.

Q. Conſider well what you ſay.

A. Yes, my Lords; I ſpeak what my Conſcience tells me: Here I am before the Lords, I muſt ſpeak Truth.

Q. How far can you recollect yourſelf, if it was before the Trial, or not, that ſhe was put away?---*A.* It was before the Trial.

Q. How long?

A. I can't remember; I think it was about a Quarter of a Year; I can't tell exactly, but it was near upon.

Q. How near was you to the Dutcheſs? What was your Employment?

A. I help'd to get her to Bed, as her Chamber-maid.

Q. Did *Eleanor Vaneſs* never undreſs her?

A. No, never in this World.

Q. Did you never know her come into the Dutcheſs's Chamber?

A. Never, never Oh, fie! never indeed.

Q. Do you know *Nicholas Hoſier?*

A. I don't know him: There were many aſk'd for Mr. *Keemer*; but I did not know them, for he has many Acquaintance.

Q. Did you know *Thomas Hawkſworth*, your Fellow-ſervant?

A. Yes, he came when my Lady came to *Mill-bank*; Mr. *Peacock* came before; they were both Servants together.

Frances Knight *Croſs-Examined.*

Q. You ſay you lived Twenty-ſeven Years and upwards with the Dutcheſs and her Mother; Do you live with the Dutcheſsſtill?

A. Yes.

Q. How long is it ſince you liv'd with her Mother?

A. After the Dutcheſs was marry'd, I came to live with her and my Lord Duke.

Q. Have you been in her Service ſince?——*A.* Yes.

A. After the Duke parted with my Lady Dutcheſs, where did ſhe go to live?

A. She lived at *Mill-bank*, and no where elſe that I know of.

Q. Came you to live with her ſoon after her Marriage? and have you lived with her ever ſince? and did ſhe ever live at *Vaux-Hall?*

A. I never lived with her at *Vaux-Hall.*

Q. Then you have not lived with her ever ſince?

A. I have lived with her ever ſince; I have taken my Oath, and as near as I can tell you.

Q. Where did the Dutcheſs live before ſhe came to *Mill-bank?*

A. She liv'd at *Vaux-Hall.*

Q. Did not you live with her there?

A. No, I broke my Leg, and was brought to her Mother's, and ſtaid there a Twelvemonth; Mr. *Peters* was my Surgeon, he can tell it. I came here to ſpeak the Truth.

Q. Don't be angry.——*A.* No.

Q. Did you continue with the Dutcheſs till you broke your Leg?

A. Yes; and when I broke my Leg, I went home to her Mother's.

Q. When left you the Dutcheſs after ſhe parted with my Lord Duke?

A. I left her at *Mill-bank.*

Q. Do you know the Queſtion that's aſk'd? When did you leave the Dutcheſs after ſhe parted with the Duke?

A. I know no ſuch Queſtion as you aſk. I ſpeak the Truth as well as I can.

Q. Where did my Lady Dutcheſs go, when you left her?

A. I went away lame, and cou'd do her no Service.

Q. Where did you come to my Lady Dutcheſs again, when you were well?——*A.* At *Mill-bank.*

Q. Was you ever with her at *Vaux-Hall?*

A. I was not there, becauſe I was lame.

Q. Was you ever at *Vaux-Hall?*

A. I told you I broke my Leg.

Q. Was you ever at *Vaux-Hall*, or not?——*A.* I tell you I was lame.

Q. Was you ever at *Vaux-Hall* at any Time?

A. I tell you I was lame; I give you Anſwer to your Queſtion. I tell theſe noble Lords, that every Word I ſpeak is Truth.

Q. But you are ſwore to ſpeak the whole Truth.

A. I ſpeak the Truth. Why ſhould you do ſo?

Q. Was you ever with the Dutcheſs at *Vaux-Hall?*

A. I was not able to be there with her.

Q. Was you there with her, or not?

A. I was not able to go thither.

Q. Was you never there?——*A.* I was not able to go thither.

Q. Was you never there, or not, with the Dutcheſs?

A. No, I never was at *Vaux-Hall* in my Life, but at *Mill-bank* and *White-Hall* I have. *Memorandum* in this Interlineation was alter'd, upon reading over her Examination, *Yes, I have been there, but I did not ſtay there.*

Q. Was you ever there with the Dutcheſs, or not?

A. I was not there: I tell you I was not there, I was lame.

Q. Was you never there with the Dutcheſs at any Time?

A. No, I tell you I was lame: I was never there with the Dutcheſs.

Q. Where was the Dutcheſs before ſhe came to *Mill-bank?*

A. That I can't tell.

Q. Where was ſhe when you broke your Leg?

A. I left her at *Mill-bank* with her Mother.

Q. Where did you find her, when you came again?

A. I found her at her Mother's.

Q. Can't you tell where ſhe was in the mean Time?---*A.* No.

A. Was you never told by any of the Family where ſhe was at that Time?---*A.* No.

Q. Did *Vaneſs* come to the Dutcheſs when ſhe liv'd at *Mill-bank?*

A. Yes.

Q. How long did ſhe live with her after?

A. I can't tell; but a ſhort Time.

Q. Do you know *Suſannah Barrington?*---*A.* Yes.

Q. When did you ſee her laſt?

A. About three Weeks ago.

Q. Is ſhe not in the Dutcheſs's Service ſtill?

A. I'll tell you the Truth: She receiv'd a Letter from *Flanders*, acquainting her that her Mother was dead: She was very much afflicted with it: And when the Dutcheſs came in, I told her Grace that *Suſan* had receiv'd a Letter that her Mother was dead, and I did deſire my Lady to give her Leave to go to *Holland*; and ſhe's there.

Q. Did you ſee the Letter?---*A.* I ſaw it.

Q. Was it from her Mother, or from her Siſter?

A. Yes, 'twas from her Siſter, that her Mother was dead.

Q. Was *Suſanna Barrington* in the Dutcheſs's Service when this Bill was depending?——*A.* No.

Q. How long is it ſince you receiv'd that Letter?

A. 'Tis about three Weeks ago.

Q. How long is it ſince you went?

A. A Fortnight To-day.

Q. Did you ſee her any Time theſe three Weeks?

A. No, no.

Q. Did you live with her in the Houſe, and did you not ſee her?

A. She has been gone about a Week.

Q. D'you know Mrs. *Judith?*---*A.* No.

Q. D'ye know Mrs. *Briane?*

A. I have heard her Name, but am not acquainted with her.

Q. Had you any Diſcourſe with *Vaneſs*, when ſhe came to *Mill-bank* to live with the Dutcheſs?

A. No, I never lik'd her Diſcourſe.

Q. Did you ever hear the Dutcheſs ſay that ſhe liv'd at *Vaux-Hall?*

A. No.

Q. Do you know Sir *John Germaine?*

A. I know him by Sight.

Q. Did you ever ſee him at the Dutcheſs's?——*A.* No.

Q. Did you never ſee him at *Mill-bank*, or at her Houſe here?

A. No, my Lords, never.

Q. Did *Vaneſs* come along with the Dutcheſs when ſhe came to *Mill-bank?* or was ſhe hired after her Return?

A. She came after her Return to *Mill-bank.*

Q. What Time went ſhe away?

A. I can't tell the Day; that's a hard Queſtion. She went away, on my ſpeaking to the Dutcheſs, that ſhe was haunted with bad Company.

Q. Did not ſhe dreſs the Dinner when the Dutcheſs dined at home?

A. Yes; but ſhe never dined at home but very ſeldom.

Q. Can't you tell when *Vaneſs* went away?---*A.* No.

Q. Did you know *Nicholas Hoſier?*

Q. No; I know no ſuch Man. There were many People came to *Keemer*, Lords Servants and others; I don't know ſuch People.

A. You have heard that the Dutcheſs liv'd at *Vaux-Hall?*---*A.* Yes.

Q. At what Time did ſhe live there?

A. I can't tell you; I was ſick in Bed.

Q. You may recollect about what Time was it.

A. I was lame in *March*, this Month: I can't tell what Year.

Q. D'you know what Houſe ſhe liv'd in?

A. Yes; 'twas one Sir *Thomas Groſvenor*'s, at *Mill-bank.*

Q. I aſk you what Houſe ſhe liv'd at at *Vaux-Hall?*

A. I know not.

Q. How came you to know the Dutcheſs liv'd at *Vaux-Hall?*

A. You aſk what I can't tell you.

Q. You dar'n't tell.

A. Yes, I'll tell the Truth before all the Houſe of Lords.

Q. You ſaid ſhe liv'd at *Vaux-Hall?*

A. No, I never ſaid it.

Q. Whence came the Dutcheſs, when ſhe came to *Mill-bank?*

A. She came from the Place ſhe did; I did not aſk her the Queſtion; I durſt not be ſo bold.

Q. Can't you tell when ſhe came to *Mill-bank?* nor from what Place ſhe came?

A. I can't tell the Day when ſhe came. I don't aſk from what Place People come.

Q. When did you know Sir *John Germaine* firſt?

A. I ſaw him firſt with my Lord Duke there, at his Houſe in the Square.

Q. Did you never know him keep Company with the Dutcheſs?

A. No, but only with the Duke of *Norfolk* there; I ſpeak in the Preſence of GOD.

Sign'd, *FRANCES KNIGHT.*

Die Lunæ 4° *Martii*, 1699.

William White *ſworn, depoſeth as followeth:*

Queſt. DID you live with the Dutcheſs of *Norfolk* for ſome Years paſt?

Anſ. I liv'd with her ſince the firſt Week of the firſt Trial, about ſix, or ſeven, or eight Years ago.

Q. What care was there taken about the Dutcheſs's Door in the Park?

A. I generally went out the firſt in the Morning; the Door had two Bolts, a Croſs-Bar, and an Iron Chain; beſides, theſe I unbolted every Morning, and unbarr'd, when I went out early.

Q. Did you ever hear or underſtand that *Hoſier* had a Key to that Door?

A. I never knew any thing of it, nor know not of what Uſe it could have been; for he could not come in till the Door was unbolted.

Q. Say poſitively, whether ever you have heard, that this Man had a Key to that Door?

A. I never heard of it.

Q. Did you never ſee him come in at that Door?

A. Yes.

Q. How? Upon what Occaſion?

A. I happen'd to be going out myſelf, and to open the Door for him. His Buſineſs, I was told by my Lady Dutcheſs's Maid, was, That ſhe had lent Money to a Man in *Holland*, and ſhe wrote a Letter to be carry'd by this Man to her Siſter, to get this Money; and ſhe ſent another Letter by one *Bull*, to carry to *Holland*, to get the Money, as ſhe told me.

Q. Did you let him in?

A. I unbolted the Door, and let him in.

Q. Did you find that this Man uſed to come freely to the Houſe, at that Door, by any Key?

A. No, I never knew it.

Q. Who did he come to?

A. To *Suſan Barrington.*

Q. Did you ever ſee him above Stairs with her?

A. No; he might come in, and I not ſee it.

Q. Did the Dutcheſs or Servants ſay any thing that he had Leave to come in?

A. I never examin'd that, becauſe any body that had Buſineſs had Leave to come in, as Tradeſmen, and others.

Q. Did they tell you in the Houſe, that *Hoſier* was at Liberty to come into the Houſe with a Key?

A. No, never.

Q. Had you ever any Diſcourſe with *Hoſier?*

A. I was one Day coming from *Change*, and met Mr. *L'Eſtrange* and this *Hoſier*. *L'Eſtrange* told me, that he was ill of the Gripes. I told him, that the beſt Thing for it was burnt Claret; and he, and I, and *Hoſier* went to a Tavern in *Smithfield:* And while we were together, *Hoſier* reflected upon his Maſter, ſaying, His Maſter had uſed him ill, and deſerv'd to be ill uſed. Mr. *L'Eſtrange* heard theſe and ſome more Words; Mr. *L'Eſtrange* told me, that he ſpoke to that purpoſe, He was reſolved to be reveng'd of his Maſter.

Q. What did he ſay of his Maſter?

A. He ſaid his Maſter had uſed him very ill; he had many threatning Words; He ſaid his Maſter was an ill Man, and deſerv'd to be ill uſed, and the Time would come when he ſhould repent it.

Q. When did he ſay theſe Words?

A. 'Twas about *Michaelmas* two Years ago, or a Year ago, I can't tell which.

(*Croſs-Examined.*)

Q. You ſay you liv'd with the Dutcheſs the firſt Week of the firſt Trial: Was *Vaneſs* there at that Time?

A. She was gone before I came.

Q. How long?

A. I can't tell; I never ſaw her there, to the beſt of my Remembrance, but have heard there was ſuch a one in the Family.

Q. Did you know *Hoſier?*

A. I ſee him come in at the Back-Door.

Q. Whoſe Servant was he then?

A. The firſt Time I did not know; but a little after, I was told he was Sir *John Germaine*'s.

Q. What Occaſion had he to come to the Dutcheſs's Houſe?

A. I know not, but about the Buſineſs of the Letter.

Q. How often did you ſee him there?

A. Two or three Times, or more.

Q. With whom?

A. With *Suſan Barrington.*

Q. What was his Buſineſs with her?

A. About the Money, as ſhe told me. He went along with that Woman; ſhe ſent a Letter by him; and ſhe ſent Letters by ſome other *Dutchmen* into *Holland*, about the Money.

Q. Did he aſk for any other Servant?

A. Not that I know of.

Q. Did you ſee him above Stairs with her?

A. I never ſaw them in any Apartment but that Place below, where the Lumber is, near the Park-door.

Q. D'you know *Suſannah Barrington?*

A. I know her very well.

Q. D'you know where ſhe is now?

A. Her Mother died about the 10th of *January*, and then I ſaw her all in Tears; and ſhe went away after this Account of her Mother's Death.

Q. When did you ſee her laſt?

A. I have not ſeen her this Fortnight or Month, that I know of, that I could diſtinguiſh her from another Woman, except ſhe had a Maſk on.

Q. How long before this Trial ſaw you her?

A. About a Fortnight: She gave me an Account that her Mother died the 10th of *January* in *Holland.*

Q. When did ſhe go away?

A. I did not take notice of the Time ſhe went away.

Q. Did you know *Hoſier* at any other Place but at the Lady Dutcheſs's?

A. Never, but as I have ſeen him in the Park, and with Mr. *L'Eſtrange.*

Q. Was you never with him at Sir *John Germaine*'s?---*A.* Never.

Q. D'you know Sir *John Germaine?*

A. After I had lived with the Dutcheſs ſome Time, I was told by ſome in the Street, that that was his Coach, and his Livery, and that he was the Man that there was ſo much Noiſe about.

Q. Did you never ſee him in the Dutcheſs's Houſe?

A. I never ſaw him in no Part of my Lady Dutcheſs's Houſe, nor in no Apartment; and I am the only Man that goes up and down Stairs.

Q. Did you never ſee him in the Dutcheſs's Company at any other Place?---*A.* No.

Q. Did you conſtantly lie at the Dutcheſs's Houſe?

A. When the Dutcheſs was laſt at *Drayton*, I lay at *Richmond* two or three Nights.

Q. Did you lie conſtantly there, when the Dutcheſs was there?

A. I was ſick near a Month, and all that Time I lay at my Wife's; but moſt commonly lay at the Dutcheſs's, ſince ſhe is come to *Duke-ſtreet* to live.

Q. You ſay, You uſed to open the Door in the Park firſt in a Morning; what Time did you uſe to open it at?

A. At Six, Seven, or Eight o'Clock in a Morning; there was no certain Hour; but I generally open'd that Door.

Q. Did you ever know *Hauſeur* come in at any other Door but that?

A. Yes; one wet Day he came in at the Street-Door, before the Porter and all the Servants, and aſk'd for the ſame Woman.

Q. Did he never aſk for any other Body?

A. I never heard him aſk for any but *Suſan Barrington*, for ſhe was his Country-woman.

Q. If *Nicholas* got in at the Park-door, could not he get up Stairs?

A. If he could get in at that Door he talks of, he could not get into the Dutcheſs's Apartment; for there was a Room betwixt that, where the Plate and Jewels lay, that no Key could open: That if he could get up two Pair of Stairs, he could not get in there.

Q. If he had a Key, and got in at any Door, cou'dn't *Suſan Barrington*, when he came in, without any difficulty, lead him round the Houſe?

A. I can't ſay but ſhe might; but I never ſaw him, but below Stairs with that Woman, and then he went away without going up Stairs.

Q. Did you never ſee him bring any Thing to the Houſe?---*A.* No.

Q. You nam'd one *L'Eſtrange*, that you ſaw with him at the Tavern, what is he?

A. He was my old Fellow-Servant at the late Duke of *Norfolk*'s.

Q. What Diſcourſe had you with him then?

A. He complain'd to me of his being ill, and I gave him the beſt of my Advice.

Q. What Time was it that *Nicholas* had thoſe threatning Words againſt his Maſter?

A. About Ten, Eleven, or Twelve a-Clock at Noon.

Q. How long ago is it?

A. I can't tell if it be a Year or two Years; 'twas a little after *Michaelmas*; but whether it be one Year, or two Years, I can't tell.

Q. Cou'dn't Mr. *L'Eſtrange* tell?

A. I aſk'd Mr. *L'Eſtrange*, and he cou'd not tell.

Q. Whoſe Servant was *Nicholas* then?

A. He was nobody's Servant then: He rail'd againſt his Maſter at that Time for turning him away.

Q. Did you not know who was his Maſter a Year or two ago?

A. He told me he was out of Place.

Q. Did you not know him to be Sir *John Germaine*'s Servant, when he came to the Dutcheſs's?

A. I did not know it when I firſt ſaw him and *Suſan* together; but ſome time before he went away, I heard he was his Servant.

Q. But you ſay you did not know Sir *John Germaine* about two Years ago?

A. I did not know him ſo as to ſpeak to him.

WILLIAM WHITE.

Die Lunæ 4° *Martii*, 1699.

Matthew Mac-Donnell *ſworn, depoſeth as followeth:*

Queſt. HOW long have you liv'd with the Dutcheſs of *Norfolk?*

Anſw. Four Years at *Lady-day* next.

Q. In what manner was the Door going out to the Park kept? Had any body a Key to it that was not of the Family? Did it uſe to be left open?

A. 'Twas not to be left open; 'twas very unſafe to be left open; beſides, it was bolted and lock'd.

Q. Was there particular Care taken of that Door?

A. Yes; I myſelf bolted it very often at Night.

Q. Did you often unbolt it in a Morning?---*A.* Yes.

Q. Whether or not, the Time that you lived there, did you know any body, that was not of the Family, come with a Key to open that Door?

A Never.

Q. Did you know *Hauſeur*, or *Nicholas?* Had he a Key to that Door?

A. I never knew it.

Q. Did you ever ſee him come in at that Door?

A. I open'd that Door for him once or twice when he rung.

Q. When was that?---*A.* In an Evening.

Q. What did he come about?

A. I do not know; but he aſk'd for *Suſan*, my Lady Dutcheſs's Servant.

Q. Did you ever ſee him go up Stairs?

A. I never did hear he went up in my Life.

Q. When he aſk'd for *Suſan*, did he go up then?

A. No; I call'd her to him, and I never ſaw him go up Stairs.

Q. Did you ſtay with him all the while *Suſan* was with him?

A. No, I had no Buſineſs; I went my way.

Q. Was *Nicholas*, when he rung, in the Park, or at the inner Door?

A. In the Park.

(*Croſs-Examined.*)

Q. Did you know whoſe Servant *Nicholas* was?

A. I did not know, nor I aſk'd no Queſtions.

Q. How often have you ſeen him at the Dutcheſs's.---*A.* Three Times.

Q. Did he always aſk for *Suſannah Barrington?*

A. One time he aſk'd for Mr. *Keemer.*

Q. Who was Mr. *Keemer?*

A. He was the Dutcheſs's Servant.

Q. Did you uſe to ſtay with him? or, did you leave him?

A. No, to tell you the plain Truth, I thought he came to court *Suſan*, and did not ſtay with him.

Q. Did you ever ſee him up Stairs in *Suſan*'s Room?

A. I never ſaw him there.

Q. What Employment have you under the Dutcheſs?

A. I am her Foot-man.

Q. When did you ſee *Suſan* laſt?

A. On *Tueſday* Seven-night in the Morning.

Q. Not ſince?——*A.* No.

Q. Where did you ſee her then?

A. At the Dutcheſs's Houſe.

Q. What became of her after that?

A. She ſaid, her Mother died lately in *Holland*, and ſhe was going there.

Q. When did you hear her ſay ſo?

A. I heard her ſay ſo ſeveral times before ſhe went away; a Month, or a Quarter of a Year, before ſhe talk'd of going to *Holland*.

Q. Upon your Oath, don't you know that ſhe is at the Dutcheſs's?

A. I know not of her being there.

Q. Can you take it upon your Oath when ſhe was firſt wanting?

A. I ſaw her on *Tueſday* Seven-night laſt, in the Morning.

Q. How came you to know ſhe was gone, if you don't know the Time when ſhe went?

A. I did not know ſhe was gone, till I went home from the Houſe here.

Q. Who told you ſhe was gone?---*A.* The Servants.

Q. She was there when you came hither?

A. On *Tueſday* Morning I did ſee her.

Q. Has the Dutcheſs another in her Station?

A. There is one Mrs. *Cambell*, that dreſſes my Lady Dutcheſs, but ſhe does not live there.

Q. Did ſhe uſe, in *Suſan*'s Time, to come and dreſs the Dutcheſs?

A. Yes, ſhe uſed to come ſometimes.

Q. Has the Dutcheſs taken any body to do *Suſan*'s Work?

A. I know not of any.

Sign'd,
MATTHEW + MAC-DONNEL.

Die Lunæ 4° *Martii*, 1699.

Mr. Robert Welbourn *ſworn, depoſeth as followeth:*

Q. WHAT Account can you give of Mr. *L'Eſtrange*'s having Notice to be a Witneſs?

A. I was told by the Dutcheſs, That *L'Eſtrange* had been with her, and gave her an Account of ſome Particulars between *White*, and him, and *Nicholas*; That having the Griping in the Guts, they went into a Tavern together; That he heard *White* and *Nicholas* talk together very loud, but he told me he had the Gripes, and could not ſo well mind what he ſaid; but he heard him uſe hard Words againſt his Maſter, but he could not remember that he ſaid he would be reveng'd upon his Maſter; but he would recollect himſelf, and, if he could remember, he would ſay what he could: He told me, he had been bred in the *Norfolk* Family.

Q. Did you aſk Mr. *L'Eſtrange* about this Matter?

A. Yes: Mr. *L'Eſtrange* told me, He remember'd they were together, and heard *Nicholas* ſpeak very hard, ill Words againſt his Maſter, but he could not be poſitive what they were; but what he could remember he would ſpeak, if that would do the Dutcheſs any Service. He deſir'd my Lady Dutcheſs would give him notice the Night before, and he would appear.

Q. When was this?

A. 'Twas *Tueſday* or *Wedneſday*; I think 'twas *Wedneſday*.

(*Croſs-Examined.*)

Q. Did the Lady Dutcheſs tell you what Mr. *L'Eſtrange* ſaid?

A. Yes; that gave me the Occaſion to ſpeak of it. He ſaid, he heard *Nicholas* ſay hard, ill Words againſt his Maſter, but not that he heard him ſay he would ſtudy to be reveng'd. Perhaps, ſays he, there might be ſome other Words. That he was in the Kitchen, and would endeavour to recollect who was there beſides; and if he had two or three Days Time, he would enquire.

Q. Did you let him know you was concern'd for the Dutcheſs?

A. Yes; and he told me he would tell me what he could ſay in this Matter; and he ſhould be ready to appear at any Time, if that would be for the Dutcheſs's Advantage.

Q. Did he tell you he was going abroad into *Holland*?

A. Not one Word.

Q. Did you intimate to him, when the Dutcheſs was to make her Defence?

A. I think I did, but I can't be poſitive; but he took no notice to me, that he would not be there.

Q. D'you know Mr. *La Fountaine*?

A. Yes, I know one *La Fountaine*.

Q. Is he in the Dutcheſs's Service?---*A.* I believe not.

Q. D'you know whether he is at *Drayton*?

A. I have ſeen him at *Drayton*.

Q. Did he live with Sir *John Germaine*, that you know of?

A. Never, that I know of.

Q. When ſaw you *Suſan Barrington*?

A. I can't be poſitive; but I think, not this Month or ſix Weeks.

Q. Ha'n't you ſeen her ſince this Bill was brought in?

A. Poſitively, I have not.

ROBERT WELBOURN.

Die Lunæ 4° *Martii*, 1699.

Elianor Monfort *ſworn, depoſeth as followeth:*

Q. TELL the Lords if you know *Nicholas Hoſier*, and on what Account you came to know him.

A. This *Nicholas* lodg'd two or three times at my Houſe. My Huſband was a *Dutchman*, and he was a *Dutchman*; they were like Brothers, they lov'd one another.

Q. What know you of this Man, this *Nicholas*?

A. My Huſband told me, that this Man *Nicholas*, (I did not know no other Name he had;) my Huſband told me, that he had a Deſign to rob his Maſter, and that he knew where his Gold and his Jewels lay, and had made falſe Keys, and would watch his Opportunity when his Maſter was at Play, or out of Town; and left the Keys at her Houſe.

Q. Your Huſband told you ſo?

A. Yes, my Huſband bid me ſend for this Man. Theſe were his laſt dying Words.

Q. Your Huſband had a ſad Misfortune. When was't your Huſband told you ſo?---*A.* When he was in Priſon.

Q. How long ago is that?

A. About eight or nine Years ago laſt *Chriſtmas.* I would not have your Lordſhips think my Huſband was ſo bad a Man; he was only Condemn'd and Executed for changing Ten Pounds of his own Money.

Q. What were your Huſband's laſt dying Words?

A. He deſired me to ſend for this Fellow, and deliver thoſe Things he left at my Houſe. I ſent for him; he came, and had ſome Keys in a Drawer, that my Huſband told me he had left there. He took two or three Keys, and put them in his Pocket, and look'd mightily out of Countenance.

Q. What did your Huſband ſay to you?

A. He bid me give *Nicholas* the Keys, and bid him have a Care, and keep good Company.

Q. When was that?

A. A Week or a Fortnight before my Huſband was executed.

Q. Did you acquaint *Nicholas* with what your Huſband ſaid of him?

A. No, an't pleaſe your Honours; I only told him, my Huſband charg'd me to give him thoſe Keys; but being in Trouble, and having a great many Enemies, I talk'd no further with him.

Q. What did *Nicholas* ſay to you?

A. He look'd out of Countenance, and told me he would come and ſee me another Time; but he never did; ſo that I did not ſee him again till I ſaw him in the *Meuſe*, and then he told me that he would come to ſee me; but he never did, but always ſhunn'd me.

Q. How long have you known *Nicholas*?

A. Theſe eight or nine Years. I knew him when he was Footman to Sir *John Germaine*, and I knew him when he was his Gentleman. I knew him when he went, and I knew him when he came: He is like a Sea-Rat, he comes and goes when he pleaſes. I hope in GOD Almighty it will be conſider'd by this Houſe, that ſuch a Fellow's Witneſs ſhould not be taken in ſuch a great Concern.

Signum,
ELEANOR + MONFORT.

Then the Dutcheſs's Counſel pray'd that *Mac-Donnel* may be examin'd, as to the withdrawing Witneſſes, and that it be taken in Writing: Which was agreed to, and he examin'd.

Then the Dutcheſs's Counſel proceeded to examine other Witneſſes, and their Evidence taken in Short-hand.

Then Mrs. *Pitts* being call'd for, and not appearing, *William Godfrey* being ſworn, ſaid to this effect:

I Went to Serve Mrs. *Pitts* on *Friday* Morning: When I came to her Houſe there was nobody. A Woman with a Pitcher of Water went in: I aſk'd her for Mrs. *Pitts*; ſhe ſaid, She was not at home. I ſhew'd her the Order, and left a Copy of it upon the Table. She was loth to receive it; ſhe ſaid, the Lady would be within quickly. The Woman's Name was *Olivet*. The laſt Night I went again, and a Woman came out and ſaid, Mrs. *Pitts* was not at home. Then ſhe ſpake in *French* to me: I did not underſtand her. I left a Note for her to attend this Day.

Then the Dutcheſs's Counſel pray'd, That ſome Agreements between the Duke and Dutcheſs, in 1694, may be read out of the Deeds executed for that purpoſe: Which was agreed to, and read accordingly.

Die Martis 5° *Martii*, 1699.

Francis Negus *ſworn, depoſeth as followeth:*

Q. I Deſire Mr. *Negus* may be aſk'd, Whether the Dutcheſs of *Norfolk* did not ſend ſome Meſſage by him? The Words I don't confine him to; but, Whether the Meſſage ſent by him to my Lord Duke was not to this purpoſe; That notwithſtanding the Articles, ſhe deſir'd to know from his Grace in what Manner ſhe ſhould live; and that ſhe would be govern'd by his Directions?

A. I think 'twas much about the Time of the Tranſaction of theſe Articles the Dutcheſs ſent to me. Mr. *Longueville* was Counſel for the Duke, and Sir *Thomas Powys*, for the Dutcheſs. Mr. *Longueville* took what Care he could; and when they came to talk of their living ſeparately, I took it only to be an Apprehenſion and Fear that my Lord Duke would confine the Dutcheſs to ſome Houſe. My Lady Dutcheſs ſent for me; I waited on her, and ſhe expreſs'd herſelf very ſenſibly of the Misfortunes of the Duke and herſelf, that ſuch Differences ſhould have been between them; and ſhe was deſirous to let my Lord Duke know, and deſir'd me that I would let my Lord Duke know it, that ſhe would avoid all Company that ſhould give him any Offence, and that ſhe would not ſo much as pay a Viſit, but where he liked. I acquainted my Lord Duke with ſomething to this purpoſe; for ſhe often ſaid to me, more than once or twice, That if ſhe happen'd to die before my Lord Duke, ſhe would leave him her Eſtate; and I know I have ſaid ſo to my Lord Duke.

Q. Whether, from that Time, do you know that the Duke ſent any Meſſage of Complaint to the Dutcheſs, to the Place where ſhe liv'd, that he would have her live in any other Way?

A. I know nothing of that Matter.

Q. Do you know whether my Lord Duke ever deſir'd her to come and live with him?---*A.* I never heard of any ſuch Thing.

Q. Did he ever ſend to her, to avoid any Company?

A. I never heard of any ſuch Thing.

Q. Whether had you any Directions to attend the Duke, That he would give Way in a Controverſy between the Dutcheſs and a Noble Lord of this Houſe, whether he would wave his Privilege?

A. I have great reaſon to deſire Sir *Thomas*'s Favour in this Matter; I know not what he aims at. I was call'd to the Bar before, to ſpeak the Truth as to the Matter of the Privilege; I know not what he means by it.

Q. I meant it only as an Inſtance of a Civil Meſſage between the Duke and Dutcheſs, owning her as his Wife, and that this was a Meſſage that beſpoke a good Underſtanding between them?

A. Will you have me to give an Anſwer to Sir *Thomas*, my Lords? I confeſs, the Duke did ſend for me, and aſk'd me how the Settlement and Agreement were betwixt the Duke and Dutcheſs, becauſe of this Matter of the Privilege.

Q. I did not mean that; but only as a late inſtance of the Duke's owning the Dutcheſs ſo far.

A. When the Duke ſent for me, he would know, whether by the Agreement he was oblig'd to let her have the Privilege? I ſaid, I underſtood it ſo; and tho' he had no Mind to do it, but as he had waved his Privilege, in the Caſe of an Uncle, he would do it for her.

Q. What would have been the Conſequence, if the Duke had not waved his Privilege? Would not that have defended her from a Suit?

A. That you may make uſe of as you pleaſe.

Sir *Thomas Powys.* I would only make this Uſe of it, as an Inſtance of Kindneſs between the Duke and Dutcheſs.

FRANCIS NEGUS.

After the Examination of *Francis Negus*, he being before ſworn, the Dutcheſs's Counſel declared they had finiſhed their Evidence.

Whereupon the Duke's Counſel deſir'd to call a Witneſs or two, to ſupport *Nicholas Hauſeur*'s Reputation. Then *William Allen* was ſworn and examined.

Die Martis 5° *Martii*, 1699.

William Allen *ſworn, depoſeth as followeth*:

Q. D'YOU know *Nicholas Hauſeur?*-------*A.* Yes.

Q. How long have you known him?------*A.* Three Years.

Q. Did you not know him before that Time?

A. I knew him about three Years ago.

Q. Had you any Dealings before that Time?

A. I had Dealings with him when he liv'd with Mr. *Germaine.*

Q. What were his Dealings?

A. As honeſt and fair as any Man could deſire.

Q. What Office had he under Mr. *Germaine?*

A. He was Cook to Mr. *Germaine*, I ſuppoſe.

Q. What! was he Cook to him?

A. He bought in the Goods, and he paid me honeſtly for what he bought.

(Croſs Examined.)

Q. What Trade are you?--------*A.* A Butcher.

Q. Then he paid you his Maſter's Money for his Maſter's Goods?

A. Yes, he paid me very honeſtly.

Q. When ſaw you him laſt?

A. I ſaw him when I was ſummon'd here by the Order of this Houſe, but not before of late.

Sign'd,
WILLIAM W *ALLEN.*

The Duke's Counſel mov'd for Copies of the Examinations and Journals; which was granted, and the Counſel withdrew. The following Orders were made:

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Copies of the Examinations, Sign'd by the Witneſſes this Day, and Entry in the Journal, be delivered to either Side; and, That the Examinations taken this Day in Short-hand be tranſcrib'd, in order to be read to the Witneſſes To-morrow.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That To-morrow at Twelve a-Clock, this Houſe will proceed to hear the Examinations taken this Day, read to the Witneſſes, relating to the Duke and Dutcheſs of *Norfolk*, and all Lords ſummon'd to attend.

Die Mercurii 6° *Martii*, 1699.

After the Examination taken Yeſterday, relating to the Duke and Dutcheſs of *Norfolk*, were read to the Witneſſes, and they ſigning them, the Dutcheſs's Counſel mov'd to have Copies of the Depoſitions taken on either Side, and then withdrew.

Die Martis 5° *Martii*, 1699.

Matthew Mac-Donnel *ſworn, depoſeth as followeth*:

A. I WAS going to Mr. *Strange*'s Houſe, and I ſaw my Lord *Howard* of *Eſcrick* coming that Way, and he went to the Door and knock'd. I made up to the Door, and a Girl open'd the Door. My Lord aſk'd if Mr. *Strange* was within, and ſhe anſwer'd, Yes. Then I went to the Door, and aſk'd if Mr. *Strange* was at home; ſhe anſwer'd, No, he went away on *Thurſday*. I aſk'd, By Packet-boat, or how? She ſaid, By Long-Sea. I thought ſhe told my Lord he was within, and ſo I came away.

Signum,
MATTHEW + *MAC-DONNEL.*

Die Martis 5° *Martii*, 1699.

Richard May *ſworn, depoſeth as followeth*:

Q. DO you know *Nicholas Hauſeur?*

A. I never ſaw him till *Sunday* Fortnight laſt.

Q. Where ſaw you him then?

A. At my Lord Duke of *Norfolk*'s. I had a Command from my Lord Duke to take him in there.

Q. Where?

A. To lodge him in my Lord Duke's Houſe: I am his Houſhold-Steward; he commanded me to provide for him in the Houſe.

Q. I don't deſire you ſhould do any Thing unbecoming to my Lord Duke; but you are upon your Oath, and you muſt tell the Truth.

A. I'll freely tell what I know.

Q. Can you give me any Account where he was before that Time? I never ſaw nor heard of him till then.

Q. Hath he been there ever ſince?

A. Yes; I made Proviſion for him by his Grace's Command.

Q. Do you know *Vaneſs?* Where hath ſhe been?

A. On *Sunday* was Fortnight ſhe came thither likewiſe, and I was order'd to take Care for her.

Q. Where was ſhe lodg'd?

A. In my Lord Duke's Houſe in *St. James's-Square.*

Q. Has ſhe been there a Fortnight?

A. Yes, a Fortnight laſt *Sunday*, and coming here to attend the Lords.

Q. Had ſhe the Liberty of the Houſe, or was ſhe kept cloſe?

A. They were kept only as they deſir'd themſelves; no body was deny'd Liberty to ſee them: They deſir'd to be there, ſooner than any Place.

Q. D'you know that thoſe People have been ſent for, and how long before they came?

A. I was never privy to any thing of that nature: I had no Knowledge of their Names, nor whence they came.

Q. Do you know of any Money iſſued out for their coming over?

A. Not one Penny.

Q. Do you know of any Reward they have had, or are to have?

A. I know not of any Reward they have had, or are to have.

RICHARD MAY.

Die Martis 5° *Martii*, 1699.

Chriſtopher Raine *ſworn, depoſeth as followeth*:

Q. ARE you Servant to the Duke of *Norfolk?*-----*A.* Yes.

Q. D'you know *Hauſeur?*

A. I have ſeen him, but am not acquainted with him.

Q. How long is it ſince you ſaw him?

A. It is within this Fortnight.

Q. Did you not ſee him at any time further off?

A. No, I am poſitive of it.

Q. Where did you ſee him firſt?-----*A.* In *St. James*'s.

Q. In what Place there?-----*A.* At his Grace's Houſe.

Q. Hath he been there ever ſince?-------*A.* Yes.

Q. Was there a Woman called *Vaneſs* with him?-----*A.* Yes.

Q. Did they come at the ſame time?-----*A.* Yes.

Q. How long ago?-----*A.* A Fortnight; it may be, not ſo much.

Q. Had they the liberty of the Houſe, to take notice where they were?

A. They had liberty to go where they pleaſed.

Q. Did they go abroad ſince they came there?

A. I can't tell; not to my Knowledge.

Q. D'you know whether they went out of the Houſe upon any Occaſion?------*A.* Not to my Knowledge.

Q. Who brought them there?-----*A.* I don't know.

Q. D'you know whence they came?------*A.* No.

Q. Did you underſtand where they lodg'd before?

A. No, I am a Stranger to them both; I never ſaw them before.

Q. Saw you them when they came firſt?

A. No, I was not at home.

CHRISTOPHER RAINE.

Die Martis 5° *Martii*, 1699.

Edward Cotter *ſworn, depoſeth as followeth*:

Q. ARE you Servant to the Duke of *Norfolk?*-----*A.* Yes.

Q. D'you know *Nicholas Hauſeur?*

A. I did not know him but ſince this Trial.

Q. How long ago is that?-------*A.* About a Fortnight.

Q. Do you know where he had been before?

A. No; I knew nothing of him, where he was, nor what he was.

Q. Came *Helena* the *Dutchwoman* with him?

Q. Yes, the Woman came with him ſince the Trial; I never ſaw them before.

Q. Did you never know them go out of Doors ſince they came, but to this Houſe?----*A.* Never, no where elſe.

Q. Who brought them to the Duke's?-----*A.* I know not.

Q. Whence came they, d'you know?----*A.* I can't tell.

Q. Did they never report in the Houſe, whence they came?

A. No, I never heard where they lived, nor how they behaved themſelves.

Q. Do you know whether ever any Reward was given them?----*A.* No.

Q. I deſire he may be aſked, whether he has not known before, for ſome Time paſt, within this Fortnight or three Weeks, more or leſs, Meetings in *Somerſet-houſe*, in order to this Trial?

A. The Thing is this; I was one Night at *Somerſet-houſe* with my Lord Duke, 'twixt Six and Seven a-Clock; but I can't tell how long it is, whether it be three Weeks or a Month; it is no more, that I know.

Q. What were you there about?---*A.* I went there with my Lord Duke.

Q. Upon your Oath, Was there any Thing then done there, relating to this Trial?

A. Upon my Oath, I did not know but 'twas concerning my Lord *Howard* of *Eſcrick.*

Q. Was he there with the Duke?------*A.* Yes.

Q. Did you know who they went to?-----*A.* No.

Q. Upon your Oath, Don't you know whether they went to Madam *Pitts*, or no?

A. They went to ſome Houſe, but I don't know her Name they went to.

Q. Was there any body elſe there, but my Lord Duke, and my Lord *Howard?*

A. God knows. My Lord Duke called me to the Door, and ſent me on a Meſſage; and I went and came again.

Q. Who did you ſee there when you came again?

A. I ſaw none but my Lord Duke, and another that I did not know.

Q. Who did you ſee go in?

A. None but my Lord Duke, and my Lord *Howard.*

EDWARD COTTER.

Die Martis 4° *Martii*, 1699.

Francis Huddleſtone *ſworn, depoſeth as followeth:*

Queſt. UPON your Oath, d'you know of any Meetings, relating to this Trial, that hath been within ſome Time paſt?

A. For Meetings, I know not any thing of them.

Q. Do you underſtand the Queſtion?

A. I know nothing of any Meetings.

Q. Have you not been at any Place where any thing has been done, relating to this Trial, againſt the Dutcheſs of *Norfolk?*

A. I don't underſtand any thing of the Trial. I know nothing of the Dutcheſs of *Norfolk*.

Q. Pray, give a poſitive Anſwer; Have you not been preſent, or do you know of no Meeting, relating to the Proceedings againſt the Dutcheſs of *Norfolk?—A.* I never was at no Meeting.

Q. Who do you live with?—*A.* I live with my Lord *Howard*.

Q. Was you ever preſent at *Somerſet-houſe*, where my Lord *Howard* and others met?

A. I have been at *Somerſet-houſe*, but know nothing of any Concerns.

Q. D'you know *Vaneſs?—A.* I know no ſuch Perſon.

Q. D'you know *Nicholas?—A.* I don't know him.

Q. Pray, anſwer poſitively; Do you know one *Nicholas*, call'd *Hauſeur?*

A. I know ſeveral of that Name, but I know not who you mean.

Q. I mean one that lived with Sir *John Germaine*.

A. I know him not; I never had any Converſation with any Body that liv'd with Sir *John Germaine*.

(Nicholas *call'd in.*)

Q. Did you ſee any ſuch Man as appears here, at *Somerſet-houſe?*

A. I know no ſuch Man as is call'd *Nicholas Hauſeur:* I know ſeveral call'd *Nicholas*, but none of the *Hauſeurs*.

Q. Look upon this Man; Have you ſeen him before or not?

A. Yes; I have ſeen him twice or thrice; but I knew not who you meant before.

Q. How long is it ſince you ſaw him firſt?

A. About a Fortnight ago.

Q. Have you not ſeen him at *Somerſet-houſe?—A.* Never.

Q. Where did you ſee him?—*A.* In *Gerrard-ſtreet*.

Q. Was that all the Places you ſaw him at?

A. I ſaw him no where elſe.

Q. Whoſe Houſe did you ſee him at?

A. At Captain *Soames*'s Lodging.

Q. Did you not ſee a *Dutchwoman* there, one *Helen Vaneſs?*

A. There was a Woman with him; I do not know her Name.

Q. Did you not ſee her at Captain *Soames*'s?

A. She was with this Gentleman there.

Q. Did you ſee her at no other Time or Place?—*A.* No.

Q. Who elſe was there then?

A. Captain *Soames*, my Lord *Howard*, and one or two more. I was but at the Door. I have ſeen this Man go in. I was but a Footman waiting at the Door. I knew not the others that were there.

Q. Did you know no more that were there?—*A.* My Lord *Howard* was in the Houſe, but I know not if he were with them.

Q. Did you ever ſee *Helen Vaneſs* before that Time?

A. I have ſeen the Woman ſince, but never ſaw her before.

Q. Did you never ſee her any where elſe?

A. Never any where elſe but at this Houſe, going and coming.

Sign'd,
FRANCIS ✠ HUDDLESTONE.

The Counſel being withdrawn, the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Copies of the Examination, read to, and ſigned by the Witneſſes To-day, be deliver'd to either Side.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will peremptorily proceed to hear the Duke of *Norfolk*'s and Dutcheſs of *Norfolk*'s Counſel, to ſum up the Evidence on both Sides, on *Friday* next, at Twelve of the Clock, and all the Lords ſummoned to attend.

The Evidence having been ſumm'd up, the Lords, after a long Debate, and a Diviſion of the Houſe, committed the Bill, by a Majority of Sixteen.

Whereupon the Dutcheſs immediately preferred the Petition recited in the Order 8° *Martii.*

Die Veneris, 8° *Martii*, 1699.

UPON reading the Petition of *Mary*, Dutcheſs of *Norfolk*, ſhewing, that by the Bill now depending for diſſolving the Marriage between the Duke of *Norfolk* and your Petitioner, her Jointure and Marriage-Agreements are to be ſet aſide, and other Things in the Petition mentioned, and praying to be heard by her Counſel, touching the ſeveral Claims and Intereſt, and ſeveral Clauſes in the Bill: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Petitioner ſhall be heard by her Counſel To-morrow at Eleven of the Clock, at the Committee of the whole Houſe, to whom the ſaid Bill ſtands committed; at which Time ſhe is to produce her ſaid Marriage-Agreement and Writings, as in the Petition is ſet forth: At which Time the Duke's Counſel may be preſent, if he think fit.

Matth. Johnſton, Cler. Parl.

Upon which an Order was made for Counſel to prepare a Clauſe for the 10,000 *l.*

The Dutcheſs's Counſel having refuſed to join in drawing any Clauſe, tho' they adviſed a Petition about the Jointure and Marriage-Agreement, the Duke's prepared a Clauſe, to which the Lords added a few Words, and paſs'd it as in the Bill. The Bill being ſent down to the Commons, the Dutcheſs preſented the following Petition.

To the Honourable the Knights, Citizens, and Burgeſſes, in Parliament aſſembled:

The Humble Petition of MARY, Dutcheſs of *Norfolk*,

SHEWETH,

THAT for putting an End to all Differences between the Duke of *Norfolk*, your Petitioner's Huſband, and your Petitioner, ſeveral Articles of Agreement were entered into, and executed in *April* 1694, by the ſaid Duke, your Petitioner, and your Petitioner's late Father, the Earl of *Peterborough*, whereby, and by Deeds executed purſuant thereunto, the Duke had his then deſired Advantage, and hath fully enjoyed the Benefit thereof: That your Petitioner, about the Time of perfecting the ſaid Deeds, ſignified to the ſaid Duke by Mr. *Negus*, that ſhe ſhould always readily comply with all ſuch Orders in her Way of Living and Converſation, as he ſhould think fit to appoint. Notwithſtanding which, and without ever ſignifying any Diſſatisfaction to or with your Petitioner, and without any manner of Notice, or previous Proceeding in the common and ordinary Courſe of Juſtice, and to take from your Petitioner that legal Trial in the Eccleſiaſtical Court, which by the Laws of this Realm (as ſhe is adviſed) ſhe is entituled unto, did, on the 16th of *February* laſt, exhibit a Bill in the Houſe of Peers, entituled, *An Act to Diſſolve the Duke of* Norfolk'*s Marriage with the Lady* Mary Mordaunt, *and to enable him to marry again.* Upon which the Proceedings were ſo very quick, two Witneſſes lately brought from beyond the Seas being forthwith examined againſt your Petitioner; and your Petitioner charged with Facts ſuppoſed to be committed many Years ſince, and long before the Date of the ſaid Articles, could not be prepared to make her Defence as ſhe would have done, if the Proceeding had been againſt her according to the known Laws of the Land. The Places of Abode of the Witneſſes produced againſt her being yet not known or diſcovered to your Petitioner: And your Petitioner having Notice, that the ſaid Bill is paſſed the Houſe of Lords, and ſent down for the Concurrence of this Honourable Houſe,

Your Petitioner prays ſhe may be heard by her Counſel at Law and one Civilian againſt the ſaid Bill, before any Proceedings be had thereon by this Honourable Houſe,

And your Petitioner ſhall pray, &c.

MARY NORFOLK.

A Day being appointed by the Houſe of Commons for the Committee to proceed, the Duke cauſed the Papers following to be publiſhed.

THE

Duke of *NORFOLK*'s CASE;

WITH

REASONS for paſſing his BILL.

IF Want either of Precedent for a Parliamentary Divorce, before going through the tedious and ineffectual Methods of *Doctors-Commons*, or of Demonſtration of Fact, have hitherto deprived the Duke of *Norfolk* of that Relief againſt his Wife's Adultery, which the Divine Law allows; the late Statute made in the like Caſe, and the coming in of two, who, while the Duke's former Bill was depending, had been ſent away, to prevent that Diſcovery which they now make; cannot but be thought to remove all Objections againſt an Act of Parliament, not only for the Benefit of the Duke, but of the Publick, as a Means to preſerve the Inheritance of ſo great an Office and Honours to Perſons of the true Religion.

And ſince Biſhop *Cozens*'s Argument, in the Lord *Roſſe*'s Caſe, has made it evident, that thoſe Canons which govern the Spiritual Court in this Matter, are but the Remains of Popery; nothing can be now requiſite to ſatisfy the moſt ſcrupulous of the Reformed Religion, but to ſet the Duke's Proofs of his Lady's Adultery in a true Light.

The Reputation which the Dutcheſs had maintained, of Wit and Diſcretion, made it difficult for many to believe, that ſhe could be ſurprized in the very Act of Adultery, as had been formerly proved. And tho' it then appeared, that one *Henry Keemer* lived with the Dutcheſs while ſhe went by a feigned Name, at a Houſe hired for her at *Vaux-hall* by Sir *John Germaine*'s Brother; and that *Nicola*, who then lived with Sir *John*, uſed to receive Wood ſent from the Dutcheſs to Sir *John*'s Houſe by the Cockpit; the withdrawing of *Nicola*, and carrying with him the *Dutch* Maid, equally entruſted with the Secret on Sir *John*'s Side; left no Evidence of their conſtant Converſation, but *Keemer* ſince dead, and *Suſannah Barrington*, who had the like Truſt from the Dutcheſs.

Keemer, though very unwillingly, ſome Years ſince confeſſed his living with the Dutcheſs at *Vaux-hall*, where he pretended ſhe was obliged to conceal herſelf for Debt; and what Share *Suſannah* had in the Secret was unknown, till *Nicola* appeared: *Nicola* coming into *England* ſome time ſince, in Expectation of a Service, expreſs'd his Readineſs to diſcover what he knew, and to endeavour to bring with him the *Dutch* Maid.

* She proves, that for two Months the firſt Summer after the King came for *England*, Sir *John Germaine* and the Dutcheſs lived together as Man and Wife, and were ſeen in Bed together by her, Mr. *Briane*, and his Wife, Sir *John*'s Siſter; and that *Nicholas Hauſeur*, Sir *John*'s Valet de Chambre, uſed to be aſſiſting to him; as the Dutcheſs's Woman, *Suſannah Barrington*, was to her, at going to Bed, and riſing.

She proves the like Converſation at *Vaux-hall*, and the Dutcheſs's Houſe at the *Mill-bank*, till the Duke's firſt Bill for a Divorce was depending; within which time, *Nicholas Hauſeur*, by Sir *John*'s Order, carried away her and *Suſannah Barrington*, with Intention of going for *Holland*, to prevent their being examined to what they knew; but the Wind proving contrary, they could not go till the Bill was rejected; and then Sir *John* fetch'd back *Suſannah*, who was moſt uſeful to the Dutcheſs; but *Hauſeur* went for *Holland* with *Ellen*.

† He confirms *Ellen*'s Evidence in every Particular; and beſides the Perſons mentioned by *Ellen*, as privy to Sir *John*'s lying with the Dutcheſs, names Sir *John*'s Brother, *Daniel*. *Nicholas* having been found very truſty, his Maſter ſent for him to return to his Service; and gave him the Opportunity of proving the Continuance of the ſame adulterous Converſation, at ſeveral Times and Places, from the Summer, 1692, to the 26th of *April*, 1696. He ſwears he had after his Return to Sir *John*'s Service ſeen them in Bed together at Sir *John*'s Houſe at the *Cock-pit*, and at the Dutcheſs's Houſe at *Mill-bank*, and where ſhe now lives; and uſed to be let into the Dutcheſs's Apartment by *Suſannah Barrington*, or *Keemer*. Nor can any Man who ſhall read the Teſtimonials given Mr. *Hauſeur* by Sir *John*; by the laſt of which it appears, that he ſerved him faithfully as his Steward; reaſonably queſtion *Hauſeur*'s Credit.

‡ Another, who had been advanced by Sir *John* from his Footman to Mr. *Hauſeur*'s Place, and from thence to a good Office in the Exciſe, very unwillingly confirmed the Teſtimony of *Hauſeur* and the *Dutch* Maid, not only as to the Time of their going from the Service of Sir *John* and the Dutcheſs; but though being no Foreigner, he could not ſo eaſily be ſent away to prevent Diſcovery, and therefore was not let ſo far into the Secret as *Hauſeur* and the *Dutch* Maid; yet he ſwears, the Dutcheſs uſed to come maſk'd to his Maſter's Houſe; that he has gone with him as far as the *Horſe-Ferry*, towards her Houſe at the *Mill-Bank*; that then his Maſter ſometimes lay out all Night, and the next Morning he has carried Linnen and Cloaths for his Maſter to *Keemer*'s Houſe, or *Keemer* has fetch'd them from him: And this he proves to have been ſince the rejecting the former Bill, and about five Years ſince, when he was ſucceeded by *Hauſeur*, as before he had ſucceeded *Hauſeur*.

Two other Foreigners, *La Fountain*, who lived with Sir *John*, and was ſerved with Summons at the Dutcheſs's Houſe at *Drayton*, and *Hugonee*, who ran away from the Lord *Haverſham*'s ſince Summons was taken out againſt him, ſeem to have had the ſame Truſt that *Hauſeur* had; for both declared, *That nothing ſhould oblige them to betray their Maſter's Secrets:* One ſaid, *No Court could diſpenſe with an Oath of Secrecy*; and both declared, *They would immediately go beyond Sea.* Summons have been taken out for Mr. *Briane* and his Wife, and Sir *John Germaine*'s Brother (who are, or lately were, in Town) to confeſs or deny what *Nicola* and *Ellen* appeal to them for; and it cannot be imagined, that Sir *John* ſhould chuſe the Honour of being thought to have to do with a Dutcheſs, before the clearing her and himſelf from the Imputation, by bringing his Relations to diſprove the Charge, if what is ſworn to be within their Knowledge is falſe.

And if Sir *John*'s Vanity ſhould prevail with him, at leaſt it is to be preſumed that his Relations would be more juſt to him and the Lady, than to ſuffer any Thing to paſs againſt them, which they could with Truth and Juſtice prevent.

But ſince none of them appear, the World will believe their abſenting more than a thouſand Witneſſes, in Confirmation of what Mr. *Hauſeur*, *Ellen*, and *Bayly* have ſworn: Whoſe Evidence not only ſtands untouch'd by any Thing offered by the Dutcheſs's Witneſſes, but is plainly confirm'd by them in the principal Parts.

This being the Nature of the Proofs, 'tis obſervable,

1. That there never yet was any Caſe of this kind, where the Evidence was not liable to greater Objections than can be made to this.

Though in the lateſt Caſe of this kind, there was full Conviction of the Lady's having Children, while ſhe lived ſeparate from her Huſband, and the Preſumption was very violent whoſe the Children were; yet this was but Preſumption, and that was weakened by the Preſumption in Law that they were the Huſband's; eſpecially, ſince there was no direct Proof of the Lover's ever lying with her.

2. Tho' in that Caſe, by reaſon of the Interval of Parliament, and Fear of the Deaths of Witneſſes, a Suit was begun in *Doctors-Commons*, 'twas taken from thence while the Suit was depending; therefore that was rather an Objection againſt proceeding in Parliament, than an Argument for it.

3. In that Caſe, ſeveral Witneſſes were examined at the Bars of both Houſes, who had not been examined at *Doctors-Commons*, nor any Notice given of their Names before their Examination.

4. It appears by that Caſe, and the preſent, that the Examinations in Parliament are more ſolemn and certain than thoſe of the Spiritual Court; which depend too much upon the Honeſty of the Regiſter, or his Deputy.

5. Before that Caſe, Parliaments have either broken through the Rules which bind the Spiritual Court, as in the Caſe of the Duke of *Norfolk*, § *Eliz.* where the Parliament ratified the Marriage, ‖ *as lawful according to God's Law*; *tho' protracted and letted, by Reaſon of certain Decrees and Canons of the* Pope'*s Law*; or elſe have diſſolved a Marriage where there had been no Application to *Doctors-Commons*, as in the Caſe of Mrs. *Wharton*, who had been married to Mr. *Campbell*; and yet there had been no Examination of Witneſſes, but what had been before the two Houſes.

** So long before, in the Caſe of Sir *Ralph Sadler*, upon Proof before the two Houſes, that Lady *Sadler*'s former Huſband had deſerted her, and diſappeared for four Years before ſhe married Sir *Ralph*, the Parliament legitimated her Children by Sir *Ralph*.

Whereas ſome object againſt the paſſing the Bill, as if it would countenance a Juriſdiction in the Houſe of Lords to examine to ſuch Matters, in the firſt Inſtance or Originally; the Objection would be the ſame if it had begun, as it might, in the Houſe of Commons; but in truth would be of equal Force againſt moſt private, and ſeveral publick Acts, occaſioned by the Examination of Witneſſes of Notoriety of Fact.

Since therefore the Duke has ſo long, and ſo often in vain endeavoured to be freed from a Lady, publickly famed and proved to have lived with Sir *John Germaine*, as his Wife; the Duke's former Diſappointment cannot but be powerful Arguments for his ſpeedy obtaining that Juſtice which the Spiritual-Court cannot give him, their Power reaching no further than to that Liberty of living as ſhe liſt, ſome Years ſince ſettled by Articles: But as none of leſs Art and Oratory than her Counſel, could have turned this into a Licence to commit Adultery, if ſhe liſt, or a Pardon afterwards; had there not been Evidence of her acting according to ſuch Conſtruction, the Duke would have hoped ſhe had repented of the former Injuries he had received from her; but now hopes, ſhe ſhall no longer continue to bear the Name of his Wife, and put him in Danger of being ſucceeded by Sir *John Germaine*'s Iſſue, or deprive him of the Expectation of leaving his Honours, Offices and Eſtates to a Proteſtant Heir.

Biſhop *COZENS*'s Argument,

Proving, *That Adultery works a Diſſolution of the Marriage.*

Being the Subſtance of ſeveral of Biſhop *Cozens*'s Speeches in the Houſe of Lords, upon the Debate of the Lord *Roſs*'s Caſe.

Taken from Original Papers, writ in the Biſhop's own Hand.

THE Queſtion is indefinitely to be ſpoken of, Whether a Man being divorced from his Wife, who hath committed Adultery, and is convicted of it, may marry himſelf to another Wife or no, during the Life of her which is divorced?

The Place in St. *Matthew* the 5th, repeated again St. *Matthew* the 19th, has great Perſpicuity: If it be not lawful for a Man to put away his Wife, and marry again, except it be in the Caſe of Fornication (for the diſplacing the Words, by putting the Exception before the Marriage, cannot alter the Senſe), then *è contrario*, it muſt of neceſſity follow, that if the Wife be put away for Fornication, the Huſband, by the Tenour of Chriſt's Words, is left free to marry again; which Freedom is not allowed to the Adultereſs herſelf, nor any Man elſe that ſhall marry her.

St. *Mark* and St. *Luke* have been oppoſed to St. *Matthew*; and it has been ſaid, that Chriſt's Words in St. *Matthew* did not properly belong to *Chriſt's Diſciples*, or the *Chriſtian Church*, as the Words in St. *Mark* and St. *Luke*, which are abſolute, do; which is a Saying that neither I, nor, I think, no body elſe ever heard of before. For *Chriſt*'s Sermon in the Mount was ſpoken to *his Diſciples*, and eſpecially belonged to *Chriſtians*.

'Tis clear they are ſpoken to his Diſciples; for he ſays to them, that they are *the Salt of the Earth, and the Light of the World*; and that they are bleſſed, *when they ſuffer Perſecution for his Name's Sake*; which no Man will ſay or apply to the *Jews*.

'Tis true, that in the 19th Chapter of St. *Matthew*, *Chriſt* anſwers the *Scribes* and *Phariſees*, who came to tempt him with their Queſtion, *Whether it was lawful for a Man to put away his Wife for any Cauſe*, as they ſaid Moſes *had permitted 'em to do.* But the Anſwer that *Chriſt* gave them, *That it was not lawful, but only in the Caſe of Adultery, for Men to put away their Wives, and marry another*; was a Rule which concerned all *Chriſtians* to obſerve for ever after; and for that Reaſon was recorded by St. *Matthew*.

The Words in St. *Mark* and St. *Luke* are not to be taken abſolutely, but to be ſupplied and underſtood by his Words in St. *Matthew*, as in many other Caſes is clear; *viz.* the Thief upon the Croſs, Baptiſm in the Name of the *Father*, *Son* and *Holy Ghoſt*, &c. whereof many Inſtances may be brought, as the Deſtruction of *Nineveh*, &c.

But for *Chriſt*'s Words, the Exception confirms the Rule, and infers a Conceſſion, that in the Caſe of Fornication, the putting away one Wife, and marrying another is allowed. It is alike with divers other his Exceptions, which are found in Scripture: For brevity, I will inſtance in this one *(viz.) Except ye repent, ye ſhall all likewiſe periſh.* Upon which Text, if I or any Biſhop elſe were to preach, I believe we ſhould not diſcharge our Duty, unleſs we ſhould tell the People, That if by the Grace of God they did repent, they ſhould not periſh.

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* *Elianor Vaneſs* Exam. 22 *Feb.* 1699.

† *Nicholas Hauſeur.*

‡ *William Bayly.*

§ *Eliz.* x. 31.

‖ 2 & 3 *W. M.*

** 37 *H.* 8.

The Exception here, εἰ μὴ *niſi*, unleſs, is parallel with the 1 *Kings* iii. 18. *None were in the Houſe except we twa n*; they two therefore were, others were not.

Such Exceptions proceeding from natural Equity, are tacitly implied in Laws, tho' pronounced in general Terms.

But as to the Exception here, the Words are not capable of any other Senſe than as I have obſerved; for except that Reſtraint be referred to marrying again, the Senſe would run thus, *Whoſoever puts away his Wife commits Adultery*; which ſtands not with Truth or Reaſon; ſince it is not the Diſmiſſion that is adulterous, but the Marriage of another. It is therefore the plain Drift of our Saviour to teach the *Phariſees*, that the Marriage of a ſecond Wife, after a Diſmiſſion of a former, *upon any other Cauſe, except for Fornication*, is no leſs than Adultery; thereby inferring, That upon a juſt Diſmiſſion for Fornication, a ſecond Marriage cannot be branded with Adultery.

Beſides, the *Phariſees* Queſtion [*Is it lawful for a Man to put away his Wife for every Cauſe?*] was not without a plain Implication of Liberty to marry another; which our Saviour well knowing, gives a full Anſwer, as well to what he meant, as what he ſaid; which had not been perfectly ſatisfactory, if he had only determined that one Part concerning Diſmiſſion, and not the other concerning Marriage; which Clauſe if two *Evangeliſts* expreſs not, yet it muſt be fetch'd neceſſarily from the third; ſince it is a ſure and irrefragable Rule, That all Four *Evangeliſts* make up one perfect *Goſpel*.

The *Rhemiſts* and College of *Dowey* urge for the *Popiſh* Doctrine, *Rom.* vii. 2. *The Woman which hath an Huſband, is bound by the Law to her Huſband as long as he liveth*; but,

1. This Place is to be expounded by *Chriſt*'s Words.

2. St. *Paul* hath no Occaſion here to ſpeak of Divorce, but of *Marriage whole and ſound*, as it ſtands by God's Ordinance.

3. He ſpeaks of a Woman who is under her Huſband; ſo is not ſhe that is divorced from him.

St. *Paul* uſeth this to his Purpoſe of the Law being dead, to which we are not bound.

Nor is their Doctrine more favoured by 1 *Cor.* vii. 10. *Let not the Woman depart*; as being in her Choice whether ſhe would depart or not; but in the Caſe of *Fornication* ſhe was to depart, or rather be *put away*, whether ſhe would or not.

The Bond of Marriage is to be enquired into, what it properly is. Being a Conjugal Promiſe ſolemnly made between a Man and his Wife, That each of them will live together according to God's Holy Ordinance, notwithſtanding Poverty or Infirmity, or ſuch other Things as may happen during their Lives; Separation from Bed and Board, which is Part of their Promiſe ſo to live together, doth plainly break that Part of the Bond whereby they are tied to live together both as to Bed and Board. The Diſtinction betwixt Bed and Board and the Bond, is new, never mentioned in the Scripture, and unknown to the ancient Church; deviſed only by the Canoniſts and Schoolmen in the *Latin* Church (for the *Greek* Church knows it not) to ſerve the Pope's Turn the better, till he got it eſtabliſhed in the Council of *Trent*; at which Time, and never before, he laid his Anathema upon all them that were of another Mind; forbidding all Men to marry, and not to make any Uſe of *Chriſt*'s Conceſſion.

Bed and Board, or Cohabitation, belong to the Eſſence and Subſtance of Matrimony; which made *Eraſmus* and Biſhop *Hall* ſay, *That the Diſtinction of thoſe two from the Bond is meerly Chimerical and Fancy.*

The Promiſe of Conſtancy and mutual Forbearance, if it hinders Divorce as to the Bond, hinders it alſo as to Bed and Board; and becauſe the ſame Bed and the ſame Table were promiſed in the Marriage Contract; but the Promiſe does not extend even to tolerating Adultery, or malicious Deſertion; which, according to God's Ordinance, diſſolves the Marriage.

Our *Saviour* ſpeaks of Divorces inſtituted by the *Moſaical* Law; but they were no other than Divorces from the Bond.

The Form of the Bill of Divorce among the *Jews* was this, *Be expelled from me, and free for any Body elſe.* To give the Bill of Divorce, is from the *Hebrew* Root כרת, which is to break, or cut off the Marriage. With this agree the ancient Canons, Councils, and Fathers of the Church.

Concil. Neocæſar. & Elib. forbid the retaining an adulterous Wife. *Concil. Eliber. Aurelian. & Arelatenſ.* give Liberty in ſuch Caſe to marry again. *Clemens*'s Conſtitution, *Tertullian*, St. *Baſil* in his Canons, approved by a General Council, are for marrying again. *Concil Venet.* If they marry in any other Caſe than Fornication, they are to be excommunicated, and not otherwiſe. *Concil. Wormat.* gives Liberty to the innocent Party to marry after Divorce. *Concil. Lateran.* gives leave for the innocent Party after a Year to marry again.

Concil Lateran. If any one take another Wife while a Suit is depending, and afterwards there be a Divorce between him and the firſt, he may remain with the ſecond.

Lactantius, St. *Hierom* and *Epiphanius*, are for Allowance of Marriage after Divorce. *Chryſoſtom*, *Hom.* 19. 1 *Cor.* 7. ſays, *That the Marriage is diſſolved by Adultery; and that the Huſband, after he hath put her away, is no longer her Huſband.*

Theophylact on the 16th of St. *Luke* ſays, that St. *Luke* muſt be interpreted by St. *Matthew*. St. *Hilary* is for marrying again, as Dr. *Fulk* ſaith upon St. *Matthew* the 7th. The *Eaſtern* Biſhops, in the Council of *Florence*, are for marrying again: *Juſtin Martyr* ſpeaks of a Woman giving a Bill of Divorce to a diſſolute Huſband, without finding any Fault with it.

St. *Ambroſe* ſays, a Man may marry again, if he puts away an adulterous Wife; *Theodoret* ſaid of a Wife who violated the Laws of Marriage, *Therefore our Lord requires the Bond or Tye of Marriage to be diſſolved.*

All the *Greek* Church to this Day allow it. *Eraſmus Cajetan*, and other Papiſts: The Civil Law, and the Laws of the Emperor are clear for it: And the Conſtitutions of our own Church of *England*, in the Time of *H.* 8. *Ed.* 6. and Queen *Eliz.*

The Practice of the *Engliſh* Church, in the Stat. 1 *Jac. c.* 11. againſt ſecond Marriages, Divorces are excepted; and in *Canon* 107. 'tis provided, they ſhall not marry again; but it is not ſaid ſuch Marriages are void, only the Caution is forfeited: *Neither doth the Canon ſpeak of ſuch Separations, wherein the Bond is broken, as 'tis by Fornication.*

Even the *Canon-Law* allows marrying again, in caſe a Woman ſeeks her Huſband's Life, and in caſe of a Bond-Woman. *Gratian* ſays, in the Caſe of Adultery, lawful Marriages ought not to be deny'd. In the Caſe of an incurable Leproſy, it was the Advice of St. *Gregory* to *Auſtin* the Monk, That he that could not contain, ſhould rather marry. *Bellarmine* owns, That the Bond of the Marriage of Infidels is diſſolvable; but the Marriage of the Faithful, and of Infidels, is of the ſame nature: And *Juſtinian*, a Jeſuit, confeſſes, That it is ſimply lawful for the innocent Party to marry again. And the *Roman Doctors* allow a Diſſolution of the Bond of Marriage, if the Parties ſhould, after Conſummation, transfer themſelves into a Friary or Nunnery.

* The *Canons* which, in the Caſe of Adultery, prohibit marrying in the Life-time of the guilty Perſon, are contrary to two Acts of Parliament made 25 *Hen.* 8. and 3 & 4 *Edw.* 6. wherein no *Canons* are allow'd that be any way *repugnant to the Laws of* God, *or the Scripture, the King's Prerogative Royal, and the Statutes of this Land:* Thirty-two Perſons were to review the *Canon-Law*, in which Review, drawn up by Archbiſhop *Cranmer*, the innocent Perſon is permitted to marry again, *according to Chriſt's Law and Conceſſion.*

We have Examples of ſuch Marriages in *H.* 4. of *France*, and *H.* 8. of *England*, Lord *Mountjoy*, Lord *Rich*, Biſhop *Thornborough*, and divers others. And 'tis obſervable, That in the Caſe of the Marquis of *Northampton*, 5 *Ed.* 6. who had been divorced for his Lady's Adultery, and married another before any Act of Parliament made concerning it, an Act which paſſed afterwards (only two Spiritual and two Temporal Lords diſſenting) declares, he had been *at liberty by the Laws of* God *to marry*, and did *lawfully marry* another: Where the Act manifeſtly ſuppoſes, that whatever had obtain'd for Law till that Time, was void, as being *contrary to* God*'s Law.*

The moſt conſiderable Men of the Reformed Churches, both at Home and Abroad, are of this Opinion: *Grotius* quotes *Tertullian*, in whoſe Time it was lawful for the innocent Party to marry.

Lancelot. Inſtit. Jur. Can. acknowledges, that Divorce is a Diſſolution of the Marriage.

Selden, who is not likely to contradict the Laws of this Kingdom, maintaineth, That Marriage after Divorce is to be allow'd; and in that Particular Dr. *Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Ameſius* deſerves to be ſet down at large: "Marriage, "ſays he, cannot be diſſolv'd by Men at their Pleaſure; and for that rea"ſon, as 'tis conſider'd ſimply and abſolutely, 'tis rightly ſaid to be in"diſſolvable, becauſe Marriage is not only a Civil, but a Divine Con"junction; and is alſo of that nature, that it cannot be diſſolv'd without "Detriment of either Party: Yet it is not ſo diſſolvable, but it may be "diſſolv'd for a Cauſe which God approves as juſt; for the Indiſſolva"bility was not inſtituted for a Puniſhment, but for the Comfort of inno"cent Perſons; and it admits an Exception, wherein God ceaſes to con"join. By Adultery two are made not to remain one Fleſh: Hence it "is that a contagious Diſeaſe is not a Cauſe of diſſolving Marriage. *By "Adultery the very Eſſence of the Contract is directly violated; but the Con"tract ceaſing, the Bond depending on the Contract neceſſarily ceaſes.* It is "againſt all Reaſon, that all Matrimonial Duties ſhould be for ever taken "away, yet the Bond or Obligation to thoſe Duties ſhould continue. "The Words of *our Lord*, *Mat.* v. 32. and xix. 9. have no Diſtinction or "Limitation of the Putting away, but ſimply and abſolutely approve of "Putting away; therefore they approve of Putting away, not *Partial*, "or to a particular Purpoſe, from Bed and Board, but *Total.*"

None are againſt the Reform'd Divines, but Dr. *Howſon*, Mr. *Bunny*, and Dr. *Prideaux*.

Dr. *Howſon* was a profeſs'd Adverſary to Dr. *Raynolds*, who was a great Maintainer of the Church of *England* againſt all the Points of Popery, and particularly in this.

Dr. *Taylor*, Biſhop *Hall*, Dr. *Fulk* are for Second Marriages; no Authors againſt them but the Council of *Trent*, and thoſe of the Church of *Rome*; whoſe Credit is only ſav'd by thoſe of our Church who agree with them.

Upon the Difference of Explication between St. *Ambroſe*, *Origen*, and St. *Auſtin*, a new kind of Divorce has been thought of, *from Bed and Board*; but this *Divorce*, or *Name of a Divorce*, was unknown to the *Jews* and *Ancient Chriſtians*.

I ſaid ſo much before, at the firſt and ſecond reading of this Bill, that I was in good Hopes to have had no further Occaſion given me of anſwering any objections againſt it now; but ſeeing divers new Arguments have been ſtudied and framed againſt it ſince that Time, I ſhall now endeavour to ſatisfy and clear them all.

1. The firſt Argument againſt it, is, That the Separation from Bed and Board doth not diſſolve the Bond of Marriage. To which I muſt reply, as I did before, That this is a Diſtinction without a Difference, newly invented by the *Canoniſts* and *School-men*, and never heard of either in the *Old* or *New Teſtament*, nor in the Times of the ancient Fathers, who accounted the Separation from Bed and Board to be the Diſſolution of the Bond itſelf.

2. That firſt Inſtitution of Marriage, that they may be *one Fleſh*, is by Adultery diſſolv'd, when the Adultereſs makes herſelf *one Fleſh with* another Man, and *thereby diſſolves the firſt Bond of her Marriage.*

3. The Objection, That if the Bond be diſſolv'd, and afterwards, if the Man or Woman be reconcil'd, they muſt be married over again, is no neceſſary Conſequence, no more than 'tis in a Perſon baptiz'd, who may break his Covenant, and renounce his Baptiſm, and yet upon true Re-

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* Ref. Leg. Eccleſ. Tit. de Adulteriis & Divortiis.

pentance be received into God's Favour by virtue of the firſt Covenant, without any new Baptiſm. Suppoſe a Witch, who, they ſay, makes a Compact with the Devil to renounce her Baptiſm, ſhould afterwards, by the Grace of God, ſeriouſly and truly repent herſelf of the Wickedneſs; I do not believe that any Body would take upon him to baptize her again: And if a Prieſt ſhould renounce his Orders, and turn *Turk*, and yet afterwards repent him, and return into the Church, he need not be re-ordain'd a ſecond time. The Caſe will be the ſame in Marriage.

4. I ſaid heretofore, that the *Roman* Doctors allowed this Diſſolution of the Bond, when the Man and Wife, even after the Conſummation of Marriage, would transfer themſelves into a Friary or a Nunnery; but becauſe it hath been ſince doubted, that no Authority can be ſhewed for this Particular, I ſhall here ſhew it out of the old Conſtitutions of the Church of *England*.

"And, * in the Caſe of Religion, that is the true Underſtanding, "That, to wit, either of them betaking themſelves to Religion before "Carnal Knowledge, the Bond of Marriage be diſſolv'd: But *if both* "*enter into Religion, and make ſolemn Profeſſion, then ſuch Marriage is* "*diſſolved, even as to the Bond.*"

5. It hath alſo been ſaid, That if the Bill paſs, it will paſs againſt the *Church of England*; which, I confeſs, I do not underſtand; for the *Church of* England is *within the Kingdom of* England; and if the Laws of this Kingdom be for the Bill, and have declared it by the Aſſent of the King, Lords and Commons, as in the Caſe of the Marquis of *Northampton* was *heretofore declar'd, in the Time of King* Edward *the Sixth, That by the Laws of* God *the innocent Party was at Liberty to marry again*; certainly the *Spiritual Lords*, as well as the *Temporal* and *Commons*, are bound to admit it: And *I know not why they ſhould be called the Church of* England *that join with the Council of* Trent, *and plead ſo much to uphold it, rather than others that join with all the Reformed Churches, and plead againſt the Canon of the Church of* Rome, *which hath laid an* Anathema *upon us, if we do not agree with them.*

As to the ſuppoſed Inconveniencies that will follow upon marrying again:

1. More Inconveniencies will follow if they be forbidden to marry again.
2. The Father would be in an Uncertainty of the Children, if they ſhould retain the Adultereſs.
3. There would be Danger of poiſoning or killing one another, if no ſecond Marriage were allowed.
4. Where the Parties ſhould conſent to new Marriages for their own Luſts, the Magiſtrates have Power to over-rule ſuch Practices.
5. If they be kept altogether by Divorce from Marrying, it would occaſion the innocent Party to ſin.

A little before the main Queſtion about paſſing the Duke's Bill, the Dutcheſs's Agents handed about this Paper, among ſuch as they thought to be her Friends.

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* Prov. Will. Lyndewode, ſive Conſt. Ang. fol. 94. Ver. nulla tenus ſeparentur.

THE

CASE of MARY, Dutcheſs of *Norfolk*.

UPON the Marriage of the *Dutcheſs* with the now *Duke* of *Norfolk*, in the Year 1677, her Father, the late Earl of *Peterborough*, paid as Part of her Portion 10000*l.* and ſettled on that Marriage Lands of near 1000*l.* *per Annum*, the Remainder of which, on Failure of Iſſue, was limited to the now Duke and his Heirs for ever; and the Earl after his and his Lady's Death, ſecured to the Duke the Forfeiture of *Drayton*, worth 10000*l.* more; and the Duke receiv'd alſo, by Agreement, 1000*l.* *per Annum* for Twenty Years out of the Earl's Eſtate, beſides very rich Jewels, Plate, and other Things of great Value, which the Dutcheſs brought with her into the Duke's Family: And great Debts having been contracted for the Support of the Duke's Honour and his Service, while he cohabited with the Dutcheſs, ſhe hath, ſince his Separation from her, paid them out of her own Eſtate.

That by the evil and malicious Inſinuations of the Dutcheſs's Enemies, the Duke was prevail'd on to carry her, then a Proteſtant, into *France*, and to put her into a Monaſtery (where ſhe could not be admitted without changing her Religion), and left her there, on great Aſſurances of ſending for her home in a ſhort time; and ſo parted with great Expreſſions of Kindneſs.

That a conſiderable Time after, by the Duke's Conſent, ſhe return'd into *England*, and lived retiredly at *Drayton* in *Northamptonſhire*; and at the Time of the Revolution ſhe again retired to *France*, where ſhe continued till ſhe heard of her Father's Impriſonment in the *Tower*, and then came back to *England*, and lived privately, till her Father obtain'd his Liberty, when ſhe came home to him.

That the 8th of *January*, 1691, the Duke was prevail'd on, by the Inſtigation of her Enemies, to exhibit a Bill in the Houſe of Peers, to the ſame Effect with the Bill now depending, and divers Witneſſes were examin'd on both Sides; after which, and a long ſolemn Debate and due Conſideration had by their Lordſhips of the Witneſſes, and what was ſworn by them, the 17th of *February*, they were pleaſed to reject the Bill without a ſecond Reading.

Notwithſtanding which, the Duke was again prevail'd on, the 22d of *December*, 1692, to exhibit a Second Bill in the Houſe of Peers, to the ſame Effect with his Firſt; which, after ſeveral Debates, was the 2d of *January* following again rejected.

Some time after this, and for accommodating all Differences between them, Propoſals were made to the Dutcheſs, which, after long Agitation, on the 28th of *April*, 1694, were reduced into Writing, and executed by the Duke and Dutcheſs; the Preamble of which Articles is in the Words following: *Whereas diverſe Controverſies, Debates, Demands, and Suits of ſeveral natures have for ſome Time ſince been agitated, and continued, between the ſaid Duke and the ſaid Dutcheſs, his Wife*, &c. *unto all which it is at laſt held fitting (it being conducible to their reſpective Quiets and Eaſe) to have an End put, and the like for the future prevented: It is therefore hereby, and by the Parties to theſe Preſents, declar'd and agreed in manner following*; Whereby the Dutcheſs convey'd to the Duke's Uſe the Manour of *Caſtle-Riſing*, &c. And alſo the ſaid Dutcheſs and her Truſtees aſſign'd their Intereſt in a conſiderable Part of the Manour of *Sheffield* in *Yorkſhire* to the Uſe of the ſaid Duke; ſo that by theſe Articles, and that Deed executed thereupon, the Duke had his then deſired Advantages.

That after the Execution of theſe Articles, the Dutcheſs ſent for one Mr. *Negus*, the Duke's principal Gentleman, and expreſs'd herſelf very ſenſible of the Misfortune of the Duke and herſelf, and deſir'd Mr. *Negus* to tell the Duke, that ſhe would avoid all Company that ſhould give him any Offence; and that ſhe would not ſo much as pay a Viſit, but where he liked: Which Mr. *Negus* lately teſtified before the Lords, and that he acquainted the Duke with it; as alſo, that ſhe had ſeveral times told him, If ſhe died firſt, ſhe would leave the Duke her Eſtate.

That notwithſtanding the ſaid Agreement, whereby the Duke and Dutcheſs agreed to live ſeparately, yet without his ſignifying any Diſſatiſfaction to or with the Dutcheſs, and without any manner of Notice, or previous Proceeding in the common and ordinary Courſe of Juſtice, but by taking from her that Legal Trial in the Eccleſiaſtical Court, which by the Laws of this Realm ſhe is entitled unto, he did, on the 16th Day of *February* laſt, exhibit in the Houſe of Peers the Bill now depending for diſſolving the Duke's Marriage with the Dutcheſs, and for enabling him to marry again: Upon which the Proceedings were ſo very quick, two Foreigners (a *French* Footman, and a *Dutch* Cook-maid) lately brought from beyond Sea, being forthwith examin'd againſt her, charging her with Facts ſuppoſed to be committed many Years ſince, and long before the Date of the ſaid Agreement, and on which the two former Bills were founded, that it was impoſſible for her to make her Defence, as ſhe might have done if the Proceedings had been againſt her according to the known Laws of this Land.

The Dutcheſs thought herſelf under a Neceſſity of complying with all the Orders of the Houſe of Peers; and accordingly, as well as ſhe could, made her Defence, tho' leſs than a Week's Time was allow'd her for doing it; and upon examining the Evidence of the Duke's Witneſſes, many Contradictions appear'd, ſome whereof follow, as doth appear by the Depoſitions taken in Writing, and now remaining in the Houſe of Peers.

For *Hauſeur* the Footman ſwears, the Dutcheſs was at the *Cock-pit*, when, and before he came to live with Sir *John Germaine*; and, that he continued there Fifteen Days after; and that after the Dutcheſs left the *Cock-pit* ſhe went to *Vaux-Hall*.

Vaneſs the Cook-maid ſwears, *Hauſeur* came to Sir *John* when the Dutcheſs was at *Vaux-Hall*.

Hauſeur ſwears, That the 8th of *Febr.* 92, he left Sir *John*'s Service, when the Trial was between the Duke and Dutcheſs in Parliament, and after lived privately ſix or eight Weeks, till he and *Vaneſs* could get for *Holland*, and arrived there in the *Eaſter* following.

And yet in another Place he ſwore, he deſir'd Leave to go; and afterwards, That he alſo went for *Holland* as ſoon as the Wind was fair.

But *note*, all the Evidence was cloſed and order'd to be ſumm'd up the Ninth of *February*; ſo that he needed not afterwards to have gone. And whereas he inſinuates, That he and *Vaneſs* were ſecreted, and kept from being Witneſſes:

Note, It doth no where appear, that either he or *Vaneſs* were ever thought on for Witneſſes.

Hauſeur ſwears, He return'd again to Sir *John* in Summer 92, being often ſent to by Sir *John*.

Whereas *Bayly*, another of the Duke's Witneſſes, ſwears, he did not return again to Sir *John* in two Years after he went away, *Bayly* the Witneſs being all that Time, and three Years before, a Servant in the Houſe.

Note alſo, That this very Summer 92, to wit, in *Eaſter*-Term, the Duke brought his Action againſt Sir *John*, which was tried *Michaelmas*-Term 92; at which Time it had been more likely, if Sir *John* had believ'd he could have done him any Harm, he ſhould have kept him in *Holland*, rather than have ſent for him over, eſpecially conſidering that this Fellow afterwards ſwears Sir *John* ſwore in a Rage this Fellow would betray him.

Hauſeur being aſk'd, Who ſent for *Vaneſs* over?

He anſwer'd, That after he had promis'd the Duke and Lord *Howard* to ſpeak the Truth of what he knew, they deſir'd him, if he met *Vaneſs*, to deſire her to come over, and ſpeak the Truth of what ſhe knew.

And being aſk'd, How long after he met *Vaneſs?* anſwer'd, About Twelve Months ſince.

And being aſk'd, When was the firſt Time he ſpoke to her about coming over to ſpeak the Truth? anſwer'd, 'Tis about a Year ſince.

And being aſk'd, How long it was ſince they reſolv'd to come over? anſwer'd, Twelve Months.

Vaneſs being aſk'd, Whether ſhe was not ſent for from *Holland* to be a Witneſs? anſwer'd, She knew nothing of it till eight or nine Weeks ago.

Vaneſs ſwears, She was ſent away on Account of the Trial.

Whereas *Peacock*, *Hawkſworth* and *Knight*, three Servants of the Dutcheſs's, ſwore the Dutcheſs turn'd her away before the Trial, for keeping Company with *Dutch* Soldiers; and they do ſwear a new Cook-maid before the Trial.

Hauſeur ſwears, He had a Key of the Door going into the *Park*, and could come in when he would.

And yet owns he knew but two of the Servants, one whereof is long ſince dead.

And alſo the Dutcheſs's Servants ſwear, they never heard any body had a Key; and that if any Key had been, they muſt have known of it. They alſo prove the ſhutting up, bolting, and chaining the Door every Night, and opening it every Morning; and but one of the Servants remembers ever to have ſeen him at the Door, and then he rung the Bell; but came only to ſee a Country-woman of his, and to carry Letters to *Holland*, and brought Anſwer back to her, but was not admitted beyond the Paſſage.

Hauſeur and *Vaneſs* ſwear, they ſaw the Dutcheſs and Sir *John* in Bed together at *Mill-bank*.

The Dutcheſs's Woman ſwore, ſhe has put the Dutcheſs to Bed, and taken her up every Night and Morning ſeveral Years, and never ſaw him in the Houſe. And two others ſwear, they were conſtantly in waiting Night and Morning, and poſitively deny any Knowledge of any ſuch Thing, and ſay, they never ſaw *Hauſeur* there; and that *Vaneſs* was never admitted up Stairs, ſhe was ſo dirty a Creature, much leſs to dreſs or undreſs the Dutcheſs, as ſhe pretended often to have done.

Vaneſs ſwears, She could not tell the Places ſhe has been at theſe Six Weeks laſt paſt. Whereas

Mr. *May*, and two other of the Duke's Servants, ſwear, ſhe has been fourteen Days in the Duke's own Houſe, with the full Liberty of the Houſe.

Vaneſs being aſk'd, Whether ſhe ever told any body of the Occaſion of her going away? She ſwore, Yes, ſhe told it to a great many in *Holland*, and not here.

Yet being afterwards aſk'd, Whether ſhe ever diſcovered that ſhe was ſent out of the Way? ſhe ſwore directly, No.

Theſe are *ſome* of the *many* plain Contradictions and Diſproofs of theſe Evidences, beſides the great Improbability in their own Nature, in ſeveral Things ſworn.

But it is alſo to be noted, that *Hauſeur* left Sir *John*'s Service in a Diſguſt; and ſo 'tis prov'd by *Bayly*, another of the Duke's Witneſſes and that what *Hauſeur* ſwore could be nothing but Spite and Malice: Yea, 'tis prov'd on the Dutcheſs's Part, that he ſwore he would find a Way to be reveng'd of him, and that perhaps it might not be long firſt: And Mr. *Strange*, Mrs. *Pitts*, and her two Maids, who could have depoſed very materially for the Dutcheſs, refuſed to appear, tho' often ſummon'd, being Perſons not in the Dutcheſs's Intereſt or Power.

This *Hauſeur* has been out of Place ever ſince he left Sir *John*'s Service, *April* 96, and is ſo ſtill, as he ſwears, and ſo in conſequence likely to be neceſſitous.

Note alſo, that *Hauſeur* ſwears, Sir *John* gave him ſeven Guineas to pay the Charges of himſelf, *Vaneſs*, and another, which were order'd to be kept private till they could be ſhipp'd off, and alſo for their Paſſage into *Holland*, which was in Time from the 8th of *February* 92, till *Eaſter*.

Which does not look like a Bribe for a Secret of this Nature, being hardly ſufficient to maintain three People, and pay their Lodgings, for two Months.

Hauſeur would be thought a mighty Confidant, ſo as to have a Key to the Dutcheſs's Houſe, to come in and go out when he pleas'd; and yet, as well acquainted as he pretended to be with the Houſe, and the Dutcheſs's Bed-chamber, he could not tell on what Floor it was, nor what Furniture it had, nor whether wainſcoted or hanged: And when he was aſk'd, which way the Windows of the Bed-chamber look'd? he trifled in that Queſtion, and concluded, he could ſee the Water, but was afraid to go near the Window, for fear of being diſcover'd; and yet had no Scruple of coming into the Houſe with his Key, at any time.

Theſe Things being obſerv'd, it muſt be conſider'd, that the Facts now in effect charged againſt the Dutcheſs are ſuggeſted to be done many Years ſince, and were debated and conſider'd before the Peers, before the Rejection of the two firſt Bills, and long before the Agreement for putting an End to all Controverſies and Debates. Now 'tis very hard to put the Dutcheſs to account again for thoſe very Facts, conſidering, that after eight or nine Years many People are dead, others diſpers'd, and not in a little Time to be found out, and Circumſtances of Times and Places (which in the Nature of all theſe Caſes is almoſt all that is left to diſcover a Falſity) forgot.

The Dutcheſs is alſo under the unavoidable Neceſſity of proving a Negative againſt downright Swearing, and that without any Matter introductory; and alſo by two mean Servants, the one turn'd out of her Place for keeping company with Foot-Soldiers, and the other leaving his Place in diſguſt, becauſe he could not have the Play-Money.

Maſters are already too much in the Power of their Servants; and if they charge their Maſters with Adultery, Felony, and even Treaſon, it is not eaſily in the Power of the Maſter to defend himſelf againſt downright Swearing; Servants having thoſe Opportunities of the Knowledge of Times, and Places, and Company, which cannot be denied or avoided, and which others have not; whereupon they may frame and build falſe Evidence, and many times are of ill Principles and deſperate Fortunes, and of Tempers very revengeful; ſo that whoever turns away a Servant, he is in his Power for his Eſtate, Honour, and even Life itſelf; and therefore, for the Safety and Freedom of Families, in other Countries, they are not permitted to be Evidence againſt their Maſters, in any Matter criminal whatſoever.

Note alſo, That the Dutcheſs thinks ſhe, as an *Engliſh* Subject, has, by *Magna Charta*, the ſame Right to a Trial in the legal and ordinary Way of Juſtice, as the reſt of the King's Subjects, eſpecially conſidering that there never yet was in *England* one Precedent of a Bill exhibited in *Parliament* to diſſolve a Marriage at the firſt Inſtance, without any previous Proceedings in the Eccleſiaſtical Courts, (which in theſe Caſes is the Law of the Land) and not above Five or Six Bills in above 600 Years ever paſs'd to diſſolve Marriages, or make Second Marriages good, even after there had been a Divorce in the Spiritual Courts, and thoſe Bills too in Caſes generally where the Huſbands were without any Recrimination.

No Impediment appears why the Duke ſhould not have endeavour'd a Divorce at Law before he had attempted a Bill to diſſolve the Marriage; for any Application to the *Legiſlature* for Trial of Matters of private Right is improper, becauſe there are proper Judicatures that give that Remedy the Law allows.

To aſk any thing of the *Legiſlature*, in private Cauſes between Party and Party, beyond what the known Laws in force give, ſeems to be improper; becauſe,

1. It is to make a Law in one Perſon's Caſe, which is not the Law in another's.

2. It is to retroſpect Actions, and after the Fact, to augment or alter the Penalty. Our Laws are certain and known, that Perſons may conform their Actions to them.

3. The Courts and Forms of Law are equally the Subjects Right with the Law, and the Application to the *Legiſlature* takes away all that Right of Form and Charging; whereas a Certainty in Time to anſwer, and Exceptions to Witneſſes, and other legal Defences of the Fact, cannot be denied the meaneſt Subject.

The Conſequence that ſhort and ſummary Ways of Proceedings may have on the Settlements of Eſtates and Families, may be very dangerous; and tho' the Duke of *Norfolk*'s Bill paſſed the Houſe of Peers, yet a great Number of the Peers, both Spiritual and Temporal, enter'd their Proteſt againſt its paſſing, and their Reaſons for it.

It ought to be no Prejudice to the Dutcheſs, that the next Heir preſumptive to the Duke doth not yet appear to be a Proteſtant; becauſe when a Bill, which hath lately paſſed both Houſes, is become a Law, it is not likely that noble Family will be without a Proteſtant at the Head of it.

If any of the Witneſſes formerly examined on the Bill in 1699, be now again produced, it is humbly apprehended, that as the Validity of their Teſtimony they then gave was totally overthrown by a greater Number of Witneſſes, ſo it will be again, tho' under the Diſadvantage of the great Diſtance of Time.

Martis 19 *die Martii*, 1699.

The Reading the Bill, for diſſolving the Marriage of the Duke of *Norfolk*, the ſecond Time, and hearing Counſel as well on the behalf of the Dutcheſs againſt the Bill, as on behalf of the Duke for the Bill, being the Order of the Day, before the Counſel was called in, to prevent the Inconvenience of People crouding into the Houſe, the Houſe made an Order,

That none but the Counſel, Sollicitors, and Parties ſhould be called in, and that the Witneſſes ſhould have Notice to attend without, ready to be called in, if the Houſe ſhould think fit.

It was alſo intimated, That if the Duke and Dutcheſs did think fit to come into the Houſe, they ſhould be accommodated with Chairs, that being a Reſpect ſhewed to the Nobility when they come into the Houſe.

And then the Counſel, and Sollicitors, and Parties of both Sides were called in: And firſt the Bill was read to them.

And then the Lady Dutcheſs's Petition was read.

The Counſel that appeared were,

Sir *Thomas Powys*, Mr. *Dod*, Dr. *Pinfold*,	for the Dutcheſs.
Mr. Serj. *Wright*, Mr. *Northey*, Mr. *Atwood*, Dr. *Oldiſh*,	for the Duke.

And Mr. *Speaker* then ſpake to this Effect:

Mr. *Speaker*. You are here, I ſee, Counſel on both Sides. The Houſe have ordered, That my Lady Dutcheſs ſhould be heard according to the Prayer of her Petition; and my Lord Duke had likewiſe an Order to be heard to make good his Bill. I think the Petitioner is to be heard firſt, to make good the Allegations of her Petition; and when the Houſe have heard you both, as to that, they will conſider whether they will proceed to hear the Allegations of the Bill made out.

Sir *Thomas Powys*. Mr. *Speaker*, with your Favour, Sir, I am of Counſel with the Petitioner, the Dutcheſs of *Norfolk*, againſt this Bill that is now before you; and I believe I may ſay with ſome Aſſurance, that this Bill, in the Manner it is now brought before you, is the firſt that ever was attempted in this Honourable Houſe. 'Tis, Sir, true, that ſeveral Years ago this Bill, or another of the ſame Nature, was attempted twice in the other Houſe, and as often rejected; but 'tis as true, at laſt it does come from thence hither, but not without a Proteſtation there; and I humbly hope that you will take notice, that this is a Bill of Divorce in Parliament, in the firſt Inſtance, without a previous Proſecution to examine the Fact in any of the ordinary Courts that have Authority in theſe Matters.

It is a Bill not only to Divorce the Dutcheſs upon a very ſhort Warning, who hath been a Wife twenty-three Years, but to render her Infamous to all Poſterity by Act of Parliament, which I account to be the greateſt Misfortune poſſible to befal any Perſon; and at the ſame time it takes from her the legal Trial of the Fact whereof ſhe is accuſed, and which ſhe hath a Right to by the Laws of the Land, ſure as much as the meaneſt Subject; and which we don't apprehend ſhe has in any wiſe forfeited; nor is there any Reaſon aſſigned, why his Grace has not been pleaſed to proceed in the ordinary Courſe. I hope, Sir, you will take Notice alſo, that this is, in truth, nothing but a Suit between Party and Party. 'Tis meerly a Cauſe Matrimonial between Huſband and Wife, began originally in the Houſe of Peers; and as hitherto the Beginning of Cauſes between Party and Party, in that Houſe, hath been ſtrongly oppoſed, ſo I hope it will be thought reaſonable to do ſo always, becauſe it deprives the Subject of that legal Defence due to him by the Law of the Land. If this was always complained of, when the Proceedings were in a Judicial Way, ſurely 'tis a great deal worſe to begin there a private Cauſe between Party and Party in the Legiſlative Way. I can ſee no manner of Difference with reſpect to the Loſs of thoſe great Advantages the Party is intitled to, only this ſeems rather to be the moſt againſt Reaſon.

Sir, this is a ſummary Proceeding with a Witneſs. It began but the 16th of *February*, and but a Week's Time given to the Party accuſed of ſo high a Crime, and of ſo great Conſequence to the Party accuſed, to be heard to it; and tho' perhaps we may with Reaſon enough find Fault with the tedious Proceedings in ſome Courts, where Appeals and Writs of Error are juſtly due, as where Property is well fixed, it muſt needs be reaſonable: I ſay, from various Cauſes, though Suits in the Ordinary Courts are very tedious; yet I am ſure a ſummary Way of Proceeding without due Warning, or any certain Way of making Defence by any known Rules, and without Oath, as here without Appeal, without any Poſſibility of retrieving the Matter again, with great Submiſſion; and if this muſt be for all that one has in the World, ſuch a ſummary Way is a very terrible Thing.

I would be glad any one would make it his own Caſe, and think with themſelves how they ſhould like it, if their Life, Eſtate, and all they had, were put upon ſuch a ſummary Way of Proceeding. 'Tis true, in ſome Kingdoms, where the Government is arbitrary, the Proceedings are ſummarily, and moſt commonly they go together; and if we were in a Place where the Judges were infallible, and there were no falſe Witneſſes, and Truth could be diſcovered at an inſtant, a ſummary Way would be beſt; but ſince Men are fallible, ſince there is Paſſion and Partiality in the World, ſince oftentimes there is notorious Detections of Perjury, and ſeveral Things are difficult to be diſcloſed, and require a reaſonable Time for examining into Facts; from thence it is that there are ſettled Courſes for determining all Queſtions in *England* between Party and Party; and there are known Rules and good Methods for the Relieving againſt any ill Judgment that is given.

Whatever you may think of this particular Caſe of the Dutcheſs of *Norfolk*; the Example is of mighty Conſequence to all Parents, that perhaps make hard ſhift to give their Daughters conſiderable Portions, and may think they have married them well, and made Proviſion for them and their Children: I ſay it will be hard, if their Daughters ſhould be ſent home to them upon a Fortnight's Warning, and that Witneſſes ſhould be examined againſt them without their having Notice ſo much as of the Places of their Abode; and a Thing ſhould be determined before the Witneſſes can be well known: And it muſt be agreed to be of great Conſequence to all collateral Heirs, if Marriages are ſo eaſily and ſuddenly ſet aſide for want of Iſſue; which I find to be one of the Cauſes aſſigned for this Bill, and that it might be in a ſummary Way, perhaps before they can well hear of it. I am ſure, this is a Matter of too great Temptation to be put upon Men that may grow weary of their Wives, and deſire a better Fortune, or deſire Change, or may be moved by a thouſand Reaſons we can't think of, to revive old Quarrels, and think of Things long ſince paſſed, if you will ſee ſuch a Precedent of Divorcing in ſuch a ſummary Way.

This is ſure of infinite Concern to us in higher Matters. A Bill of Divorce of a Woman in Parliament, without a legal Trial, is juſt the ſame Thing as a Bill of Attainder againſt a Man for Treaſon; the one forfeits the Eſtate, corrupts the Blood, and takes away his Life, and the other does very little leſs: For I find, according to the Bill, 'tis to forfeit her Joynture, to defame her Perſon, corrupt her Reputation; and tho' it leave her Life, it is left with Infamy, which is worſe than Death; and in a Caſe of this high Moment, ſure you will be careful how you alter the Courſe of Trials. I beſeech you, Sir, will not the Reaſon be the ſame, that a Bill of Attainder may be brought againſt a Man, and that Witneſſes againſt him may be fetch'd from beyond Sea, which he had formerly diſcharged from his Service, and put the other Side to prove what is always very difficult, the Negative, to make his Defence, which muſt needs require a reaſonable Time for the making out of Circumſtances, and laying Evidence together? Where will be the difference between proceeding againſt a Man for his Life without a Trial, and proceeding againſt a Woman for her Joynture, where her Name, Family, and Reputation is concerned, and perhaps her Children, the Legitimacy of whom muſt come in queſtion; and in a Caſe, where the Perſon by no Behaviour of hers hath forfeited ſuch a Trial, nor the Perſon that proſecutes this Bill, can't ſhew, that he hath been obſtructed in his proceeding in the ordinary Way? I need not take notice of what every body knows, that we have a happy Conſtitution if we can keep it; every Man can call his Wife his own, and his Eſtate his own, becauſe it can't be taken away but by legal Trial; but if you will go into theſe extraordinary Reſorts, when the Courts and the Law is open, without any previous Preparations for that Matter, by having a fair Examination, that the Party can't ſay there is a Surprize, I know not where it will end; and though in one Caſe it may be deſirable, that there ſhould be an extraordinary Relief: But will this go no further? Can any body ſay that?

That which we find in *Magna Charta* is not to be forgot, where there is ſo much Care in the ſeveral Inſtances of it for the preſerving of Property, and the Right of Trials, *Quod nullus deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittimus, niſi per legale judicium parium ſuorum vel per legem terræ.*

Why, in this Caſe the Eccleſiaſtical Law is *Lex Terræ.* And if that be to be taken away without any Reaſon, why may not the Law in any other Caſe?

We have, perhaps, in Time of great Emergency and publick Difficulties, had ſome extraordinary Laws grounded on extraordinary Reaſons; but now we are in a Time of ſettled Peace, when there may be a juſt Determination according to the Law of the Land, I can't ſee any Reaſon for this Proceeding, no, not in this particular Caſe.

I would, Sir, with your Favour, take Notice of thoſe few Inſtances of this kind, that have been in *England* by Act of Parliament, and in what manner they have proceeded.

There have not paſſed hardly ſix in ſix hundred Years; I think I may challenge them on the other Side to ſhew ſo great a Number, but thoſe I have I ſhall quote: but they proceeded in another Manner than this has done.

'Tis true, where Perſons have had a fair Trial in a proper Court, and Witneſſes have been examined, and Sentence final been pronounced, and where the Party as to the Fact hath been concluded according to the Law of the Land; when all this hath paſſed, ſome Inſtances there have been, that afterwards an Act of Parliament has paſſed to ſtrengthen the Sentence, and to carry it farther than the Eccleſiaſtical Court will allow, even to the diſſolving the Marriage, and enabling the innocent Perſon to marry again; but you will find all thoſe Acts are founded and built upon the Sentence of thoſe Courts, and recite thoſe Sentences as a great Inducement to the paſſing of thoſe Acts; and I crave Leave juſt to take Notice of thoſe. The firſt we find, is that made in the Caſe of the Marquis of *Northampton*, which was in 5 *E.* 6. He was married to a Daughter of the Earl of *Eſſex*, and ſhe eloped from him, and was proſecuted in the Eccleſiaſtical Courts, and there was Sentence againſt her of Divorce. The Marquis, from hence, took upon him to marry a Daughter of the Lord *Cobham*; and after four Years Marriage of her, he obtained an Act of Parliament to ratify the ſecond Marriage; which Act recites a Settlement of Divorce in the Eccleſiaſtical Court.

This took its riſe from Examination according to Law; and that Act of Parliament is grounded upon it, and recites it as a previous Matter neceſſary to induce that Act.

The next that follows was the famous Caſe of the Lord *Roſs*, afterwards Earl of *Rutland*, tho' there perhaps was as great a Notoriety of Fact as can be pretended in this Caſe, and he did not ſtand impeached of any immodeſt Behaviour; but even in that Caſe the Divorce by the Act, followed a Divorce in the Eccleſiaſtical Court, and that paſſed with ſuch Difficulty, that it was four Years in hand; it began in Sixty-ſix, and was not paſſed till Seventy: I have a Copy of it, and it ſays, that foraſmuch as *Mannors*, commonly call'd L. *Roſs*.

And it proceeds thereupon to enable him to marry again; but this, Sir, could not be but by two Acts of Parliament, beſides the Sentence in the Eccleſiaſtical Court; for he firſt got that Court to declare the Children illegitimate, and then in the Year (70) the Parliament paſſed this Act.

I know of no other, till we come to a Caſe that happened within our Memory; 'tis the Caſe of a Perſon of great Worth, and I hope it will give no Offence when I cite the Precedent.

It was the Caſe of Mr. *Lukenor*, who had been groſly abuſed by his Wife, by Elopement and open Adultery; but the Act he obtained went no farther than to diſable the Children born while ſhe lived in open Adultery; and that Act recites a Sentence of Divorce: I have a Copy of it, and I crave leave I may read a few lines of it; it recites that Mr. *Lukenor*'s Wife had eloped from her Huſband.

There was indeed a famous Caſe not long ago, of a Lady that was taken away by force, and pretended to be married, and an Act of Parliament came afterwards to declare that Marriage null and void; but even there was a Proceeding at Law with a Witneſs. The Perſon that had been concerned, was actually indicted and executed; it was not there to make a Divorce, and ſo it had been a vain Thing to have gone into the Spiritual Court, where there was no Marriage; for it was only a Law after the Fact declaratory by way of Caution, to give the more Satisfaction that That Marriage was null and void.

Sir, the laſt I know of (and it may be proper for you to obſerve how quick theſe People come after it) was that of a noble Earl, that did obtain laſt Parliament an Act for divorcing him and his Lady: It is the Caſe of the Earl of *Macclesfield*; but in that Caſe it will be proper to take Notice to you, that there were previous Proceedings in the Eccleſiaſtical Court; there was a Libel exhibited againſt her, a Charge upon her, and Witneſſes examined, and ſhe had a fair Opportunity of making her Defence; there was a regular and a long Proceeding againſt her, and a Proſecution of her, in order to a Sentence of Excommunication; and then there came the Earl's Petition into the Houſe of Peers, ſetting forth, that there had been ſuch a Proceeding as this, and that ſhe ſtood in Contempt, having been proſecuted as far as that Court could go: After an Examination of Witneſſes, in all the Caſes I have heard of a Divorce by Act of Parliament, there have been Proceedings in the Eccleſiaſtical Court; this was the Way of former Time, but now we are beginning where the Matter ought to end.

And now the firſt Application is to that Place, wherein all theſe Inſtances (as I think it ought to be) was the laſt Reſort. 'Tis true, this Method may not pleaſe the Duke, for we know his Grace is in haſte for cutting the Knot aſunder at once, by the Legiſlative Power; but I hope, upon theſe Precedents, you will think it more reaſonable it ſhould be at firſt untied, or at leaſt looſened by a judicial Proceeding. If you will, I do not ſee how in Juſtice the Parliament can deny the like Remedy the next Seſſions to any other that may be in the like Caſe; it may be in worſe, for here is no pretence of any ſpurious Iſſue. Can the Parliament of *England*, whence we take our Meaſures of Juſtice, deny the like Remedy in Juſtice to any others that are in the like Caſe? What is it that guards you from an infinite Application of this Nature, but requiring Perſons to take the ordinary Courſe firſt, and to come round about to the Parliament, as the laſt Remedy, to carry the Sentence perhaps farther than the Eccleſiaſtical Court can do: But if Perſons can come up directly hither, I am apt to think your *Lobby* will be crowded with Petitioners of this Nature the next Seſſions; though the Seſſions now are long and frequent, this ſingle Buſineſs may be ſo great as to obſtruct all other Buſineſs; I am ſure a Committee for Adultery would have a full Employment.

Let it be conſider'd how ſtrange it would be, if ſome poor Man, upon this Precedent, ſhall come and make Application, and tell you he ſtands in Need of ſuch a Bill from the Condition of his Family; that his Wife plunders his Houſe, ſells his Goods, and lives in Adultery, and prays this Matter may be examined in a ſummary Way, becauſe he is not able to go through the coſtly Courſe of Eccleſiaſtical Courts, and be favoured with a Divorce; would not this poor Man's Caſe ſeem to have the like Juſtice, or poſſibly more? And yet if ſuch a mean Man ſhould come with ſuch a Petition, perhaps it would look ſtrange; but yet in Juſtice there is no Reſpect of Perſons; the Law in *England* is, *unum pondus & una menſura*; and if this ſhould be done in the Caſe of a great and rich Man, and not for a poor Man, they may ſay what has been ſaid by ſome, *That our Laws are like the Spider's Web, which only hold the leſſer Inſects.*

Shall thoſe that expect the beſt Fortunes and greateſt Advantage by Marriage, not undergo the bad Fortune of Marriage too? I am ſure if this be ſo, it's a Privilege of *Peerage* never thought on before.

You may ſee, Sir, by this Bill, how Precedents grow upon you; at firſt in the Caſe of the Marquis of *Northampton*, it was hard to get an Act after a Divorce: So it was in the Caſe of my Lord *Roſs*; the laſt Seſſions in the Caſe of the Earl of *Macclesfield*; it went farther there, becauſe there had been a previous Proceeding in the Eccleſiaſtical Court, and his Lady had obſtructed that Sentence, that Act paſſed before Sentence; but now we are come to have it done without ſo much as a Trial to get a Divorce in the Eccleſiaſtical Courts; to have all paſſed at once in a ſummary Way, it will be but to petition the *Parliament*, and all ſhall be determined without a Poſſibility of being re-heard.

I know nothing can be ſaid on the other Side with good Reaſon (unleſs that which I heard in another Place), why they ſhould not go to the Eccleſiaſtical Court, which is, that thoſe Courts cannot divorce *a Vinculo* Matrimony; therefore it would have been a vain Thing: This may be a good Reaſon for them to come to you afterwards, but 'tis no Reaſon for them to come here at firſt, unleſs they would ſay at the ſame time, that every Thing ought to be begun in Parliament, becauſe 'tis poſſible every Thing may be brought to the Houſe of *Peers* at laſt: Will they ſay that all Ejectments ought to be begun originally in the Houſe of *Peers*, becauſe after the Parties have been at great Charge and Trouble in the Courts below, they may be brought thither by Writ of Error at the laſt? This would have been a good Expedient, in a Cauſe lately where a Deed was tried over and over, if the Perſons concerned in ſo many Verdicts, had once thought of having begun in Parliament to have had it ſettled, whether it was a juſt Deed or no; if this be the Rule, it would be well it were known, and made to be the Law of the Kingdom; for that Law will be always reckoned hard which is made in one Caſe, if it may not be had in another; the Law of *England* does go throughout, and if it be Law for one, 'tis for another. I have but one Thing more to lay before you, and that ſeems worthy of your Conſideration, beſides all that I have ſaid.

You obſerve the Bill is general, without Reſtraint of Time and Place, or Deſcription, or Circumſtanees relating to the Fact: Now, Sir, I muſt take leave to acquaint you, that ſo long ago as *April* 1694, his Grace the Duke, who complains of this Matter, as if ſome Misfortune had befallen him, having made former Complaints and Attempts for obtaining what he now deſires, did at laſt in *April* 1694, not ſuddenly, but by Advice of Counſel, with his Friends about him, after a long Time of Agitation, come to Articles with his Wife the Dutcheſs; of which I crave leave only to read the *Preamble*.

The articles are between his Grace the Duke of *Norfolk* and the Earl of *Peterborough*, and recites——

* It is therefore determin'd by the Parties, and agreed as followeth; and thereupon the Articles proceed to ſettle every Thing between the Duke and Dutcheſs to his own Satisfaction, and according to his own Deſire: His Grace hath reap'd the Benefit of thoſe Articles, by having received a great Sum of Money; and the Dutcheſs parted with her Intereſt in that Great and Noble Manour of *Sheffield*; his Grace hath had all that he on his Part was to have, and hath executed abundance of Deeds, purſuant to his Agreement. Now if, after all this, there be a Proſpect of farther Advantage by another Marriage, that will not move you to give him a Liberty for a Departure from ſo ſolemn an Agreement; in what a Condition are People that have purchas'd their Peace as the Dutcheſs has, if they may have Liberty to go back beyond this, for the Bill has no ſtint? Surely all Reconciliation between Men and their Wives, and all Acts towards them, and all Acts of Kindneſs, are to be favour'd; and Matters of a Divorce are of an odious Nature, and not to be encourag'd after ſuch Compoſure of Differences, and Reconciliation. We have Inſtances of ſome that have taken their Wives again, and lived comfortably afterwards; ſurely it ſhall not be in their Power to go back and ſay, *Pray let us be divorced*; 'tis contrary to the uſe of all Acts of Pardon. What is the End of all Acts of Parliament of General Pardon, and all Statutes of Limitation, but to eaſe People in ſuch a Caſe? For 'tis impoſſible that any Perſon can be able to defend their Actions nine or ten Years ago; they can't keep their Witneſſes alive, and therefore the Law hath often limited a Time, beyond which Perſons ſhall not go back: And this, we think, the Duke hath done by Articles, and ſurely they are concluſive both before God and Man.

I ſhall ſay no more, but that I don't apprehend the Nation will be in any great Danger, if the Duke do, betwixt this and the next Seſſion, proceed in the ordinary Courſe, and prepare Matters againſt another Seſſion; I am ſure 'tis of great Conſequence: No man can deny but we have a good Conſtitution; but if it is in the Caſe of a particular Perſon to be broken, ſuch a Breach in this Conſtitution may not be very eaſily recover'd.

I hope this Cauſe, that is precipitated here out of Time, and before thoſe Preparations were made that have been in all other Caſes, ſhall be remitted to its proper Place, where her Grace will give the Duke a Meeting, if they be not before that Time reconcil'd.

Mr. *Dodd*. Mr. *Speaker*, I deſire the Favour of a Word of the ſame Side. Theſe Bills are not common; I think there are not above three Inſtances to be found in the Records of this Kingdom.

This Bill is to diſſolve a Marriage after Twenty-three Years Continuance, and that not upon ſo many Days Notice as there has been Years of the Marriage, for to ſerve the particular Purpoſes of one Perſon: 'Tis a Law after the ſuppoſed Fact committed; the Law ſhould go firſt, and the Fact follow; it is not a General Law for all the People of *England*; as ſuch, it would have been another Conſideration: There is no Occaſion for a particular Law, 'tis a Bill from the Lords, and in a little time, for what I know, the Lords will preſcribe to it. There is not one of theſe Bills for a Commoner, unleſs in my Lord *Roſs*'s Caſe, who was of a Noble Family.

'Tis not pretended by this Bill, that the Dutcheſs hath had any ſpurious Iſſue, though that was the Circumſtances of one of the Bills that did paſs, and that was a material Circumſtance in the Caſe; and that is not alledged here. Theſe Bills are not to be made uſe of, but upon extraordinary Occaſion, and the utmoſt Extremity, and till then I hope ſuch Bills ſhall not be made uſe of; and we think the Proceeding upon this Bill, in this Caſe, will appear much harder; for 'tis the firſt Inſtance of this Nature, when there has been no Proceeding in any Court whatſoever, to convict the Dutcheſs of this Offence, no Citation all this while in the Eccleſiaſtical Courts, where the Dutcheſs might have an opportunity to make her Defence.

If thoſe Courts have Juriſdiction in any one Thing, 'tis in Caſe of Matrimony: If this was brought into thoſe Courts, the Dutcheſs would be allowed to make her Defence, not only by way of Recrimination, but Examination of Witneſſes; a Commiſſion might be had to examine Witneſſes beyond Sea, if ſhe had any Witneſſes there, or in the Country; ſhe might appeal to a Superior Court, and thence to the Delegates: Theſe are all proper Defences that the Law allows, that there may be no Surprize upon the Party; and if injured, he may be righted in another Place: Theſe Proceedings we think are neceſſary to go before a Bill of this Nature, for then the Fact would be plain; and if the Dutcheſs had been convicted in this manner, as to the Fact, we muſt not have opened our Mouths againſt it.

By the ſame Reaſon that a Bill is brought to diſſolve this Marriage, in a little time you may have a Bill to marry People: Be it enacted for ſuch and ſuch Reaſons, ſuch Perſons ſhall be married. This would be a much readier Way in Caſe of Contracts, than any Proceedings in the Eccleſiaſtical Courts. And though they may ſay the Law of *England* takes notice of Contracts of Matrimony, as well as any other Acts, that is no Anſwer; for the Fact is, whether there is any Contract of Matrimony, or no; and ſo 'tis here, whether my Lady is guilty of the Crimes charged here in the Bill; and for this ſhe ought to have a proper Trial, and ought to be called to an Account in the ordinary Methods of the Law; and then it might be proper to carry the Sentence farther than thoſe Courts can. I hope you will be very tender of making a new Precedent; and I do not know of any Bill before this, to convict a Woman of a ſuppoſed Crime; then this is the firſt Bill of this Nature, and you will conſider, whether you will make a Precedent of it or no. Though this before you is the Caſe of a great and honourable Perſon, yet your Juſtice will be the ſame, if it ſhould happen that any other Man in the Kingdom ſhould be in the ſame Circumſtances, and willing to ſlip over all Trials, whereby the Perſon accuſed might have an Opportunity of making her juſt Defence, as is the Caſe of this noble Lady, who is hurried on after twenty-three Years Marriage to a Determination in as many Days in this extraordinary manner.

I hope therefore you will not proceed in a Bill of this extraordinary Nature, of which there is not one Inſtance to be given, where you have begun to examine a ſuppoſed Crime, but you have always left it to the Determination of the Law in the ordinary Courſe; and we think it ought rather to be ſo in this Caſe, becauſe 'tis not pretended by the Bill, that there is any Stop put to their Proceedings there; there is no Abſence of Witneſſes, no Incapacity, but his Grace may proceed there to convict this Lady of the Crime he ſuppoſes her guilty of, and ſhe will there have her juſt Defence; and till then there is no Crime for you to judge upon, and I hope you will think fit to reject this Bill.

Dr. *Pinfold*. Mr. *Speaker*, I deſire to ſpeak a few Words as to the Eccleſiaſtical Law, which is a Part of the Law of *England* as much as any other, for our Law does not receive *Majus & Minus*; and the Eccleſiaſtical Courts have been ſettled for ſeveral Ages, and are governed by ſuch Rules which every Subject has a Right to. Sir, this Bill is to diſſolve the Bond of Marriage, and to give Leave to marry again; and I crave Leave to ſhew the Houſe what our Eccleſiaſtical Conſtitutions are in that Caſe, and how tender they have been in that Point, and how thoſe Conſtitutions are grounded upon the Canons and Decrees of Councils.

The Caſes where the Bond of Marriage is to be diſſolv'd are but few, and they ariſe before Marriage; 'tis in the Caſe of a Precontract or Nonage, or Conſanguinity, and there the Bond is broken by the Sentence of the Judge, and the Perſon hath liberty to marry again; but for what comes afterwards, whether it be the Caſe of Adultery, or any thing elſe, the Law Eccleſiaſtical, which, as I ſaid before, is part of the Law of *England*, hath been very careful not to diſſolve the Marriage.

The 48th Canon ſays, If any Layman ſhall put away his Wife, and marry another, he ſhall be excommunicated: That was the Senſe of thoſe early Days; and ſure they did not think it an indifferent Matter, becauſe they puniſhed it with ſo heavy a Puniſhment. So 'twas in the Council of *Arles*, 314, and there it was decreed, That if a Man took his Wife in Adultery, he ſhould be forbidden to marry. There what was to be done? Counſel ſhould be given him not to marry while ſhe lived, tho' ſhe was an Adultereſs.

And in the Council 402, the *Neapolitan* Evangelical, Apoſtolical Council, it was decreed, That if a Man was divorced from his Wife, or a Wife from her Huſband, there they were not to marry, but ſhould remain unmarried, or be reconciled.

And in the *African* Council, Canon 102, there it was provided, That they who were divorced, whether 'twas a Huſband from his Wife, or a Wife

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* *Vide* her printed Caſe *ut infra*.

Wife from her Huſband, they ſhould remain unmarried. This was the Senſe of the antient Canons and Councils, and this is received into our Eccleſiaſtical Conſtitution. In the 15th Year of the Reign of Queen *Elizabeth*, in the Chapter of *Divorces*, 'tis ſaid, That upon a Sentence of Divorce there muſt be an Admonition, and a Prohibition, that the Party ſhall not marry again.

And in the Year 1602, in the Beginning of King *James*'s Reign, there was a farther Proviſion made to keep them from being married again; and that was this, That they ſhould give Bond and Security that they ſhould not marry again; this is certainly our Eccleſiaſtical Conſtitution, and grounded on the Senſe of the antient Canons.

Now it remains to ſhew ſome Advantage this would have had: If ſhe had had the Trial which of common Right is due to the meaneſt Subject, ſhe would have had the Advantage of Challenges, which ſhe can't have here; for here the Evidence muſt drop from the Witneſſes Mouths, who are Foreigners, and have been long abſent; there they muſt give an Account of themſelves, which here hath not been done by any Body. The Lady might have given her Exceptions to thoſe Witneſſes, and had a Commiſſion into *Holland*, to have examined how theſe Witneſſes behaved themſelves, and whether theſe Perſons were to be believed and credited: Here ſhe would likewiſe have Liberty to give an Account how this Deſign began. I do now ſpeak with reſpect to the Duke, but I do ſay it does ſeem to have begun a Year and a half ago. She would likewiſe have had the Advantage of a thorough Reconciliation: And here are ſome Deeds in (94) between the Duke and the Dutcheſs, which I hope, if the Houſe will take an Account of, will have its due Effect; ſhe would likewiſe have had the Advantage of an Appeal, the common Right of the Subject, and grounded upon good Reaſon; and in caſe there had been a Neglect in the firſt Inſtances, the Party may be righted in another Place.

By this Bill ſhe is debarr'd of the Advantage of Recrimination, to which ſhe hath a Right, for the Text Law is ———

And the Text Law, *De Divortiis*, were the Charge moſt true, which we do not admit; yet if ſhe can prove the ſame Thing againſt her Huſband, the Fault of one muſt be ſet againſt the Fault of another, and he can't have the Advantage of his Prayer.

I ſhall repeat only one Thing more, and that is the Caſe quoted already of the Earl of *Maccleſfield*; but in that Caſe the Lady withdrew herſelf five or ſix Days before Sentence; yet there the Lord *Maccleſfield* had all her Defences, and even her Recrimination, and had a Time to prove it; there was Publication, and a Day ſet down for Sentence; but ſhe ſpun out the Time till the Parliament was ready to riſe, and then my Lord's Friends adviſed him to begin in Parliament; and when the Lords were acquainted of my Lady *Maccleſfield*'s ſtanding in Contempt of the Court, and ſhe was proſecuted ſo far, that ſhe was almoſt ready to go to Priſon for her Contempt, then the Houſe of Lords did think fit to receive my Lord *Maccleſfield*'s Bill, and not before; but before my Lord *Maccleſfield* brought his Bill in Parliament, there was nothing remained to be done in the Eccleſiaſtical Courts but Sentence: And I hope for all theſe Reaſons, you will not proceed upon this Bill.

Mr. Serj. *Wright*. Mr. *Speaker*, I am of Counſel for the Duke of *Norfolk*, who is your Suppliant for this Bill, for Redreſs againſt the higheſt Injury that can be offered; the Rights of his Marriage-Bed have been invaded, and he comes for that Relief here, which no other Court can afford him; for the learned Doctor on the other Side tells you plainly, from the Canon Law, that there can be no Divorce *a Vinculo Matrimonii* in their Courts: Now to ſend us to a Court for Relief, that they tell us before-hand can give us none, is in Effect to tell us we ſhall have none at all.

The Bill is founded upon the Suggeſtions contained in the firſt three or four Lines of the Bill, that the Dutcheſs of *Norfolk* hath, for divers Years, lived in Separation from the Duke her Huſband, and hath had unlawful Familiarity and adulterous Converſation with Sir *John Germaine*, and is guilty of Adultery on her Part, and hath broken the Bond of Matrimony: Theſe are the Reaſons for which the Duke deſires this Bill may paſs; 'tis for the adulterous Converſation of the Dutcheſs, not for one ſingle Act, but a continual Series of the like Acts for many Years; for we ſhall not give only one ſingle Act or Inſtance in Evidence, but prove this Converſation for ſeveral Years, beginning in Eighty-ſeven, and carried on to the latter End of Ninety-five.

It hath been objected, that this is the firſt Inſtance of a Divorce, the firſt Bill of this Kind, where there has been no Proceedings in the Spiritual Court: That 'tis the firſt Bill of this Kind we deny; but that there have been no Proceedings in the Spiritual Court, we own; for the Earl of *Maccleſfield*'s was the ſame, to all Intents and Purpoſes, as this is; for though 'tis true, they had been in the Spiritual Court, yet 'tis as true, they came here into Parliament before any Sentence in the Spiritual Court: Now to what Purpoſe is it to go into the Spiritual Court, and not to ſtay for the Determination of that Court, if the Judgment of that Court is to have any Weight in the Caſe of the Earl of *Maccleſfield?* 'Tis true, they had been there and examined Witneſſes on one Side with all Precipitation, yet would they not ſtay for a Sentence there, but quitted their own Proceedings, and came to the Parliament. Now I do take it, that they had better never been there, than to have come away before Sentence; for when they were in the Spiritual Court, and were proceeding there, to leave that Court, ſhewed rather a Miſtruſt of their own Caſe. But it was no Objection in that Caſe, that it was taking it away from the Juriſdiction of the Spiritual Court. We don't come to you for any thing the Spiritual Court can grant us; for that Court goes no farther, if the Fact be proved, than to make a Separation *a menſa & thoro*, but the Bonds of Marriage is to be continued ſtill: Now with Submiſſion, this is to puniſh the Innocent inſtead of the Guilty: What would the Dutcheſs deſire more, than to be ſeparated from the Bed and Board of her Huſband, and be left free to accompany Sir *John Germaine?* But we go further, for we come to the Parliament to diſſolve this Marriage for that which is allowed by ſeveral learned Writers to be a juſtifiable Reaſon for ſo doing, for Adultery committed by the Wife: 'Tis expreſly, that a Man ſhall not put away his Wife, except in caſe of Fornication; this Text plainly allows, that in caſe of Fornication a Man might put away his Wife; but the Popiſh Canons the Doctor has named, have put a Conſtruction upon it: Say they, You ſhall put her away; but how? She ſhall be removed from your Bed and Table, but you ſhall not marry another. Then they ſay, there is no Precedent of a Bill of this Kind, but there hath been a previous Proſecution in the Spiritual Courts. I agree the Marquis of *Northampton*'s Caſe, that That Act does recite the Proceedings in the Spiritual Court: But that Caſe is ſtronger than this, for there the Marquis of *Northampton* had married even in the Teeth of their Canon Law, and comes afterwards an Act of Parliament to make this Marriage good, and there the Divorce was no Ingredient upon the paſſing of the Bill: But the Parliament enacted the Marriage to be lawful. In my Lord *Roſs*'s Caſe, there is no mention of any Divorce.

I appeal to the Journals of your own Houſes for that; but notwithſtanding the Divorce, the whole Matter was examined over again, Witneſſes were examined both in the Houſe of Lords, and here upon the firſt Bill which was brought, which was to illegitimate and baſtardize the Children; and the Witneſſes proved, that my Lord *Roſs* and his Lady had not lain together for a long time, and that ſhe had kept Company with others; ſo that the Parliament did not found the Bill upon what had been done upon the Divorce.

I appeal to your own Memory, that in the Earl of *Maccleſfield*'s Caſe, there was no Uſe at all on that Side; the Bill was brought, that there had been Proceedings in the Spiritual Court, nor is there any ſuch Thing recited in the Bill, but only an expreſs downright Charge of Adultery; nor was it proper for them to have mentioned any Proceedings in the Spiritual Court, ſince they waved that Proſecution; but we on the other Side inſiſted on it, as a Reaſon why the Parliament ſhould not proceed in it, it being to take upon them an original Juriſdiction; but we were then anſwered by a learned Gentleman againſt this Bill, that it was in vain to go there, for they could not give the Remedy that might reaſonably be expected. I beg the Favour to mention a Caſe or two, where Divorces have been in Parliament, and there have been no Proceedings in the Spiritual Court; one of them was the Caſe of Mrs. *Knight*, who was married *infra annos Nubiles* to Mr. *Goodwin*. Every one knows, that a Marriage *infra annos Nubiles*, is a good Marriage; and if the Woman be above nine Years old, ſhe ſhall be endowed; and yet notwithſtanding, for ſome irregular Proceedings, without going into the Spiritual Court, they came into Parliament; a Bill was paſſed, by which this Marriage was diſſolved; and I think 'tis expreſly enacted,

That ſhe ſhall not marry till ſuch an Age. This goes farther; for here I am ſure the Doctor would have explained, and told you, if there had been Reaſon to diſſolve the Marriage, they could have done as great a Feat in the Spiritual Court; that they could have examined Witneſſes upon Oath, and could have told you whether there was proper Evidence; yet the Parliament, without any regard to what they could do, would aſſert their own Juriſdiction.

The Caſe of Mr. *Wharton* was mentioned on the other Side; and therefore I need not ſay any thing to it: There was nothing of Divorce, nor needed any.

They ſay this Bill begins where it is proper for Matters of this Nature to end; and that after we have taken a Turn into the Spiritual Court, and travelled three or four Years there, then it will be fit for the Judgment of Parliament. I would know if they had been ſeven Years in that Court (and perhaps if they come there, we ſhall not get out ſooner,) to what Uſe the Examination of that Court would be. This Houſe, I preſume, would not let thoſe Depoſitions be read here, eſpecially if the Witneſſes to their Facts were living.

They ſay this is a very ſummary Way of proceeding; it may be too quick for the Dutcheſs; but you may be pleaſed to conſider, that there was a Bill brought into the other Houſe ſome Years ago, and rejected; upon what Terms, that will reſt upon us to ſhew you by and bye.

But the Matter was, the Witneſſes that proved the Fact, was ſent out of the Way by the Dutcheſs and Sir *John Germaine*, when Things were under an Examination; and we hope a Matter of this Nature never ſhall be baffled by keeping the Evidence out of the Way.

We told them long ago, who the Witneſſes were; they were the Dutcheſs's Servants, ſuch as they thought fit to entruſt.

They ſay this Bill deprives the Dutcheſs of her Trial; I hope nobody thinks the Parliament will paſs a Bill, without due Examination of Witneſſes, and legal Proof of the Fact; if ſo, what matter is it, whether the Proof be made before the Parliament, or ſome inferior Court? If the Dutcheſs be guilty of this Crime, we come here for Relief, which the Spiritual Court, the Doctors tell you, can't give us; ſince the Dutcheſs hath broke the Bond of Matrimony, we come to you to Diſſolve that Marriage, and I hope we ſhall have it.

The Doctor hath inſiſted on one Thing, that I think is very extraordinary: He tells you, by the Rules of their Law, if the Woman can recriminate, and prove her Huſband guilty, in ſuch a Caſe, they muſt ſet the Fault of one againſt the Fault of the other.

I wiſh the Doctor could have told you the Offence had been equal, that the Injury to Families had been equal; a Man by his Folly of this kind brings no ſpurious Iſſue to inherit the Lands of his Wife, but a Woman deprives her Huſband of any legitimate Iſſue; for when ſhe converſes in this Manner with another Man, the Iſſue may be equally look'd upon to be that Man's, if not more, and his Lady hath kept this Converſation ever ſince the Year Sixteen Hundred Eighty-Seven, and left the Duke.

One Thing is farther objected, and they inſiſt upon certain Articles of Agreement in Ninety-Four, and they read to you the Preamble of them: Why, Sir, the Articles, if they come to be read through, I am ſure it won't amount to what they pretend; it does not amount to this, that the Dutcheſs might uſe her Body as ſhe pleaſed; there is no Agreement, that ſhe ſhould live after her own Pleaſure. Indeed, ſhe was to have the uſe of her Houſhold Goods, and Servants, and live where ſhe pleaſed; but that will not juſtify her in her Way of Living.

Then to tell you, theſe are Matters of long ſtanding; they are ſo, and of a long continuance; for, if my Inſtructions prove true, we ſhall prove this Scene of Adultery for Matter of eight Years ſucceſſively, and that by Servants that were privy to the Intrigues, who were ſent away to *Holland*; but no ſooner was the Bill baffled, but the Man was ſent for again, and the ſame Converſation continued that was between the Dutcheſs and Sir *John Germaine* before he left *England*.

The ſame was continued after he came back to his Service in (1691); only they were ſomething more cautious, and People were not admitted ſo familiarly to ſee them in Bed together in (1692); and ſo it continued till 1695.

They mentioned the Statute of Limitations, which was to put an End to frivolous and vexatious Actions: How they can apply it to this Caſe, I can't ſee; becauſe a Man ſhall not bring frivolous and vexatious Actions after a long diſtance of Time, therefore a Man ſhall not complain when he hath received the greateſt Injury that can be done to Mankind.

Sir, They are kind to us again, in recommending it to the Duke to go into the Spiritual Court till the next Seſſions: But we think we are in proper Method here, for that Relief which the Spiritual Court cannot grant; and ſince we have ſo good Reaſon to come here, if we prove the Fact, I hope this high Court will not ſend away a Complaint of this Nature, without ſuch Relief as ſuitable.

Mr. *Northey*. Sir, I am of the ſame Side: I would beg leave to ſay this: As to what the Counſel have ſaid in relation to the Evidence, that there were three Witneſſes examined upon Oath, in the Houſe of Peers, before the Bill did paſs there; and I believe they are aware of that, and that when you hear our Witneſſes, there will be no Anſwer to be given on their Side; and indeed the Witneſſes they brought, were ſo far from contradicting our Witneſſes, that they did really confirm them. But that is not the Caſe now, what our Evidence is, or whether it be fit for you to believe them, that will be when you have heard them; and for the Matter of the Time, that you can't take notice of neither, till you hear our Evidence. But this I may ſay, we ſhall bring a Man that will ſpeak to within four or five Years.

But the Matter they apply themſelves to, which is material, is, Whether it is proper for you to proceed on this Bill, that is, to give ſuch a Relief as we deſire, by diſſolving this Marriage? And in the next Place, Whether this be a proper Time to aſk this Favour?

For the firſt, the learned Doctor tells you, 'tis not proper at any time to do it, for he would have the Canon Law govern here, as it does in their Courts. But the Counſel on the other Side have cited you ſeveral Precedents where it hath been done. In the Caſe of the Marquis of *Northampton*, the ſecond Marriage was contrary to the Canon Law, and yet that Marriage was confirmed according to God's Law. And this Bill is to relieve againſt the Canon Law.

Now, whether we are here in a proper Time; Sir *Thomas Powys* has ſaid a great many Things, which may be proper to many other Purpoſes. One Argument was, becauſe the Witneſſes can't be upon Oath; but that we know will not prevail in this Place. In the next Place they except, becauſe this Proceeding is in a ſummary Way. I would know of them, whether there is not the ſame Objection to all Proceedings before a Jury, that they have no Notice what Witneſſes will be produced?

Then in the next Place they bring a great Argument for the Recital of ſome of theſe Bills, That there have been a Sentence in the Eccleſiaſtical Courts. Now, 'tis true, they have been ſo in ſome of thoſe Caſes: But I beg leave to obſerve, That in the Caſe of the Marquis of *Northampton*, the Bill was not to confirm the Sentence, or to enable them to marry, but to deliver them out of the Hands of the Eccleſiaſtical Courts, who ſaid it was not lawful in that Caſe to marry, for they were married before.

I beg leave to ſay, That in the Caſe of my Lord *Macclesfield*, there was no Notice in the Bill that came down to you of any Proceedings in the Eccleſiaſtical Courts: And I take this to be the Reaſon, becauſe there was no Sentence, though where there was a Sentence, they had good Reaſon to take notice of it. And I think there is as much Certainty, and as good Ground to proceed on this Bill, as in the other Caſe, for the Witneſſes have been already examined in the Houſe of Lords. In the Caſe of my Lord *Roſs*, there was no Regard to the Determination of the Eccleſiaſtical Courts, as a Guide to the Parliament; and it was looked upon as of no Conſequence, for the Witneſſes were examined again.

'Tis true, when we came before you without ſuch a Proceeding, we came under this Diſadvantage, you will be ſure to expect a plainer and fuller Proof; but for that we will undertake to make the Fact ſo plain, that they can't give the leaſt Pretence to anſwer to it.

We are here aſking that we can't have any where elſe: Their great Deſign is Delay, and that we have learnt from the Civilian, who tells you, their Methods are very grave and deliberate, and, that they may have a Commiſſion to examine Witneſſes beyond Sea; and that is to enquire how their own Servants have liv'd beyond Sea.

As to what Sir *Thomas Powys* would have, that is, that we ſhould go into the Spiritual Court, and apply ourſelves here again next Seſſions, I do not think the Legiſlature will ſend us back to aſk that in the Spiritual Court which both have ſubmitted to: For after the Duke had miſcarried in the Relief he ſought by another Bill, by the Dutcheſs's ſending the Witneſſes out of the way; why truly, after that, to prevent any Proſecution in the Spiritual Court, the Dutcheſs ſubmitted to a Separation by Articles, and that was all the Duke could have pretended to by the Eccleſiaſtical Law: We follow her upon that, and come to enforce that Separation. And, to make it effectual, and for that which we humbly hope will be thought but Juſtice to the Duke, that is, to be deliver'd from this Wife, and to have Liberty to marry again; we think there is no Occaſion for Delay, and that nobody can be hurt by a Precedent that carries Relief in this nature, and deliver us from a Law, which in the Days of Popery was put upon us. Upon the whole Matter, I hope you will think that we are here very properly for Relief, and that we ſhall have the Favour to call our Witneſſes.

Dr. *Oldiſh*. Sir, the great Objection againſt the paſſing of this Bill was, becauſe Witneſſes had not been examin'd in the proper Court. 'Tis very true, generally ſpeaking, in Caſes it ought to be ſo; but here is a very great Exception to that Rule, and which, I think, can't admit of an Anſwer, and that is, the Notoriety of the Fact; and in that Caſe they begin with Execution. And if that be ſo, I think there never was a clearer Demonſtration in the World; for when formerly the Dutcheſs came to give in her Anſwer in the Houſe of Lords, to the Charge againſt her, ſhe did declare, That in the Year 83, or thereabouts, ſhe went out of *England*, and tarried Three Years, and return'd about the Time of the Revolution. And it does plainly appear there, beyond all queſtion, that ſhe was at *Lambeth*, and went under the Name of the Lady *Beckman*, and was attended by one *Keemer*, who went then by the Name of *Goodman*. Beſides this, there are Witneſſes that ſpeak to particular Facts. Now, I ſay, here is that which amounts to Demonſtration; and where there is a Notoriety of Fact, that is an Exception out of the General Rule, and 'tis proper to begin with Execution.

There is an Exception to the General Councils and Canons that have been mention'd, That there ſhall not be a Divorce *à Vinculo*. Sir, I ſay, it was an Eccleſiaſtical Conſtitution, which was againſt the Law of God; and 'tis demonſtrably ſo; for where our Saviour ſays, That *a Man ſhall not put away his Wife, except in caſe of Fornication*; it is plain, that in caſe of Fornication he may.

There is another Thing inſiſted on, and that is, That there was a Reconciliation between the Duke and his Dutcheſs. 'Tis true, a Reconciliation ſhould drown all Things before that Time; but when the Law takes notice in caſe of a Relapſe, that does *recrudeſcere*, it rubs upon the old Sore, and then that which was before laid aſleep is brought again upon the Stage, and will return with greater Vengeance. And we have plain Proof of her living in the ſame manner ſince, as before.

But they would inſinuate to you, That in caſe there was a Trial in the Eccleſiaſtical Court, there might be a Recrimination; but there muſt be a Compenſation, which can't be thought in this Caſe; for, I think, in this Caſe, under Favour, there is no Compariſon. I don't think they are *Paria*, for 'tis impoſſible for the Huſband to do that Injury as the Wife may; for ſhe may bring a Baſtard into the Family, and then the Eſtate does not go according to the Law of God and Nature, for every body deſires his own Blood ſhould ſucceed him.

Sir *Tho. Powys*. Sir, I ſhall ſay but very little. But Three or Four Things have been mention'd on the other Side, which they offer as if they conceiv'd them to have great Weight, and yet they ſeem to me as very capable of being anſwered; and I crave your Favour to do it.

They have gone much upon the Proofs that they are ready to make, and, I think, not very properly, becauſe we ſpeak againſt their Proceeding upon this Bill; but I am ſure it turns upon them: For, according to their own ſhewing, they are very well prepar'd to proceed in a regular Courſe, for they have their Witneſſes ready, and nothing does obſtruct them.

Mr. Serj. *Wright* mention'd a Thing which, I muſt confeſs, I was ſurpriz'd in; for when I told him, he could not find any Precedent of ſuch a Bill as this, without a previous Proceeding in the Spiritual Court; Mr. Serj. *Wright* ſaid, It was quite otherwiſe; and, to ſhew you it was ſo, he cited two Caſes where there was no Marriage. Now I always underſtood, a Divorce muſt be in any Caſe where there was a Marriage, for the Caſe of Mr. *Knight*'s, that was very lately: That was the Caſe of an Infant, who they pretended to have married *infra annos nubiles*; and therefore, ſays he, the declaring of that Marriage to be null and void by Act of Parliament, was a Divorce. The other was the Caſe of Mrs. *Wharton*, which was no Marriage neither, for Marriage muſt be by Conſent, and that was a Force: And that he fancies to be a Caſe, where there was a Divorce too, without proceeding in the Spiritual Court; and yet, of his own ſhewing, it was no Marriage.

Another Thing I am much more ſurpriz'd at, we inſiſted, that they would not ſhew an Act for making a Divorce without giving the Party an Opportunity to make a Defence; and the Doctor ſays, in Common Caſes it ought to be ſo: And they cited the Earl of *Macclesfield* we firſt mention'd, and the Doctor told you the Progreſs it had, and that there was a full and regular Proceeding, of great length of Time; and, that my Lady *Macclesfield* had all her Witneſſes examin'd, and my Lord proſecuted her to an Excommunication, which is in effect a Sentence, for it is in our Law as in Caſes of Outlawry. This he calls a Precedent wherein they proceeded to get an Act of Parliament, without a previous Proceeding in the Spiritual Court.

He tells you in the next place, That notwithſtanding the Divorce in the Caſe of my Lord *Roſs*, the Parliament did examine Witneſſes; 'tis true, they did, for I don't think they will ſo entirely pin their Faith upon thoſe Proceedings, as to have no other Satisfaction. But will he therefore ſay they took no Notice of it, when 'tis the Foundation and Ground of the Bill?

He tells you in the next place, That the Crime does not ſeem equal between the one and the other; and ſo, in ſome ſort, they ridicule the Doctor's Notion of Recrimination. But I apprehend the Doctor is right in it; for it would be hard if a Man ſhould marry a young Woman, and give her an ill Example in his own Family, (I do not ſay 'tis this Caſe) and bring her acquainted with looſe and ill Company, and by his Example or Provocation lead her into the ſame Offence; would that Man deſerve to be rewarded with a new Wife, and another Portion, becauſe his firſt Wife had only followed his Example?

They ſay, the Offence is not equal, becauſe the Man brings no Children into the Family.

I doubt it happens oftentimes to them that go abroad, that they bring home that to their Wives which ſticks longer by them than their Children.

Then to come and ſay, The Articles can't be of any Uſe to us at all; and to imagine that we uſe the Articles ſo, that the Dutcheſs might be at perfect liberty to live in Adultery; I wonder how that Conceit hath followed him hither, when we told him we had not ſuch a Thought as to live in Adultery, but they do direct her to live ſeparate; and ſo we uſed them, as an Anſwer to that Part. We uſed them likewiſe as an Act of total Oblivion and Remiſſion of any Thing beyond that Time; and, I hope, to ſuch Purpoſes they ſhall be thought ſacred.

Now I beſeech you, Sir, on the whole Matter, have they on the other Side ſaid one Thing but what does totally tend to bring all Caſes of Adultery immediately before you? Have they diſtinguiſh'd this Caſe from the Caſe of any other Perſon? And then, if they have not, I do not ſee from henceforward, that any but Fools will go to the Eccleſiaſtical Courts for Relief: For, ſays the Serjeant, they cannot give them a final Relief, and enable any Perſon to marry again, and therefore let nobody think to go there again; but here is a Relief to be had worth a Man's having. But, I hope, we ſhall have the Benefit of the Law, as it is, till you think fit to alter it, and then you will erect ſome Judicature, where People may have their Trial. Now therefore the Argument goes too far, or it argues nothing at all; becauſe, if there be any thing in it, it goes to take away the Proceedings of thoſe Courts totally.

But tho' thoſe Courts cannot do all that theſe Gentlemen deſire, they can do what is very proper to be done; they can examine Witneſſes, and pronounce Sentence, and give the Party a full Opportunity of knowing the Accuſation and Accuſers; and then the Caſes we have mentioned have had the Aid of an Act of Parliament.

Sir, we have ſpent a great deal of your Time already; I hope, ſince you ſee what Uſe they make of the laſt Precedent of my Lord *Macclesfield*, where he did proceed to an Excommunication. Now from thence they argue, that you ſhould proceed Originally in this Caſe. When is the Time to make a Stand, but in the firſt Caſe? And then no Man can complain of any Injury. If you grant this to my Lord, I think in Juſtice you cannot deny it to any other that ſtands in need of it. I believe there never was the like before; and therefore, I hope, you will put a Stop to it here.

Mr. *Dodd.* The Gentlemen on the other Side have told you, that our Saviour hath ſaid, *That no Man ſhould put away his Wife, except for Fornication.* 'Tis true, the Text is ſo; but he cannot ſhew you any Text wherein our Saviour ſays, That the Man may marry again, tho' he might put his Wife away. Another Thing was ſaid, as to the Proceeding in the Eccleſiaſtical Courts: Dr. *Oldiſh* ſays, There is to be nothing but Execution where there is a Notoriety of Fact; and here the Fact is notorious, and therefore you may come up to order Execution; but that is a ſtrange Doctrine to our *Engliſh* Conſtitution. Would they hang one firſt, and try him afterwards? That would make Work. Let the Fact be never ſo notorious, yet 'tis the Right of all the People of *England* to have a legal Trial; and, I hope, you will not interpoſe till there hath been a regular Trial in another Place.

Then Sir *Thomas Powys* offer'd to produce the Articles, but they were not admitted.

Lunæ 25 Die Martii, 1700.

The Houſe reſolv'd themſelves into a Committee of the whole Houſe, to conſider of the Duke of Norfolk's *Bill.*

Sir Rowland Gwynne *took the Chair of the Committee of the whole Houſe.*

And the Counſel and Sollicitors were call'd in, and the Bill read to them; and then Mr. Northey, *of Counſel with the Duke, open'd the Evidence thus:*

Mr. *Northey.* I AM of Counſel for the Duke of *Norfolk*. I ſhall not trouble you now (becauſe I think it not fit) to ſay any thing for the Bill, for that you have approved of by Commitment of the Bill, and declar'd it to be a reaſonable and juſt Relief againſt the Dutcheſs, for the Adultery charged in the Bill. I ſhall not ſpend any of your Time in aggravating the Crime of Adultery.

But that which is incumbent on his Grace's Counſel now, is to lay before you the Proofs of the Fact ſuggeſted in the Bill; and the Facts to be prov'd are the Introduction of the Bill, That the Dutcheſs has liv'd, for divers Years in Separation from the Duke, and had unlawful Familiarity and adulterous Converſation with Sir *John Germaine*; and for that Fact we will call our Witneſſes.

And our Evidence will make this out to you, as plain as 'tis poſſible to expect a Matter of this Nature to be prov'd.

However, I think they have manag'd Things in that manner, as we ſhall be able to give as plain a Proof of theſe Facts as might be expected of thoſe Acts which are in their own Nature moſt publick. However, in the Nature of the Thing, there were but a few Perſons to be intruſted with it, and thoſe were generally Servants, who had Attendance on the Dutcheſs's Perſon. We ſhall produce you Servants both of the Dutcheſs and Sir *John Germaine*; and, I hope, it cannot be an Objection that they are Servants; for to object to them for that Reaſon, is to ſay, You ſhall prove the Fact, but you ſhall have no Witneſſes; for theſe are Facts that cannot be prov'd but by ſuch as were concerned with the Dutcheſs.

For our Evidence, it will fall out to be this: The Duke and Dutcheſs were married in the Year 1677, and they liv'd together till about the Year 1685: And then the Duke having ſome Account of her Converſation of this Nature, they did part, and afterwards ſhe came to live openly with Sir *John Germaine*; for, in *May* 1689, the Witneſſes will give you an Account, that for two Months together ſhe lodg'd with Sir *John Germaine* at the *Cock-pit*; and they liv'd there as Man and Wife, as the Witneſſes phraſe it. During the Time they liv'd there, there was a near Relation of Sir *John Germaine*'s, Mr. *Daniel Germaine* his Brother, and Mrs. *Briane* his Siſter, did frequently come to the Houſe; and two of the Witneſſes were frequently in the Room while they were a-bed together.

After two Months time, the Dutcheſs thought fit to be a little more private, and it was given out ſhe was gone to *France*; but in truth ſhe remov'd to *Vaux-hall*, to a Houſe that was taken by Sir *John Germaine*'s Brother, and went by the Name of my Lady *Beckman*; and ſhe liv'd there two Years ſucceſſively; and Sir *John Germaine* came there frequently, once or twice in a Week, and lay there at Nights during that Time. We have two Witneſſes that did attend the Dutcheſs, as well as at the *Cock-pit*; one of them is *Ellena Vaneſs*, who was hired by Sir *John Germaine*'s Siſter, and liv'd with the Dutcheſs at the *Cock-pit* two Months. We have a ſecond Witneſs, one *Hoſier*, who was with Sir *John Germaine* at the *Cock-pit* fifteen Days before the Dutcheſs went to *Vaux-hall*; and afterwards he went to *Vaux-hall* when ſhe removed there, and ſtaid with her all the two Years.

Theſe are both Foreigners, and *Dutch* People, and it was reaſonable enough to expect foreign Witneſſes, when an *Engliſh* Dutcheſs had a foreign Gallant: They are ſuch as he thought fit to entruſt about her.

After ſhe had liv'd two Years at *Vaux-hall* (this brings her to the Year 1691) ſhe removed home again to her Houſe at *Mill-Bank*, and there Sir *John* and ſhe were frequently together, and have been ſeen a-bed together.

This brings us to the Time when the Duke, having an Account that ſhe had this Converſation with Sir *John Germaine*, brought a Bill into the Houſe of Peers for a Divorce; but it happen'd that the Dutcheſs and Sir *John Germaine*, to avoid the Condemnation, kept the Witneſſes out of the Way, and afterwards cauſed them to be ſent into *Holland*.

The Woman ſtaid abroad till about three Months ago, but the Man return'd before into Sir *John Germaine*'s Service; and he will give you an Account of what Obſervations he made there, for the Familiarity continued between them then. He was admitted into the Room where they us'd to be, and he will give you an Account how he hath ſeen them frequently together; and he brings it down to within the Year 1695.

We have another Witneſs, one *William Bayly*, who likewiſe was a Servant to Sir *John Germaine*, and came into his Place when *Hoſier* went beyond Sea. He is an unwilling Witneſs, becauſe he hath been preferred by Sir *John Germaine*; but when he was upon his Oath in the other Houſe, he did give an Account, That while he continued in Sir *John Germaine*'s Service, notwithſtanding this publick Reproach in 1695 and 1696, ſhe frequently came to Sir *John Germaine*'s Houſe with one *Keemer*, whom ſhe had great Confidence in, and one *Suſannah Barrington*, I think, yet in the Dutcheſs's Service. And this Mr. *Bayly* will give you an Account, that his Maſter was often from home; and when he was ſo, he uſed to carry his Linnen to this *Keemer*, who was the Dutcheſs's Servant, or this *Keemer* would come to him for it: And this will bring it down to 1696. There are ſeveral Witneſſes to confirm this; but we think, with Submiſſion, after the Dutcheſs had been ſo accuſed in the Houſe of Lords of ſuch a Familiarity, any Evidence of a Converſation between them afterwards, is as much as a Thouſand Witneſſes; for no Woman that valued her Reputation, having been accus'd as ſhe was, would have had any Converſation with Sir *John Germaine* afterwards. But we don't want Circumſtances to ſupport the Evidence of Fact; we have as plain Evidence in this Caſe, as can be expected in a Caſe of this Nature. We will ſpend no more of your Time, but beg Leave to call our Witneſſes.

Mr. *Atwood.* Sir *Rowland Gwynne*, pleaſe to favour me with a few Words on the ſame Side; I ſhall not miſ-ſpend the Time of the Committee in repeating any thing ſaid by Mr. *Northey*; I ſhall only obſerve, that the Witneſſes, *Hoſier* and *Vaneſs*, ſay, That *Suſannah Barrington* was privy to this adulterous Converſation: And this *Suſannah Barrington* has withdrawn herſelf ſince the Bill was depending in the Houſe of Lords.

'Tis further prov'd, That Mr. *Daniel Germaine* and Mr. *Briane*'s Wife were in *England* lately, and that theſe were privy to the ſame Converſation.

Then the Witneſſes were call'd in one by one, and Interpreters allow'd.

The Witneſſes that were examined before the Committee of the Commons were *Ellena Vaneſs*, *Nicholas Hoſier*, *William Bayly*, and *Ann Read*.

But all, except *Ann Read*, were examined in the Houſe of Lords, and their Evidence there being at large ſet forth, the Reader is referred to the ſame. The Evidence of *Ann Read* is as follows:

Ann Read being aſk'd, Whether ſhe had ever ſeen the Dutcheſs go to Sir *John Germaine*'s Houſe, and when? ſays, That about *April* 1692, (which was ſoon after the Duke's Bill had been rejected in the Houſe of Lords) ſhe ſaw the Dutcheſs of *Norfolk* go in a Chair to Sir *John*'s Houſe; that the Door was immediately opened upon her Chair's being ſet down, and ſhe went into the Houſe with her Maſk off.

She being aſk'd, Whether ſhe had ſeen Sir *John* come to the Dutcheſs's Houſe, and when? ſays, She, within a Twelve-month laſt paſt, or thereabouts, followed him to the Dutcheſs's Houſe, about Three of the Clock in the Afternoon, and, that ſhe did not ſee him come out.

After the Witneſſes were examined on the Part of the Duke of *Norfolk* for the Bill, Sir *Thomas Powys* of Counſel with the Dutcheſs of *Norfolk*, being call'd upon to make Defence, ſpake to this Effect:

Sir *Thomas Powys*. I am at a Loſs, Sir, and under ſome kind of a Surprize, becauſe, as far as I apprehend, you call upon us to make our Defence. I hope in a Caſe of ſuch Moment as this is (and it may be there cannot be greater), and ſince you are pleas'd to take this Caſe out of the uſual Way of Trials, and to try it in the firſt Inſtance, you will be pleas'd, that we ſhould be fairly and regularly heard. And ſince it was not allow'd us, upon our being heard againſt the Bill, that we ſhould have a Time to make our Defence; now we have heard what the Witneſſes ſwear, we ſhall deſire but a ſhort Time, no more than what is abſolutely neceſſary, to make our Defence. This hath ſpent us ſix Hours already; and I am ſure the Witneſſes that have been examin'd have given ſuch Variety of Anſwers, that it doth afford a great deal to be ſaid to it. We have likewiſe a good many Witneſſes to be examin'd, but I am far from propoſing any thing to delay it. We had a Week's Time allow'd us in the Houſe of Lords, but that is no Rule for you, and we don't expect it here: But, even while we are at this Bar, a Perſon from a very worthy Member gives us Intelligence, upon ſight of this Cook-maid, of a Matter that will defame her; and he will be ready to make it out, that ſhe was turn'd away for being a common Thief in *Holland*; and therefore, Sir, you ſee how Time is neceſſary in point of Accidents that do happen; and I cannot make our Defence now.

Thereupon the Counſel withdrew; and the Committee having conſider'd of the Deſire of the Counſel for the Dutcheſs to have Time allow'd them to make their Defence, were of Opinion, That the Counſel ſhould proceed then to make their Defence; and Candles were ordered to be brought in.

And the Counſel being call'd in again, Sir *Rowland Gwynne* being in the Chair of the Committee, acquainted them with the Determination of the Committee.

Then Sir *Thomas Powys* obſerv'd upon the Evidence that had been given, and inſiſted, that the Evidence given before the Committee of Commons did differ from the Evidence given by them upon Oath in the Houſe of Lords; and offered to produce the Examination of the ſaid Witneſſes upon Oath in the Houſe of Lords. And an Objection being made, That ſuch Examination ought not to be read in that Caſe, as Evidence before this Committee; the Council withdrew, and the Committee conſider'd of the ſaid Objection, and were of Opinion, that the ſaid Depoſitions ſhould not be read.

And the Counſel being call'd in again, were acquainted with it, and that if they had any Witneſſes, *viva voce*, to encounter their Evidence, they might produce them.

Sir *Thomas Powys*. Sir, by this Reſolution my Client is deprived of that Defence I thought I could have made for her; but I ſubmit to the Pleaſure of the Committee.

Mr. *Atwood*. The Examinations in the Houſe of Lords were ſo lately, that 'tis an eaſy thing for the Sollicitors, who were by, to give an Account of a Contrariety in the Evidence, if there were any.

A Member. Whether you have any other Evidence to offer, but as to this Point?

Sir *Tho. Powys*. All our Evidence would tend to contradict theſe Witneſſes; and if the reading of thoſe Depoſitions won't be allow'd, we muſt abide your Pleaſure, and ſubmit it to you.

Mr. *Dodd*. We muſt ſubmit it to you; our Witneſſes were in Concurrence with that ſort of Evidence.

Sir *Rowland Gwynne*. There are ſeveral Perſons named, who are Perſons of Credit, and good Reputation, Mr. *Briane* and his Lady, Mr. *Daniel Germaine* and his Siſter; theſe would be Witneſſes of Credit, againſt thoſe that are, you ſay, not of Credit.

Counſel. We have ſummon'd them and Mrs. *Pitts*, and done all that we could on our Side to get them here; and I hope you won't prejudge our Caſe, to ſay they are in our Intereſt; that is to determine the Queſtion. We have likewiſe ſummon'd Mrs. *Pitts* and her two Maids; and whether they will appear, or not, that we cannot tell; but this we are ready to make out to you.

Mr. *Atwood*. *Suſannah Barrington*, the Dutcheſs's Woman, privy to the whole Converſation, is prov'd to have been with her ſince the Bill was brought into the Houſe of Lords.

A Member. Whether he has one living Witneſs to produce, that he can make good his Defence by?

Sir *Tho. Powys*. Sir, if you expect an Anſwer by me, I am aſſur'd that we have Witneſſes; but if I cannot bring thoſe People againſt themſelves, if I cannot bring *Nichola* againſt *Nichola*, I deſpair of doing any good, if I bring a thouſand other Witneſſes againſt him: And therefore I pray this Favour of you, That ſince 'tis your Pleaſure that this Evidence be not allow'd, you will not make a bad Conſtruction of it, that I do not proceed to make a Defence to this Bill; for I cannot truly do it, unleſs I had ſome other Inſtructions from my Client, but ſhall defeat her Expectation to proceed upon the other Part of the Caſe, ſince what we built upon with good Authority, as we thought, is not thought fit to be admitted.

Sir *Rowland Gwynne*. Sir, you are at liberty to go on, if you have any thing more to ſay, than that you cannot proceed without further Directions from your Client.

A Member. Whether they have any thing to offer in the Defence of the Dutcheſs, upon the Crime ſhe is charg'd with; for, I believe, 'tis a new Thing for the Counſel, when their Client is charg'd with a Crime, to ſay, They cannot defend her unleſs they go and aſk, whether they ſhall defend her, or no? If they have any thing to ſay in her Defence, we ſhall be ready to hear it.

Sir *Rowland Gwynne*. Sir *Thomas Powys*, have you any thing more to ſay?

Sir *Tho. Powys*. I cannot but repeat what I have already ſaid, That I would be glad to make the beſt Defence this Caſe may bear; and I may ſay, I have defended it twice with very good Succeſs, and this is a third Time; and I would make the beſt Defence this Caſe would bear now. And I muſt own to you, that the Courſe of our Evidence, we did propoſe to ourſelves, is ſo far broke, by the firſt Determination you were pleaſed to make, that I cannot venture upon the reſt of the Defence, if ſo be your Pleaſure be not to admit of this Matter.

Sir *Rowland Gwynne*. You may by any Sollicitors or Agents, that were preſent when theſe Witneſſes were examin'd in the Houſe of Lords, prove what they ſwore there.

Mr. *Dodd*. We apprehend you have already determin'd the Matter, and we cannot now meddle with it; but if I apprehend it aright from the Chair, 'tis your Opinion, that we may produce the Sollicitors and Agents, to give an Account of what was ſworn in the Houſe of Lords. Now we are under this Diſability by your Determination, That we, relying upon what you have determined againſt us, are not prepar'd with our Sollicitors, or others, to give Evidence of that Matter, but in a little Time they will be able to give an Account of what was then ſworn.

Mr. *Atwood*. It ſeems they want to be taught their Leſſon.

And then the Counſel withdrew, and the Committee proceeded upon the Bill, Clauſe by Clauſe, and went thro' it, and ordered the ſame to be reported; which was done accordingly; upon which the Bill paſs'd.

CLXIX. *The Trial of Captain* WILLIAM KIDD, *at the* Old-Bailey, *for* Murder *and* Piracy *upon the* High-Seas; *and of* Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, *and* Darby Mullins, *for* Piracy, May 8th *and* 9th, 1701, 13 Will. III.

THE King's Commiſſion for holding the Court being firſt read, they proceeded to call the Gentlemen ſummoned upon the Grand-Jury, *and the Perſons ſworn were the Seventeen following*, viz.

William Broughton,
Thomas Hanwell,
Daniel Borwell,
Humphry Bellamy,
Nath. Rolſton, Sen.
Joſhua Bolton,
Benjamin Pike,
Joſeph Marlow,
Benjamin Travis,
Stephen Thompſon,
Thomas Cooper,
Robert Gower,
Robert Clement,
Thomas Seſſon,
William Goodwin,
Robert Callow,
Thomas Haws.

Cl. of Arr. Gentlemen of the Grand-Jury, ſtand together, and hear the Charge.

The King's Majeſty commands all Juſtices of the High Court of Admiralty, that have any Authority to take any Inquiſitions, Recognizances, Examinations, or Informations of Offences committed within the Juriſdiction of the Admiralty of England, *to deliver the Records of the ſame into this Court*, &c. *And all others are commanded to keep Silence, upon Pain of Impriſonment.*

Then Dr. Oxenden *gave the Charge to the Grand-Jury, explaining the Nature of the Commiſſion, and the Crimes enquirable by Virtue of it by the Grand-Jury.*

Then the Grand-Jury withdrew, and after ſome Time returned into Court, and found the Bill of Indictment againſt Captain Kidd *for Murder, and another againſt him and* Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, *and* Darby Mullins, *for Piracy. Then Proclamation (as uſual) being made, the aforeſaid Priſoners were brought to the Bar, and Arraigned.*

Cl. of Arr. William Kidd, hold up thy Hand.

Kidd. May it pleaſe your Lordſhips, I deſire you to permit me to have Counſel.

Mr.[*] *Recorder.* What would you have Counſel for?

Kidd. My Lord, I have ſome Matter of Law relating to the Indictment, and I deſire I may have Counſel to ſpeak to it.

Dr. *Oxenden.* What Matter of Law can you have?

Cl. of Arr. How does he know what it is he is charged with? I have not told him.

Mr. *Recorder.* You muſt let the Court know what thoſe Matters of Law are, before you can have Counſel aſſigned you.

Kidd. They be Matters of Law, my Lord.

Mr. *Recorder.* Mr. *Kidd*, do you know what you mean by Matters of Law?

Kidd. I know what I mean; I deſire to put off my Trial as long as I can, till I can get my Evidence ready.

Mr. *Recorder.* Mr. *Kidd*, you had beſt mention the Matter of Law you would inſiſt on.

Dr. *Oxenden.* It cannot be Matter of Law, to put off your Trial, but Matter of Fact.

Kidd. I deſire your Lordſhip's Favour; I deſire Dr. *Oldiſh* and Mr. *Lemmon* may be heard as to my Caſe.

Cl. of Arr. What can he have Counſel for, before he has pleaded?

Mr. *Recorder.* Mr. *Kidd*, the Court tells you, you ſhall be heard what you have to ſay when you have pleaded to your Indictment. If you plead to it, if you will, you may aſſign Matter of Law, if you have any; but then you muſt let the Court know what you would inſiſt on.

Kidd. I beg your Lordſhip's Patience till I can procure my Papers. I had a Couple of *French* Paſſes, which I muſt make uſe of in order to my Juſtification.

Mr. *Recorder.* That is not Matter of Law. You have had long Notice of your Trial, and might have prepared for it. How long have you had Notice of your Trial?

Kidd. A Matter of a Fortnight.

Dr. *Oxenden.* Can you tell the Names of any Perſons that you would make uſe of in your Defence?

Kidd. I ſent for them, but I could not have them.

Dr. *Oxenden.* Where were they then?

Kidd. I brought them to my Lord *Bellamont* in *New-England*.

Mr. *Recorder.* What were their Names? You cannot tell without Book. Mr. *Kidd*, the Court ſee no Reaſon to put off your Trial, therefore you muſt plead.

Cl. of Arr. W. Kidd, hold up thy Hand.

Kidd. I beg your Lordſhips I may have Counſel admitted, and that my Trial may be put off; I am not really prepared for it.

Mr. *Recorder.* Nor never will, if you can help it.

Dr. *Oxenden.* Mr. *Kidd*, you have had reaſonable Notice, and you knew you muſt be tried, and therefore you cannot plead you are not ready.

Kidd. If your Lordſhips permit thoſe Papers to be read, they will juſtify me. I deſire my Counſel may be heard.

Mr. *Coniers.* We admit of no Counſel for him.

Mr. *Recorder.* There is no Iſſue joined; and therefore there can be no Counſel aſſigned. Mr. *Kidd*, you muſt plead.

Kidd. I cannot plead till I have thoſe Papers that I inſiſted upon.

Mr. *Lemmon.* He ought to have his Papers delivered to him, becauſe they are very material for his Defence. He has endeavoured to have them, but could not get them.

Mr. *Coniers.* You are not to appear for any one till he pleads, and that the Court aſſigns you for his Counſel.

Mr. *Recorder.* They would only put off the Trial.

Mr. *Coniers.* He muſt plead to the Indictment.

Cl. of Arr. Make Silence.

Kidd. My Papers were all ſeized, and I cannot make my Defence without them. I deſire my Trial may be put off till I can have them.

Mr. *Recorder.* The Court is of Opinion, they ought not to ſtay for all your Evidence; it may be they will never come. You muſt plead, and then if you can ſatisfy the Court, that there is a Reaſon to put off your Trial, you may.

Kidd. My Lord, I have Buſineſs in Law, and I deſire Counſel.

Mr. *Recorder.* Mr. *Kidd*, the Courſe of Courts is, when you have pleaded, the Matter of Trial is next: If you can then ſhew there is Cauſe to put off the Trial, you may; but now the Matter is to plead.

Kidd. It is a hard Caſe when all theſe Things ſhall be kept from me, and I be forced to plead.

Mr. *Recorder.* If he will not plead, there muſt be Judgment.

Kidd. My Lord, would you have me plead, and not to have my Vindication by me?

Cl. of Arr. Will you plead to the Indictment?

Kidd. I would beg that I may have my Papers for my Vindication.

Cl. of Arr. Nicholas Churchill, hold up thy Hand.

Churchill. My Lord, I deſire I may have the Benefit of the Proclamation; I came in upon the King's Proclamation.

Mr. *Recorder.* If you do not plead, the Court muſt paſs Judgment upon you. You can have no Benefit in what you ſay, till you have pleaded. If you were indicted for Felony, and you will not plead, the Law takes it in Nature of a Confeſſion, and Judgment muſt paſs, as if you were proved guilty.

Cl. of Arr. Nicholas Churchill, hold up thy Hand. *James Howe*, hold up thy Hand. *Robert Lamley*, hold up thy Hand. (*Which they did.*)

Mr. *Recorder. W. Kidd* has not held up his Hand.

Cl. of Arr. He does hold up his Hand. *William Jenkins*, hold up thy Hand. *Gabriel Loff*, hold up thy Hand. *Hugh Parrot*, hold up thy Hand. *Richard Barlicorn*, hold up thy Hand. *Abel Owens*, hold up thy Hand.

Owens. I came in upon the King's Proclamation, and entered myſelf into the King's Service.

Mr. *Recorder.* You muſt plead firſt, and then, if there be Occaſion, you will have the Benefit of it. (*Then he held up his Hand.*)

Cl. of Arr. Darby Mullins, hold up thy Hand.

Mullins. May it pleaſe your Lordſhips, I came in voluntarily on the King's Proclamation.

Mr. *Recorder.* This is the ſame Caſe with *Owens*, you muſt ſpeak to that afterwards.

Cl. of Arr. W. Kidd, you ſtand indicted by the Name of *William Kidd*, &c. Art thou guilty or not guilty?

Kidd. I cannot plead to this Indictment, till my *French* Paſſes are deliver'd to me.

Cl. of Arr. Are you guilty or not guilty?

Kidd. My Lord, I inſiſt upon my *French* Papers; pray let me have them.

Mr. *Recorder.* That muſt not be now, till you have put yourſelf upon your Trial.

Kidd. That muſt juſtify me.

Mr. *Recorder.* You may plead it then, if the Court ſee Cauſe.

Kidd. My Juſtification depends on them.

Mr. *Recorder.* Mr. *Kidd*, I muſt tell you, if you will not plead, you muſt have Judgment againſt you, as ſtanding mute.

Kidd. I cannot plead till I have theſe Papers; and I have not my Witneſſes here.

Mr. *Recorder.* You do not know your own Intereſt; if you will not plead, you muſt have Judgment againſt you.

Kidd. If I plead, I ſhall be acceſſary to my own Death, till I have Perſons to plead for me.

Mr. *Recorder.* You are acceſſary to your own Death, if you do not plead. We cannot enter into the Evidence, unleſs you plead.

Cl. of Arr. Are you guilty or not guilty?

Mr. *Recorder.* He does not underſtand the Law; you muſt read the Statute to him.

Cl. of Arr. Mr. *Kidd*, are you guilty of this Piracy, or not guilty?

Kidd. If you will give me a little Time to find my Papers, I will plead.

Cl. of Arr. There is no Reaſon to give you Time; will you plead or not?

Mr. *Coniers.* Be pleaſed to acquaint him with the Danger he ſtands in by not pleading. Whatever he ſays, nothing can avail him till he pleads.

Mr. *Recorder.* He has been told ſo, but does not believe us.

Mr. *Coniers.* If there be any Reaſon to put off his Trial, it muſt be made appear after Iſſue is joined.

Mr. *Recorder.* If you ſay guilty, there is an end of it; but if you ſay not guilty, the Court can examine into the Fact.

Officer. He ſays he will plead.

Cl. of Arr. W. Kidd, art thou guilty, or not guilty?

Kidd. Not guilty.

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[*] Sir *Salathiel Lovell.*

Cl. of Arr. How wilt thou be tried ?

Kidd. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance. (*And ſo of all the reſt.*)

Kidd. My Lord, I beg I may have my Trial put off for three or four Days, till I have got my Papers.

Mr. *Recorder.* The Judges will be here by and bye, and you may move the Court then ; we are only to prepare for your Trial : We do not deny your Motion ; but when the Court is full, they will conſider of the Reaſons you have to offer.

[*Then* William Kidd *was tried upon the Indictment for Murder.*]

Cl. of Arr. W. Kidd, Hold up thy Hand : Thou ſtandeſt indicted by the Name of *William Kidd,* late of *London,* Mariner, *&c.*

The firſt Indictment for MURDER.

‘THE Jurors for our Sovereign Lord the King do, upon their Oath, preſent, That *William Kidd,* late of *London,* Mariner, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the Thirtieth Day of *October,* in the Ninth Year of the Reign of our Sovereign Lord, *William* the Third, by the Grace of God, of *England, Scotland, France,* and *Ireland,* King, Defender of the Faith, *&c.* by Force and Arms, *&c.* upon the High Sea, near the Coaſt of *Malabar,* in the *Eaſt-Indies,* and within the Juriſdiction of the Admiralty of *England,* in a certain Ship, called The *Adventure-Galley* (whereof the ſaid *William Kidd* then was Commander), then and there being, feloniouſly, voluntarily, and of his Malice afore-thought, then and there did make an Aſſault in and upon one *William Moore,* in the Peace of God and of our ſaid Sovereign Lord the King, to wit, then and there being, and to the Ship aforeſaid, call'd The *Adventure-Galley,* then and there belonging ; and that the aforeſaid *William Kidd,* with a certain Wooden Bucket, bound with Iron Hoops, of the Value of Eight-pence, which he the ſaid *William Kidd* then and there had and held in his right Hand, did violently, feloniouſly, voluntarily, and of his Malice afore-thought, beat and ſtrike the aforeſaid *William Moore* in and upon the right Part of the Head of him the ſaid *William Moore,* a little above the right Ear of the ſaid *William Moore,* then and there upon the High-Sea, in the Ship aforeſaid, and within the Juriſdiction of the Admiralty of *England* aforeſaid, giving the ſaid *William Moore,* then and there with the Bucket aforeſaid, in and upon the aforeſaid right Part of the Head of him the ſaid *William Moore,* a little above the right Ear of the ſaid *William Moore,* one mortal Bruiſe ; of which mortal Bruiſe the aforeſaid *William Moore,* from the ſaid Thirtieth Day of *October,* in the Ninth Year aforeſaid, until the One-and-Thirtieth Day of the ſaid Month of *October,* in the Year aforeſaid, upon the High-Sea aforeſaid, in the Ship aforeſaid, and within the Juriſdiction of the Admiralty of *England* aforeſaid, did languiſh, and languiſhing did live ; upon which One-and-Thirtieth Day of *October,* in the Ninth Year aforeſaid, the aforeſaid *William Moore* upon the High Sea aforeſaid, near the aforeſaid Coaſt of *Malabar,* in the *Eaſt-Indies* aforeſaid, in the Ship aforeſaid, called The *Adventure-Galley,* and within the Juriſdiction of the Admiralty of *England* aforeſaid, did die ; and ſo the Jurors aforeſaid, upon their Oath aforeſaid, do ſay, That the aforeſaid *William Kidd* feloniouſly, voluntarily, and of his Malice afore-thought did kill and murther the aforeſaid *William Moore* upon the High Sea aforeſaid, and within the Juriſdiction of the Admiralty of *England* aforeſaid, in manner and form aforeſaid, againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity, *&c.*’

How ſay'ſt thou, *William Kidd,* art thou guilty of this Murder whereof thou ſtandeſt indicted, or not guilty ?---*Kidd.* Not guilty.

Cl. of Arr. How wilt thou be tried ?

Kidd. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance. *Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, Darby Mullins,* hold up your Hands. You the Priſoners at the Bar, thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your ſeveral Lives and Deaths. If therefore you, or any of you, will challenge them, or any of them, your Time is to ſpeak to them as they come to the Book to be ſworn, and before they be ſworn.

Kidd. My Lord, I deſire Counſel may be aſſigned me.

Mr. *Recorder.* Capt. *Kidd,* I told you it would be your Time, when the Jury was called, to offer what you had to offer ; therefore, if you have any Thing now to ſay to the Court, you had beſt ſay it.

Kidd. I beg I may have Counſel, Dr. *Oldiſh,* and Mr. *Lemmon,* that they may be heard on my behalf.

Mr. Juſt. *Powel.* If he deſires it, you may be Counſel for him, provided there be any Matter of Law that he has to plead ; otherwiſe he muſt be tried.

Dr. *Oldiſh.* My Lord, he moves that his Trial for Piracy may be put off for ſeveral Reaſons ; one is, there is one *Davis,* that is a neceſſary Witneſs for him ; he was taken a Paſſenger into the Ship, and therefore could not be concerned in any Piracy : Now this *Davis* ſtands indicted, ſo that he is deprived of this Perſon, who is a neceſſary Witneſs for him in this Caſe.

Mr. *Coniers.* He is not indicted yet ; he may call him if he thinks fit.

Mr. Juſt. *Powel.* If he be indicted, yet he may be a Witneſs.

Dr. *Oldiſh.* My Lord, we deſire he may be here.

Mr. Juſt. *Powel.* Where is he ?---*Cl. of Arr.* He is in *Newgate.*

Mr. Juſt. *Powel.* Let him be ſent for.

Dr. *Oldiſh.* My Lord, it is very fit his Trial ſhould be delay'd for ſome time, becauſe he wants ſome Papers very neceſſary for his Defence. It's very true, he is charged with Piracies in ſeveral Ships ; but they had *French* Paſſes when the Seizure was made. Now if there were *French* Paſſes, it was a lawful Seizure.

Mr. Juſt. *Powel.* Have you thoſe Paſſes ?

Kidd. They were taken from me by my Lord *Bellamont* ; and theſe Paſſes would be my Defence.

Dr. *Oxenden.* Had you any other Paſſes when you took the *Armenian* Ship ?

Dr. *Oldiſh.* If thoſe Ships that he took had *French* Paſſes, there was juſt Cauſe of Seizure, and it will excuſe him from Piracy.

Kidd. The Paſſes were ſeized by my Lord *Bellamont,* that we will prove as clear as the Day.

Mr. *Lemmon.* My Lord, I deſire one Word as to this Circumſtance ; he was doing his King and Country Service, inſtead of being a Pirate : For in this very Ship there was a *French* Paſs, and it was ſhewn to Mr. *Davis,* and carried to my Lord *Bellamont,* and he made a Seizure of it. And there was a Letter writ to teſtify it, which was produced before the Parliament ; and that Letter has been tranſmitted from Hand to Hand, ſo that we cannot at preſent come by it. There are ſeveral other Papers and Letters that we cannot get ; and therefore we deſire the Trial may be put off till we can procure them.

L. C. B. *Ward.* Where are they ?

Mr. *Lemmon.* We cannot yet tell whether they are in the Admiralty-Office, or whether Mr. *Jodrell* hath them.

Mr. J. *Powel.* Let us ſee on what you go. You talk of *French* Paſſes ; you ſhould have been prepared to make Affidavit of it. What Ship was that which had the *French* Paſſes ?

Mr. *Lemmon.* The ſame we were in, the ſame he is indicted for.

Mr. J. *Powel.* Make out this, Mr. *Lemmon.*

Mr. *Lemmon.* My Lord, we deſire Mr. *Davis* may be ſent for ; he will prove it.

L. C. B. *Ward.* Send for *Edward Davis.*

Mr. *Fell.* My Lord, will you have him brought into Court ?

L. C. B. *Ward.* Yes.

Mr. Sol. Gen. They have had a Fortnight's Notice to prepare for the Trial.

Dr. *Oldiſh.* We petitioned for Money, and the Court ordered fifty Pounds ; but the Perſon that received it went away, and we had none till laſt Night.

Dr. *Oxenden.* I ordered that the Money might be paid into his own Hands, that he might be ſure to have it.

Mr. *Crawley,* Regiſter, declar'd, that he paid the Fifty Pounds into his own Hands on *Tueſday* Morning.

L. C. B. *Ward.* You ought to make it out, that there is a reaſonable Cauſe to put off the Trial, or elſe it cannot be allowed.

Mr. *Lemmon.* My Lord, we will be ready To-morrow Morning.

L. C. B. *Ward.* They ought to have had due Notice ; what Notice have they had ?

Mr. Sol. Gen. A Fortnight's Notice, this Day Fortnight.

Dr. *Oldiſh.* My Lord, he ſhould have had his Money delivered to him.

Kidd. I had no Money nor Friends to prepare for my Trial till laſt Night.

L. C. B. *Ward.* Why did you not ſignify ſo much to the King's Officers?

Mr. Sol. Gen. My Lord, this we will do ; Let *Davis* be brought into Court ; and if that be a juſt Excuſe, we are contented. In the mean time, let him be tried for the Murder, wherein there is no Pretence of want of Witneſſes or Papers.----*Officer. Davis* is here, my Lord.

Cl. of Arr. Set all aſide but Capt *Kidd. William Kidd,* You are now to be tried on the Bill of Murder ; the Jury is going to be ſworn ; if you have any Cauſe of Exception, you may ſpeak to them as they come to the Book.

Will. Kidd. I ſhall challenge none ; I know nothing to the contrary but they are honeſt Men.

The JURY ſworn were,

Nathaniel Long,
Jo. Ewers,
Jo. Child,
Ed. Reeves,
Tho. Clark,
Nath. Green,
Henry Sherbrook,
Henry Dry,
Richard Greenaway,
Jo. Sherbrook,
Tho. Emm,
Rog. Mott.

[*After Proclamation made (as uſual) the Court proceeded to the Trial as follows :*]

Cl. of Arr. W. Kidd, hold up thy Hand. (*Which he did.*) You Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *William Kidd, &c.* as before in the Indictment. Upon this Indictment he has been arraigned, and thereunto has pleaded *Not Guilty,* and for his Trial has put himſelf on God and his Country, which Country you are. Your Charge is to enquire, Whether he be guilty of the Murder whereof he ſtands indicted, in Manner and Form as he ſtands indicted, or Not Guilty, *&c.*

Mr. *Knap.* My Lord, and you Gentlemen of the Jury,

This is an Indictment of Murder. The Indictment ſets forth, *That* William Kidd, *on the 30th of* October, *on the High Sea, on the Coaſt of* Malabar, *did aſſault one* William Moore, *on board a Ship called The* Adventure, *whereof* William Kidd *was Captain, ſtruck him with a wooden Bucket, hooped with Iron, on the Side of the Head near the right Ear, and that of this Bruiſe he died the next Day, and ſo that he has murdered the ſame Perſon.* To this Indictment he pleaded Not Guilty : If we prove him Guilty, you muſt find him ſo.

Mr. Sol. Gen. My Lord, and Gentlemen of the Jury, we will prove this as particularly as can be, that *William Kidd* was Captain of the Ship, and that *William Moore* was under him in the Ship, and that without any Provocation he gave him this Blow whereof he died.

Mr. *Coniers.* My Lord, it will appear to be a moſt barbarous Fact, to murder a Man in this manner ; for the Man gave him no Manner of Provocation. This *William Moore* was a Gunner in the Ship, and this *William Kidd* abuſes him, and calls him *Louſy Dog* ; and, upon a civil Anſwer, he takes this Bucket and knocks him on the Head, whereof he died the next Day. Call *Joſeph Palmer,* and *Robert Bradinham.* (*Who appear'd, and were ſworn.*) *Joſeph Palmer,* give my Lord and the Jury an Account of what you ſaw done by *William Kidd,* on the Coaſt of *Malabar,* as to *William Moore* his Gunner.

Joſeph Palmer. About a Fortnight before this Accident fell out, Capt. *Kidd* met with a Ship on that Coaſt, that was called The *Loyal Captain.* And about a Fortnight after this, the Gunner was grinding a Chiſſel aboard the *Adventure,* on the High Sea near the Coaſt of *Malabar,* in the *Eaſt-Indies.*

Mr. *Coniers.* What was the Gunner's Name ?

Joſeph Palmer. William Moore : And Capt. *Kidd* came and walked on the Deck, and walks by this *Moore* ; and when he came to him, ſays, *Which way could you have put me in a Way to take this Ship, and been clear?* Sir, ſays *William Moore, I never ſpoke ſuch a Word, nor ever thought ſuch a Thing.* Upon which Capt. *Kidd* called him a *Louſy Dog.* And ſays *William Moore, If I am a Louſy Dog, you have made me ſo ; you have brought me to Ruin, and many* *more.* Upon his ſaying this, ſays Captain *Kidd, Have I ruin'd you, ye Dog?* and took a Bucket bound with Iron Hoops, and ſtruck him on the right Side of the Head, of which he died the next Day.

Mr. *Cowper.* What was the Gunner doing at that Time that he gave him the Blow?

Joſeph Palmer. He was grinding a Chiſſel at the Time that he ſtruck him.

Mr. *Cowper.* Did he give him the Blow immediately after he gave him that Anſwer?

Joſeph Palmer. He walk'd two or three times backward and forward upon the Deck before he ſtruck the Blow.

Mr. J. *Turton.* What did Captain *Kidd* ſay firſt?

Palmer. Which way could you have put me in a Way of taking this Ship, and been clear? Says the Gunner, *I never ſaid ſo, nor thought any ſuch Thing.*

Mr. *Cowper.* Hark you, Friend, explain that Matter.

Mr. Bar. *Hatſell.* What was the Occaſion of thoſe Words?

Palmer. It was concerning this Ship.

L. C. B. *Ward.* What Ship was it? Name the Ship.

Palmer. It was the *Loyal Captain.* Captain *Kidd* ſaid to *William Moore, Which way could you have put me in the Way to have taken this Ship, and been clear?* Says *William Moore, I never ſaid ſuch a Thing, nor thought it.* Upon that he call'd him *Louſy Dog.*

L. C. B. *Ward.* Was that Ship taken?—*Palmer.* No, ſhe was gone.

Mr. *Coniers.* You ſay he call'd him *Louſy Dog?*——*Palmer.* Yes.

Mr. *Coniers.* What did *William Moore* ſay to him then?

Palmer. He ſaid, *If I am a Louſy Dog, you have brought me to it; you have ruin'd me and many more.* Upon this, ſays Captain *Kidd, Have I brought you to Ruin, you Dog?* Repeating it two or three times over, and took a turn or two upon the Deck, and then takes up the Bucket, and ſtrikes him on the Head.

Mr. *Cowper.* You ſay he made a turn or two on the Deck, and then ſtruck him.———*Palmer.* Yes.

Mr. *Coniers.* Tell my Lord what paſs'd next after the Blow.

Palmer. He was let down the Gun-room; and the Gunner ſaid, *Farewel, farewel, Captain* Kidd *has given me my laſt.* And Captain *Kidd* ſtood on the Deck, and ſaid, *You're a Villain.*

Mr. *Cowper.* How near was Captain *Kidd* to him when he ſaid he had given him his laſt?—*Palmer.* He was near him.

Mr. *Cowper.* Was he within hearing of what *Moore* ſaid?

Palmer. Yes; he was within ſeven or eight Foot.

Mr. Sol. Gen. Did you apprehend that he died of that Blow?

Palmer. He was in perfect Health before that.

Mr. Sol. Gen. What did the Surgeon think of it?

Palmer. The Surgeon is here.

Mr. Sol. Gen. Did you ſee him afterwards?

Palmer. No, I did not ſee him after, till he was dead.

Mr. *Cowper.* How did the Wound appear when you ſaw him?

Palmer. After he was dead, the Surgeon was call'd to open his Head; and Captain *Kidd* ſaid, *You are damn'd buſy without Orders.*

Mr. *Cowper.* Tho' we aſk you Queſtions, you muſt turn your Face there, towards the Jury. Give the Jury an Account of what you ſaw.

Palmer. I felt on his Head, and I felt ſomething give way, and about the Wound there was a Bruiſe.

Mr. *Cowper.* You ſay you ſaw him when he was carried off, after the Blow; How did his Head appear then? Was he bloody?

Palmer. There was not much Blood came from him.

L. C. B. *Ward.* Was you by when theſe Words were ſpoken?

Palmer. Yes, my Lord.

L. C. B. *Ward.* Did you ſee the Priſoner give the Blow with the Bucket upon thoſe Words?——*Palmer.* Yes, my Lord.

L. C. B. *Ward.* How long was it before he went down the Deck?

Palmer. Preſently.

L. C. B. *Ward.* Did he complain of the Wound?

Palmer. He ſaid, *Farewel, farewel, Captain* Kidd *has given me my laſt.*

L. C. B. *Ward.* Was this *Moore* in a good Condition of Health before this Blow was given him?—*Palmer.* Yes, my Lord.

L. C. B. *Ward.* And afterwards he complain'd?—*Palmer.* Yes, my Lord.

L. C. B. *Ward.* When he was dead, what Marks were on his Head?

Palmer. On the right Side of his Head, on this Place *(pointing to his own Head)* it was bruis'd a conſiderable Breadth; and in one Place I could feel the Skull give way.

Mr. *Cowper.* How long after the Blow did he die?

Palmer. The next Day following.

Mr. *Cowper.* And you ſay you ſaw him dead then?—*Palmer.* Yes, Sir.

L. C. B. *Ward.* Captain *Kidd*, if you will aſk him any Queſtions, you may.

Kidd. My Lord, I would aſk this Man, what this *Moore* was doing when this thing happen'd?

L. C. B. *Ward.* Mr. *Palmer*, you hear what he ſays; What was *Moore* doing?——*Palmer.* He was grinding a Chiſſel.

Kidd. What was the Occaſion that I ſtruck him?

Palmer. The Words that I told you before.

Kidd. Was there no other Ship?——*Palmer.* Yes.

Kidd. What was that Ship?——*Palmer.* A *Dutch* Ship.

Kidd. What were you doing with the Ship?---*Palmer.* She was becalm'd.

Kidd. This Ship was a League from us, and ſome of the Men would have taken her, and I would not conſent to it; and this *Moore* ſaid, I always hinder'd them making their Fortunes: Was not that the Reaſon I ſtruck him? Was there a Mutiny on board?

Palmer. No; you chaced this *Dutchman*, and in the way took a *Malabar* Boat, and chaced this Ship all the whole Night; and they ſhew'd their Colours, and you put up your Colours.

Kidd. This is nothing to the Point: Was there no Mutiny aboard?

Palmer. There was no Mutiny, all was quiet.

Kidd. Was there not a Mutiny, becauſe they would go and take that *Dutchman?*

Palmer. No, none at all.

Mr. *Coniers.* Call *Robert Bradinham.*

Jury. What was the Cauſe that he ſtruck him?

Palmer. A Fortnight before this was done, we met with this *Loyal Captain*, of which Capt. *Hoar* was Commander, and he came on board Captain *Kidd*'s Ship, and Captain *Kidd* went on board his, and then Captain *Kidd* let this Ship go. About a Fortnight after this, the Gunner was grinding his Chiſſel on the Deck, and Captain *Kidd* ſaid to him, *Which way could you have put me in a Way to take this Ship, and been clear?* To which he reply'd, *I never ſaid ſuch a Thing, nor thought of ſuch a Thing.* Whereupon Captain *Kidd* call'd the Gunner *Louſy Dog*; and, ſays *Moore, If I am a Louſy Dog, you have made me ſo; you have brought me to Ruin, and a great many more.* And ſays Captain *Kidd, Have I brought you to Ruin, you Dog?* and after ſtruck him with the Bucket. Theſe were all the Words that paſs'd.

Mr. J. *Powel.* Was Captain *Kidd* aboard that Ship?

Palmer. Yes; and Captain *Hoar* was aboard him.

Mr. J. *Powel.* Was there any body nigh at that Time?

Palmer. Yes; there were eight or nine Men, that had Muſquets and other Arms, and they were for taking the Ship, and Captain *Kidd* was againſt it, and ſo it was not done.

Kidd. My Lord, I was in the Cabin, and heard a Noiſe, and came out; and *William Moore* ſaid, *You ruin us, becauſe you will not conſent to take Captain* Hoar's *Ship.* Says a *Dutchman, I will put Captain* Kidd *in a Way to take this Ship, and come off fairly.*

L. C. B. *Ward.* You may aſk him any Queſtions you have a mind to, but you muſt reſerve what you have to ſay for yourſelf till you come to make your Defence.

Mr. Sol. Gen. Mr. *Palmer*, do you know of any other Provocation to ſtrike him beſides thoſe Words?

Palmer. I know of no other Provocation.

Mr. *Coniers.* Set up *Robert Bradinham.* (*Who appeared.*) Mr. *Bradinham*, in what Office was you in the Ship?

Bradinham. I was Surgeon of the Ship.

Mr. *Coniers.* Of what Ship?

Brad. The *Adventure-Galley*, whereof Captain *Kidd* was Maſter.

Mr. *Coniers.* Was you there when the Blow was given?----*Brad.* No.

Mr. *Coniers.* Was you ſent for when Captain *Kidd* had given the Gunner the Wound upon the Head?

Brad. I was ſent for to his Aſſiſtance after he was wounded, and I came to him, and aſk'd him how he did? He ſaid, *He was a dead Man; Captain* Kidd *had given him his laſt Blow.* And I was by the Gun-room, and Captain *Kidd* was walking there, and I heard *Moore* ſay, *Farewel, farewel, Captain* Kidd *has given me my laſt Blow*; and Captain *Kidd*, when he heard it, ſaid, *Damn him, he is a Villain.*

Mr. *Coniers.* Did you hear him ſay ſo?------*Brad.* I did hear it.

Mr. *Cowper.* Was it in a way of Anſwer to what he ſaid?

Brad. Yes.

Mr. *Cowper.* How long did he live after the Blow?

Brad. He died the next Day. The Wound was but ſmall, the Skull was fractur'd.

Mr. *Cowper.* Do you believe he died of the Wound?----*Brad.* Yes.

Mr. *Cowper.* Had you any Diſcourſe with Captain *Kidd* after this about this Man's Death?

Brad. Some Time after this about two Months, by the Coaſt of *Malabar*, Captain *Kidd* ſaid, *I do not care ſo much for the Death of my Gunner, as for other Paſſages of my Voyage; for I have good Friends in* England *that will bring me off for that.*

L. C. B. *Ward.* Mr. *Kidd*, will you aſk him any Queſtions?

Kidd. I aſk him, Whether he knew of any Difference between this Gunner and me before this happen'd?

Brad. I knew of no Difference between them at all.

Mr. Sol. Gen. Mr. *Kidd*, have you any Thing more to aſk him?---*Kidd.* No.

Mr. *Coniers.* Then we have done for the King.

L. C. B. *Ward.* Then you may make your Defence. You are charg'd with Murder, and you have heard the Evidence that has been given, What have you to ſay for yourſelf?

Kidd. I have Evidence to prove it is no ſuch thing, if they may be admitted to come hither. My Lord, I will tell you what the Caſe was: I was coming up within a League of the *Dutchman*, and ſome of my Men were making a Mutiny about taking her, and my Gunner told the People he could put the Captain in a Way to take the Ship, and be ſafe. Says I, *How will you do that?* The Gunner anſwer'd, *We will get the Captain and Men aboard.* And what then? *We will go aboard the Ship, and plunder her, and we will have it under their Hands that we did not take her.* Says I, *This is* Judas *like, I dare not do ſuch a Thing.* Says he, *We may do it, we are Beggars already. Why*, ſays I, *may we take this Ship becauſe we are Poor?* Upon that a Mutiny aroſe: So I took up a Bucket, and juſt throw'd it at him, and ſaid, *You are a Rogue to make ſuch a Motion.* This I can prove, my Lord.

L. C. B. *Ward.* Call your Evidence.

Mr. *Cowper.* Mr. *Palmer*, was there any Mutiny in the Ship when this Man was killed?——*Palmer* There was none.

L. C. B. *Ward.* Captain *Kidd*, call what Evidence you will.

Kidd. They are Priſoners; I deſire they may be call'd up.

L. C. B. *Ward.* Whatever other Crimes they may be guilty of, they may be Witneſſes for him in this Caſe.

Mr. Baron *Hatſell.* Mr. *Palmer*, did he throw the Bucket at him, or ſtrike him with it?

Palmer. He held it by the Strap in his Hand.

Kidd. Call *Abel Owens. (Who appear'd.)* Can you tell which Way this Bucket was thrown?

Mr. J. *Powel.* What was the Provocation of throwing this Bucket?

Owens. I was in the Cook-room, and hearing ſome Difference on the Deck, I came out, and the Gunner was grinding a Chiſſel on the Grindſtone, and the Captain and he had ſome Words, and the Gunner ſaid to the Captain, *You have brought us to Ruin, and we are Deſolate.* And, ſays he, *Have I brought you to Ruin? I have not brought you to Ruin, I have not done an ill Thing to ruin you; you are a ſawcy Fellow to give me theſe Words.* And then he took up the Bucket, and did give him the Blow.

Kidd. Was there not a Mutiny among the Men?

Owens. Yes, and the bigger Part was for taking the Ship ; and the Captain ſaid, *You that will take the* Dutch-man, *you are the ſtrongeſt, you may do what you pleaſe* ; *if you will take her, you may take her* ; *but if you go from aboard, you ſhall never come aboard again.*

L. C. B. *Ward.* When was this Mutiny you ſpeak of ?

Abel Owens. When we were at Sea.

L. C. B. *Ward.* How long was it before this Man's Death ?

Owens. About a Month.

Mr. J. *Powel.* At this Time when the Blow was given, did *Moore* the Gunner endeavour to make any Mutiny ?---*Owens.* No.

Mr. J. *Powel.* Was there any Mutiny then ? ——*Owens.* None at all.

Kidd. Did not he ſay, He could put me in a Way to take the *Dutchman*, and be clear ?

Owens. I know there were ſeveral of them would have done it, but you would not give Conſent to it.

Kidd. No ; but this was the Reaſon I threw the Bucket at him.

L. C. B. *Ward.* Captain *Kidd*, he tells you this was a Month before you ſtruck him.

Jury. My Lord, we deſire he may be aſked, Whether he did throw the Bucket, or ſtrike him with it ?

L. C. B. *Ward.* Anſwer the Jury to that Queſtion.

Owens. He took it with the Strap, and ſtruck him with it.

Kidd. Did not I throw it at him ?

Owens. No ; I was near you when you did it.

Mr. *Coniers.* Did you ſee the Stroke given ?

Owens. I did ſee the Stroke given.

L. C. B. *Ward.* Captain *Kidd*, Will you call any more ?

Kidd. Yes, my Lord. Call *Richard Barlicorn.*

Mr. J. *Powel.* What Queſtions would you have him aſk'd ?

Kidd. *R. Barlicorn*, What was the Reaſon that Blow was given to the Gunner ?

Barlicorn. At firſt when you met with the Ship, there was a Mutiny, and Two or Three of the *Dutchmen* came aboard ; and ſome ſaid, ſhe was a rich Veſſel, and they would take her : And the Captain ſaid, *No, I will not take her.* And there was a Mutiny in the Ship, and the Men ſaid, *if you will not, we will.* And he ſaid, *If you have a mind, you may* ; *but they that will not, come along with me.*

Kidd. Do you think *William Moore* was one of thoſe that was for taking her ?———*Barlicorn.* Yes.

L. C. B. *Ward.* How long was that before *Moore* died, do you know ?

Barlicorn. No ; I did not keep a Journal.

L. C. B. *Ward.* Was it after *Moore* died ?

Barlicorn. No, Sir, it was before *Moore* died.

Mr. *Coniers.* How long before ?

Barlicorn. I believe it was about a Month or Three Weeks, I cannot tell which.

L. C. B. *Ward.* You ſay there was a Mutiny in the Ship, what was the Mutiny about ?——*Barlicorn.* About taking the Ship.

L. C. B. *Ward.* What was the Ship's Name ?

Barlicorn. The *Loyal Captain.* And the Captain ſaid, *If they take the Ship, they ſhould never come aboard again.*

L. C. B. *Ward.* Was you by when *Moore* received this Blow ?

Barlicorn. No ; I was not by then.

Kidd. Did you know of any Quarrel between this *Moore* and I before that Accident ?———*Barlicorn.* No, I did not.

Mr. J. *Powel.* Was there any Mutiny in the Ship when this *Moore* died ?——*Barlicorn.* They were talking of it.

Kidd. Was there not a *Dutchman* cloſe by us, when this Blow was given ?---*Barlicorn.* Yes, Sir.

Kidd. He was going to make another Mutiny, and I prevented him.

Mr. J. *Powel.* Did *Moore* endeavour to make any Mutiny at that Time ?

Barlicorn. The Ship was gone at that Time.

Mr. J. *Powel.* How long had ſhe been gone ?

Barlicorn. About a Week.

Mr. Bar. *Hatſell.* Was there any Mutiny about the *Dutch* Ship you ſaw ?

Barlicorn. The *Dutch* Ship ? Not that I know of ; but there was a Mutiny aboard the *Loyal Captain.*

Kidd. Do you not know of another Mutiny ?

Mr. Bar. *Hatſell.* Do you know of any other Mutiny ?

Barlicorn. No.

Kidd. At that very Time they were going to make a Mutiny.

L. C. B. *Ward.* Will you aſk him any more Queſtions ?

Kidd. What Diſcourſe had I with *Moore* at that Time ?

Barlicorn. I was aboard our Ship, but did not ſee the Blow given.

Kidd. They were ſaying they would take her, and he ſaid he could put me in a Way to take her, without coming to any Harm.

L. C. B. *Ward.* What occaſion could thoſe Words be of a Mutiny ?

Barlicorn. There were many of the Men would have gone with Arms, and taken that Ship without the Captain's Conſent.

L. C. B. *Ward.* At that Time when this *Moore* was killed, was there any Mutiny ?---*Barlicorn.* No.

L. C. B. *Ward.* When was it that *Moore* ſaid, they might have taken this Ship ?

Barlicorn. At the ſame Time when the Ship was in Company with us.

L. C. B. *Ward.* That was a Week or a Fortnight before.

Barlicorn. No, Sir, the *Loyal Captain* was within Sight of us.

Mr. Bar. *Hatſell.* What, when *Moore* was killed ?

Barlicorn. No, not then. *William Moore* lay ſick a great while before this Blow was given ; and the Doctor ſaid, when he viſited him, This Blow was not the Cauſe of his Death.

L. C. B. *Ward.* Then they muſt be confronted. Do you hear, *Bradinham*, what he ſays ? He ſays you ſaid, That Blow was not the Cauſe of his Death. Did you ever ſay ſo ?

Bradinham My Lord, I never ſaid ſo.

L. C. B. *Ward.* Did you ſee that young Man there ?

Bradinham Yes ; he was aboard the Ship.

L. C. B. *Ward.* Was *Moore* ſick before that Blow ?

Bradinham. He was not ſick at all before.

Barlicorn. He was ſick ſometime before, and this Blow did but juſt touch him ; and the Doctor ſaid, he did not die on the occaſion of this Blow.

Mr. J. *Gold.* Did you ever ſay ſo, Mr. *Bradinham ?*

Bradinham. No, my Lord.

Mr. Sol. Gen. You ſay he did but juſt touch him ; Were you preſent when the Blow was given ?

Barlicorn. No ; but I ſaw him after he was dead, and I was by when the Doctor ſaid, he did not die of that Blow.

Mr. *Cowper.* What did he die of ?

Barlicorn. I cannot tell, he had been ſick before ; we had many ſick Men aboard.

Mr. Sol. Gen. How long did he lie after this Blow before he died ?

Barlicorn. I cannot tell juſtly how long it was.

L. C. B. *Ward.* How long do you think ? You took notice of the Blow ; How long did he live after that ?

Barlicorn. I believe about a Week.

L. C. B. *Ward.* And the two Witneſſes ſwore he died the next Day.

Barlicorn. I cannot tell juſtly how long he lived afterwards.

Jury. We deſire to know whether he knew what was the Occaſion of this Blow ?

Barlicorn. All the Reaſon I can give is, becauſe it was thought he was going to breed a Mutiny in the Veſſel.

L. C. B. *Ward.* Did you hear of that by any body ?

Kidd. Was *Bradinham* in the Mutiny ? Declare that.

L. C. *B. Ward.* Mr. *Kidd*, why do you aſk that Queſtion ?

Kidd. I aſk him, whether *Bradinham* was not in any Mutiny in the Ship ?

L. C. B. *Ward.* Why do you aſk that ?

Barlicorn. If any Thing was to be, he was as forward as any one.

L. C. B. *Ward.* You ſay he was as forward as any ; but it does not appear any one made a Mutiny at this time.

Barlicorn. I do not know, Sir.

L. C. B. *Ward.* Have you any more to call ?

Kidd. My Lord, here is another Witneſs.

L. C. B. *Ward.* What is your Name ?

Hugh Parrot. Hugh Parrot.

L. C. B. *Ward.* Mr. *Kidd*, What do you aſk him ?

Kidd. I aſk you whether *Bradinham* was in a Mutiny in my Ship ?

Hugh Parrot. I cannot ſay whether he was or no.

L. C. B. *Ward.* Capt. *Kidd*, you are tried for the Death of this *Moore* ; now why do you aſk this Queſtion ? What do you infer from hence ? You will not infer, that if he was a Mutineer, it was lawful for you to kill *Moore.*

Kidd. Do you know the Reaſon why I ſtruck *Moore ?*

Hugh Parrot. Yes, becauſe you did not take the *Loyal Captain*, whereof Captain *Hoar* was Commander.

L. C. B. *Ward.* Was that the Reaſon he ſtruck *Moore*, becauſe the Ship was not taken ?

Hugh Parrot. I ſhall tell you how it happen'd, according to the beſt of my Knowledge. My Commander fortuned to come up with this Captain *Hoar*'s Ship, and ſome were for taking her, and ſome not ; and afterwards there was a little ſort of Mutiny, and ſome roſe in Arms, the greateſt Part, and they ſaid they would take this Ship ; and the Commander was not for it ; and ſo they reſolved to go away in the Boat, and take her. Captain *Kidd* ſaid, *If you deſert my Ship, you ſhall never come aboard again, and I will force you into* Bombay, *and I will carry you before ſome of the Council there :* Inſomuch as my Commander ſtilled them again, and they remained on Board. And about a Fortnight afterward there paſſed ſome Words between this *William Moore* and my Commander ; and then ſays he, *Captain, I could have put you in a Way to have taken this Ship, and been never the worſe for it.* He ſays, *Would you have me take this Ship ? I cannot anſwer it, they are our Friends* ; and my Commander was in a Paſſion ; and with that I went off the Deck, and I underſtood afterwards the Blow was given, but how I cannot tell.

Mr. J. *Powel.* Capt. *Kidd*, have you any more to aſk him ; or have you any more Witneſſes to call ?

Kidd. I could call all of them to teſtify the ſame thing ; but I will not trouble you to call any more.

L. C. B. *Ward.* Have you any more to ſay for yourſelf ?

Kidd. I have no more to ſay, but I had all the Provocation in the World given me ; I had no deſign to kill him, I had no Malice or Spleen againſt him.

L. C. B. *Ward.* That muſt be left to the Jury to conſider the Evidence that has been given ; you make out no ſuch matter.

Jury-man. My Lord, I deſire the Petitioner may give an Account, whether he did do any Thing in order to his Cure.

L. C. B. *Ward.* He is to be tried according to Law ; the King's Evidence hath been heard, and he has the Liberty to produce what Evidence he can for himſelf ; Will you put him to produce more Evidence than he can ? If he has any more to ſay, it will be his Intereſt to ſay what he can ; the Court is willing to hear him as long as he hath any Thing to offer for himſelf, either upon that Account, or any Thing elſe.

Kidd. It was not deſignedly done, but in my Paſſion, for which I am heartily ſorry.

L. C. B. *Ward.* Gentlemen of the Jury, the Priſoner at the Bar, *William Kidd*, is Indicted for the Murder of *William Moore*, and whether he be guilty of this Murder, or not guilty, it is your part to determine on the Evidence that has been given. The Fact charged againſt him is this, That the Priſoner at the Bar, *William Kidd*, being the Commander of the Ship, called The *Adventure-Galley*, and the deceaſed *William Moore* the Gunner in that Ship ; That upon the High Sea, near the Coaſt of *Malabar*, in the *Eaſt-Indies*, and within the Juriſdiction of the Admiralty of *England*, in *October*, in the Ninth Year of his Majeſty's Reign, 1697, the Priſoner, *William Kidd*, out of his Malice fore-thought, did ſtrike the Deceaſed *William Moore* with a Bucket hooped with Iron, on the right Side of the Head, and that the Blow was the Occaſion of the Death of the ſaid *William Moore* ; that this was done on the 30th of *October*, and that his Death enſued on the 31ſt of *October*, being the next Day. This is the Fact charged upon him.

Now you have heard the Evidence that has been given on the King's Part, and you will weigh it well. You hear the firſt Witneſs that has been produc'd on behalf of the King, is *Joſeph Palmer.* He tells you he was preſent on board this Ship at the Time when the Blow was given: And he ſays, there had been ſome Diſcourſe between the Priſoner *William Kidd* and the Deceaſed *Moore*, concerning taking a Ship that was called The *Loyal Captain*; and that Captain *Kidd* ſaid to him, *How could you have put me in a way to take that Ship, and be clear? No*, ſays *Moore*, *I ſaid no ſuch Thing.* The Reply Captain *Kidd* made to him was, *He was a Louſy Rogue.* The Anſwer of the Deceaſed was this, *If I am ſo, you have made me ſo; you have ruined me and a great many others.* With that, ſays Captain *Kidd*, *Have I ruined you, you Dog?* And up he took a Bucket hoop'd with Iron, and gave him a Blow on the right Side of his Head. And thereupon he complained and ſaid, *You have given me my laſt Blow.* And then *Moore* went down below Deck, and he ſaw him no more till the next Day, and then he was dead; and he felt upon his Head, and perceived a Bruiſe in one Part of it, as broad as a Shilling, and he felt the Skull was broke; and he does take on him to ſay, that he believes that Blow was the Occaſion of his Death. Being aſk'd, Whether he knew in what State of Health he was before? he ſays, He was in a healthy Condition; he was grinding a Chiſſel at that Time when the Blow was given; and that Blow he believes was the Occaſion of his Death. And being aſked, Whether he heard any other Words, or ſaw or knew any Thing that could be any Cauſe of Provocation? he ſays, He knew no more than the Reply of the Party deceaſed; *If I am a louſy Dog, you have made me ſo, and have been my Ruin:* And then having taken two or three Turns upon the Deck, he gave him the Blow; and then *Moore* went down the Deck, and uſed theſe Words, *You have given me my laſt Blow*, or to that Effect.

Gentlemen, You have heard the Surgeon alſo, *Robert Bradinham*; and he tells you, He did not ſee the Blow given, but he was ſent for after, and the Deceaſed ſaid, *Captain* Kidd *had given him his laſt Blow*: And thereupon he did examine him as a Surgeon, and does believe that Blow on the Head was the Occaſion of his Death; and he did obſerve it as well as he could.

Juryman. My Lord, I think *Bradinham* ſaid, He was not then by when the Priſoner gave the Blow.

L. C. B. *Ward.* I did not ſay he was: He ſays, He was ſent for after the Blow; and when he came, the Deceaſed ſaid, he gave it him, and what would be the Conſequence.

Now theſe two being croſs-examined by the Priſoner *William Kidd*, whether they did not know of ſome Mutiny in the Ship, that might be the Occaſion of his giving this Blow; they have told both their Stories, of what Diſcourſe there was of taking this Ship, The *Loyal Captain*, and of what Deſign there was upon the *Dutch* Ship after. Now the firſt of theſe was a Fortnight before this happen'd, and the other a Week; ſo that there was then no Occaſion of Mutiny, nor do they know of any Mutiny at that Time.

Now, Gentlemen, he has produced for himſelf three Witneſſes. The firſt that he calls is *Abel Owens*; and this Witneſs has not in his Teſtimony made for the Priſoner, but in effect confirmed what the other Witneſſes for the King ſaid: For he tells you he was by when the Blow was given, and gives you an Account how this Thing was; That there was ſome Diſcourſe between them, much what to the Effect aforeſaid, both as to what Captain *Kidd* ſaid to *Moore*, and what *Moore* replied; and that Captain *Kidd* ſhould ſay to *Moore*, *You are a ſaucy Fellow*, or to that Purpoſe; and *Moore* ſaid, *You have ruined me, and a great many others*; and with that the Priſoner took up the Bucket, and ſtruck him with it. And he being aſked, If there were any Provocation or Occaſion why this Blow was given, and whether there was any Mutiny at that Time, as he pretended? he ſays, He knew of none, only he ſpeaks of one about a Month before.

They have call'd two other Witneſſes; one is *Richard Barlicorn*; he is the Priſoner's Servant; and though he be his Servant, yet the Law allows him to be a Witneſs for him, and the Credit of his Teſtimony is left to you. Now what has he ſaid? He has told you ſomething different Stories. He thinks there was a Mutiny in the Ship. And being aſk'd about what Time? he thinks it was about a Month or three Weeks before; and, upon further Examination, ſaith, there was no Mutiny when *Moore* was killed. He is willing to ſay what he can for his Maſter, and believes Mr. *Kidd* did not deſign to do any Harm to that Man; for he heard the Surgeon ſay, that Blow was not the Occaſion of his Death. Now, in Contradiction to that, *Bradinham*, the Surgeon, ſays, he never did ſay ſo, but believes that this Blow was the Occaſion of his Death. You have heard what Objections the young Man's Teſtimony is liable to, and you will conſider his whole Evidence.

The laſt Witneſs the Priſoner has called, is *Hugh Parrot.* He ſays, there was ſomething of theſe Words, and that the Deceaſed did ſay, he could have put the Captain in a Way to have taken the Ship; and hereupon Words aroſe, and the Captain was in a Paſſion; and that then he went away, and underſtood afterwards the Blow was given, but how he could not tell.

Now, Gentlemen, this being the Matter of Fact, the Priſoner is Indicted upon it for Murder. Now to make the killing of a Man to be Murder, there muſt be Malice prepenſe, either expreſs or implied: The Law implies Malice, when one Man, without any reaſonable Cauſe or Provocation, kills another. You have had this Fact opened to you. What Mutiny or Diſcourſe might be a Fortnight or Month before, will not be any Reaſon or Cauſe for ſo long Continuance of a Paſſion. But what did ariſe at that Time, the Witneſſes tell you. The firſt Witneſs tells you, the firſt Words that were ſpoken, were by Mr. *Kidd*; and upon his Anſwer, Mr. *Kidd* calls him *Louſy Dog.* The Reply was, *If I am ſo, you have made me ſo; you have ruined me, and a great many more.* Now, Gentlemen, I leave it to you to conſider, whether that could be a reaſonable Occaſion or Provocation for him to take a Bucket, and knock him on the Head and kill him. You have heard the Witneſſes have made it out that he was a healthy Man, and they are of Opinion that the Blow was the Occaſion of his Death. Now for the Priſoner, on ſuch a Saying, and without any other Provocation, to take a Bucket and knock the Deceaſed on the Head, and kill him, muſt be eſteem'd an unjuſtifiable Act: For, as I ſaid, if one Man kill another without Provocation, or reaſonable Cauſe, the Law preſumes and implies Malice; and then ſuch killing will be Murder, in the Senſe of the Law, as being done out of Malice prepenſe. If there be a ſudden falling out, and fighting, and one is killed in heat of Blood, then our Law calls it Manſlaughter: But in ſuch a Caſe as this, that happens on ſlight words, the Priſoner called the Deceaſed a *Louſy Dog*; and the Deceaſed ſaid, *If I be ſo, you have made me ſo*; Can this be a reaſonable Cauſe to kill him? And if you believe them to be no reaſonable Cauſe of Provocation, and that this Blow was given by the Priſoner, and was the Occaſion of *Moore*'s Death, as the Witneſſes alledge, I cannot ſee what diſtinction can be made, but that the Priſoner is guilty of Murder. Indeed, if there had been a Mutiny at that Time, and he had ſtruck him at the Time of the Mutiny, there might have been a reaſonable Cauſe for him to plead in his Defence, and it ought to have been taken into Conſideration; but it appears, that what Mutiny there was, was a Fortnight at leaſt before: Therefore, Gentlemen, I muſt leave it to you: If you believe the King's Witneſſes, and one of the Priſoner's own, that this Blow was given by the Priſoner in the manner aforeſaid, and are ſatisfied that it was done without reaſonable Cauſe or Provocation, then he will be guilty of Murder: And if you do believe him guilty of Murder, upon this Evidence, you muſt find him ſo: If not, you muſt acquit him.

Kidd. My Lord, I have Witneſſes to produce for my Reputation.

L. C. B. *Ward.* Mr. *Kidd*, we gave you Time to make your Defence: Why did not you produce them? You were aſked more than once, if you had any more to ſay; and you ſaid, you would call no more Witneſſes.

Kidd. I can prove what Service I have done for the King.

L. C. B. *Ward.* You ſhould have ſpoken ſooner: But what would that help in this Caſe of Murder? You ſaid you had no more to ſay before I began.

Then an Officer was ſworn to keep the Jury; and about an Hour after the Jury returned, and gave in their Verdict.

Cl. of Arr. Gentlemen, anſwer to your Names. *Nath. Long.*

Nath. Long. Here, *&c.*

Cl. of Arr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Arr. *William Kidd*, hold up thy Hand. *(Which he did.)* Look upon the Priſoner. Is he guilty of the Murder whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper.

CLXIX. *The Trial of* William Kidd, Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loffe, Hugh Parrot, Richard Barlicorn, Abel Owens, *and* Darby Mullins, *for* Piracy *and* Robbery, *on a Ship called The* Quedagh Merchant.

‘THE Jurors for our Sovereign Lord the King do, upon their Oath, preſent, That *William Kidd*, late of *London*, Mariner; *Nicholas Churchill*, late of *London*, Mariner; *James Howe*, late of *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jenkins*, late of *London*, Mariner; *Gabriel Loffe*, late of *London*, Mariner; *Hugh Parrot*, late of *London*, Mariner; *Richard Barlicorn*, late of *London*, Mariner; *Abel Owens*, late of *London*, Mariner; and *Darby Mullins*, late of *London*, Mariner; The 30th Day of *January*, in the Ninth Year of the Reign of our Sovereign Lord, *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland* King, Defender of the Faith, *&c.* by Force and Arms, *&c.* upon the High Sea, in a certain Place diſtant about ten Leagues from *Cutſheen*, in the *Eaſt-Indies*, and within the Juriſdiction of the Admiralty of *England*, did piratically and feloniouſly ſet upon, board, break, and enter a certain Merchant Ship, called The *Quedagh Merchant*, then being a Ship of certain Perſons (to the Jurors aforeſaid unknown); and then and there piratically and feloniouſly, did make an Aſſault in and upon certain Mariners (whoſe Names to the Jurors aforeſaid are unknown) in the ſame Ship, in the Peace of God, and of our ſaid now Sovereign Lord the King, then and there being, piratically and feloniouſly did put the aforeſaid Mariners of the ſame Ship, in the Ship aforeſaid, upon the High Sea, in the Place aforeſaid, diſtant about ten Leagues from *Cutſheen* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, piratically and feloniouſly did ſteal, take, and carry away the ſaid Merchant Ship, called The *Quedagh Merchant*, and the Apparel and Tackle of the ſame Ship, of the Value of 400*l.* of lawful Money of *England*; ſeventy Cheſts of *Opium*, of the Value of 1400*l.* of lawful Money of *England*; two Hundred and fifty Bags of Sugar, of the Value of 100*l.* of lawful Money of *England*; twenty Bales of raw Silk, of the Value of 400*l.* of lawful Money of *England*; an hundred Bales of *Callicoes*, of the Value of 200*l.* of lawful Money of *England*; two hundred Bales of Muſlins, of the Value of 1000*l.* of lawful Money of *England*; and three Bales of *Romels*, of the Value of 30*l.* of lawful Money of *England*; the Goods and Chattels of certain Perſons (to the Jurors aforeſaid unknown) then and there, upon the High Sea aforeſaid, in the aforeſaid Place, diſtant about ten Leagues from *Cutſheen* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, being found in the aforeſaid Ship, in the Cuſtody and Poſſeſſion of the ſaid Mariners in the ſame Ship, from the ſaid Mariners of the ſaid Ship, and from their Cuſtody and Poſſeſſion, then and there, upon the High Sea aforeſaid, in the Place aforeſaid, diſtant about ten Leagues from *Cutſheen* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the King, his Crown and Dignity, *&c.*’

Cl. of Arr. SET *William Kidd*, *Nicholas Churchill*, &c. to the Bar *(And ſo of the reſt.)* *Will. Kidd*, hold up thy Hand. *(Which he did, and ſo of the reſt.)*

You the Priſoners at the Bar, thoſe Men that you ſhall hear call'd, and that perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your ſeveral Lives and Deaths. If therefore you, or any of you, will challenge any of them, your Time is to ſpeak to them as they come to the Book to be ſworn, and before they be ſworn.

And there being no Challenges, the Twelve that were ſworn on the Jury were as follow:

John Cooper,
Jo. Hall,
Jo. James,
Peter Parker,
Caleb Hook,
R. Rider,
P. Walker,
William Hunt,
John Micklethwait,
Richard Chiſwell,
Abraham Hickman,
George Grove.

Cl. of Arr. Crier, Count theſe: *John Cooper.*

Cryer. One, *&c.* Twelve good Men and true, ſtand together, and hear your Evidence.

[*Then the uſual Proclamation for Information was made; and the Priſoners being bid to hold up their Hands, the Clerk of Arraignments charg'd the Jury with them thus:*]

Cl. of Arr. You of the Jury, look upon the Priſoners, and hearken to their Cauſe. They ſtand indicted by the Names of *William Kidd*, &c. (as before in the Indictment.) Upon this Indictment they have been Arraign'd, and thereunto have ſeverally pleaded, *Not Guilty*; and for their Trial put themſelves on God and their Country, which Country you are. Your Charge is, to enquire whether they be guilty of the Piracy and Robbery whereof they ſtand indicted in Manner and Form as they ſtand indicted, or not guilty, *&c.*

Nic. Churchill. My Lord, I beg your Opinion, whether I may not plead the King's Pardon?

L. C. B. *Ward.* Let us ſee your Pretences: You ſhall have all legal Defences and Advantages allow'd to you.

Nic. Churchill. I came in upon his Majeſty's Proclamation.

L. C. B. *Ward.* Have you the King's Proclamation? If you have, let us ſee it.

Churchill. We had Notice of it at *Guiana*, and we deliver'd up ourſelves to Col. *Baſs*, Governor of *Eaſt-Jerſey*, and I have it under his Hand. I beg your Lordſhip would appoint me Counſel to plead my Caſe.

(The Paper was ſhewn, and read.)

Mr. *Crawley.* I know not when it was.

Churchill. I had Notice of it at *Guiana*: I have been two Years in Cuſtody.

L. C. B. *Ward.* How long have you been a Priſoner?

Churchill. Almoſt two Years; two Years next *July*.

L. C. B. *Ward and the reſt of the Judges.* The Proclamation *(for what you ſay yourſelf)* does not reach your Caſe.

Howe, Churchill, Mullins. We came in upon the Procalmation all the ſame Day.

Mr. J. *Powel.* How can you make it appear you ſurrender'd?

Priſoners. Here is an Affidavit made of it by the Governor's Secretary; and there's the Gentleman himſelf, Col. *Baſs*.

Mr. J. *Powel.* You muſt make it out that you have come in within the Conditions of that Proclamation, if you have any Benefit by it.

L. C. B. *Ward.* Let the Proclamation be read. *(Which was done accordingly; and it here follows:)*

By the KING, a Proclamation.

William R.

‘WHereas We being informed, by the frequent Complaints of our good Subjects trading to the *Eaſt-Indies*, of ſeveral wicked Practices committed on thoſe Seas, as well upon our own Subjects as thoſe of our Allies, have therefore thought fit (for the Security of the Trade of thoſe Countries, by an utter Extirpation of the Pirates in all Parts *Eaſtward* of the *Cape of Good Hope*, as well beyond *Cape Comorin* as on this ſide of it, unleſs they ſhall forthwith ſurrender themſelves, as is herein after directed) to ſend out a Squadron of Men of War, under the Command of Captain *Thomas Warren*. Now We, to the Intent that ſuch who have been guilty of any Acts of Piracy in thoſe Seas, may have Notice of our moſt gracious Intention, of extending our Royal Mercy to ſuch of them as ſhall ſurrender themſelves, and to cauſe the ſevereſt Puniſhment according to Law to be inflicted upon thoſe who ſhall continue obſtinate, have thought fit, by the Advice of our Privy Council, to iſſue this Proclamation; hereby Requiring and Commanding all Perſons who have been guilty of any Act of Piracy, or any ways Aiding or Aſſiſting therein, in any Place Eaſtward of the *Cape of Good Hope*, to ſurrender themſelves within the ſeveral reſpective Times herein after limited, unto the ſaid Captain *Thomas Warren*, and the Commander in Chief of the Squadron for the Time being, and to *Iſrael Hayes*, *Peter Dellanoye*, and *Chriſtopher Pollard*, Eſquires, Commiſſioners appointed by Us for the ſaid Expedition, or to any Three of them, or, in caſe of Death, to the major Part of the Survivors of them. And We do hereby declare, That We have been graciouſly pleas'd to impower the ſaid Captain *Thomas Warren*, and the Commander in Chief of the ſaid Squadron for the Time being, *Iſrael Hayes*, *Peter Dellanoye*, and *Chriſtopher Pollard*, Eſquires, Commiſſioners aforeſaid, or any Three of them, or, in caſe of Death, to the major Part of the Survivors of them, to give Aſſurance of our moſt gracious Pardon unto all ſuch Pirates in the *Eaſt-Indies*, *viz.* all Eaſtward of the *Cape of Good Hope*, who ſhall ſurrender themſelves for Piracies or Robberies committed by them upon the Sea or Land; Except, nevertheleſs, ſuch as they ſhall commit in any Place whatſoever after Notice of our Grace and Favour hereby declared; And alſo excepting all ſuch Piracies and Robberies as ſhall be committed from the *Cape of Good Hope* Eaſtward, to the Longitude or Meridian of *Socatora*, after the laſt Day of *April*, 1699, and in any Place from the Longitude or Meridian of *Socatora* Eaſtward, to the Longitude or Meridian of *Cape Comorin*, after the laſt Day of *June*, 1699, and in any Place whatſoever Eaſtward of *Cape Comorin* after the laſt Day of *July*, 1699; And alſo excepting *Henry Every* alias *Bridgman*, and *William Kidd.*’

Given at our Court at Kenſington, *the Eighth Day of* December, 1698, *in the Tenth Year of our Reign.*

GOD ſave the KING.

Clerk. There is no Day mention'd in this Paper when they ſurrender'd themſelves.

Mr. *Moxon.* My Lord, about the Year 1698, there was a Special Commiſſion given to four Perſons, and they were to proceed in their Voyage to the *Indies*, and they carried a great Number of *Proclamations*, That all the Pirates in ſuch and ſuch Places ſhould ſurrender themſelves: Now they came to *St. Helena* with them, and Captain *Warren* was ſent to *St. Mary's*, and he was to deliver ſome of theſe Proclamations there, and the Commiſſioner had then the Ambaſſador to the Great Mogul on Board, and this Captain *Warren* theſe Proclamations. *Warren* comes and delivers the Proclamations out, and, among the reſt, the Priſoner at the Bar having Notice of this, he goes to the Governor, and confeſſes he had been a Pirate, and deſired them to take Notice that he ſurrendered himſelf; and we have the Governor here, to give an Account of this Matter.

L. C. B. *Ward.* The Proclamation ſays, They muſt ſurrender themſelves to ſuch and ſuch Perſons by Name: See if it be ſo. *(Then the* Proclamation *was read again.)* Here are ſeveral Qualifications mentioned; you muſt bring yourſelves under them, if you would have the Benefit of it.

Dr. *Newton.* Let them ſhew that they ſurrender'd themſelves to the Perſons they were to ſurrender to.

Mr. *Moxon.* My Lord, we will prove we gave Notice within the Time, by this Paper.

Mr. Sol. Gen. There is no Time mention'd in it. *(The Affidavit was read.)* Charles Hally, *Gent. maketh Oath, That in the Year* 98, *there being Notice of his Majeſty's Gracious Pardon to ſuch Pirates as ſhould ſurrender themſelves*, James Howe, Nicholas Churchill, *and* Darby Mullins, *in* May, 1699, *did ſurrender themſelves to* Jeremiah Baſs, *and he did admit them to Bail.*

L. C. B. *Ward.* There are Four Commiſſioners named in the Proclamation: There is no Governor mention'd that is to receive them, only thoſe Four Commiſſioners.

Mr. *Moxon.* But, my Lord, conſider the Nature of this Proclamation, and what was the Deſign of it, which was, to invite Pirates to come in.

Mr. *Coniers.* We muſt keep you to the Proclamation: Here is not enough to put off the Trial.

L. C. B. *Ward.* If you had brought yourſelves within the Caſe of the Proclamation, we ſhould be very glad: You that offer it, muſt conſider it is a Special Proclamation, with divers Limitations; and if you would have the Benefit of it, you muſt bring yourſelves under the Conditions of it. Now there are Four Commiſſioners named, that you ought to ſurrender to; but you have not ſurrendered to any one of theſe, but to Colonel *Baſs*, and there is no ſuch Man mentioned in this Proclamation.

Mr. *Knapp*. My Lord, and Gentlemen of the Jury, the Indictment ſets forth, That the Priſoners at the Bar, on the Thirtieth of *January*, in the Ninth Year of his Majeſty's Reign, ten Leagues diſtant from *Cutſheen*, did Piratically ſeize and rob a certain Ship call'd *The Quedagh Merchant*, and put the Men in fear of their Lives; and the ſaid Ship, with her Aparel, Tackle and Goods, did then and there, upon the High Sea, take and carry away, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity: To this Indictment they have pleaded, Not guilty: If we prove it upon them, you muſt find them guilty.

Dr. *Newton*, *Advocate for the Admiralty*. My Lord, and Gentlemen, the Priſoners at the Bar, Captain *William Kidd*, late Commander of The *Adventure-Galley*, and nine other Mariners in the ſame Veſſel, ſtand indicted for feloniouſly and piratically aſſaulting and taking a Ship, call'd *The Quedagh Merchant*, on the High Sea near *Cutſheen*, in the *Eaſt-Indies*, about the Thirtieth of *January*, in the Ninth Year of his Majeſty's Reign: The Ship was conſiderable for its Force and Bulk, being about four hundred Ton; and more conſiderable for its Lading, having on Board to the Value of many Thouſand Pounds.

This Captain *Kidd*, who thus acted the Pirate himſelf, went from *England* in *April*, 1696. with a Commiſſion, dated the 26th of *January* preceding, to take and ſeize Pirates in the *Indian* Seas, which were then very much and very dangerouſly infeſted by them, to the great Hazard, and Loſs, and Ruin of the Merchant.

The Ship carry'd thirty Guns, and there were on Board about eighty Men; but the Captain being come to *New-York*, in *July* 96, pretending, as indeed it was deſign'd he ſhould, and he had undertaken to make that Deſign good, that he was going to *Madagaſcar* (which was the known and common Receptacle of the Pirates in thoſe Seas) to take Pirates, and free the Seas from thoſe Diſturbers of the commerce of Mankind; ſo many came in to him, being invited by Articles publickly ſet up by him in that Place, that his Number quickly encreas'd to one hundred and fifty-five Men; a Force ſufficient, if he had meant well, to have made him uſeful to the Publick; and to prove as miſchievous, if his Deſigns were otherwiſe: And what thoſe were, will quickly appear.

After calling in at ſeveral Places for Proviſions, and, among others, at *Madagaſcar*, in *July* 97, he ſail'd to *Bob*'s-*Key*, a ſmall Iſland at the Entrance of the *Red Sea*, and a convenient Station for the obſerving what Veſſels went from thence to the *Indies*; and now, inſtead of taking Pirates, he becomes one himſelf, and the greateſt and the worſt of all. Here he ſtaid three Weeks, in expectation of the *Mocca* Fleet, to make his Benefit and his Fortune out of it; for, whatever he had before pretended, this was his real Deſign, and now ſo poſſeſs'd his Mind, that he could not refrain from declaring, and that often to his Men, That now he ſhould make his Voyage, and ballaſt his Ship with Gold and Silver. After long Expectation, the Fleet, on the 14th of *Auguſt*, to the Number of Fourteen, came by; he fell in with the middle of them, fir'd ſeveral Guns at 'em; but finding they had an *Engliſh* and *Dutch* Convoy, that Deſign happily fail'd of the wiſh'd-for Succeſs.

This Diſappointment however did not diſcourage him, but that he proceeded on for the Coaſt of *Malabar*, where he knew the Trade was conſiderable, and hoped his Advantage would be proportionable in the diſturbing it; and there accordingly, for ſeveral Months, he committed many great Piracies and Robberies, taking the Ships and Goods of the *Indians* and others at Sea, *Moors* and *Chriſtians*, and torturing cruelly their Perſons, to diſcover if any Thing had eſcaped his Hands; burning their Houſes, and killing, after a barbarous Manner, the Natives on the Shore; equally cruel, dreaded and hated both on the Land and at Sea.

Theſe criminal Attempts and Actions had rendered his Name (to the Diſgrace and the Prejudice of the *Engliſh* Nation) too well known, and deſervedly deteſted, in thoſe remote Parts of the World; and he was now look'd upon as an Arch-Pirate, and the common Enemy of Mankind; and accordingly two *Portugueſe* Men of War went out in purſuit of him, and one met with him and fought him for ſeveral Hours; but *Kidd*'s Fortune then reſerv'd him for another manner of Trial.

Amongſt the great Number of Veſſels he took on that Coaſt, was the Ship he ſtands indicted for, *The Quedagh Merchant*, being then on a trading Voyage from *Bengal* to *Surat*, the Commander *Engliſh*, Captain *Wright*, the Owners *Armenian* Merchants, and others. He had taken *Moors* before, but *Moors* and *Chriſtians* are all alike to Pirates, they diſtinguiſh not Nations and Religions.

Thoſe on board the Veſſel offer'd Thirty thouſand *Rupeees* for her Ranſom, but the Ship was too conſiderable to be parted with, even for ſo great a Sum; ſo *Kidd* ſold Goods out of her, on the neighbouring Coaſt, to the Value of Ten or Twelve thouſand Pounds, out of which he took whatever he could pretend to for Ammunition and Proviſions, with forty Shares for himſelf, and the Remainder was diſpoſed of amongſt the Crew, and particularly thoſe who are here indicted with him, who accompanied him, who aſſiſted him throughout in all his Piracies, and who now too ſhare the Spoils and the Guilt with him.

With this Ship and another, and the Remainder of the Goods not ſold on the Coaſt, he ſail'd once more for *Madagaſcar*, where he arrived in the Beginning of *May* 98, and there again what was left on board was divided according to the ſame Proportions, and amongſt the ſame Perſons as before, each Mariner having about three Bales to his Share.

[*Then the Jury brought in their Verdict againſt* William Kidd, *for Murder: And Dr.* Newton *proceeded.*]

It is not to be omitted, That at his Return to *Madagaſcar*, there came on board him ſome Perſons from the Ship *The Reſolution*, formerly the *Mocca Frigate* (for the piratically ſeizing of which Veſſel there have been formerly Trials and Convictions in this Place), of which Captain *Culliford*, a notorious Pirate, now in Cuſtody, and againſt whom two Bills have been found for Piracy by the Grand-Jury, was the Commander. They at firſt ſeem'd to be afraid of *Kidd*, but without any Ground; as his former Actions had demonſtrated, and the Sequel ſhewed: They, who were harden'd Pirates, and long inured to Villanies, could ſcarce think that any Man could ſo betray the Truſt and Confidence the Publick had placed in him, and ſaid, They heard he was come to take and hang them; but Captain *Kidd* aſſur'd them, that he had no ſuch Deſign, and that he had rather his Soul ſhould broil in Hell, than do them any Harm; bid them not be afraid, and ſwore he would be true to them; and here, indeed, he did not break his Word. This was his Way of being true to his Truſt, and making good the Ends of his Commiſſion, in acting with the greateſt Treachery, and the greateſt Falſeneſs, that ever Man did: And, to make all that has been repreſented of him true, Captain *Kidd* and Captain *Culliford* went on board, treated, and preſented each other; and, inſtead of taking *Culliford*, as it was his Duty to have done, and his Force was ſufficient to have perform'd it, he gave him Money and Ammunition, two great Guns and Shot, and other Neceſſaries to fit him out to Sea, that he might be in a Condition the better to take and ſeize other innocent Perſons.

His own Ship he now left, and went on Board the *Quedagh Merchant*; ſeveral of his Men then went from him, but not the Priſoners; they were all along Well-wiſhers and Aſſiſtants to him, fought for him, divided the Plunder with him, and are now come to be try'd with him.

This, Gentlemen, is the Crime he is indicted for, Piracy; the growing Trouble, Diſturbance, and Miſchief of the Trading World, and the peaceable Part of Mankind, the Scandal and Reproach of the *European* Nations, and the Chriſtian Name (I wiſh I could not ſay, that the *Kidds* and the *Averys* had not made it more particularly ſo of the *Engliſh*) amongſt *Mahometans* and *Pagans*, in the extremeſt Parts of the Earth; which turns not only to the Diſadvantage of the immediate Sufferers, but of all ſuch as traffick in thoſe Countries, whether Companies or ſingle Merchants, who are to ſuffer for the Misfortunes of others, with whom, it may be, they have no Dealings; and for the Villainies of ſuch, whom they and all Mankind equally and juſtly deteſt and abhor.

This is the Perſon that ſtands indicted at that Bar, than whom no one in this Age has done more Miſchief, in this worſt kind of Miſchief; or has occaſioned greater Confuſion and Diſorder, attended with all the Circumſtances of Cruelty and Falſhood, and a Complication of all manner of Ill.

If therefore theſe Facts ſhall be prov'd upon him, you will then, Gentlemen, in finding him guilty, do Juſtice to the injured World, the *Engliſh* Nation (our common Country), whoſe Intereſt and Welfare ſo much depend on the Encreaſe and Security of Trade; and, laſtly, to yourſelves, whom the Law has made Judges of the Fact.

Mr. *Sol. Gen.* My Lord, and Gentlemen of the Jury, I am of Counſel for the King, againſt the Priſoners at the Bar, in this Caſe, with the Doctor that has open'd the Matter from the Beginning. Theſe Priſoners at the Bar went out with Commiſſions for good Purpoſes, tho' they made uſe of them to very bad ones. Gentlemen of the Jury, I muſt tell you, The Charge upon which you are to enquire, is only upon a certain Ship, call'd *The Quedagh Merchant*, and to that we ſhall apply our Evidence. What was taken in her has been open'd already: All we will do now, is to call our Witneſſes, and make out, to your Satisfaction, the Things charg'd upon them.

Mr. *Coniers*. My Lord, we ſhall prove this Charge by the Perſons that were Evidence before, *Robert Bradinham*, and *Joſeph Palmer*: They went out with Captain *Kidd* in his Voyage, and he began it in *April*, 1696. I believe 'twill be neceſſary, that they give ſome Account before this Piracy was committed, which was not, in Time, till *February*, 1697. They will give you an Account of ſome Plunders that happen'd before this, and then of the taking of this Ship, and the dividing it amongſt them.

Mr. J. *Powel*. When went they out?

Mr. *Coniers*. They began their Voyage in *April*, 1696, and took this Ship in *February*, 1697. They did, all along that Voyage, commit ſeveral Plunders on ſeveral Ships they thought a Prey: Their Deſign was, not to take Pirates, but to take what they could get out of any Ships, Friends or Enemies; for in this Ship, *The Quedagh Merchant*, which was a *Mooriſh* Ship, there were ſeveral *Armenians*; and they offered them a great Sum of Money to redeem the Ship, but they refus'd it; and they diſpoſed of the Goods, and divided the Money; and for the Proof of that, we will call Mr. *Bradinham*.

Mr. J. *Powel*. I underſtand, that he had a Commiſſion; therefore if any one has a Commiſſion, and he acts according to it, he is not a Pirate; but if he take a Commiſſion for a Colour, that he may be a Pirate, it will be bad indeed: And therefore, if you can prove, that he was a Pirate all along, this will be a great Evidence againſt him.

Mr. *Coniers*. My Lord, we will prove that; ſo that the Commiſſion was but a Colour. Mr. *Bradinham*, pray, give my Lord and the Jury an Account when you began your Voyage, and your Proceedings afterwards.

Bradinham. Some time in the Year 1696, about the Beginning of *May*, I and others were with Captain *Kidd*; and we ſail'd from *Plymouth*, deſigning for *New-York*; and in the Way we met with a *French* Banker, and took her.

Mr. *Coniers*. Tell the Court what ſhip it was you went in, and with whom.

Bradinham. We went with Captain *Kidd*, in the *Adventure-Galley*.

Mr. *Coniers*. What Number of Men had you when you went firſt out?

Bradinham. About ſeventy or eighty Men.

Mr. *Coniers*. What Force of Guns had you?

Bradinham. We had thirty Guns.

Mr. *Coniers*. In what Office was Captain *Kidd* in the Ship?

Bradinham. He was the Commander of her.

Mr. *Coniers*. Now tell my Lord and the Jury what Time you left *England*, and how you proceeded.

Bradinham. In *May*, 1696, we left *Plymouth*, and went to *New-York*, and in the Way met with a *French* Ship, and took her: And when we came to *New-York*, Captain *Kidd* put up Articles, That if any Men would enter themſelves on Board his Ship, they ſhould have their Shares of what ſhould be taken; and he himſelf was to have Forty Shares.

Mr. *Coniers.* What Number of Men did he get after theſe Articles were publiſh'd?

Brad. He carried from *New-York* an Hundred and fifty-five Men.

Mr. *Coniers.* Whither did he ſail then?

Brad. To the *Madeira*'s, from thence to *Bonavis*, from thence to *St. Jago*; from thence to *Madagaſcar*, from thence to *Joanna*, from thence to *Mahala*, from *Mahala* to *Joanna* again, and from thence to the *Red-Sea*; and there we waited for the *Mocca* Fleet: They paſſed us one Night, and we purſued them, and went among them, but he found they were too ſtrong for him, and was fain to leave them.

Mr. *Cowper.* How long did you lie in wait for that Fleet?

Brad. A Fortnight or three Weeks.

Mr. *Cowper.* Did he expreſs himſelf ſo, That he did lie in wait for that Fleet?

Brad. Yes; he ſaid, that he did deſign to make a Voyage out of them.

Mr. *Cowper.* Did he not lie in wait for any *French* Effects in that Fleet?

Brad. No, only for the *Mooriſh* Fleet.

Mr. *Cowper.* What do you mean by the *Mooriſh* Fleet?

Brad. The Natives of *India*, the *Mahometans*.

Mr. *Cowper.* Where did you lie in wait for that Fleet?

Brad. In the *Red-Sea*.

Mr. *Cowper.* In the Mouth of it?

Brad. Yes.

Mr. *Cowper.* Is it a fit Place for that Purpoſe?

Brad. Several Sail of Ships may lie there.

Mr. *Cowper.* Did you expect them?

Brad. Yes; Captain *Kidd* waited for them.

Mr. *Coniers.* How long did you ſtay there?

Brad. About a Fortnight.

Mr. *Coniers.* Did you do any thing in that time to get Intelligence?

Brad. Captain *Kidd* ſent his Boat three times to *Mocca*, to ſee if they could make any Diſcovery; and the two firſt times they could make none; but the third time they brought word the Ships were ready to ſail; and accordingly they came, and we ſailed after them, and fell in with them, and Captain *Kidd* fired at them.

Mr. *Cowper.* You ſay, he ſent his Boat three times for Intelligence: Can you remember what Anſwer they brought?

Brad. The two firſt times they brought no Intelligence; but the third time they brought Word, that fourteen or fifteen Ships were ready to ſail.

Mr. *Coniers.* What Colours did they ſay they had?

Brad. I cannot tell that. When Captain *Kidd* had fetched them up, he found they were under Convoy, and ſo he left them: And then he was going to the Coaſt of *Malabar*, and by the Way met with Capt. *Parker*.

Mr. J. *Powel.* Did they fire any Guns at the *Mocca* Fleet?

Brad. Yes; Capt. *Kidd* fired divers Guns at them.

Mr. *Coniers.* After ſuch time as you left the *Mocca* Fleet, what happen'd after that? Recollect yourſelf.

Brad. We took a Ship, that Capt. *Parker* was Commander of, between *Carawar* and the *Red-Sea*.

Mr. *Coniers.* What Ship was this that Captain *Parker* was Commander of?

Brad. A *Mooriſh* Ship; ſhe came from *Bombay*, and Capt. *Parker* was the Maſter.

Mr. *Coniers.* What did you take from this Ship?

Brad. Capt. *Kidd* took out *Parker*, and a *Portugueſe* for a *Linguiſter*.

Mr. *Coniers.* A *Linguiſter*, What do you mean by that?

Brad. An Interpreter; he took out of her a Bale of Coffee, a Bale of Pepper, about twenty Pieces of *Arabian* Gold, and ordered ſome Men to be taken and hoiſted up by their Arms, and drubb'd with a naked Cutlace.

Mr. *Coniers.* Why did he do that?

Brad. That they might confeſs what Money they had.

Mr. *Coniers.* Were thoſe *Frenchmen* that were thus uſed?

Brad. No, they were *Moors*.

Mr. *Coniers.* Was there any Demand made of thoſe Men, Capt. *Parker* and the *Portugueſe*?

Brad. Yes; the *Engliſh* Factory ſent for this *Parker* and the *Portugueſe*, and he deny'd that he had any ſuch Perſons on board, for he kept them in a Hole.

Mr. *Coniers.* Do you know any Thing more?

Brad. Then he went to Sea, and that Night he met with a *Portugueſe* Man of War; the next Morning he came up with her, and the *Portugueſe* firſt fired at Captain *Kidd*, and he at him again; they fought four or five Hours. Capt. *Kidd* had ten Men wounded.

Mr. *Coniers.* So that there was nothing more than Fighting?

Brad. No.

Mr. *Coniers.* Go on. What did you do next?

Brad. We went to the Coaſt of *Malabar*.

Mr. *Coniers.* What did you go thither for?

Brad. We went to one of the *Malabar* Iſlands for Wood and Water, and Captain *Kidd* went a-ſhore, and ſeveral of his Men, and plundered ſeveral Boats, and burnt ſeveral Houſes, and ordered one of the Natives to be ty'd to a Tree, and one of his Men to ſhoot him.

Mr. *Coniers.* Pray go on: What was the Reaſon of his ſhooting this *Indian*?

Brad. One of his Men, that was his Cooper, had been a-ſhore, and ſome of the Natives had cut this Man's Throat, and that was the Reaſon he ordered his Men to ſerve this Man ſo.

Mr. *Coniers.* Pray go on, and give an Account of what afterwards.

Brad. Then we came back again to the *Malabar* Coaſt, and cruiſed; and in *October* he killed his Gunner, *William Moore*.

Mr. *Coniers.* Tell what happened next after that.

Mr. *Cowper.* Was this the *October* next after he left *England*, or the Year following?

Brad. It was in *October*, 1697.

Mr. *Coniers.* Well, go on.

Brad. Some time in *November* he took a *Mooriſh* Ship belonging to *Surat*; there were two *Dutchmen* belonging to her, the reſt were *Moors*. Captain *Kidd* chaſed this Ship under *French* Colours; and when the *Dutchman* ſaw that, he put out *French* Colours too. And Captain *Kidd* came up with them, and commanded them on board; and he ordered a *Frenchman* to come upon Deck, and to pretend himſelf Captain: And ſo this Commander comes aboard, and comes to this *Monſieur Le Roy* that was to paſs for the Captain, and he ſhews him a Paper, and ſaid it was a *French* Paſs. And Captain *Kidd* ſaid, *By God, Have I catch'd you? You are a free Prize to* England. We took two Horſes, ſome Quilts, *&c.* and the Ship he carried to *Madagaſcar*. In *December* he took a *Mooriſh* Ketch; ſhe was taken by the Boat; we had one Man wounded in taking of her.

Mr. *Coniers.* When was this done?

Brad. In *December*, 1697.

Mr. *Coniers.* What did you plunder then?

Brad. Our People took the Veſſel a-ſhore, and Captain *Kidd* took out of her thirty Tubs of Sugar, a Bale of Coffee, *&c.* and then he order'd the Veſſel to be turned a-drift.

Mr. *Coniers.* What followed in *January*?

Brad. *January* the 20th, Captain *Kidd* took a *Portugueſe* that came from *Bengal*: He took out of her two Cheſts of *Opium*, ſome *Eaſt-India* Goods, and Bags of Rice, *&c.*

Mr. *Coniers.* How long did you keep this Ship?

Brad. He kept this *Portugueſe* Ship about ſeven Days; he took out of her ſome Butter, Wax, and *Eaſt-India* Goods: He kept her till he was chaſed by ſeven or eight Sail of *Dutch*, and then he left her.

Mr. *Coniers.* My Lord, now we are come to that on which the Indictment is founded. Mr. *Bradinham*, give a particular Account of that.

Brad. Some time in *January*, Captain *Kidd* took the *Quedagh Merchant*; he gave her chaſe under *French* Colours: He came up with her, and commanded the Maſter aboard; and there came an old *Frenchman* in the Boat; and after he had been aboard a-while, he told Captain *Kidd* he was not the Captain, but the Gunner; and Captain *Kidd* ſent for his Captain on board his Ship.

Mr. *Coniers.* Who was that?

Brad. Mr. *Wright*.

Mr. *Coniers.* What Countryman was he?

Brad. An *Engliſhman*. He was ſent for aboard, and he came; and Captain *Kidd* told him, he was his Priſoner; and he ordered his Men to go aboard, and take Poſſeſſion of the Ship, and diſpoſed of the Goods on that Coaſt, to the Value of Seven or Eight thouſand Pounds.

Mr. *Coniers.* What Perſons were aboard her?

Brad. There was Captain *Wright*, and two *Dutchmen*, and a *Frenchman*, and ſome *Armenians*, and the reſt *Moors*.

Mr. *Coniers.* Did theſe *Armenians* make any Offer of any Money for their Ranſom?

Brad. Captain *Kidd* told them, they ſhould be ranſomed, if they made an Offer that he liked of; ſo they offered him Twenty thouſand *Rupees*. He told them, that was but a ſmall Parcel of Money, and the Cargo was worth a great deal more.

Mr. *Coniers.* Who did the Cargo belong to?

Brad. To thoſe *Armenians*, as I was inform'd by Captain *Wright*.

Mr. *Coniers.* What did he do with them?

Brad. He diſpoſed of ſome of them on the Coaſt of *India*.

Mr. *Coniers.* What did he do with the Proceed of the Goods he ſold?

Brad. He ſhared the Money.

Mr. *Coniers.* Had theſe Men (the other Priſoners) any of the Shares?

Brad. Yes, all of them. You were a Half-ſhare Man, and you a Half-ſhare Man. *(pointing at two of them.)*

Mr. *Coniers.* Mr. *Bradinham*, you ſay Captain *Wright* came aboard *Kidd*'s Ship?

Brad. Yes.

Mr. *Coniers.* Did he diſcourſe with him?

Brad. I was not with him, for he kept his Cabin to himſelf.

Mr. *Coniers.* But you are ſure he came aboard?

Brad. Yes.

Mr. *Coniers.* And he was an *Engliſhman*?

Brad. Yes.

Mr. *Coniers.* How did Captain *Kidd* behave himſelf to the Ships or Boats there?

Brad. He boarded ſeveral Ships, and took out of them what was for his Turn.

Mr. *Coniers.* How did he uſe thoſe that he traded with?

Brad. Some of them came aboard ſeveral times, and he traded with them: But ſome of them came aboard when he was going away, and he plundered them, and ſent them aſhore without any Goods.

Mr. *Coniers.* What Countrymen were thoſe he ſerved thus?

Brad. *Mahometans*: They had dealt with him before conſiderably.

Mr. *Coniers.* How much did he take from them?

Brad. About Five Hundred Pieces of Eight.

Mr. *Coniers.* How do you know that?

Brad. I ſaw it told afterwards. We went to *Madagaſcar* afterwards, and by the Way met with a *Mooriſh* Ship, and took out of her ſeveral Caſks of Butter, and other Things.

Mr. *Cowper.* What were the Crew of this Ship?

Mr. J. *Powel.* They are indicted for the *Quedagh Merchant*. Were all the Priſoners in that Action? You have given an Hiſtorical Account from the Beginning, that he was a meer Plunderer: But now you are to come to the *Quedagh*, for which they are indicted; go not beyond it.

Mr. *Coniers.* Look on the ſeveral Priſoners at the Bar, and tell, whether any of the Priſoners were at the Taking of the *Quedagh Merchant*?

Cl. of Arr. Was *William Kidd* there at the Time the Ship was taken?

Brad.

Bradinham. Yes.

Cl. of Arr. Was *Nicholas Churchill* there ?- ---*Bradinham.* Yes.

Cl. of Arr. Do you know *James Howe?* Was he there ?--*Brad.* Yes.

Cl. of Arr. Had he a Share ?----*Bradinham.* Yes.

Cl. of Arr. Had *Robert Lamley* a Share ?

Bradinham. Yes: He was a Servant, and had but half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *William Jenkins*, was he there, and had a Share ?

Bradinham. Yes.

Cl. of Arr. *Gabriel Loſſe*, did you know what he had ?

Bradinham. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *Hugh Parrot*, what had he ?---*Bradinham.* Half a Share.

Cl. of Ar. Had *Richard Barlicorn* a Share ?

Bradinham. He had half a Share of Money, and a whole Share of Goods.

Cl. of Arr. Had *Abel Owens* any ?---*Bradinham.* He had half a Share.

Abel Owens. Had I any of it ?---*Bradinham.* You had it: You took it.

Cl. of Arr. What had *Darby Mullins?*

Bradinham. He had half a Share of the Money, and a whole Share of the Goods.

Mr. *Coniers.* Now we have fully proved this as to the *Quedagh Merchant.*

Dr. *Newton.* When you came to *Madagaſcar*, what was done there ?

Bradinham. There came a *Canoo* to us with ſome *Engliſh* Men in her; they were formerly acquainted with Captain *Kidd*, and they told him, they had heard that he was come to take them, and hang them.

Dr. *Newton.* Who were they ?

Bradinham. They belong'd to the *Moco* Frigate.

Mr. *Coniers.* Give a particular Account of that Matter.

Bradinham. When we came to *Madagaſcar*, there came a *Canoo* off to us.

Mr. *Coniers.* From whom ?

Bradinham. From the *Moco* Frigate, Captain *Culliford* was the Commander; and there were ſome white Men in her, that had formerly been acquainted with Captain *Kidd*; they heard that he was come to take them, and hang them. He told them it was no ſuch thing, for he was as bad as they.

Mr. *Coniers.* Were they thought to be Pirates?

Bradinham. They were ſo.

Mr. *Coniers.* What was it that Captain *Kidd* ſaid ?

Bradinham. He aſſured them it was no ſuch thing; and afterwards went aboard with them, and ſwore to be true to them; and he took a Cup of Bomboe, and ſwore to be true to them, and aſſiſt them; and he aſſiſted this Captain *Culliford* with Guns, and an Anchor, to fit him to Sea again.

L. C. B. *Ward.* How came you to know all this? Was you aboard then?

Bradinham. I was aboard then, and I heard the Words.

Dr. *Newton.* Were any of the Goods divided at *Madagaſcar?*

Bradinham. Yes.

Mr. *Coniers.* Now look on the Priſoners again: You ſay, after he met with this Captain *Culliford*, you went and had a Diviſion made; pray, give an Account of it.

Bradinham. When we came to *Madagaſcar*, Captain *Kidd* ordered the Goods to be carried aſhore, and ſhared; and he had forty Shares himſelf.

Cl. of Arr. Had *Nicholas Churchill* a Share ?---*Bradinham.* Yes.

Cl. of Arr. Had *James Howe* a Share ?---*Bradinham.* Yes.

Cl. of Arr. Had *Robert Lamley* a Share ?---*Bradinham.* Yes.

Cl. of Arr. Had *William Jenkins* a Share ?---*Bradinham.* Yes.

Cl. of Ar. Had *Gabriel Loſſe* a Share ?---*Bradinham.* Yes.

Cl. of Arr. Had *Hugh Parrot* a Share ?---*Bradinham.* Yes.

Cl. of Arr. Had *Richard Barlicorn* a Share ?

Bradinham. Yes.

Cl. of Arr. Had *Abel Owens* a Share ?

Bradinham. Yes.

Cl. of Arr. Had *Darby Mullins* a Share ?

Bradinham. Yes.

Cl. of Arr. So that you ſay, every one of the Priſoners at the Bar had a Share.---*Bradinham.* Yes.

Mr. *Coniers.* What became afterwards of the *Adventure-Galley?*

Bradinham. She was ſo leaky, that ſhe had two Pumps going; and when ſhe came to ſhore, they left her, becauſe ſhe was not fit to go to Sea again: And ſo Captain *Kidd* went aboard the *Scuddee Merchant*, and deſigned to make a Man of War of her.

Mr. *Coniers.* What is that *Scuddee Merchant?* Do you mean the *Quedagh Merchant?*

Bradinham. Yes.

L. C. B. *Ward.* What became of that Ship afterwards ?

Bradinham. I left him at *Madagaſcar*, after the Money and Goods were divided; and can give no Account afterwards.

Dr. *Newton.* But you ſay, Capt. *Kidd* went aboard the *Quedagh.*

Bradinham. Yes.

Mr. *Coniers.* My Lord, we have done as to this Witneſs; if they will aſk any Thing they may.

Cl. of Arr. Will any of you aſk him any Queſtions ?

Kidd. He ſays, when he went out firſt from *England*, he went out of *Plymouth* in *May*, which he did not; for he went in *April*, therefore this is a Contradiction.

L. C. B. *Ward.* Mr. *Kidd*, if you will aſk him any Queſtions, you may. Do you deſire he ſhould be poſitive when you went from *Plymouth?*

Bradinham. It was about the Firſt of *May*, my Lord.

L. C. B. *Ward.* What Year ?

Bradinham. In the Year 1696.

Cl. of Arr. *Nicholas Churchill*, will you aſk him any Queſtions ?

Churchill. I would have went aſhore at *Carawar*, but the Captain would not let me.

L. C. B. *Ward.* It is proved, that you was at the taking of the *Quedagh Merchant*, and dividing the Goods.

Churchill. Yes, my Lord; but I could not help it; I was forced to do what the Captain ordered me.

Cl. of Arr. *James Howe*, will you aſk him any Queſtions ?

James Howe. Have not I obeyed my Captain in all his Commands ?

L. C. B. *Ward.* There is no doubt made of that. If any of you will aſk him any Queſtions, you may.

Kidd. Did you not ſee any *French* Paſſes aboard the *Quedagh Merchant?*

Bradinham. You told me you had *French* Paſſes; I never did ſee them.

Kidd. Did you never declare this to any body, that you ſaw theſe *French* Paſſes ?

Bradinham. No, I never did ſee any; but I only ſaid, I heard you ſay you had them.

Churchill. Had I any Share?

Bradinham. Yes.

Churchill. How will you prove that ?

Jenkins. My Lord, I aſk him, Whether I was not a Servant ?

L. C. B. *Ward.* Aſk the Witneſs what Queſtions you will.

Bradinham My Lord, he was a Servant.

L. C. B. *Ward.* Who was he Servant to ?

Bradinham. To *George Bullen.*

Jenkins. My Lord, I beg you will examine my Indenture, for I have it in my Pocket; I had nothing aboard that Ship but what my Maſter had.

Bradinham. But you had a Share of the Goods: I cannot tell whether your Maſter had it afterwards.

Cl. of Arr. *Gabriel Loſſe*, have you any Queſtion to aſk him ?

Gab. Loſſe. I have nothing to ſay to him, but to aſk him, Whether I did ever diſobey my Captain's Commands, or was any ways mutinous on board the Ship ?

Bradinham. No, I cannot ſay you did.

Cl. of Arr. *Hugh Parrot*, do you aſk him any Queſtions ?

Parrot. No.

Cl. of Arr. *Richard Barlicorn*, do you aſk him any more Queſtions ?

Barlicorn. I aſk him, Whether I was not the Captain's Servant ?

L. C. B. *Ward.* Yes, he ſays you was.

Cl. of Ar. *Abel Owens*, will you aſk him any Queſtions ?

Owens. I have nothing to ſay; but depend upon the King's Proclamation.

Cl. of Arr. *Darby Mullins*, have you any Queſtions to aſk him ?

Mullins. My Lord, he knows I had nothing but what Captain *Kidd* was pleaſed to give me.

L. C. B. *Ward.* Was he a Servant to Captain *Kidd*, or no ?

Bradinham. He had a half a Share of Money, and a whole Share of Goods.

Mr. J. *Powel.* What was the Reaſon ſome had whole Shares, and ſome half Shares ?

Bradinham. Some were able Seamen, and ſome Landmen or Servants. There were in all one hundred and ſixty Shares, whereof Capt *Kidd* had forty; and ſome of the Men had whole Shares, and ſome only half Shares.

Mr. *Cowper.* You told us at firſt, that in your Paſſage to *New-York*, you took a *French* Banker, and that he condemned her at *New-York.*

Bradinham. Yes.

Mr. *Cowper.* Did he offer to carry any other Ships he took to be condemned ?

Bradinham. No, Sir, never.

Mr. *Coniers.* Call *Joſeph Palmer.* (*Who appeared.*) Mr. *Palmer*, give my Lord, and the Jury, an Account, whether you were one of the Men that went with Capt. *Kidd* in the *Adventure-Galley.*

Palmer. Yes, I was.

Mr. *Coniers.* Then give an Account when you left *England*; and of your Proceedings in your Voyage.

Palmer. About the Laſt of *April*, or the Beginning of *May*, 1696, we went out of *Plymouth* to *New-York*, and by the Way took a *French* Banker. And in *July* we came to *New-York.* About the 6th of *February* we went to *Maderas.*

Mr. *Coniers.* When you were at *New-York*, was there any Publication of any Thing, to invite Men to come in to Captain *Kidd?*

Palmer. Yes, there were Articles ſet up for Men to come aboard Capt. *Kidd*'s Ship: He was to have forty Shares for his Ship, and every Man was to have a Share; and they were to give him ſix Pounds a Man for their Arms.

Mr. *Coniers.* How many Men was his Complement ?

Palmer. When we came from *New-York*, he had between one hundred and fifty and one hundred and ſixty Men.

Mr. *Coniers.* Give an Account what you did after this: Whither did you go then ?

Palmer. We went from *New-York* to *Maderas*, and from thence to *Bonaviſt*, and there we took in Salt; and from thence we went to *St. Jago*, and there we bought Proviſions; and from thence we went to *Madagaſcar.* When we were not far from the *Cape of Good Hope* he met with Capt. *Warren*, with three Sail of Men of War beſides himſelf; there was the *Tyger*, and the *King-fiſher*, and another Ship; and Capt. *Kidd* kept them Company about three or four Days, and after that went to *Madagaſcar*, and ſome time in *February* arrived there; and there we watered and victualled. We came to *Malabar* about the Firſt of *June.* Then we went to *Joanna*, and from thence to *Mahala*; and from thence to *Joanna* again: And then we met with ſome *Indian* Merchants; ſo we watered the Ship there, and did them no Harm: And from thence we went to *Mahala*, where Captain *Kidd* graved his Ship. We had a great Sickneſs in the Ship, and ſometimes we loſt four or five Men in a Day. And afterwards we went to *Joanna* again, and there came aboard ſeveral *French* Men and ſeveral *Engliſh* Men that had loſt their Ship. Thoſe *French* Men lent Captain *Kidd* ſome Money to mend his Ship. And after this, we came to a Place called *Mabbee*, in the *Red-Sea*, and took in Water, and *Guinea* Corn, that he took from the Natives: And from thence we went to *Babs-Key.*

Mr. *Coniers.* What Time was it that you came to that *Babs-Key?*

Palmer. In *July*, 1697.

Mr. *Coniers.* Now pray, tell us what paſſed there ?

Palmer. When Capt. *Kidd* came to *Babs-Key*, he ſtay'd there about three Weeks.

Mr. *Coniers.* Why did you ſtay there ? Tell us the Reaſon of it.

Palmer. I heard him ſay, *Come, Boys, I will make Money enough out of that Fleet.*

Mr. *Coniers.* Out of what Fleet?

Palmer. The *Mocca* Fleet. When we came to the Key, he ordered ſome of his Men to look out as Spies. He ſent his Boat three times to make a Diſcovery, and he gave them Orders, either to take a Priſoner, or to get an Account what Ships lay there. And the Boat went twice, and brought no News; but the third time they brought Word, that there were fourteen or fifteen Ships lying there ready to ſail; ſome of them had *Engliſh* Colours, ſome *Dutch* Colours, and ſome *Mooriſh* Colours: and there was a great Ship with red Colours, with her Fore-top-ſail looſe, ready to ſail. And Captain *Kidd* ordered his Men to take Care theſe Ships did not paſs by in the Night.

Mr. *Coniers.* You ſay, he order'd his Men to watch this Fleet: How did he order them?

Palmer. He order'd them by a Liſt in their Turns, to look out for the coming of this Fleet: And ſo after four or five Days the Fleet came down in an Evening, about the 14th or 15th of *Auguſt*: The next Morning Captain *Kidd* went after them, and he fell into the midſt of the Fleet, and there was a *Dutch* Convoy, and an *Engliſh* one among them. He went into the midſt of the Fleet, and fired a Gun after a *Mooriſh* Ship, and the two Men of War fired at us, but did no Harm, for they did not reach us. So we left the Fleet, and from thence went to *Carawar.*

Mr. *Coniers.* Tell what paſſed there.

Palmer. Then we met with a ſmall Veſſel belonging to *Aden.*

Mr. *Coniers.* What Country did it belong to?

Palmer. Black People, only there was one *Thomas Parker*, and a *Portugueze*, Don *Antonio*, on Board.

Mr. *Coniers.* Was he the Commander of the Ship?

Palmer. I cannot tell.

Mr. *Coniers.* What did Captain *Kidd* do with this Ship?—*Palmer.* He took this *Parker* for a Pilot, and the *Portugueze* for Linguiſter.

Mr. *Coniers.* What do you mean by that Word Linguiſter?

Palmer. An Interpreter, to ſpeak *Spaniſh* and *Portugueze.*

Mr. *Coniers.* Did he take any Thing out of the Ship beſides the Men?

Palmer. He took a Bale of Pepper, and a Bale of Coffee, and let the Ship go. But after this we went to *Carawar.*

Mr. *Coniers.* Before you let the Ship go, how were the Men uſed by him?

Palmer. He ordered ſome of the Men to be hoiſted up by their Arms, and drubb'd with a naked Cutlaſs: They were laid with their Hands backward.

Mr. *Coniers.* When they were hoiſted up, give an Account how they were uſed, and for what Reaſon.

Palmer. They were beat with a naked Cutlaſs, to make them diſcover what Money was aboard.

Mr. *Coniers.* What was the next Thing?

Palmer. He took out this *Parker* for a Pilot, and *Antonio*, the *Portugueze*, for a Linguiſter. I heard there was Money taken, but I did not ſee it.

Mr. *Coniers.* What did he do with thoſe Men?

Palmer. He kept them as the other Men were kept.

Mr. *Coniers.* Was there any Demand made of theſe Men?

Palmer. When we came to *Carawar*, the Factory demanded them, and he denied them.

Mr. *Coniers.* What Factory is this?

Palmer. An *Engliſh* Factory. There were one *Harvey* and *Maſon* came to demand theſe Men.

Mr. *Coniers.* And what ſaid Captain *Kidd* to them?

Palmer. He deny'd that he had any ſuch Men; and he kept them in the Hold, I believe, a Week. Several of his Men would have left him if they could.

Mr. *Coniers.* What did he do after this?

Palmer. He put to Sea, and met with a *Portugueze* Man of War, and fought her: He engaged her five or ſix Hours, and afterwards left her, and then he bought ſome Hogs of the Natives. After he went from this *Carawar*, he went to *Porto*, and took in ſome Hogs there. And then went to the Iſland of *Malabar*, and watered his Ship; and his Cooper went aſhore, and the Natives cut his Throat. And after this Captain *Kidd* ſent ſome Men aſhore, and order'd them, that if they ſhould meet any of the Natives, they ſhould kill 'em, and plunder 'em.

Mr. *Coniers.* Go on, Sir.

Palmer. After that they went to the Coaſt of *Malabar* again, and in *November* met with a Ship, and took her: One *Schipper Mitchel* was the Commander; ſhe was a *Mooriſh* Ship.

Mr. *Coniers.* What became of her?

Palmer. Capt. *Kidd* carried her to *Madagaſcar.*

Mr. *Coniers.* What Goods were in her?—*Palmer.* There were two Horſes, and ten Bales of Cotton, that he ſold to the Natives.

Mr. *Coniers.* Did he ſend for any aboard at this Time?

Palmer. There was a *Frenchman* that was to pretend himſelf the Captain. He took her under *French* Colours, and haled her in *French*; and this Monſieur *le Roy* was to paſs for Captain, and he ſhewed his *French* Paſs, and———

Mr. *Coniers.* Give an Account of his perſonating the Captain. Who order'd him ſo to do?

Palmer. Capt. *Kidd* order'd him ſo to do; and they haled him in *French*, and he came aboard, and he had a *French* Paſs. And then Captain *Kidd* told him, he was Captain.

Mr. *Coniers.* And he took the Ship?

Palmer. Yes, the Cotton and Horſes, and ſold them afterwards.

Mr. *Coniers.* Whither went you next?

Palmer. We coaſted about the Coaſt of *Malabar.*

Mr. *Coniers.* Did you meet with any Boats there?—*Palmer.* Yes, ſeveral.

Mr. *Coniers.* What did you do with them?—*Palmer.* Capt. *Kidd* robbed and plundered them, and turned them adrift again.

Mr. *Coniers.* What was the next Thing you did?

Palmer. About the Firſt of *January* we met with a *Portugueze* Ship.

Mr. *Coniers.* Where?—*Palmer.* On the ſame Coaſt we took her.

Mr. *Coniers.* What did you do with that Ship?

Palmer. He kept her a Week, and took out two Cheſts of *Indian* Goods, and thirty Jars of Butter, and a Tun of Wax, and half a Tun of Iron, and an hundred Bags of Rice.

Mr. *Coniers.* Did you take thoſe Goods you mentioned?

Palmer. Yes, and carried them aboard the *Adventure-Galley.*

Mr. *Coniers.* What was the next Ship you met with?

Palmer. The *Quedagh Merchant.*

L. C. B. *Ward.* Be very plain and particular in this, and how ſhe was taken; for this is the Ship in the Indictment, and for taking which the Priſoners are tried.

Palmer. About the laſt of *January* ſhe was taken: I was not then aboard the Galley, for then I was aboard the *November*, and was ordered to get Water. After three or four Days I went aboard; but I was not aboard at the Time ſhe was taken. About three or four Days after, I ſaw her, and Capt. *Kidd* was aboard; and I believe there were taken out of her Goods to the Value of ten or twelve Thouſand Pounds; which were ſold, ſome before they were put aſhore, and ſome after.

Mr. *Coniers.* To whom were they ſold?—*Palmer.* To the *Banians.* Captain *Kidd* kept the Seamen to help to ſail the Ships.

L. C. B. *Ward.* What became of the Money the Goods were ſold for?

Palmer. It was ſhared.

L. C. B. *Ward.* What Share had the Captain?

Palmer. He had forty Shares.

Cl. of Arr. What Share had *W. Kidd*?---*Palmer.* He had forty Shares.

Cl. of Arr. In Goods, or Money?

Palmer. In both Goods and Money.

Cl. of Arr. Look upon *Nich. Churchill*; what had he?---*Palmer.* He had near Two Hundred Pounds of each, which was a Man's Share.

Cl. of Arr. Look upon *James Howe*; Had he any Share?

Palmer. Yes, a whole Share.

Cl. of Arr. Had *Robert Lamley* any Share?---*Palmer.* He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. William Jenkins, Had he any Share?---*Palmer.* He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. Had *Gabriel Loffe* any Share?---*Palmer.* He had half a Share of the Money, and a whole Share of the Goods.

Mr. *Coniers.* Why had they no more?---*Palmer.* They were Land-men.

Cl. of Arr. Hugh Parrot, Had he any?

Palmer. He had a whole Share.

Cl. of Arr. Had *Richard Barlicorh* any Share?

Palmer. He had half a Share.

Cl. of Arr. Had *Abel Owens* any?—*Palmer.* He had a whole Share.

Cl. of Arr. Had *Darby Mullins* any Share?

Palmer. He had a whole Share.

Mr. *Coniers.* What became of the reſt of the Goods?

Palmer. They were carried to *Madagaſcar.*

Mr. *Coniers.* Who ordered the Goods to be hoiſted out and ſhared? Who ordered that?—*Palmer.* At the Beginning I was not there.

Mr. *Coniers.* Who ordered it?

Palmer. Capt *Kidd*: And moſt of the Goods were aſhore before I came back; and before I came back, he had his Share, and moſt of the reſt.

Mr. *Coniers.* How many of the Priſoners at the Bar had their Share of the Goods?—*Palmer.* All theſe Men.

Cl. of Arr. Whoſe Shares were divided to them before you went away?

Palmer. None; but only they were prepared in order to be divided.

L. C. B. *Ward.* Did you hear any of them ſay, they had any Shares.

Palmer. Yes, *Hugh Parrot*, and *Gabriel Loffe.*

Cl. of Arr. What ſay you to *William Kidd*? Did he own he had any Share?—*Palmer.* No.

Cl. of Arr. Did you hear *Nicholas Churchill* ſay he had any?

Palmer. No, I did not; I cannot ſay I heard them ſay ſo.

Cl. of Arr. Did you hear *Gabriel Loffe* and *Hugh Parrot* ſay, they had any Shares?—*Palmer.* Yes, I heard them ſay ſo.

Mr. *Coniers.* Whither did you proceed next?

Palmer. We left Captain *Kidd* there; I went no further with him.

Mr. *Coniers.* I aſk you, Whether you met with any Ships beſides what you mentioned?

Palmer. When we came to *Madagaſcar*, in the latter end of *April*, or beginning of *May* 1696, there was a Ship call'd *The Reſolution*, which was formerly call'd *The Mocca Frigate*; ſeveral of the Men came off to Captain *Kidd*, and told him, they heard he came to take, and hang them. He ſaid, that it was no ſuch Thing, and that he would do them all the Good he could. And Captain *Culliford* came aboard of Captain *Kidd*, and Captain *Kidd* went aboard of *Culliford.*

Mr. *Coniers.* Who was that *Culliford*?

Palmer. The Captain of the Ship. And on the Quarter-deck they made ſome Bomboo, and drank together; and Captain *Kidd* ſaid, Before I would do you any Harm, I would have my Soul fry in Hell-fire; and wiſhed Damnation to himſelf ſeveral times, if he did. And he took the Cup, and wiſhed that might be his laſt, if he did not do them all the Good he could.

Mr. *Powel.* Did you take theſe Men to be Pirates?

Palmer. They were reckoned ſo.

Dr. *Newton.* Did Captain *Kidd* make *Culliford* any Preſents?

Palmer. Yes, he had four Guns of him.

Dr. *Newton.* Of whom?

Palmer. Of Captain *Kidd*; he preſented him with them.

Mr. *Powel.* Was there not a Preſent on the other Side?

Palmer. I believe there was, I have heard ſo? I heard *Culliford* ſay, I have preſented Captain *Kidd* to the Value of four or five Hundred Pounds.

Mr. *Cowper.* Were theſe Kindneſſes done to *Culliford*, after *Culliford*'s Men ſaid, they heard Captain *Kidd* came to hang them?

Palmer. Yes.

Mr. *Cowper*. What did Captain *Kidd* do after that?

Palmer. He went aboard the *Quedagh Merchant*.

Mr. *Cowper*. What did he do with his own Ship?

Palmer. She was leaky, and he left her.

Mr. *Cowper*. Did he carry, or attempt to carry, any of the Ships he took, in order to condemn them, beſides that *French* Banker?

Palmer. He never did, nor talked of any ſuch thing.

L. C. B. *Ward*. Mr. *Kidd*, Will you aſk this Witneſs any Queſtions?

Kidd. I aſk him, Whether I had no *French* Paſſes?

Palmer. Indeed, Captain *Kidd*, I cannot tell. I did hear him ſay, that he had *French* Paſſes, but I never ſaw them.

L. C. B. *Ward*. Thoſe Goods that were taken out of the *Quedagh Merchant*, whoſe Goods were they ſuppoſed to be?

Palmer. The *Armenian* Merchants. I have heard Captain *Kidd* ſay ſeveral times, he had *French* Paſſes.

Kidd. And did you hear Nobody elſe ſay ſo?

Palmer. No.

Cl. of Arr. *Churchill*, Will you aſk any Queſtions?

Churchill. My Lord, I have no Queſtions to aſk him.

Cl. of Arr. *James Howe*, Will you aſk him any Queſtions?

J. Howe. No.

Cl. of Arr. *Robert Lamley*, will you aſk him any Queſtions?

R. Lamley. No.

Cl. of Arr. *William Jenkins*, Will you aſk him any Queſtions?

William Jenkins. Had I half a Share?

Palmer. You received half a Share of Money, and a whole Share of Goods.

Will. Jenkins. You know that I was a Servant, and had nothing in this Voyage but what my Maſter had.

Cl. of Arr. *Gabriel Loffe*, Will you aſk him any Queſtions?

G. Loffe. No.

Cl. of Arr. *Hugh Parrot*, Will you aſk him any Queſtions?

H. Parrot. No.

Cl. of Arr. *Richard Barlicorn*, Will you aſk him any thing?

R. Barlicorn. No.

Cl. of Arr. *Abel Owens*, Will you aſk him any thing?

A. Owens. No.

Cl. of Arr. *Darby Mullins*, Will you aſk him any thing?

D. Mullins. No.

Kidd. It is in vain to aſk any Queſtions.

L. C. B. *Ward*. Then you may make your own Defence. Come, Mr. *Kidd*, what have you to ſay in your own Defence?

Kidd. I had a Commiſſion to take the *French*, and Pirates; and in order to that, I came up with two Ships, that had *French* Paſſes both of them. I called you all a-Deck to conſult: And did not a great many of the Men go aboard? Did not you go? You know, Mr. *Palmer*, I would have given theſe Ships to them again, but you would not; you all voted againſt it.

Palmer. This Man *(pointing to the* Armenian *that was in Court)* offered you twenty thouſand Rupees for the Ship, and you refuſed it.

Kidd. Did not I aſk, Where will you carry this Ship? And you ſaid, We will make a prize of her; we will carry her to *Madagaſcar*.

Palmer. Says Captain *Kidd* to his Men, Theſe *Armenians* make ſuch a Noiſe for the Ship, that I muſt ſay, my Men will not Part with her; but there was not a quarter Part of the Men concerned in it. The *Armenians* came crying and wringing their Hands: Upon which, ſays Captain *Kidd*, I muſt ſay, my Men will not give them the Ship. And ſo ſome of the Men went on the Fore-caſtle, and pretended, they would not give them the Ship; but there was not a quarter Part of the Men concerned in it.

L. C. B. *Ward*. Did thoſe Goods belong to *Frenchmen*, or *Armenians*?

Palmer. To *Armenians*.

L. C. B. *Ward*. What was that Pretence of a *French* Paſs that was on board the *Quedagh Merchant*?

Palmer. I ſaw none.

Kidd. But you have heard of it.

Palmer. I have heard of it, but never ſaw it.

L. C. B. *Ward*. Mr. *Kidd*, have you any more to ſay? You ſpeak of a Commiſſion that you had; you may have it read, if you pleaſe.

Kidd. I deſire to have them both read.

L. C. B. *Ward*. Yes, they ſhall.

Then his Commiſſion of Repriſals upon the *French* was read.

‘*WILLIAM* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* Whereas We have taken into Our Conſideration the Injuries, Spoils, and Acts of Hoſtility committed by the *French* King and his Subjects, unto and upon the Ships, Goods, and Perſons of our Subjects extending to their grievous Damages, and amounting to great Sums; and that notwithſtanding the many and frequent Demands made for Redreſs and Reparation, yet none could ever be obtain'd: We did therefore, with the Advice of our Privy Council, think fit, and ordered, That general Reprizals be granted againſt the Ships, Goods, and Subjects of the *French* King; ſo that as well Our Fleets and Ships, as alſo all other Ships and Veſſels, that ſhall be Commiſſioned by Letters of Marque, or general Repriſals, or otherwiſe, ſhall or may lawfully Seize, and take all Ships, Veſſels, and Goods belonging to the *French* King, or his Subjects, or Inhabitants within any of the Territories of the *French* King: And ſuch other Ships, Veſſels, and Goods as are, or ſhall be liable to Confiſcation, and bring the ſame to Judgment in our High Court of Admiralty of *England*, or ſuch other Court of Admiralty as ſhall be lawfully Authoriſed in that behalf, according to the uſual Courſe and Laws of Nations. And whereas *William Kidd* is though fitly qualified, and hath Equipped, Furniſhed, and Victualled a Ship called *The Adventure-Galley*, of the Burthen of about Two hundred eighty-ſeven Tuns, whereof the ſaid *William Kidd* is Commander: And whereas he the ſaid *William Kidd* hath given Security with Sureties by Bond to Us, in Our ſaid High Court of Admiralty, according to the Effect and Form ſet down in certain Inſtructions made the ſecond Day of *May*, One thouſand Six hundred Ninety-three, and in the Fifth Year of our Reign, a Copy whereof is given to the ſaid Captain *William Kidd*: Know ye therefore that We, by theſe Preſents, grant Commiſſion to, and do Licenſe and Authoriſe the ſaid *William Kidd* to ſet forth in warlike Manner the ſaid Ship called *The Adventure-Galley*, under his own Command, and therewith by Force of Arms to Apprehend, Seize, and Take the Ships, Veſſels, and Goods belonging to the *French* King and his Subjects, or Inhabitants within the Dominions of the ſaid *French* King, and ſuch other Ships, Veſſels, and Goods, as are, or ſhall be liable to Confiſcation, and to bring the ſame to ſuch Port as ſhall be moſt convenient, in order to have them legally adjudged in our High Court of Admiralty, or ſuch other Court of Admiralty as ſhall be lawfully Authorized in that behalf; which being Condemned, it ſhall and may be lawful for the ſaid *William Kidd*, to ſell and diſpoſe of ſuch Ships, Veſſels, and Goods, ſo adjudged and condemned, in ſuch ſort and manner as by the Courſe of Admiralty hath been accuſtomed (except in ſuch Caſes where it is otherwiſe directed by the ſaid Inſtructions and the Act of Parliament thereunto annexed). Provided always, that the ſaid *William Kidd* keep an exact Journal of his Proceedings, and therein particularly take Notice of all Prizes which ſhall be taken by him, the Nature of ſuch Prizes, the Times and Places of their being taken, and the Values of them, as near as he can judge; as alſo of the Station, Motion and Strength of the Enemy, as well as he or his Mariners can diſcover by the beſt Intelligence he can get; and alſo whatſoever elſe ſhall come unto him, or any of his Officers, or Mariners, or be diſcovered or declared unto him or them, or found out by Examination, or Conference with any Mariners or Paſſengers of, or in any of the Ships or Veſſels taken, or by any other Perſon, or Perſons, or by any other Ways or Means whatſoever, touching or concerning the Deſigns of the Enemy, or any of their Fleets, Veſſels, or Parties, and of their Stations, Ports, and Places, and of their Intents therein; and of what Merchant Ships or Veſſels of the Enemy's bound out, or home, or to any other Place, as he, or his Officers, or Mariners ſhall hear of, and what elſe material in thoſe Caſes may arrive to his or their Knowledge; of all which he ſhall from Time to Time, as he ſhall, or may have Opportunity, tranſmit an Account to our Commiſſioners for executing the Office of Lord High-Admiral of England, or their Secretaries, and to keep a Correſpondence with them by all Opportunities that ſhall preſent. And further Provided, That nothing be done by the ſaid *William Kidd*, or any of his Officers, Mariners, or Company, contrary to the true Meaning of Our aforeſaid Inſtructions; but that the ſaid Inſtructions ſhall be by them, and each and every of them, as far as they, or any of them are therein concern'd, in all Particulars well and duly perform'd and obſerved. And we pray and deſire all Kings, Princes, Potentates, Eſtates, and Republicks, being our Friends and Allies, and all others to whom it ſhall appertain, to give the ſaid *William Kidd* all Aid, Aſſiſtance and Succour in their Ports with his ſaid Ship, Company and Prizes, without doing, or ſuffering to be done, to him any Wrong, Trouble, or Hindrance; We offering to do the like, when we ſhall be by them thereunto deſired. And We will and require all Our own Officers whatſoever, to give him Succour and Aſſiſtance as Occaſion ſhall require. This Our Commiſſion to continue in force till farther Order to the contrary from Us, or Our Commiſſioners for executing the Office of Lord High-Admiral of *England*. In Witneſs whereof We have cauſed the Great-Seal of Our High Court of Admiralty of *England* to be hereunto affixed. *Given at* London *the Eleventh Day of* December, *in the Year of Our Lord, One thouſand Six hundred Ninety-five, and in the Seventh Year of Our Reign.*

‘ORLANDO GEE, *Reg.*’

Mr. J. *Powel*. Capt. *Kidd*, Can you make it appear there was a *French* Paſs aboard the *Quedagh Merchant*?

Will. Kidd. My Lord, theſe Men ſay, They heard ſeveral ſay ſo.

Mr. *Coniers*. But all came from you.

L. C. B. *Ward*. If there was a *French* Paſs in the Ship, you ought to have condemned her as Prize.

Then his other Commiſſion was read for Cruiſing againſt the Pirates.

WILLIAM *R*.

‘*WILLIAM* III. By the Grace of GOD, King of *England*, *Scotland*, *France* and *Ireland*, Defender of the Faith, *&c.* To Our truſty and well-beloved Captain *William Kidd*, Commander of the Ship *Adventure-Galley*, or to any other the Commander for the Time being, *Greeting*. Whereas We are informed, That Captain *Thomas Too*, *John Ireland*, Captain *Thomas Wake*, and Captain *William Maze*, or *Mace*, and other Our Subjects, Natives or Inhabitants of *New-England*, *New-York*, and elſewhere, in Our Plantations in *America*, have aſſociated themſelves with divers other wicked and ill-diſpoſed Perſons, and do, againſt the Law of Nations, daily commit many and great Piracies, Robberies, and Depredations upon the Seas in the Parts of *America*, and in other Parts, to the great Hindrance and Diſcouragement of Trade and Navigation, and to the Danger and Hurt of our Loving Subjects, Our Allies, and all others Navigating the Seas upon their lawful Occaſions: *Now Know Ye*, That We being deſirous to prevent the aforeſaid Miſchiefs, and, as far as in Us lies, to bring the ſaid Pirates, Free-Booters, and Sea-Rovers to Juſtice, have thought fit, and do hereby Give and Grant unto you the ſaid Captain *William Kidd* (to whom Our Commiſſioners for Exerciſing the Office of Our Lord High-Admiral of *England*, have Granted a Commiſſion as a private Man of War, bearing Date the Eleventh Day of *December*, One thouſand

Six hundred and Ninety-five) and unto the Commander of the ſaid Ship for the Time being, and unto the Officers, Mariners, and others, who ſhall be under your Command, full Power and Authority to apprehend, ſeize, and take into your Cuſtody, as well the ſaid Captain *Thomas Too*, *John Ireland*, Captain *Thomas Wake*, and Captain *William Maze*, or *Mace*, as all ſuch Pirates, Free-Booters, and Sea-Rovers, being either our own Subjects, or of any other Nations aſſociated with them, which you ſhall meet upon the Coaſt or Seas of *America*, or in any other Seas or Ports, with their Ships and Veſſels, and alſo ſuch Merchandizes, Money, Goods, and Wares, as ſhall be found on board, or with them, in caſe they ſhall willingly yield themſelves: But if they will not ſubmit without Fighting, then you are by Force to compel them to yield. And We do alſo require you to bring, or cauſe to be brought, ſuch Pirates, Free-Booters, and Sea-Rovers, as you ſhall ſeize, to a legal Trial; to the End they may be proceeded againſt according to Law in ſuch Caſes. And We do hereby charge and command all our Officers, Miniſters, and other our loving Subjects whatſoever, to be aiding and aſſiſting to you in the Premiſes. And We do hereby enjoin you to keep an exact Journal of your Proceeding in the Execution of the Premiſes, and therein to ſet down the Names of ſuch Pirates, and of their Officers and Company, and the Names of ſuch Ships and Veſſels as you ſhall by virtue of theſe Preſents ſeize and take, and the Quantities of Arms, Ammunition, Proviſion, and Loading of ſuch Ships, and the true Value of the ſame, as near as you can judge. And We do hereby ſtrictly charge and command you, as you ſhall anſwer the ſame at your utmoſt Peril, That you do not in any manner offend, or moleſt any of our Friends or Allies, their Ships, or Subjects, by Colour or Pretence of theſe Preſents, or the Authority thereby granted. *In Witneſs whereof*, We have cauſed our Great Seal of *England* to be affixed to theſe Preſents. *Given at our Court at* Kenſington, *the Twenty-ſixth Day of* January, *One thouſand Six hundred Ninety-five, in the Seventh Year of our Reign.*’

L. C. B. *Ward.* Now you have had the Commiſſions read, what do you excuſe yourſelf by? What Uſe do you make of them to juſtify or defend yourſelf?

Will. Kidd. About this *Quedagh Merchant.*

L. C. B. *Ward.* What, would you have her a *French* Ship?

Kidd. Under a *French* Commiſſion. The Maſter was a Tavern-keeper at *Suratt*: Do not you know that, Mr. *Palmer*?

Palmer. I was not on board when this Paſs came; I never ſaw it.

L. C. B. *Ward.* But then you ſhould have condemned this Ship, if ſhe had been a *French* Ship, or had a *French* Paſs.

Kidd. The Evidence ſays, It was by my Order that the Goods were taken out; I was not at the ſharing of the Goods, I knew nothing of it.

L. C. B. *Ward.* Out of the Goods that were taken, ſome were ſold in the Country there, and the Produce of them was ſo much Money; it is proved, That that Money was divided; and purſuant to the Articles ſet up, you were to have forty Shares, and the reſt of the Men whole, or half Shares, as they deſerved. Now this Money, both theſe Men ſwear it was taken by you: And the firſt ſwears, That the Goods not ſold then, that remained in the Ship, were alſo divided, and that you had forty Shares of them: And the other ſays, He did not ſee the Goods divided, but two of the Men acknowledged it.

Kidd. My Lord, this *Frenchman* was aboard five or ſix Days before I underſtood there was any *Engliſhmen* aboard. Well, ſaid I, what are you? An *Engliſhman*, I am Maſter. What have you to ſhew for it? Nothing, ſays he. When they ſee a *French* Paſs, they will not let the Ship go.

Mr. J. *Powel.* You have produced Letters Patents that impowered you to take Pirates: Why did you not take *Culliford*?

Kidd. A great many of the Men were gone aſhore.

Mr. J. *Powel.* But you preſented him with great Guns, and ſwore you would not meddle with them.

L. C. B. *Ward.* When the Queſtion was put, Are you come to take us and hang us? you anſwered, I will fry in Hell before I will do you any Harm.

Kidd. That is only what theſe Witneſſes ſay.

L. C. B. *Ward.* Did you not go aboard *Culliford*?

Kidd. I was not aboard *Culliford.*

L. C. B. *Ward.* Theſe Things preſs very hard upon you. We ought to let you know what is obſerved, that you may make your Defence as well as you can.

Kidd. I deſire Mr. *Davis* may be called. (*He was called accordingly, and appeared.*) Mr. *Davis*, pray give an Account whether you did not ſee a *French* Paſs?

L. C. B. *Ward.* You are his Witneſs; you muſt anſwer what he aſks you.

Mr. *Davis.* I came a Paſſenger from *Madagaſcar*, and from thence to *Amboyna*, and there he ſent his Boat aſhore, and this Man was aſhore; and there was one ſaid, Capt. *Kidd* was publiſhed a Pirate in *England*; and he gave thoſe Paſſes to him to read. The Captain ſaid, they were *French.*

L. C. B. *Ward.* Who gave them?

Mr. *Davis.* Capt. *Kidd* gave them.

L. C. B. *Ward.* Did you know any thing of taking the *Quedagh Merchant*?---Mr. *Davis.* No, no.

L. C. B. *Ward.* Then you cannot ſay, they have any Relation to the *Quedagh Merchant*?---Mr. *Davis.* No, not I.

Kidd. You heard Capt. *Elms* ſay, They were *French* Paſſes.

Mr. *Davis.* Yes, I heard Capt. *Elms* ſay, They were *French* Paſſes. Says he, If you will, I can turn them into *Latin.*

Mr. Bar. *Hatſell.* Have you any more to ſay, Capt. *Kidd*?

Kidd. I have ſome Papers, but my Lord *Bellamont* keeps them from me, that I cannot bring them before the Court.

Cl. of Arr. Have you any more to ſay?

Kidd. I have ſome to call, that will bear Teſtimony to my Reputation.

L. C. B. *Ward.* Call whom you pleaſe, we will not abridge you.

Kidd. Call Mr. *Bradinham.* I deſire this of him, Whether he never ſaw the *French* Paſſes, and whether he did not tell Col. *Baſs* ſo?

Bradinham. I never ſaw a *French* Paſs; I only heard ſo.

Col. *Baſs.* I have heard Mr. *Bradinham* ſay, He heard Capt. *Kidd* ſay, he had *French* Paſſes on board; but I never heard him ſay, he ſaw them Paſſes.

Kidd. He juſt now denied that he ever ſaw the *French* Paſſes, or heard of them.

L. C. B. *Ward.* He ſays ſo now, that he never ſaw them, only he heard you ſay ſo. Col. *Baſs*, have you heard him ſay the Paſſes related to the *Quedagh Merchant*?

Col. *Baſs.* He has often ſaid, he heard *Kidd* ſay the *French* Paſſes were aboard.

Cl. of Arr. Have you any more Witneſſes to call?

Kidd. I deſire Mr. *Say* may be called: He is in the Priſon, I deſire he may be ſent for.

L. C. B. *Ward.* We will give you all the Liberty you can expect. If you have any more, you were beſt call them all together. In the mean time, what ſay you, *Churchill*?

Churchill. I deſire Col. *Baſs* may be called, and that this Affidavit may be read.

L. C. B. *Ward.* Col. *Baſs*, what have you to ſay for *N. Churchill*?

Col. *Baſs.* My Lord, I only wait for his Queſtion.

L. C. B. *Ward.* *Churchill*, what will you aſk Col. *Baſs*?

Churchill. Whether I did not ſurrender myſelf to him?

L. C. B. *Ward.* If you can make your Caſe come within the Proclamation, you muſt make it appear, that you ſurrendered according to the Directions of it.

Churchill. My Lord, we came in in the Year 1699, and ſurrendered ourſelves to Col. *Baſs.*

L. C. B. *Ward.* If you can make it appear that you ſurrendered yourſelves in purſuance of that, to the Perſons appointed to receive your Surrender, that will be ſomewhat to the Point; but Col. *Baſs* had not Power by that Proclamation to receive your Surrender; and therefore you cannot have any Benefit by it, unleſs you bring your Caſe within it. But you may call Col. *Baſs*, if you will.

Churchill. My Lord, we came in upon that Proclamation, and might have gone away any Day if we would; but we ſtay'd in the Country, and we never offer'd to go away till it was my Lord *Bellamont*'s Pleaſure to ſend for us.

L. C. B. *Ward.* You may call Col. *Baſs*, and hear what he ſays.

Churchill. Col. *Baſs*, will you be pleaſed to tell my Lord, whether we did not ſurrender ourſelves to you in purſuance of the King's Proclamation?

Col. *Baſs.* My Lord, about the 29th of *May*, 1699, I had an Account of ſome Perſons, that were ſuppoſed Pirates, that were come to ſurrender themſelves; and on my Landing, theſe two Perſons came to me, and ſurrendered to me the 4th of *June*, 1699. And I told them, I muſt refer their Caſe to his Majeſty at home.

L. C. B. *Ward.* Who were they that ſurrendered to you?

Col. *Baſs.* *Nicholas Churchill*, and *James Howe.*

L. C. B. *Ward.* Where were you Governour?

Col. *Baſs.* At the Province of *Weſt-Jerſey.*

Dr. *Oxenden.* How came they here?

Col. *Baſs.* I left them under Bail.

L. C. B. *Ward.* Did you ſend them over?

Col. *Baſs.* No, my Lord, I came to *England* before: I left them in Cuſtody. They were ſent over Priſoners by my Succeſſor.

L. C. B. *Ward.* What did they ſay to you when they ſurrendered themſelves to you?

Col. *Baſs.* They ſaid they had been in the *Indies*, and that they had committed ſeveral Piracies, and deſired they might have the Benefit of his Majeſty's Proclamation.

L. C. B. *Ward.* What Pirates did they mention to you?

Col. *Baſs.* They mentioned the *Mocca Frigate*, and Capt. *Kidd.*

Dr. *Oxenden.* Had you the Proclamation?

Col. *Baſs.* No; but I had ſeen one of them.

L. C. B. *Ward.* Did you take yourſelf allowed to receive their Surrender?---Col. *Baſs.* No, my Lord, I did not.

Cl. of Arr. *Nicholas Churchill*, have you quite done?

N. Churchill and *James Howe.* Yes, Sir, we came in upon his Majeſty's Proclamation.

Cl. of Arr. *Robert Lamley*, what have you to ſay?

Robert Lamley. My Lord, I was but a Servant.

L. C. B. *Ward.* Who was you a Servant to?

Robert Lamley. To Mr. *Owens.*

L. C. B. *Ward.* How does that appear?

Robert Lamley. The Surgeon knows it.

Bradinham. My Lord, he was concern'd with the Cook.

Robert Lamley. My Lord, here is my Indenture. (*Which was read.*)

Cl. of Arr. *William Jenkins*, what have you to ſay?

William Jenkins. I have nothing to ſay, but I was Servant to Mr. *Bullen.*

L. C. B. *Ward.* Where is your Witneſs to prove it?

Jenkins. Both the King's Witneſſes know it.

Bradinham and *Palmer.* My Lord, he was his Servant.

Cl. of Arr. *Gabriel Loffe*, what ſay you for yourſelf?

Loffe. My Lord, about the Year 1696, I entered myſelf on board Capt. *Kidd*, and went out with him, and I never diſobeyed his Command in any Thing.

L. C. B. *Ward.* Did he go out under the firſt Commiſſion?

Palmer. He came aboard at *New-York.*

L. C. B. *Ward.* Did you take him in before or after the Articles were ſet up?---*Palmer.* After the Articles were ſet up.

L. C. B. *Ward.* Did Capt. *Kidd* take any notice of his Commiſſion in the Articles?---*Palmer.* Yes, my Lord, he did mention them. I have a Copy of the Articles.

Mr. *Crawley.* Mr. *Palmer*, are theſe Articles the Copy of the Articles ſet up by Capt. *Kidd* at *New-York*?---*Palmer.* Yes.

Mr. J. *Gould.* Did you examine them ?

Palmer. To the beſt of my Knowledge they were a true Copy.

Mr. J. *Tourton.* Did you compare them with the Original ?

Palmer. No, my Lord.

Cl. of Ar. Gabriel Loffe, Have you any more to ſay ?

Loffe. Yes, a great deal more to aſk the Evidence.

Cl. of Arr. What will you aſk them ?

Loffe. Whether I did not obey the Captain ?

Mr. J. *Turton.* There is no Scruple to be made of that.

Loffe. I went out to ſerve his Majeſty under his Commiſſion.

L. C. B. *Ward.* But how came you to take part of the Money ?

Loffe. I had what they pleaſed to give me.

L. C. B. *Ward.* You muſt needs imagine, that when Capt. *Kidd* did theſe extravagant Things, and divided the Money and Goods, that he did not act according to his Commiſſion. What could you think of it ?

Cl. of Arr. Hugh Parrot, what have you to ſay for yourſelf ?

Parrot. My Lord, in the Year 1695, in the Month of *October*, I ſailed out of *Plymouth* in a Merchant-man, bound for *Cork* in *Ireland*, there to take in Proviſions; thence to the Iſland of *Barbadoes*; and in ſight of the Iſland of *Barbadoes*, I was taken by a *French* Privateer, and carried to *Martinico*; and thence coming in a Tranſport-ſhip, I was brought to *Barbadoes*; there I ſhip'd myſelf in a Veſſel bound to *Newfoundland*, and thence to *Maderas:* And then I went to *Madagaſcar*, and there I ſtay'd ſome ſhort time after, and came in Company with Capt. *Kidd*; and then the Commander and I had a falling out, and ſo I went aſhore at that Iſland: And underſtanding that Capt *Kidd* had a Commiſſion from the King, I came aboard Capt. *Kidd*'s Ship, and ever ſince have been with him.

L. C. B. *Ward.* Did you come in after he had been at *New-York?*

Parrot. This was in the Year 1697.

L. C. B. *Ward.* You have acted with him, and ſhared with him. Could you imagine he was acting according to his Commiſſion, when he was doing theſe Things ?

Parrot. I thought I was ſafe where the King's Commiſſion was.

L. C. B. *Ward.* The Commiſſion was to take Pirates, and not to turn Pirates.

Parrot. Mr. *Palmer*, did you ever ſee me guilty of an ill thing ? Did I ever diſobey my Captain ?

Palmer. You were always obedient to your Commander.

Parrot. Then I came to *Madagaſcar* with Captain *Kidd*, where I might have gone aboard a known Pirate, but I refuſed it, and kept Cloſe to my Captain: And when I came to *New-England*, I might have gone away as others did; but I had my Liberty at *Boſton* for about a Week, and went up and down, and I ſurrender'd myſelf.

L. C. B. *Ward.* You did not ſurrender yourſelf, but only you had a Liberty to go away, and did not.

Parrot. I thought there was no need of it. My Lord, I deſire you would aſk the Witneſſes, Whether I ever diſobeyed the Captain's Commands ?

L. C. B. *Ward.* They ſay no otherwiſe, but that you went willingly.

Cl. of Arr. Richard Barlicorn, what have you to ſay ?

Barlicorn. My Lord, I beg leave that I may produce ſome Evidence for my Reputation. Here is a Certificate from the Pariſh where I was born.

L. C. B. *Ward.* That will ſignify nothing; we cannot read Certificates; they muſt ſpeak *Viva Voce.*

Barlicorn. Call *Benjamin Bond*, *Daniel Phillips*, and *James Newton.*

L. C. B. *Ward.* What do you call theſe Witneſſes for ?

Barlicorn. To give an Account of my Reputation, what they know of me.

Benj. Bond. I knew him when he was a Child, and he was very civil and honeſt; I lived near him till he was 13 or 14 Years old: And he came of honeſt Parents, and behaved himſelf very civilly all that Time.

L. C. B. *Ward.* Have you known any Thing of him ſince ?

Bond. No, my Lord.

L. C. B. *Ward.* What have you to ſay further ?

Barlicorn. My Lord, I was a Servant to Capt. *Kidd*, and have been with him ſix Years; and I have a Certificate from ſeveral of my Relations that will teſtify it.

Cl. of Arr. Richard Barlicorn, have you any Thing more to ſay ?

Barlicorn. I am a Servant to Capt. *Kidd.*

L. C. B. *Ward.* How long have you been ſo ? Where was that you came firſt to be his Servant ?----*Barlicorn.* At *Carolina.*

Cl. of Arr. Abel Owens, what ſay you for yourſelf ?

Owens. My Lord, I deſire the Privilege of the Proclamation. I entered myſelf into the King's Service. I have been in the King's Service, according to his Majeſty's Proclamation. I deſire it may be read.
(*Which was done.*)

L. C. B. *Ward.* You deſire the Benefit of this Proclamation; but you muſt bring yourſelf under the Qualifications it requires, if you would have any Benefit of it.

Mr. *Crawley.* He has a Certificate of it.

L. C. B. *Ward.* Is it within the Proclamation ?

Mr. *Crawley.* The Certificate is dated the 15th of *March*, 1700, from Mr. *Riches*, a Juſtice of the Peace in *Southwark.*

L. C. B. *Ward.* Mr. *Riches*, I ſuppoſe, did believe he was within this Proclamation.

Mr. J. *Gould.* The Pardon extends to all Perſons for Piracies committed before that Time, if they ſurrender themſelves to ſuch and ſuch, and enter themſelves on board one of his Majeſty's Ships.

Mr. *Coniers.* A Juſtice of the Peace is not within the Proclamation.

Cl. of Arr. Have you any mere to ſay ?

Owens. Only to deſire the Benefit of the Proclamation.

L. C. B. *Ward.* He ſurrender'd himſelf to Juſtice *Riches*, and then entered himſelf aboard one of his Majeſty's Ships; and then there was Evidence againſt him when on board, and he was ſeized: This may be fit to recommend him to the King's Mercy, but it is not a Defence againſt the Accuſation.

Cl. of Arr. Darby Mullins, What do you ſay for yourſelf ?

Mullins. I came in upon the King's Act of Grace; I came aſhore with the reſt of the People.

L. C. B. *Ward.* What have you to ſhew, to entitle you to the Benefit of the Proclamation ?

Mullins. I was ready to die of the Bloody-Flux, and not able to go myſelf, but I ſent my Name in to the Governor.

L. C. B. *Ward.* Where was you when you was ſo ſick ?

Mullins. In *Weſt-Jerſey.* I came aſhore in *Cape May.* I was ſick like to die all the Way from *Madagaſcar*, expecting every Minute to die with the Bloody-Flux.

Dr. *Oxenden.* How came you to leave Captain *Kidd?*

Mullins. He uſed me very hardly, and therefore I left him.

L. C. B. *Ward.* You had a Dividend of the Money and Goods.

Mullins. He gave it me, and afterwards took it from me.

L. C. B. *Ward.* Was he your Maſter ?

Mullins. I had no Maſter.

Dr. *Oxenden.* How did you come to *Jerſey?*

Mullins. I came there with Capt. *Shelley*; he is in Court.

Dr. *Oxenden.* You were aboard Capt. *Culliford.*

Mullins. I came home, in hopes to get the King's Pardon.

L. C. B. *Ward.* That which you ſay is very odd; though you quitted Capt. *Kidd*'s Ship, you went into *Culliford*'s.

L. C. B. *Ward.* Capt. *Kidd*, you ſaid you had more to ſay juſt now; if you have, let us hear it.

Kidd. I deſire this Man may be heard two or three Words.

L. C. B. *Ward.* What is his Name ?

Kidd. Mr. *Say.*

Mr. *Say.* I happened to be at the *Treaſury-Office* in *Broad-ſtreet* to receive ſome Money, and Mr. *White* was there; and he aſked me, Will you go along with me, and ſee one *Elbury*, that is in the *Marſhalſea* for Debt? Says I, I am a Stranger to him, I do not care to go. Says he, Bear me Company. So I went with him; and when I came there I ſaw Capt. *Kidd*'s Men. And this Mr. *Elbury* was in Company with Capt. *Kidd*'s Surgeon. Says I, I am a Brother of the Quill, I ſhould be glad to drink a Glaſs with you. We ſtayed there but a little while, and aſked what that Man was ? Says he, He is Capt. *Kidd*'s Surgeon. Upon this I ſaid, Here is a mighty Noiſe about Capt. *Kidd.* Says he, I believe he has done but what he can anſwer, or that can do him any Hurt. Says I, Where have you been with him ? He ſaid at *Maagaſcar.*

L. C. B. *Ward.* Mr. *Bradinham* was with them, there is no doubt of that. It is not to be queſtioned, that he would not ſay any Thing ill of them then. Capt. *Kidd*, have you any Thing more to ſay ?

Kidd. Call Capt. *Humphreys.* (*Who appeared.*)

L. C. B. *Ward.* What Queſtions would you aſk him ?

Kidd. What do you know of me ?

Humphreys. I knew you, Sir, in the *Weſt-Indies* in the Beginning of the late War; and I know you had the Applauſe of the General, as I can ſhew by the General's Letter. I know nothing further of you.

Kidd. Did you know any Thing that I was guilty of any Piracies ?

Humphreys. No; but you had a general Applauſe for what you had done from time to time.

L. C. B. *Ward.* How long was this ago ?

Humphreys. Twelve Years ago.

L. C. B. *Ward.* That was before he was turned Pirate.

Kidd. Call Capt. *Bond.* (*Who appeared.*)

L. C. B. *Ward.* What do you call him for ?

Kidd. Capt. *Bond*, Pray, will you give an Account what you know of me ?

Bond. I know you was very uſeful at the Beginning of the War in the *Weſt-Indies.*

Mr. B. *Hatſell.* To be ſure, they had a good Opinion of him in 1695, when they granted him the Commiſſion.

Kidd. There is nothing in the World can make it appear I was guilty of Piracy; I kept Company with Capt. *Warren* for ſix Days.

Mr. *Coniers.* I believe you kept Company more with Captain *Culliford* than with Captain *Warren.*

Kidd. I never deſign'd to do any ſuch Thing.

Mr. *Coniers.* My Lord, we will ſay nothing at all; but leave it to your Lordſhip to direct the Jury.

Kidd. I have many Papers for my Defence, if I could have had them.

L. C. B. *Ward.* What Papers were they ?

Kidd. My *French* Paſſes.

L. C. B. *Ward.* Where are they ?

Kidd. My Lord *Bellamont* had them.

L. C. B. *Ward.* If you had had the *French* Paſſes, you ſhould have condemned Ships.

Kidd. I could not, becauſe of the Mutiny in my Ship.

L. C. B. *Ward.* If you had any Thing of Diſability upon you to make your Defence, you ſhould have objected it at the Beginning of your Trial; what you mean by it now I cannot tell. If you have any Thing more to ſay, you may ſay it, the Court is ready to hear you.

L. C. B. *Ward.* Gentlemen of the Jury, the Priſoners at the Bar, *W. Kidd*, *N. Churchill*, *J. Howe*, *R. Lamley*, *W. Jenkins*, *Gab. Loffe*, *Hugh Parrot*, *Rich. Barlicorn*, *Abel Owens*, and *Darby Mullins*, in Number Ten, ſtand all here Indicted for the Crime of Piracy, charged to be committed by them. And the Inſtance of the Crime is, for Feloniouſly and Piratically Seizing and Taking the Ship called *The Quedagh-Merchant*, with the Apparel and Tackling thereof, to the Value of 400*l.* and divers Goods mentioned in the Indictment, to the Value of 4500*l.* the Goods of ſeveral Perſons unknown, from the Mariners of the ſaid Ship, and this at High-Sea, within the Juriſdiction of the Court of Admiralty, about ten Leagues from *Cutſheen* in the *Eaſt-Indies* the 30th of *January*, 1697, and in the 8th Year of his Majeſty's Reign. Now whether all, or any, and which of theſe Priſoners, are guilty of this Crime of Piracy laid in this Indictment, or not guilty, it is your Part to determine according to the Evidence that has been given on both Sides. The Crime charged on them is Piracy, that is, Seizing and Taking this Ship and Goods in it, piratically and feloniouſly: The Time and Place is laid alſo in the Indictment. To make good this Accuſation, the King's Counſel have produced their Evidence; and two Witneſſes have been examined in this Caſe, each of them were in the Ship which took the *Quedagh Merchant*, and very well acquainted with all the Proceedings; that is, *Robert Bradinham* and *Joſeph Palmer*. The firſt has given you an hiſtorical Account of the whole Proceedings of Capt. *Kidd*, from his firſt going out of *England* in the *Adventure Galley*, to the Time of this Fact charged on them. They tell you, That about *May*, 1696, the King intruſted this Capt. *Kidd* with two Commiſſions, and they were both read to you: By one of them, under the Admiralty-Seal, he was authorized to ſet out as a Privateer the *Adventure-Galley*, and therewith to take and ſeize the Ships and Goods belonging to the *French* King, or his Subjects, and ſuch other as were liable to Confiſcation. And by the other Commiſſion, under the Broad-Seal of *England*, Authority was given for the Taking of ſome Pirates by Name, and all other Pirates in the ſeveral Places therein mentioned; but in no ſort to offend or moleſt any of the King's Friends or Allies, their Ships or Subjects, by Colour thereof. And by both Commiſſions, Command was given to bring all ſuch Ships and Goods, as ſhould be taken, to legal Trials and Condemnations. They tell us, That this Ship ſet out from *Plymouth* about *May*, 1696, and that in their Paſſage they did take a *French* Ship, and they did condemn that Ship. Now, Gentlemen, you muſt bear this in your Minds, that to make it Piracy, it muſt be the taking piratically and feloniouſly upon the High Sea, within the Juriſdiction of the Admiralty of *England*, the Goods of a Friend, that is, ſuch as are in Amity with the King. Now you ſee what Way they went to work, and what Meaſures they took. Captain *Kidd* goes out, and goes to *New-York*; and when he was there, he has a Project in his Head, of ſetting up Articles between himſelf and the People that were willing to be concerned with him: For now, whether it ſeems more probable from what followed, that Captain *Kidd* deſigned to manage himſelf according to the Meaſures given him, and the Powers of his Commiſſions, or any other Way, you muſt conſider; for it is told you, That between one hundred and fifty and one hundred and ſixty Men came in under theſe Articles, whereof the other Priſoners were Part, and concerned in them. And as to thoſe Articles, the Import of them was, That whatever ſhould be taken by theſe People in their Expeditions, ſhould be divided into one hundred and ſixty Parts, whereof Capt. *Kidd* was to have forty Shares for his Part, and the reſt were to have according to the Merit of each Party, ſome whole Shares, and ſome half Shares.

Now after theſe Articles, you perceive what Progreſs they made, and what Courſe they took; they went from one Place to another, and uſed a pretty deal of Severity wherever they came. A Deſign they had to go into the *Red-Sea*; and they had Expectations of the *Mocca* Fleet that lay at *Mocca*, and they ſent their Spies three times to get Intelligence: The two firſt times they could make no Diſcovery; but the third time they made an effectual Diſcovery, that the Fleet was ready to ſail; and in the mean time Capt. *Kidd* lay there in Expectation of this Fleet; and, as the firſt Witneſs tells you, Capt. *Kidd* ſaid, He intended to make a Voyage out of this Fleet. Well, he had a Diſcovery of this Fleet, and they came accordingly; and they tell you, that he and his Men in the Ship did attack one of the Ships: But theſe Ships being guarded by two Men of War, he could make nothing of them; however, he ſhewed what his Intention and Deſign was. Could he have proved, that what he did was in purſuance of his Commiſſions, it had been ſomething: But, what had he to do to make any Attack on theſe Ships, the Owners and Freighters whereof were in Amity with the King? This does not appear to be an Action ſuitable to his Commiſſion. After he had done this, he came to Land, and there, and afterwards at Sea, purſued ſtrange Methods, as you have heard. The ſeeming Juſtification he depends on, is his Commiſſions. Now it muſt be obſerv'd how he acted with relation to them, and what Irregularities he went by. He came to a Place in the *Indies*, and ſent his Cooper aſhore, and that Cooper was killed by the Natives; and he uſes Barbarity, and ties an *Indian* to a Tree, and ſhoots him to Death. Now he went from Place to Place, and committed Hoſtilities upon ſeveral Ships, dealing very ſeverely with the People.

But this being ſomething foreign to the Indictment, and not the Facts for which the Priſoners at the Bar are indicted, we are confined to the *Quedagh Merchant*; but what he did before, ſhews his Mind and Intention not to act by his Commiſſions, which warrant no ſuch Things. Gentlemen, you have an Account, that he met with this Ship, *The Quedagh Merchant*, at Sea, and took her; that this Ship belonged to People in Amity with the King of *England*; that he ſeized this Ship, and divers Goods were taken out of her and ſold, and the Money divided purſuant to the Heads contained in thoſe Articles ſet up at *New-York*. The Witneſſes that ſpeak to that, come home to every one of the Priſoners: They tell you, that this Dividend was made; that Captain *Kidd* had forty Shares of the Money, and the reſt of the Priſoners had their Proportions according to the Articles, ſome whole Shares, and ſome a half Share of that Money. After they had ſeized on the Ship, you hear of a certain Sort of Project, that a *Frenchman* ſhould come and pretend himſelf the Maſter, and produce, or pretend to produce, a *French* Paſs, under a Colour that theſe People's Ship and Goods, who were *Moors*, ſhould be *Frenchmen*'s Ship and Goods, or ſailed under a *French* Paſs, and ſo juſtify what he did under the Colour of his Commiſſion from the King. Now no Man knows the Mind and Intention of another, but as it may be diſcovered by his Actions. If he would have this to be underſtood to be his Intention, or that it was a Reality, that he took this as a *French* Ship, or under a *French* Paſs, then he ought to have had the Ship and Goods inventoried, and condemned according to Law, that he might have had what Proportion belonged to him, and that the King might have had what belonged to him, as his Commiſſions directed: But here was nothing of that done, but the Money and Goods that were taken were ſhared; and you have an Account likewiſe how ſome of the Goods were ſold, and the Money diſpoſed of, and how the remaining Goods were diſpoſed of; and one Witneſs ſpeaks poſitively of the Diſtribution of the Goods that remain'd unſold, that they were divided according to the ſame Proportions as the Articles mentioned, and every one of the Priſoners had his Share: There belong'd Forty Shares to Capt. *Kidd*, and Shares and half Shares to the reſt.

Now this is the great Caſe that is before you, on which the Indictment turns: The Ship and Goods, as you have heard, are ſaid by the Witneſſes to be the Goods of the *Armenians*, and other People that were in Amity with the King; and Captain *Kidd* would have them to be the Goods of *Frenchmen*, or at leaſt, that the Ship was ſailed under *French* Paſſes. Now if it were ſo, as Capt. *Kidd* ſays, it was a lawful Prize, and liable to Confiſcation; but if they were the Goods of Perſons in Amity with the King, and the Ship was not navigated under *French* Paſſes, it is very plain it was a piratical taking of them. Gentlemen, it is to be conſidered what Evidence Capt. *Kidd* hath given to prove that Ship and Goods to belong to the *French* King, or his Subjects, or that the Ship was ſailed under a *French* Paſs, or, indeed, that there ever was a *French* Paſs ſhewn or ſeen. He appeals indeed to the Witneſſes over and over again, Did you never ſee it? No, ſay they: Nor did not you, ſaith he, ſay you ſaw it? No, ſaith the Witneſs; I ſaid, that Capt. *Kidd* ſaid he had a *French* Paſs, but I never ſaw it. Now after all, the taking the *Quedagh Merchant* is brought down to Mr. *Kidd*, and the Priſoners with others, and the Diſtribution of the Money produced by the Sale of the Goods among Mr. *Kidd* and his Crew, whereof every one of theſe Priſoners were preſent at the ſame time, and had Proportions.

Now, Gentlemen, this muſt be obſerved; If this was a Capture on the High Sea, and theſe were the Goods of Perſons in Amity with the King, and had no *French* Paſs, then it is a plain Piracy. And if you believe the Witneſſes, here is a taking of the Goods and Ships of Perſons in Amity, and converting them to their own Uſe: Such a taking at Land as this would be Felony, and being at Sea it will be Piracy; for this is a taking the Ship from the right Owners, and turning it to their own Uſe. So that you have Evidence as to the ſeizing of the Ship, and dividing the Money riſing from the Goods ſold, and ſharing the Remainder according to the Articles.

Now, what does Captain *Kidd* ſay to all this? He has told you, he acted purſuant to his Commiſſion; but that cannot be, unleſs he gives you Satisfaction, that the Ship and Goods belonged to the *French* King, or his Subjects, or that the Ship had a *French* Paſs; otherwiſe neither of them will excuſe him from being a Pirate; for if he takes the Goods of Friends, he is a Pirate; he had no Authority for that; there is no Colour from either of his Commiſſions for him to take them: And as to the *French* Paſſes, there is nothing of that appears by any Proof; and, for aught I can ſee, none ſaw them but himſelf, if there were ever any. It is proved, That the People that were Owners of the Goods made him very large Offers to redeem the Ship (Twenty thouſand *Rupees*, as I remember); but he would not accept their Propoſal, but ſaid, *That is a ſmall Sum, the Cargoe is worth a great deal more*; or to that effect: And further ſaid, *He muſt anſwer theſe People, that his Men will not part with it*: And a *French* Man was to be ſet up for a mock Buſineſs, as you have heard; and if the Witneſſes ſay true, they were ſaid by the Captain of the Ship to be, and were reputed to be, the Ship and Goods of Friends, and not of Enemies; and if they were ſo, and had no *French* Paſs, then is he, and thoſe that were concerned with him, guilty of piratically taking this Ship, and of piratically ſeizing the Goods in the Ship; and neither of his Commiſſions will juſtify ſuch an Action as this. If he had acted purſuant to his Commiſſion, he ought to have condemned the Ship and Goods, if they were a *French* Intereſt, or ſailed under a *French* Paſs; but by his not condemning them, he ſeems to ſhew his Aim, Mind, and Intention, that he did not act in that Caſe by virtue of his Commiſſion, but quite contrary to it; for he takes the Ship, and ſhares the Money and Goods, and is taken in that very Ship by my Lord *Bellamont*, and he had continued in that Ship till that Time; ſo there is no Colour or Pretence appears, that he intended to bring this Ship to *England* to be condemned, or to have condemned it in any of the *Engliſh* Plantations, having diſpoſed of the whole Cargoe as aforeſaid. Here I muſt leave it to you to conſider, whether, according to the Evidence that appears, there is any Ground for him to ſay, he has acted by his Commiſſion in taking the *Quedagh Merchant* and Goods in her, or whether he has not acted contrary thereunto.

Now, for himſelf, he has called ſome Perſons here to give an Account of his Reputation, and of his Services done in the *Weſt-Indies*; and one of them ſays, about ten or twelve Years he did good Service there. Why, ſo he might, and might have, and 'tis very like he had, ſuch Reputation when the King truſted him with theſe Commiſſions, elſe I believe he had never had them; ſo that whatever he might be ſo many Years ago, that is not a Matter to be inſiſted on now, but what he hath been ſince, and how he hath acted in this Matter charged againſt him: So that, Gentlemen, as to Mr. *Kidd*, I muſt leave to you, whether he is guilty of Piracy or no? And if you believe him guilty upon the Evidence, you will find him ſo; if not, you will acquit him.

Now for the other Priſoners, it is proved they were all concerned in taking and ſharing the Ship and Goods in the Indictment; yet their Circumſtances differ pretty much among themſelves. There are three of them, that it has been made out to you, and owned by the King's Witneſſes, that they were Servants, *Robert Lamley*, *Will. Jenkins*, *Richard Barlicorn*. All theſe are made out to be Servants, and you have had the Indentures of two of them produced, and the King's Witneſſes prove them ſo, and they were admitted to be Servants. Now, Gentlemen, there muſt go an Intention of the Mind, and a Freedom of the Will, to the committing a Felony or Piracy. A Pirate is not to be underſtood to be under Conſtraint, but a free Agent; for in this Caſe the bare Act will not make him guilty, unleſs the Will make it ſo. Now a Servant, it is true, if he go voluntarily, and have his Propoſition, he muſt be accounted a Pirate; for then he acts upon his own Account, and not by Compulſion. And theſe

Perſons, according to the Evidence, received their Part; but whether they accounted to their Maſters for their Shares afterwards, yea or no, as they pretend, but make no Proof of it, I muſt leave that to you; and therefore there is a Conſideration to be had of them: For if theſe Men did go under the Compulſion of their Maſters, to whom they were Servants, and not voluntarily, and upon their own Accounts, it may difference their Caſe from others, who went and acted willingly in this Matter, and upon their own Accounts. So that as to thoſe that were Servants under the Command of their Maſters, that were preſent with them, I muſt leave it to you, whether you will diſtinguiſh between them and the others, that were not Servants, but free Agents. It is true, a Servant is not bound to obey his Maſter but in lawful Things, which they ſay they thought this was, and that they knew not to the contrary, but that their Maſters acted according to the King's Commiſſion; and therefore their Caſe muſt be left to your Conſideration, whether you think them upon the whole Matter Guilty or no. If you believe them Guilty, you will find them ſo, otherwiſe you will acquit them.

For the other Perſons, ſome of them pretend they came in on his Majeſty's Proclamation, and for that you muſt conſider the Evidence, and take it altogether, and conſider whether you are ſatisfied by what they have ſaid or prov'd, that they have brought themſelves within the Benefit of the King's Favour by that Proclamation. You have heard it read, and obſerv'd the Qualifications and Directions by it, and the Terms upon which the Pardon was promiſed, which are not made out to you, to be complied with by them; they may apply another way for the King's Mercy; this Court muſt proceed according to the Rules of Law and Juſtice: But then all of them hold on this; We were, ſay they, under the Captain, and acted under him as their Commander: And, Gentlemen, ſo far as they acted under his lawful Commands, and by Virtue and in Purſuance of his Commiſſions, it muſt be admitted they were juſtifiable, and ought to be juſtify'd: But how far forth that hath been, the Actions of the Captain and their own will beſt make it appear. It is not conteſted, but that theſe Men knew, and were ſenſible of what was done and acted, and did take Part in it, and had the Benefit of what was taken ſhared amongſt them: And if the taking of this Ship and Goods was unlawful, then theſe Men can claim no Advantage by theſe Commiſſions, becauſe they had no Authority by them to do what they did, but acted quite contrary to them. What had they to do to enter into ſuch Articles, and to act as they did? You muſt conſider the Evidence given here, according to the Rules of the Law; and if you are ſatisfied, that they have Knowingly and Wilfully been concerned or partaken with Capt. *Kidd* in taking this Ship, and dividing the Goods, and that Piratically and Feloniouſly, then they will be Guilty within this Indictment. It is worthy of Conſideration what appears upon the Evidence, that they met with one reputed to be a notorious Pirate, call'd *Culliford*; he was eſteemed an Arch-Pirate, and known to be ſo; yet this Capt. *Kidd*, that was commiſſion'd to take Pirates, inſtead of taking him, grows to ſuch an Intimacy with him, that he ſaid he would have his Soul fry in Hell before he would hurt him, or to that Effect; and ſo they made Preſents one to another; and Captain *Kidd* left three of his Men with him. Whilſt Men purſue their Commiſſions they muſt be juſtify'd; but when they do Things not authorized, or never acted by them, it is as if there had been no Commiſſion at all. I have diſtinguiſhed the Evidence as well as my Memory ſerves me, and muſt leave it to you to determine upon the whole Matter, who are Guilty, and who not? And ſuch as you are ſatisfied to be Guilty, you will find ſo, and ſuch as you are not ſatisfied to be Guilty, you will acquit.

[*Then the Jury withdrew, and after Half an Hour's Stay brought in their Verdict.*]

Cl. of Arr. Gentlemen of the Jury, anſwer to your Names, *John Cowper*, &c.

J. Cowper. Here, *&c.*

Cl. of Arr. Are you agreed of your Verdict?—*Omnes.* Yes.

Cl. of Arr. Who ſhall ſay for you?—*Omnes.* Foreman.

Cl. of Arr. Will. Kidd, Hold up thy Hand. (*Which he did.*) How ſay you, Is he Guilty of the Piracy whereof he ſtands indicted, or not Guilty? (*And ſo of the reſt.*)

Foreman. Guilty.

Cl. of Arr. Is *Nicholas Churchill* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *James Howe* Guilty, *&c.*?—*Foreman.* Guilty.

Cl. of Arr. Is *Robert Lamley* Guilty, *&c.*?—*Foreman.* Not Guilty.

Cl. of Arr. Is *William Jenkins* Guilty, *&c.*?—*Foreman.* Not Guilty.

Cl. of Arr. Is *Gabriel Loffe* Guilty, *&c.*?—*Foreman.* Guilty.

Cl. of Arr. Is *Hugh Parrot* Guilty, *&c.*?—*Foreman.* Guilty.

Cl. of Arr. Is *Richard Barlicorn* Guilty, *&c.*?—*Foreman.* Not Guilty.

Cl. of Arr. Is *Abel Owens* Guilty, *&c.*?—*Foreman.* Guilty.

Cl. of Arr. Is *Darby Mullins* Guilty, *&c.*?—*Foreman.* Guilty.

[*Then* William Kidd *and the other nine Perſons, were further Arraigned upon four Indictments, in manner following:*]

Cl. of Arr. William Kidd, Hold up thy Hand. (*Which he did, and ſo the other Nine.*)

You ſtand indicted by the Name of *William Kidd*, late of *London*, Mariner, *&c.*

The Jurors for our Sovereign Lord the King do, upon their Oath, Preſent, That *William Kidd*, late of *London*, Mariner; *Nicholas Churchill*, late of *London*, Mariner; *James Howe*, late of *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jenkins*, late of *London*, Mariner; *Gabriel Loffe*, late of *London*, Mariner; *Hugh Parrot*, late of *London*, Mariner; *Richard Barlicorn*, late of *London*, Mariner; *Abel Owens*, late of *London*, Mariner; and *Darby Mullins*, late of *London*, Mariner; the 20th Day of *September*, in the Ninth Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* by Force and Arms, *&c.* upon the High Sea, in a certain Place, diſtant about Fifty Leagues from the Port of *Carrawar*, in the *Eaſt-Indies*, and within the Juriſdiction of the Admiralty of *England*, did piratically and feloniouſly ſet upon, board, break and enter a certain Ship call'd *A Mooriſh Ship*, then being a Ship of certain Perſons (to the Jurors aforeſaid unknown), and then and there piratically and feloniouſly did make an Aſſault in and upon certain Mariners (whoſe Names to the Jurors aforeſaid are unknown) in the ſame Ship, in the Peace of God, and of our ſaid now Sovereign Lord the King, then and there being, piratically and feloniouſly did put the aforeſaid Mariners of the ſame Ship, in the Ship aforeſaid then being, in corporal Fear of their Lives, then and there in the Ship aforeſaid upon the High Sea, in the Place aforeſaid, diſtant about Fifty Leagues from the Port of *Carrawar* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, piratically and feloniouſly did ſteal, take and carry away One hundred Pound Weight of Coffee, of the Value of Five Pounds of lawful Money of *England*, Sixty Pound Weight of Pepper of the value of Three Pounds of lawful Money of *England*, One hundred Weight of *Myrrh*, of the Value of Five Pounds of lawful Money of *England*, and Twenty Pieces of *Arabian* Gold, of the Value of Eight Pounds of lawful Money of *England*, the Goods, Chattels and Moneys of certain Perſons (to the Jurors aforeſaid unknown) then and there upon the High Sea aforeſaid, in the aforeſaid Place, diſtant about Fifty Leagues from the Port of *Carrawar* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, being found in the aforeſaid Ship, in the Cuſtody and Poſſeſſion of the ſaid Mariners in the ſaid Ship, from the ſaid Mariners of the ſaid Ship, and from their Cuſtody and Poſſeſſion, then and there upon the High Sea aforeſaid, in the Place aforeſaid, diſtant about 50 Leagues from the Port of *Carrawar* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the King, his Crown and Dignity, *&c.*

How ſay'ſt thou, *William Kidd*, Art thou guilty of this Piracy and Robbery, whereof thou ſtandeſt Indicted, or not guilty?

William Kidd. Not guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance. (*And ſo of the other Nine.*)

Cl. of Arr. William Kidd, Hold up thy Hand. (*Which he did: And ſo the other Nine.*)

You ſtand indicted by the Name of *William Kidd*, late of *London*, Mariner. (*And ſo of the reſt.*)

The Jurors for our Sovereign Lord the King do, upon their Oath, Preſent, That *William Kidd*, late of *London*, Mariner; *Nicholas Churchill*, late of *London*, Mariner; *James Howe*, late of *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jenkins*, late of *London*, Mariner; *Gabriel Loffe*, late of *London*, Mariner; *Hugh Parrot*, late of *London*, Mariner; *Richard Barlicorn*, late of *London*, Mariner; *Abel Owens*, late of *London*, Mariner; and *Darby Mullins*, late of *London*, Mariner; the 27th Day of *November*, in the 9th Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* by Force and Arms, *&c.* upon the High Sea, in a certain Place, diſtant about four Leagues from *Callicut* in the *Eaſt-Indies*, and within the Juriſdiction of the Admiralty of *England*, did piratically and feloniouſly ſet upon, board, break, and enter a certain Ship called *A Mooriſh Ketch*, then being a Ship of certain Perſons (to the Jurors aforeſaid unknown), and then and there piratically and feloniouſly did make an Aſſault in and upon certain Mariners (whoſe Names to the Jurors aforeſaid are unknown) in the ſame Ship, in the Peace of God, and of our ſaid now Sovereign Lord the King, then and there being, piratically and feloniouſly did put the aforeſaid Mariners of the ſame Ship, in the Ship aforeſaid then being, in corporal Fear of their Lives, then and there in the Ship aforeſaid, upon the High Sea, in the Place aforeſaid, diſtant about four Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, piratically and feloniouſly did ſteal, take and carry away the ſame Ship, and the Apparel and Tackle of the ſame Ship, of the Value of Five hundred Pounds of lawful Money of *England*; Eleven Bales of Cotton, of the Value of Sixty Pounds of lawful Money of *England*; two Horſes, each of them of the Price of Twenty Pounds of lawful Money of *England*; and Fifty *Indian* Quilts of the Value of Five Pounds of lawful Money of *England* (the Goods and Chattels of certain Perſons to the Jurors aforeſaid unknown), then and there upon the High Sea aforeſaid, in the aforeſaid Place, diſtant about four Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, being found in the aforeſaid Ship, in the Cuſtody and Poſſeſſion of the ſaid Mariners in the ſame Ship, from the ſaid Mariners of the ſaid Ship, and from their Cuſtody and Poſſeſſion, then and there upon the High Sea aforeſaid, in the Place aforeſaid, diſtant about four Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the King, his Crown and Dignity, *&c.*

How ſay'ſt thou, *William Kidd*, Art thou Guilty of this Piracy and Robbery whereof thou ſtandeſt indicted, or not Guilty?

William Kidd. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance. (*And ſo of the other Nine.*)

Cl. of Arr. William Kidd, Hold up thy Hand. (*Which he did: And ſo the other Nine.*)

You ſtand indicted by the Name of *William Kidd*, late of *London*, Mariner. (*And ſo the reſt.*)

“ The Jurors for our Sovereign Lord the King do, upon their “ Oath, Preſent, That *William Kidd*, late of *London*, Mariner; *Nicholas Churchill*, late of *London*, Mariner; *James Howe*, late of *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jen-*

“ *kins*, late of *London*, Mariner; *Gabriel Loffe*, late of *London*, Mariner; *Hugh Parrot*, late of *London*, Mariner; *Richard Barlicorn*, late of *London*, Mariner; *Abel Owens*, late of *London*, Mariner; and *Darby Mullins*, late of *London*, Mariner; the Twenty-eighth Day of *December*, in the Ninth Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* by Force and Arms, *&c.* upon the High Sea, in a certain Place, diſtant about four Leagues from *Callicut*, in the *Eaſt-Indies*, and within the Juriſdiction of the Amiralty of *England*, did piratically and feloniouſly ſet upon, board, break and enter a certain Ketch, call'd *A Mooriſh Ketch*, then being a Ketch of certain Perſons (to the Jurors aforeſaid unknown), and then and there piratically and feloniouſly did make an Aſſault in and upon certain Mariners (whoſe Names to the Jurors aforeſaid are unknown) in the ſame Ship, in the Peace of God, and of our ſaid now Sovereign Lord the King, then and there being, piratically and feloniouſly did put the aforeſaid Mariners of the ſame Ketch, in the Ketch aforeſaid then being, in corporal Fear of their Lives, then and there in the Ketch aforeſaid, upon the High Sea, in the Place aforeſaid, diſtant about four Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, piratically and feloniouſly did ſteal, take, and carry away the ſaid Ketch, and the Apparel and Tackle of the ſame Ketch, of the Value of Fifty Pounds of lawful Money of *England*; thirty Tubs of Sugar-candy, of the Value of Fifteen Pounds of lawful Money of *England*; ſix Bales of Sugar, of the Value of Six Pounds of lawful Money of *England*; and ten Bales of Tobacco, of the Value of Ten Pounds of lawful Money of *England*, the Goods and Chattels of certain Perſons (to the Jurors aforeſaid unknown) then and there upon the High Sea aforeſaid, in the aforeſaid Place, diſtant about four Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, being found in the aforeſaid Ketch, in the Cuſtody and Poſſeſſion of the ſaid Mariners in the ſame Ketch, from the ſaid Mariners of the ſaid Ketch, and from their Cuſtody and Poſſeſſion, then and there upon the High Sea aforeſaid, in the Place aforeſaid, diſtant about four Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the King, his Crown and Dignity, *&c.*”

How ſay'ſt thou, *William Kidd*, Art thou guilty of the Piracy and Robbery whereof thou ſtandeſt indicted, or not Guilty?

Will. Kidd. Not guilty.

Cl. of Arr. How wilt thou be try'd?

Will. Kidd. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance. (*And ſo of the other Nine.*)

Cl. of Arr. *William Kidd*, hold up thy Hand. (*Which he did: And ſo the other Nine.*)

You ſtand indicted by the Name of *Will. Kidd*, late of *London*, Mariner, *&c.* (*And ſo of the reſt.*)

“ The Jurors for our Sovereign Lord the King do, upon their Oath, Preſent, That *William Kidd*, late of *London*, Mariner; *Nicholas Churchill*, late of *London*, Mariner; *James Howe*, late of *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jenkins*, late of *London*, Mariner; *Gabriel Loffe*, late of *London*, Mariner; *Hugh Parrot*, late of *London*, Mariner; *Richard Barlicorn*, late of *London*, Mariner; *Abel Owens*, late of *London*, Mariner; and *Darby Mullins*, late of *London*, Mariner; the Twentieth Day of *January*, in the 9th Year of the Reign of our Sovereign Lord, *William* the Third, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland* King, Defender of the Faith, *&c.* by Force and Arms, *&c.* upon the High Sea, in a certain Place, diſtant about twelve Leagues from *Callicut* in the *Eaſt-Indies*, and within the Juriſdiction of the Admiralty of *England*, did piratically and feloniouſly ſet upon, board, break, and enter a certain Ship, call'd *A Portugueze Ship*, then being a Ship of certain Perſons (to the Jurors aforeſaid unknown), and then and there piratically and feloniouſly did make an Aſſault in and upon certain Mariners, Subjects of the King of *Portugal* (whoſe Names to the Jurors aforeſaid are unknown) in the ſame Ship, in the Peace of God, and of our ſaid now Sovereign Lord the King, then and there being, piratically and feloniouſly did put the aforeſaid Mariners of the ſame Ship, in the Ship aforeſaid then being, in corporal Fear of their Lives, then and there in the Ship aforeſaid, upon the High Sea, in the Place aforeſaid, diſtant about twelve Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, piratically and feloniouſly did ſteal, take, and carry away two Cheſts of Opium, of the Value of Forty Pounds of lawful Money of *England*; eighty Bags of Rice, of the Value of Twelve Pounds of lawful Money of *England*; one Ton of Bees-wax, of the Value of Ten Pounds of lawful Money of *England*; thirty Jars of Butter, of the Value of Ten Pounds of lawful Money of *England*; and half a Ton of Iron, of the Value of Four Pounds of lawful Money of *England*, the Goods and Chattels of certain Perſons (to the Jurors aforeſaid unknown) then and there upon the High Sea aforeſaid, in the aforeſaid Place, diſtant about twelve Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, being found in the aforeſaid Ship in the Cuſtody and Poſſeſſion of the ſaid Mariners in the ſame Ship, from the ſaid Mariners of the ſame Ship, and from their Cuſtody and Poſſeſſion, then and there upon the High Sea aforeſaid, in the Place aforeſaid, diſtant about twelve Leagues from *Callicut* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the King, his Crown and Dignity, *&c.*”

How ſay'ſt thou, *William Kidd*, art thou guilty of the Piracy and Robbery whereof thou ſtandeſt indicted, or not guilty?

William Kidd. Not guilty.

Cl. of Arr. How wilt thou be tried?

Will. Kidd. By good and my Country.

Cl. of Arr. God ſend thee a good Deliverance. (*And ſo of the other Nine.*)

[*Then the Court adjourn'd till To-morrow Morning Eight a-Clock.*]

The further Proceedings againſt William Kidd, *and the other Nine Priſoners, on the four Indictments*, May *the Ninth*, 1701.

Cl. of Arr. CALL *William Kidd*, *Nicholas Churchill*, *James Howe*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *R. Barlicorn*, *Abel Owens*, and *Darby Mullins* to the Bar. You the Priſoners at the Bar, *William Kidd*, &c. thoſe Men that you ſhall hear call'd, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your ſeveral Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn. Call *William Smith.* (*Who appear'd; and there being no Challenges, the Twelve that were ſworn are as follows.*)

The JURY.

Will. Smith,
Benj. Hooper,
Jo. Hibbert,
Jo. Pettit,
Will. Hatch,
Joſ. Chaplain,
Peter Gray,
Rob. Comfort,
Tho. Hollis,
Will. Ford,
Tho. Stephens,
J. Dodſon.

Cl. of Arr. Cryer, count theſe: *William Smith.*

Cryer. One, *&c.*

Cl. of Arr. *Benjamin Hooper.*

Cryer. Two, *&c.* Twelve good Men and true, ſtand together and hear your Evidence.

[*Then the uſual Proclamation for Information was made; and the Priſoners being bid to hold up their Hands, the Clerk of Arraignments charg'd the Jury with them thus:*]

Cl. of Arr. “ You of the Jury, look upon the Priſoners, and hearken to their Cauſe. They ſtand indicted by the Names of *William Kidd*, &c. (*as before in the Indictment.*) Upon this Indictment they have been arraign'd, and thereunto have ſeverally pleaded, Not guilty; and for their Trial put themſelves on God and their Country, which Country you are. Your Charge is to enquire, whether they be guilty of the Piracy and Robbery whereof they ſtand indicted, or not guilty, *&c.*”

Nich. Churchill. May it pleaſe you, my Lord, I came in upon his Majeſty's Proclamation; and if that do not do, I throw myſelf upon the Mercy of the Honourable Bench.

Mr. Bar. *Hatſell.* If they will withdraw their Plea, and confeſs the Indictment, they may.

Nich. Churchill and *James Howe.* We refer ourſelves to the King's Proclamation.

Dr. *Oxenden.* But do you confeſs the Matter of the Indictment? You may do that if you will, and then you need not be try'd.

Abel Owens. My Lord, I came in upon the King's Proclamation, and enter'd myſelf aboard one of the King's Ships.

Dr. *Oxenden.* You muſt anſwer firſt, and come to your Defence afterward.

Abel Owens. I hope your Honours will grant it me, as well as the reſt, I enter'd myſelf into the King's Service.

Cl. of Arr. You of the Jury, look on the Priſoners, and hearken to their Cauſe. They ſtand indicted by the Name of *William Kidd*, &c.

Mr. J. *Turton.* You may try all the Indictments together, if they are the ſame Perſons concern'd.

Cl. of Arr. They are the ſame that are concern'd in the two firſt Indictments.

Mr. J. *Turton.* Then proceed upon theſe two together.

Cl. of Arr. They ſtand a ſecond Time indicted by the Name of *William Kidd*, late of *London*, Mariner. (*And ſo of the reſt.*) Upon theſe two Indictments they have been arraign'd, and thereto have ſeverally pleaded, Not guilty; and for their Trials have put themſelves on God and their Country, which Country you are. Your Charge is to enquire, Whether they are guilty of the ſaid Piracies and Robberies whereof they ſtand indicted, or not guilty, *&c.*

Mr. *Knapp.* May it pleaſe your Lordſhip, and Gentlemen of the Jury, theſe are two ſeveral Indictments againſt *William Kidd*, *&c.* and they are both for Piracy. One ſets forth, That the Priſoners at the Bar, on the Twentieth of *September*, in the Ninth Year of his Majeſty's Reign, fifteen Leagues from *Carrawar*, did piratically invade and take a Ship call'd *The Mooriſh Ketch*, and put the Mariners in fear of their Lives. The other Indictment ſets forth, that on the 27th of *November*, in the Ninth Year of his Majeſty's Reign, four Leagues from *Callicut*, the Priſoners at the Bar did ſeize and take another *Mooriſh* Ship; to both which Indictments they have pleaded, Not guilty.

If we prove the Fact, you muſt find them guilty. We will call Witneſſes. The Witneſſes are the ſame. The whole Story you have heard before, and we will apply ourſelves now to theſe Facts mention'd in theſe two Indictments.

Mr. J. *Turton.* You muſt open your Matter firſt, becauſe there is a new Jury.

Mr. *Knapp.* Then, my Lord, and Gentlemen of the Jury, This Capt. *Kidd* went out of *England* in a Ship call'd *The Adventure Galley.* He firſt went to *New-York*, and there he ſet out Articles to procure Men, and promis'd them that would come into him a Share in the Adventures they ſhould get. From thence he goes to *Babs-Key*, and lies about three Weeks there, watching for the *Mocca* Fleet: He ſent his Boat out three times to ſee in what Condition the Ships were. He could get no Intelligence the two firſt times, but the third time he did; they brought him Word they were fourteen or fifteen Ships ready to ſail, and that their Colours were *Engliſh*, and *Dutch*, and *Mooriſh.* He lay in wait for theſe Ships, and watch'd them; and when they came down, he fell in with them, and fired at them; but he found they were under an *Engliſh* and *Dutch* Convoy, and ſo away he went and left them. And then he came to cruiſe on the Coaſt of *Malabar*, and there he met with his firſt Prize, and that is the *Mooriſh* Ship mention'd in the firſt Indictment: They ſeiz'd and took this

Mooriſh Ship, and entered her, and took ſeveral Goods out of her, and then let the Ship go away. We will call our Witneſſes as to this Ship firſt. Call *Robert Bradinham* and *Joſeph Palmer*. *(Who appeared and were ſworn.)* Mr. *Bradinham*, what have you to ſay as to this Matter?

Mr. Bar. *Hatſell.* Tell it from the Beginning; from the Time you went out of *England*, to the Time of taking this Ship, becauſe there is a new Jury.

Bradinham. About the Beginning of *May*, 1696, we went out of *England*, and went to *New-York*, in the *Adventure-Galley*, whereof Capt. *Kidd* was Commander.

Mr. *Knapp.* Whither did you go?

Bradinham. To *New-York.* We took a Ship by the Way, and carried her to *New-York*, where we condemn'd her.

Mr. *Knapp.* What Ship was that?

Bradinham. A *French* Banker. At *New-York*, Capt. *Kidd* put up his Articles, That if any would come aboard his Ship, they ſhould be welcome, no Purchaſe no Pay, mentioning that he had the King's Commiſſion: From thence we went to *St. Jauger*, then to *Madeiras*, then to *Madagaſcar*, then to *Bonavis*, then to *Joanna*, and then to the *Red-Sea*, and then to *Babs-Key*; there he lay three Weeks looking for the *Mocca* Fleet.

Mr. *Knapp.* Where?——*Bradinham.* In *Babs-Key.*

Mr. *Knapp.* You ſay he lay there about a Fornight or three Weeks: How did he behave himſelf there?

Bradinham. He ſent out his Boat three Times; and the two firſt Times they could get no Intelligence.

Mr. J. *Turton.* Tell whoſe the *Mocca* Fleet was.

Bradinham. They belong'd to the *Moors*; they were Merchant-men belonging to the *Moors.*

Mr. *Knapp.* What News did they bring the third Time?

Bradinham. The third Time they brought Word, that there were fourteen or fifteen Ships in the Harbour ready to ſail.

Dr. *Newton.* What did he ſay then?

Bradinham. That he would take as many of them as he could; and did not doubt but to make a Voyage out of them.

Mr. J. *Turton.* What Account did the two firſt Boats bring?

Bradinham. No Account at all, my Lord.

Mr. J. *Turton.* What Notice did they bring the third Time?

Bradinham. They brought Word, that there were about fourteen or fifteen Ships in the Harbour ready to ſail.

Mr. J. *Turton.* Which Time was it that they brought that Word?

Bradinham. The third Time. Then the Fleet came down, and Capt. *Kidd* followed them.

Mr. *Knapp.* Were there any on Shore to watch this Fleet?

Bradinham. There were ſome ſent to the high Land of the Iſland, to ſee if the Fleet came; and when they ſaw it, they were to give a Sign with a Half-pike and Flag, and then the Boat was to fetch them off. At laſt the Fleet came down, and Capt. *Kidd* went among them, and fired at them; but finding they were under a Convoy, and too ſtrong for him, he was forced to leave them.

Mr. *Knapp.* Whither did you go then?

Bradinham. From thence we went to *Carrawar*, and by the Way we met with a *Mooriſh* Ship, of which Captain *Parker* was Commander.

Mr. *Knapp.* My Lord, that is the Ship that they are indicted for. Where was it that you met with that Ship?

Bradinham. About fifty Leagues from *Carrawar.*

Mr. *Knapp.* Pray, what did they do with that Ship?

Bradinham. We took Capt. *Parker*'s Ship, and took him aboard, and the *Portugueze* for a Linguiſter: and he took out ſome of the Men, and bound their Hands behind them, and ordered them to be drubb'd with a naked Cutlaſs; and he took out of her ſome Pepper and Coffee, and *Arabian* Gold, and wearing Apparel, and ſeveral other Things.

Mr. *Knapp.* What did he do with theſe Men, after he had plundered the Ship?

Bradinham. He let the Ship go, and kept *Parker* and the *Portugueze* aboard.

Dr. *Newton.* How many Men were there aboard the Ship?

Bradinham. About thirty.

Dr. *Oxenden.* What Countryman was this *Parker?*

Bradinham. He was an *Engliſhman.*

Dr. *Oxenden.* How do you know that?

Bradinham. He told me ſo.

Mr. *Knapp.* What Ship was it?--------*Bradinham.* A *Mooriſh* Ship.

Mr. *Knapp.* What Time was this done?

Bradinham. In *September*, 1697.

Mr. *Knapp.* What did he do with the two Men he took out of this Ship?

Bradinham. He kept them aboard this Veſſel.

Mr. *Knapp.* What Ship was Captain *Kidd* in then?

Bradinham. He was in the *Adventure-Galley.*

Mr. *Knapp.* Tell us, whether any other of theſe Priſoners at the Bar were in that Ship when this was done?

Bradinham. Every one of them.

Cl. of Arr. Was Captain *Kidd* himſelf there?------*Bradinham.* Yes.

Cl. of Arr. Was *Nicholas Churchill* there?------*Bradinham.* Yes.

Cl. of Arr. Was *James Howe* there?------*Bradinham.* Yes.

Cl. of Arr. Was *Robert Lamley* there?------*Bradinham.* Yes.

Cl. of Arr. Was *William Jenkins* there?------*Bradinham.* Yes.

Cl. of Arr. Was *Gabriel Loffe* there?------*Bradinham.* Yes.

Cl. of Arr. Was *Hugh Parrot* there?------*Bradinham.* Yes.

Cl. of Arr. Was *Richard Barlicorn* there?------*Bradinham.* Yes.

Cl. of Arr. Was *Abel Owens* there?------*Bradinham.* Yes.

Cl. of Arr. Was *Darby Mullins* there?------*Bradinham.* Yes.

Cl. of Arr. You ſay, you are ſure they were all there?

Bradinham. Yes, I am ſure they were.

Mr. J. *Turton.* What Goods did they take out of that Ship?

Bradinham. Several Bales of Pepper, ſeveral Bales of Coffee, and ſome Myrrh, which is a Gum.

Mr. Sol. Gen. What did they do with it?

Bradinham. Capt. *Kidd* made uſe of the Myrrh to make Pitch of.

Mr. Sol. Gen. What was the Value of the Myrrh?

Bradinham. About fifteen Pounds.

Mr. Sol. Gen. Where did they go after the taking of this Ship?

Bradinham. To *Carrawar.*

Mr. Sol. Gen. What did they do there?

Bradinham. There the Captain wooded and watered his Ship.

Dr. *Oxenden.* What is *Carrawar?* Tell the Court.

Bradinham. There is an *Engliſh* Factory; they ſent ſome Men aboard, and demanded this *Parker* and the *Portugueze*; and the Captain denied them, and kept them in the Hold, and would not let them know he had them on board.

Dr. *Oxenden.* Had they any Notice of *Parker*'s being on board Capt. *Kidd*'s Ship?

Bradinham. I ſuppoſe they had Information from *Bombay*, by the Mariners that went away; for Capt. *Parker*'s Veſſel belonged to that Place.

Mr. Sol. Gen. How far is that *Carrawar* from *Bombay?*

Bradinham. About forty Leagues.

Mr. Sol. Gen. Where did you go after that?

Bradinham. They cruiſed on that Coaſt, and they went to one of the *Malabar* Iſlands.

Mr. Sol. Gen. What was done there?

Bradinham. We wooded and watered our Ship.

Mr. Sol. Gen. Did they take any Ships there?

Bradinham. Capt. *Kidd* went aſhore there, and burnt ſome Houſes, and plundered ſeveral Boats.

Mr. Sol. Gen. Was there any Ship taken there?------*Bradinham.* Yes.

Mr. Sol. Gen. What Ship?

Bradinham. Some time in *November* (about the 17th of *November)* they took a *Mooriſh* Ship, Skipper *Mitchell* was the Commander.

Mr. B. *Hatſell.* You need go no further now.

Mr. *Knapp.* We will call the other Evidence, if you pleaſe, Mr. *Sollicitor.*

Mr. Sol. Gen. We will give our Evidence upon both Indictments together.

Mr. *Knapp.* They ſtand charged with taking another Ship. You have heard how far we have carry'd it. Now they went and took another Ship about the 17th of *November.*

Bradinham. They took a *Mooriſh* Ship four Leagues from *Callicut.*

Mr. J. *Turton.* Now go on.

Bradinham. Capt. *Kidd* took this *Mooriſh* Ship on the Coaſt of *Malabar*, Skipper *Mitchell* was the Commander; ſhe was a *Mooriſh* Ship: He took out of her two Horſes, ſome Bales of Cotton, and ſome Quilts.

Mr. B. *Hatſell.* What Countryman was this Skipper *Mitchell?*

Bradinham. A *Dutchman.*

Mr. B. *Hatſell.* What Ship was it?

Bradinham. A *Mooriſh* Ship; ſhe belong'd to *Surat.*

Mr. Sol. Gen. What Burthen was ſhe?

Bradinham. About 150 Ton.

Mr. Sol. Gen. What was found in her?

Bradinham. Two Horſes, and about eleven or twelve Bales of Cotton.

Mr. J. *Turton.* Was this on the Coaſt of *Callicut?*

Bradinham. It was on the Coaſt of *Malabar.*

Mr. *Knapp.* How far from *Malabar?*

Bradinham. Seven or eight Leagues.

Mr. Sol. Gen. What did they do after this with the Ship, and Goods, and People?

Bradinham. The People they ſet aſhore, and kept the Ship, and carry'd her to *Madagaſcar.*

Mr. Sol. Gen. What was the Value of the Horſes taken out of her?

Bradinham. The Horſes were worth about 40 *l.*

Mr. Sol. Gen. What the Cotton?

Bradinham. About an Hundred Pounds.

Mr. B. *Hatſell.* How do you know this Skipper *Mitchell* was a *Dutchman?*

Bradinham. He told me ſo; he came afterwards aboard Capt. *Kidd*, and took Arms under him.

Mr. Sol. Gen. Were all theſe Perſons aboard this Ship when ſhe was taken?-------*Bradinham.* Yes, my Lord.

Mr. B. *Hatſell.* You ſay, this Ship was about 150 Ton; What might ſhe be worth?------*Bradinham.* About 500 *l.*

Mr. B. *Hatſell.* To whom did ſhe belong?----*Bradinham.* To the *Moors.*

Mr. B. *Hatſell.* What *Moors?*

Bradinham. The *Moors* that belonged to *Suratt*, as I was inform'd by the *Moors.*

Mr. Sol. Gen. What did he do with the Ship afterwards?

Bradinham. She was carried to *Madagaſcar.*

Mr. Sol. Gen. What did they do with the Ship?

Bradinham. They ſunk her.

Mr. Sol. Gen. Do you know why they ſunk her?

Bradinham. She was ſunk voluntarily.

Kidd. This Man contradicts himſelf in an hundred Places.

Bradinham. The Ship was ſunk purpoſely.

Dr. *Newton.* What was done when you came to *Madagaſcar?*

Bradinham. When we came to *Madagaſcar*, there came off a Canoo with white Men aboard, that belong'd to the *Mocca* Frigate: Some of theſe Men belong'd formerly to Capt. *Kidd.* She was ſuppos'd to be a Pirate Ship.

Mr. Sol. Gen. What was the Reaſon of ſinking that Ship?

Bradinham. They ſunk her in the Harbour, that ſhe might be convenient for Veſſels to careen by. Some Men came off in this Canoo, and they told him, they heard he was come to take them, and hang them. He ſaid it was no ſuch Thing.

Dr. *Newton.* Who was the Captain of the *Mocca* Frigate?

Bradinham. Captain *Culliford.*

Dr. *Newton.* Was he a Pirate?----*Bradinham.* Yes, he was reputed ſo.

Mr. Sol. Gen. Well, go on.

Bradinham. Capt. *Kidd* ſwore he would be true to them, and that he would do them no Harm.

Mr. Sol. Gen. Did you hear all this?

Bradinham. Yes, he ſwore to be true to them.

Mr. *Knapp.* Was there any thing ſaid about Capt. *Kidd*'s taking her?

Bradinham. Nothing.

Dr. *Newton.* What paſſed afterwards between Capt. *Kidd* and *Culliford?*

Bradinham. They were very friendly together, and they made Preſents to one another.

Dr. *Newton.* What Preſents were there made?

Bradinham. *Culliford* gave to Capt. *Kidd* ſome Pieces of *China* Silk, and *Kidd* bid *Culliford* take any thing he had.

Mr. Sol. Gen. Did Capt. *Kidd* give *Culliford* any Guns?

Bradinham. He ſupply'd him with two Guns.

Dr. *Newton.* Was there any Diviſion of Goods or Money?

Bradinham. After we came to *Madagaſcar*, Capt. *Kidd* ordered the Goods to be hoiſted out, and ſhared, and Capt. *Kidd* had forty Shares for himſelf.

Mr. Sol. Gen. What became of the Goods of thoſe Ships?

Bradinham. They were ſold.

Mr. Sol. Gen. What was done with the Product of the Goods?

Bradinham. Capt. *Kidd* kept it; and when there was ſomething worth ſharing, he ſhared it, and he had forty Shares for himſelf.

Cl. of Arr. Had *N. Churchill* any Share?

Bradinham. He had a whole Share.

Cl. of Arr. Had *James Howe* any Share?

Bradinham. He had a whole Share.

Cl. of Arr. Had *R. Lamley* any Share?

Bradinham. He had half a Share.

Cl. of Arr. Had *W. Jenkins* any Share?

Bradinham. He had half a Share.

Jenkins. How can you atteſt theſe wicked Lies? I had nothing.

Mr. Baron *Hatſell.* Who ſhared it?---*Bradinham.* The Captain.

Kidd. He tells a thouſand Lies.

Cl. of Arr. Look on *Hugh Parrot*; Had he any Share?

Bradinham. Yes, half a Share of Money, and a whole Share of Goods.

Cl. of Arr. Had *R. Barlicorn* any Share?

Bradinham. He had half a Share.

Cl. of Arr. Had *Abel Owens* any Share?

Bradinham. He had a whole Share.

Cl of Arr. Had *Darby Mullins* any Share?

Bradinham. He had half a Share.

Mr. Sol. Gen. Now if any of you will aſk him any Queſtions you may.

Kidd. Mr. *Bradinham*, Pray what Share had you?

Bradinham. If my Lord aſk me, I will anſwer him.

Kidd. Had you any Share?---*Bradinham.* Yes.

Kidd. Did not you come aboard my Ship, and rob the Surgeon's Cheſt?

Bradinham. No, I did not.

Kidd. Did not I come to you, when you went away, and met you on the Deck, and ſaid, Why do you take the Cheſt away?

Bradinham. No, I did not do it.

Kidd. You are a Rogue.

Mr. J. *Turton.* It were the ſame thing for him to confeſs it, as to deny it, if he had done it.

Kidd. He did certainly do it.

Mr. Baron *Hatſell.* But he ſays he did not.

Mr. J. *Turton.* Would any of you aſk him any Queſtions?

Cl. of Arr. *Nich. Churchill*, Will you aſk him any Queſtions?

Churchill. I came in on the King's Proclamation, and depend wholly on it.

Kidd. Were there not any *French* Paſſes aboard that Ship?

Bradinham. I heard ſay there were, I did never ſee them.

Kidd. I did not divide the Things, but the Men did what they pleaſed, and you took your Share, and ſaw the *French* Paſſes.

Mr. Baron *Hatſell.* What Ship is that you mean; that taken in *September*, or that in *November*?

Bradinham. The *Mooriſh* Ship, that *Parker* was Commander of.

Mr. Baron *Hatſell.* There were two mentioned.

Kidd. Juſt now he told you of two in *November*; now he ſays one in *November*, another in *September*.

Mr. Baron *Hatſell.* He ſays, that in *September*, that *Parker* was Commander of.

Kidd. There was no ſuch Thing in *November*; he knows no more of theſe Things than you do. This Fellow uſed to ſleep 5 or 6 Months together in the Hold.

Mr. J. *Turton.* I aſſure you, he gives a very good Account of the Matter.

Mr. Baron *Hatſell.* Why did you give him a Share then?

Kidd. Becauſe he was Surgeon. As for the Goods, they took it amongſt them, and did what they pleaſed, I was never near them. They lay wait for me to kill me. They took away what they pleaſed, and went to the Iſland; and I, with about 40 Men, was left in the Ship, and we might go whither we pleaſed.

Mr. Sol. Gen. Mr. *Kidd*, Will you aſk him any Queſtions?

Kidd. No, no; ſo long as he ſwears it, our Words or Oaths cannot be taken.

Cl. of Arr. Will you aſk him any more Queſtions?

Kidd. No, no, it ſignifies nothing.

Cl. of Arr. *N. Churchill*, Will you aſk him any Queſtions?

Churchill. I came in upon his Majeſty's Proclamation, and rely upon that.

Cl. of Arr. *J. Howe*, Will you aſk him any Queſtions?

Howe. I ſurrendered myſelf upon the King's Proclamation, and plead Guilty.

Cl. of Arr. *R. Lamley*, Will you aſk this Witneſs any Queſtions?

Lamley. Do you ſay, I had half a Share of Money?--*Bradinham.* Yes.

Lamley. No, I had none.

Cl. of Arr. It was your Share, and you muſt make it appear, if you accounted for it to your Maſter.

Lamley. If your Lordſhip pleaſe, I was an Apprentice.

Mr. Baron *Hatſell.* To whom was you a Servant?

Lamley. I was an Apprentice to *A. Owens*.

Mr. J. *Turton.* Was *Lamley* an Apprentice to *Owens*?

Bradinham. My Lord, he was a Servant to *Owens*, who was aboard them.

Mr. J. *Turton.* He had half a Share, but perhaps he might account for it to his Maſter afterward.

Cl. of Arr. *W. Jenkins*, Will you aſk the Witneſs any Queſtions?

Jenkins. My Lord, I beg he may ſpeak the Truth, whether I was a Servant.

Bradinham. My Lord, he was a Servant to *George Bullen*.

Mr. J. *Turton.* Was this *Bullen* aboard then?---*Bradinham.* Yes.

Mr. J. *Turton.* When both Ships were taken?--*Bradinham.* Yes.

Cl. of Arr. Will you aſk the Witneſs any Queſtions, *G. Loſſe*?

Loſſe. My Lord, when I came aboard, the Captain open'd his Commiſſion there: Did I ever diſobey his Commands?

Bradinham. Not that I know of.

Loſſe. Did you ſee me receive any Share?

Bradinham. Yes, half a Share of Money, and a whole Share of Goods.

Loſſe. Where?----*Bradinham.* In great Cabin.

Cl. of Arr. What Queſtions will you aſk him, *Hugh Parrot*?

Parrot. May it pleaſe your Lordſhip, I will give you an exact Account from the Time of my going out of *England*, in the Month of *October*, 1695.———

Cl. of Arr. You may make your Defence afterwards; in the mean time, will you aſk him any Queſtions now?

Parrot. I appeal to him, Whether he ever ſaw me do any ſuch Cruelty as he mentions?--Mr. J. *Turton.* You hear what he ſays, anſwer him.

Bradinham. I cannot ſay you were the very Man that did it, but thoſe Men were uſed ſo: they were hoiſted up, and drubb'd with a naked Cutlaſs.

Parrot. And then I aſk him, Whether I ever went any further than my Commander order'd me, or againſt the King's Commiſſion, as I thought?

Bradinham. I cannot ſay you did any thing contrary to your Commander's Orders.

Parrot. I aſk him, Whether, when I might have went aboard this Pirate, I did not ſtick cloſe to my Captain, and come home with him? and Whether I had any Inclination to leave him?

Mr. J. *Turton.* He knows not your Inclination. Where did you leave Capt. *Kidd*? Will you aſk him that?

Parrot. I came home to *Boſton* with Capt. *Kidd*: Doctor, Did I go away with them that left Capt. *Kidd*?

Bradinham. You went with Capt. *Kidd* to *Madagaſcar*.

Parrot. I came home with Capt. *Kidd*, and ſurrender'd myſelf to my Lord *Bellamont*.

Cl. of Arr. *Abel Owens*, will you aſk the Witneſs any Queſtions?

Owens. I aſk the Witneſs, Whether I did not ſurrender myſelf?

Bradinham. I cannot ſay any thing to that.

Cl. of Arr. Will you aſk him any more Queſtions?

Owens. No, I ſtand to his Majeſty's Proclamation, and the Mercy of the Honourable Bench.

Cl. of Arr. *Darby Mullins*, will you aſk the King's Witneſs any Queſtions?

Mullins. No: May it pleaſe you, my Lord I came in upon the King's gracious Proclamation, as the King's Evidence knows. Do you not know I came aſhore with you about the 28th of *May*?

Bradinham. I know he went aſhore.

Mullins. I went aſhore. I came home upon the King's Proclamation. We went aſhore at *Cape May*. I was very ſick of the Bloody-Flux, and not able to travel, and was like to die every Day.

Bradinham. My Lord, I know this Man was very ſick in the Paſſage.

Mullins. I was a Paſſenger aboard Capt. *Shelly*'s Ship.

Mr. J. *Turton.* How came he to come aboard Capt. *Shelly*? Where did he leave Capt. *Kidd*?

Bradinham. He left Capt. *Kidd* at *Madagaſcar*, and took his Paſſage with Capt. *Shelly* afterwards, after theſe were taken.

Mr. Sol. Gen. How came he to leave Captain *Kidd* at *Madagaſcar*?

Bradinham. He went aboard Capt. *Culliford*'s Ship. There was about 60 or 70 Men went aboard *Culliford*.

Mr. *Knopp.* Call *Joſeph Palmer*.

Dr. *Oxenden.* He ſays, he came in upon the King's Proclamation to *Cape May*: Do you know any thing of that?---*Bradinham.* Yes.

Dr. *Oxenden.* Where is that *Cape May*?

Bradinham. Off of *Maryland*, where Capt. *Shelly*'s Ship was at Anchor; and Capt. *Gravenport* came on board Capt. *Shelly*'s Ship, and ſaid, He heard his Majeſty's Proclamation was out to receive Pirates that would come in; and the Men rejoic'd that there was ſuch a Thing, and they went aſhore, and ſurrender'd themſelves.

Dr. *Oxenden.* Where?----*Bradinham.* At *Cape May*.

Dr. *Oxenden.* Did he go to the Governor?

Bradinham. I did not ſee him go aſhore.

Cl. of Arr. *D. Mullins*, Will you aſk him any more Queſtions?

Mullins. You was aboard when I went aſhore.

Bradinham. I did not ſee you go aſhore.

Mr. Sol. Gen. Was he ſick when he went aſhore?

Bradinham. He was ſick.

Mullins. I was ſick, and expected to die every Moment.

Cl. of Arr. All was done before that Time.

Mr. Sol. Gen. Did he rejoice when he heard the King's Proclamation was out.

Bradinham. I heard him ſay the King's Proclamation was out, and he rejoic'd with others.

Mr. Sol. Gen. Did he ſurrender himſelf to the Governor?

Bradinham. I cannot ſay that; he went aſhore.

Mr. Baron *Hatſell.* Now ſet up *Joſeph Palmer*.

Mr. J. *Turton.* Gentlemen, I would not have you under any Miſtake, that ſurrendering himſelf comes not under your Conſideration; it was after all the Facts were done that the Priſoner is charg'd with.

Mr. *Knapp.* Mr. *Palmer*, give my Lord and the Jury an Account of what you know concerning Capt. *Kidd*'s Voyage from *England* in the *Adventure Galley*, when he went out of *England*, and his Proceedings afterwards.

Palmer. About the laſt of *April*, or beginning of *May*, he went from *Plymouth* to *New-York*, and in the Way took a *French* Banker, and carried her to *New-York*, and condemn'd her there: And at *New-York* he ſet up Articles to invite Men to come aboard his Ship; That if any would come aboard, they ſhould have a Share of ſuch Treaſure as he ſhould take: He was to have forty Shares himſelf, and every Man a half or whole Share. And about the firſt of *September* following, he went from *New-York* to *Madeiras*, from thence to *Bonavis*, from thence to *St. Jauger*, then to *Madagaſcar*, then to *Malábar*, then to *Joanna*, then to *Mahala*, then to *Joanna* again, then to the *Red Sea*.

Mr. *Knapp*. Pray, give an Account of what was done there.

Palmer. There he water'd, and took *Guinea* Corn to Victual his Ship; and then to *Babs-Key*, near the *Red-Sea*.

Mr. *Knapp*. Give an Account of what he did there.

Palmer. He ſent out his Boat three times to diſcover the Fleet, and likewiſe ſome Spies on the high Land to look out on both Sides, to ſee that the Ships did not paſs by.

Mr. Sol. Gen. What Ships?---*Palmer*. *Mooriſh* Ships from *Mocca*.

Mr. Sol. Gen. Whoſe Ships were thoſe *Mooriſh* Ships?

Palmer. They were *Turks* and *Moors* together.

Mr. *Knapp*. What did he do then?

Palmer. He call'd the Men by Lot to look out, and he ſent his Boat out twice, and they return'd without bringing any Tidings. And he ſent the Boat the third time, with Orders to take a Priſoner, or to ſee what Ships lay there. And the third time Word was brought, that there were about 14 or 15 Ships lay in the Road ready to ſail, with *Dutch*, *Engliſh*, and *Mooriſh* Colours: And when this News came, Capt. *Kidd* order'd the Men to go on the other Side, on the high Lands, to ſee that the Ships did not paſs by in the Night; and in 4 or 5 Days the Ships came down, about the 14th of *Auguſt*. The Fleet came down in the Evening, and Capt. *Kidd* went after them: And ſome of the Men ſaid, We will go among them To-night: No, ſays Capt. *Kidd*, we will go in the Morning, and then we will take our Choice.

Kidd. Did you hear me ſay ſo?----*Palmer*. I heard you ſay ſo.

Kidd. I am ſure you never heard me ſay ſuch a Word to ſuch a Loggerhead as you.

Palmer. Theſe are the Words I heard him ſay. And the next Morning he fell in with this Fleet, and went through them; and there was a *Dutch* and *Engliſh* Convoy; and they fired at one another.

Kidd. Hear me----

Mr. *Knapp*. You ſhall aſk him what Queſtions you will preſently.

Mr. J. *Turton*. Who fired firſt?

Palmer. The *Dutch* and *Engliſh* fired firſt. When we lay between the *Engliſh* and *Dutch*, a *Mooriſh* Ship came by, and he fired ſeveral Shot after her: And the *Engliſh* Ship flung a Shot almoſt home, and then he made ſail, and went out of the Fleet: And from thence he went to *Carrawar*, and in the Way met with a Ship, whereof *Parker* was Commander, and there was one *Antonio*, a *Portugueſe*.

Mr. Sol. Gen. Where was this done?

Palmer. About fifty Leagues from *Carrawar*.

Mr. Sol. Gen. What Time of the Year was it?

Palmer. It was about *September*.

Mr. Bar. *Hatſell*. The Witneſs is now come to ſpeak to the Ship for which the Priſoners are indicted.

Mr. Sol. Gen. Go on; What did they do with that Ship?

Palmer. He fought the Ship and took her, and took out of her ſeveral Bales of Coffee, and he retain'd only one Bale, and ſent the reſt back again: And he took a Bale of Pepper, and ſome Myrrh to uſe inſtead of Pitch.

Mr. Sol. Gen. What Quantity of Pepper was there?

Palmer. About ſixty Pound Weight

Mr. Sol. Gen. What Myrrh?----*Palmer*. About thirty Pound Weight.

Mr. Sol. Gen. What Value was it of?---*Palmer*. I cannot tell that.

Mr. Sol. Gen. What *Arabian* Gold?

Palmer. I did not ſee it: I did not ſee any taken out then; but a pretty while afterwards, when Capt. *Kidd* came to *Carrawar*, he gave every Meſs two Pieces of *Arabian* Gold.

Mr. *Knapp*. How long was this after the Ship was taken?

Palmer. Ten or Twelve Days.

Mr. Sol. Gen. How was the Pepper diſpos'd of?

Palmer. It was divided among the Meſſes.

Mr. Sol. Gen. Had theſe Priſoners their Part?---*Palmer*. Yes.

Mr. *Knapp*. How did they uſe the Men of this Ship?

Palmer. There were ſeveral hoiſted up, and drubb'd with a naked Cutlaſs.

Kidd. Where was this done?----*Palmer*. In your Ship.

Kidd. What Ship?----*Palmer*. The *Adventure Galley*.

Kidd. Did not a Parcel of Rogues go aboard their Ship, and do it?

Mr. *Knapp*. For what Purpoſe was this done?

Palmer. Becauſe they thought they had more Money in the Ship.

Mr. *Knapp*. What Country-man was *Parker*?

Palmer. An *Engliſhman*, born in the North of *England*. He ſaid ſo.

Mr. J. *Turton*. Who elſe was detain'd beſides *Parker*?

Palmer. One *Antonio*, a *Portugueſe*. *Parker* was detain'd for a Pilot; the other for a Linguiſter.

Mr. J. *Turton*. What do you mean by a Linguiſter?

Palmer. To ſpeak *Mooriſh* and *Portugueſe*.

Mr. Sol. Gen. Where did they go then?

Palmer. From thence we went to *Carrawar*, and water'd and wooded the Ship; and a great many of his Men left him there: And when he ſaw his Men leave him he went to Sea; he would not truſt any more to go aſhore. And the next Evening he met a *Portugueſe* Man of War, and fought her, but did not take her.

Mr. J. *Turton*. Did you know any that left him?

Palmer. *Peter Lebair*, and *Churchill*, and others; they went to the *Engliſh* Factory, to know whether they would entertain them, or no.

Mr. J. *Turton*. Who went?

Palmer. Mr. *Lebair*, *Nicholas Churchill*, and another; they went to know whether they ſhould be entertain'd; and they told them, They were loth to entertain them, for fear Captain *Kidd* ſhould know of it, and do them an Injury.

Kidd. My Lord, a Parcel of theſe Men went aſhore to run away with this Ship.

Mr. J. *Turton*. Were there any more of theſe Priſoners at the Bar, that would have gone off beſides *Churchill*?

Palmer. No; but he would have gone off.

Mr. J. *Turton*. How do you know that?---*Palmer*. He told me ſo.

Mr. Bar. *Gould*. Had they an Opportunity to go off?

Palmer. Some more were taken going afterwards, and had got a Boat for that Purpoſe; but they were taken, and Capt. *Kidd* order'd them to be brought aboard, and whipp'd at the Gun.

Kidd. Certainly you have not the Impudence to ſay that!

Palmer. I ſay, you order'd them to be whipp'd, for attempting to go aſhore.

Mr. Sol. Gen. Whither did you go then?

Palmer. That Evening we went and met with a *Portugueſe* Man of War.

Mr. Sol. Gen. You may go on from that. Whither did you go then?

Palmer. To the *Malabar* Iſlands.

Mr. Sol. Gen. What to do?

Palmer. To take in Water. His Cooper went aſhore, and the Natives cut his Throat: And Capt. *Kidd* ſent his Men aſhore, and order'd them to divide themſelves into Squadrons, and to burn all the Houſes they came near, except the Houſes that had white Flags upon them.

Mr. Sol. Gen. Why not them?

Palmer. Becauſe they help'd us to water the Ship.

Mr. *Knapp*. And were there any Houſes burnt?

Palmer. Yes, a great many.

Mr. *Knap*. What did he more?

Palmer. I heard what he did; I did not ſee it.

Mr. Bar. *Hatſell*. What do you know of any other Ship?

Palmer. About the 27th of *November* he took the Ship *Maiden*, near *Callicut*. We ſpy'd a Ship in the Night, and chaced her all Night, and the next Morning he took her.

Mr. J. *Turton*. What Ship was that?

Palmer. Skipper *Mitchel* was Commander; it was a *Mooriſh* Ship, ſhe belong'd to *Suratt*; ſhe was taken in *November*, and after that ſhe was called the *November*.

Mr. Sol. Gen. How was ſhe taken?

Palmer. Capt. *Kidd* chaced her under *French* Colours; and this Ship had *French* Colours; and when he haled her it was in *French*, and this Skipper *Mitchel* anſwer'd in *French*.

Mr. Sol. Gen. Had the *Mooriſh* Ship *French* Colours before Capt. *Kidd* put up *French* Colours, or after?---*Palmer*. After.

Mr. Sol. Gen. What Colours had ſhe when ſhe was chaced at firſt?

Palmer. It was in the Night: In the Morning Capt. *Kidd* hoiſted up *French* Colours, and then the *Mooriſh* Ship likewiſe hoiſted up *French* Colours.

Mr. Sol. Gen. What follow'd?---*Kidd*. Speak true.

Palmer. I will. He fired three or four Shot at the Ship, and commanded them aboard; and *Mitchel* did ſo, and ſome of his Men with him; and he order'd Monſieur *Le Roy* to be as Captain; and he came from below Deck, and receiv'd him as Captain.

Kidd. Did you ſee that?

Palmer. I did not ſee that; but I know he was order'd to do ſo, and he receiv'd him as Captain; I was not in the Cabbin at that time. Monſieur *Le Roy* receiv'd him as Captain, and carried him aft. They haled this Ship in *French*, and bid him come aboard in *French*, and this *Frenchman* receiv'd him as Captain; and I heard him ſay, That he brought a *French* Paſs along with him.

Mr. Sol. Gen. Who did you hear ſay ſo?

Palmer. I heard People on board ſay ſo.

Kidd. *Palmer*, Did you ſee that paſs?

Palmer. Indeed, Captain, I did not.

Mr. Sol. Gen. What did you do with the Ship?

Palmer. There were two Horſes on board, and ten or twelve Bales of Cotton, and ſome Quilts, and Capt. *Kidd* ſold them at *Malabar*.

Mr. Sol. Gen. What Goods were there?---*Palmer*. Two Horſes.

Mr. Sol. Gen. What beſides?

Palmer. Ten or twelve Bales of Cotton, and ſome Quilts.

Mr. J. *Turton*. What Countryman was Skipper *Mitchel*, the Captain?

Palmer. A *Dutchman*.

Mr. Sol. Gen. What was the Ship worth?

Palmer. I cannot tell the Value of her.

Mr. Sol. Gen. What Burden was ſhe?---*Palmer*. About 150 Ton.

Mr. Sol. Gen. What did they do with thoſe Horſes, and the Cotton?

Palmer. They ſold them to the *Banians*.

Mr. Sol. Gen. What did they do with the Produce of thoſe Goods?

Palmer. Capt. *Kidd* kept it till they had a pretty deal of Money together, and then they ſhared it.

Mr. *Sol. Gen.* Had the Priſoners at the Bar any Shares of it?

Palmer. Yes.

Cl. of Arr. Had Capt. *Kidd* himſelf any Share?---*Palmer*. Yes.

Cl. of Arr. Had *Nicholas Churchill* any Share?

Palmer. Yes, he had a whole Share.

Cl. of Arr. Had *James Howe* any Share?----*Palm*. Yes, a whole Share.

Mr. J. *Turton*. Where did they ſhare it?

Palmer. On the Coaſt of *Malabar*.

Cl. of Arr. Had *Robert Lamley* any?---*Palmer*. Yes, half a Share.

Cl. of Arr. Had *William Jenkins* any Share?

Palmer. He had half a Share.

Cl. of Arr. Had *Gabriel Loffe* any?---*Palmer*. He had half a Share.

Cl. of Arr. Had *Hugh Parrot* any?---*Palmer*. He had a whole Share.

H. Parrot. Did you ſee me have any Share? Can you ſpeak that to my Face now? Did you ſee any of us have any?

Palmer. When Capt. *Kidd* ſhared this Money, I did not actually ſee him pay their Shares; but he call'd every Man by the Liſt, and they came with their Hats in their Hands, and he gave them their Money, and they ſwept it up, and went away.

Mr. Sol. Gen. Were theſe Men call'd by the Liſt?---*Palmer*. Yes.

Mr. Sol. Gen. And did they miſs none?---*Palmer*. Not that I know of.

Cl. of Arr. What ſay you to *Richard Barlicorn*? Had he any?

Palmer. He had half a Share: Whether his Maſter had it or no afterwards, I know not.

Cl. of Arr. Had *Abel Owens* any Share?

Palmer. He had a whole Share.

Cl. of Arr. What had *Darby Mullins*?---*Palmer*. He had a half Share.

Mr. *Knapp*. I think you were ſpeaking of *Arabian* Gold that they had in Meſſes: Had theſe Priſoners their Share of that?

Palmer. Yes, there was no Difference; they had all their Shares.

Mr. *Knapp*. Now, if you will aſk this Witneſs any Queſtion, you may.

Kidd. What ſignifies it to aſk him any Queſtions? We have no Witneſſes, and what we ſay ſignifies nothing.

Cl. of Arr. N. Churchill, Will you aſk him any Queſtions?

Churchill. No, I have acknowledged all theſe Crimes, and ſurrender'd myſelf, and rely on the King's Mercy.

Cl. of Arr. J. Howe, Will you aſk him any Thing?

Howe. No.

Cl. of Arr. R. Lamley, Will you aſk him any Thing?

Lamley. Mr. *Palmer,* How can you tell I had a half Share?

Palmer. There was a half Share directed for you.

Lamley. I had not a Farthing.

Mr. J. *Turton.* Was he an Apprentice?

Palmer. Yes; he was Servant to Mr. *Owens.*

Jenkins. Can you ſay, I had any Share?

Palmer. I know there was a half Share appointed for you; I know not whether your Maſter had it.

Mr. J. *Turton.* Was his Maſter aboard then?

Palmer. Yes, his Maſter was aboard then.

Cl. of Arr. Gabriel Loffe, have you any Queſtions to aſk him?

Loffe. Had I any Share?—*Palmer.* You had a half Share; I did not ſee you take it, but you were in the Liſt.

Cl. of Arr. H. Parrot, Have you any Queſtions to aſk him?

Jury-man. Did you ſee them come out with the Money in their Hats?

Palmer. Yes.

Mr. Sol. Gen. Did *Gabriel Loffe* come out as contented as the reſt?

Palmer. No, becauſe he had but half a Share.

Loffe. Did you ſee me come out with my Money?

Palmer. I ſaw you come out with Money in your Hat; and I heard you ſay, you had half a Share.

Loffe. As I live, I had no Hat then.

Cl. of Arr. Have you any Queſtions to aſk him, *H. Parrot?*

Parrot. Did you ſee me have any Share?—*Palmer.* I did not ſee you receive any Share, but you was called among the reſt.

Mr. J. *Turton.* He ſays, they were all called, Man by Man, to take their Shares.

Cl. of Arr. R. Barlicorn, Have you any Thing to aſk him?

Barlicorn. I deſire of him, Whether he ſaw me have any Goods, or take any Share?

Palmer. My Lord, when the Goods were ſhared at *Madogaſcar,* I was at *Bonavis;* I was not preſent, but I heard of it afterwards.

Barlicorn. I hope the Jury will take notice of this.

Mr. B. *Hatſell.* Mr. *Bradinham,* Did any of theſe Men complain, that they had not their Share?

Bradinham. No, no, I heard nothing of that.

Mr. J. *Turton.* Were theſe Shares ſuch as were agreed on in the Articles at *New-York?*

Palmer. Yes, Capt. *Kidd* ordered the Goods to be hoiſted out.

Kidd. Did I order the Goods to be hoiſted out?

Palmer. Yes, you did.

Kidd. It was the Mutinous Men that did it.

Parrot. How do you know that I had any Share? You did not ſee me in a Year after.

Palmer. I do not ſay, I ſaw it given you.

Kidd. My Lord, there were 95 Men that deſerted my Ship, and took away what they pleaſed; we could not ſtand in Defence of any Thing.

Barlicorn. Was not I an Apprentice to Captain *Kidd,* and waited on him continually in the Ship?

Palmer. Yes, you were.

Mr. Sol. Gen. Had he a Share allotted him?

Palmer. Yes; but I am apt to think his Maſter had it.

Mr. J. *Turton.* Who was his Maſter?

Palmer. Captain *Kidd.*

Cl. of Arr. A. Owens, Have you any Thing to ſay for yourſelf?

Owens. I refer myſelf to the King's Proclamation.

Cl. of Arr. Darby Mullins, Have you any Thing to ſay for yourſelf?

Mullins. I came to Cape *May,* where I heard of the King's Proclamation. Did not you and I come aſhore together?

Palmer. Yes, we did, the ſame Day.

Mullins. Did not we come aſhore on the King's Proclamation?

Palmer. We did hear of it.

Mullins. Did not you hear, that all the Men were glad at the News, when they heard of the Proclamation?

Dr. *Oxenden.* What did theſe Men ſay then?

Palmer. They all rejoiced to hear of ſuch a Thing.

Mullins. From the Time I came from *Madagaſcar* I was ſick of the Bloody-Flux; I could not walk a Mile in a Day.

Palmer. I know you was ſick.

Mullins. I have no more to ſay: I ſtand to your Lordſhip's Mercy, and the King's gracious Proclamation.

Mr. J. *Turton.* If you have any Witneſſes to call for yourſelves, you may call them. Capt. *Kidd,* what have you to ſay for yourſelf? You may make your Defence, firſt for that Ship taken in *September;* then, for that in *November.*

Kidd. What is it the nearer for me to ſpeak? I have no Witneſſes for theſe Things.

Mr. B. *Hatſell.* Yeſterday you produced your Commiſſions; if you will, they may be read now.

Kidd. It availed nothing then. Here is all theſe Men ſaw the *French* Paſs.

Palmer. Indeed, Captain, I never ſaw it.

Kidd. You left my Ship, with 95 Men more, and you went a-roguing afterwards.

Mr. Sol. Gen. Why did you go aboard that Pirate?

Kidd. My Lord, I had a Deſign to take that Frigate, and then I deſigned to come for *England.* I would not go with ſuch a Roguiſh Crew as you were. Was not I threatened to be ſhot in the Cabbin by ſuch Villains as you, if I would not go along with you? This was the Reaſon I could not come home. Did not you, with others, ſet fire to the Boat, to deſtroy my Ship?

Palmer. I know nothing of that; but I am ſure I ſaved your Life on the *Malabar* Iſland, when you burnt the Boat.

Kidd. My Lord, they took what they pleaſed out of this Ship, and I was forced to ſtay by myſelf, and pick up here a Man, and there a Man, to carry her home.

Cl. of Arr. Nicholas Churchill, What have you to ſay for yourſelf?

Churchill. My Lord, I plead Guilty, and rely on the King's Proclamation.

Cl. of Arr. James Howe, have you any Thing to ſay for yourſelf?

Howe. I plead Guilty, my Lord.

Kidd. Here are ſome Gentlemen here, I deſire they may be heard as to my Reputation. Here is Col. *Hewſon.*

Mr. J. *Turton.* What do you aſk Col. *Hewſon?*

Kidd. I aſk him what he knows as to my Reputation in the *Weſt-Indies.*

Col. *Hewſon.* My Lord, he was a mighty Man there. He ſerved under my Command. He was ſent to me by the Order of Col. *Codrington.*

Mr. Sol. Gen. How long was this ago?

Col. *Hewſon.* About nine Years ago. He was with me in two Engagements againſt the *French,* and fought as well as any Man I ever ſaw, according to the Proportion of his Men. We had ſix *Frenchmen* to deal with, and we had only mine and his Ship.

Kidd. Do you think I was a Pirate?

Col. *Hewſon.* I know his Men would have gone a-Pirateering, and he refuſed it, and his Men ſeized upon his Ship. And when he went this Voyage, he conſulted me, and told me they had engaged him in ſuch an Expedition; and I told him he had enough already, and might be contented with what he had: And he ſaid, it was his own Inclination; but my Lord *Bellamont* told him, if he did not go the Voyage, that there were Great Men, and they would ſtop his *Brigantine* in the River, if he did not go.

Mr. J. *Turton.* Who told you ſo? Did he?

Col. *Hewſon.* Yes, my Lord.

Mr. J. *Turton.* If he had kept to the honeſt Deſign of that Expedition, he had done very well. Did you apprehend that his Intention in that Undertaking was to be a Pirate?

Col. *Hewſon.* No, my Lord. He told me his Buſineſs was to go a-Cruiſing, and ſurprize Pirates.

Mr. Sol. Gen. Did he tell you he had no ſuch Deſign?

Col. *Hewſon.* Yes, he ſaid he would be ſhot to Death before he would do any ſuch Thing. I know he was very ſerviceable in the *Weſt-Indies.*

Cl. of Arr. Robert Lamley, Have you any Thing more to ſay?

Lamley. I can ſay nothing, for I have none of my Friends here.

Kidd. Call *Thomas Cooper.* (*Who appeared*)

Mr. J. *Turton.* What Queſtions do you aſk him?

Kidd. Sir, pray, tell my Lord what you knew of me in the *Indies.*

Thomas Cooper. I was aboard the *Lyon,* and this Capt. *Kidd* brought his Ship from a Place that belonged to the *Dutch,* and brought her into the King's Service at the Beginning of the War, about Ten Years ago; and he took Service under the Colonel; and we fought Monſieur *Du Caſs* a whole Day, and, I thank God, we got the better of it; and Capt. *Kidd* behaved himſelf very well in the Face of his Enemies.

Jury-man. How many Years ago was this?

Tho. Cooper. About Ten Years ago.

Cl. of Arr. Robert Lamley, Have you any Thing more to ſay?

Lamley. I have no Friends here, I am a 'Prentice, my Lord.

Cl. of Arr. William Jenkins, Have you any more to ſay?

Jenkins. I was an Apprentice, my Lord.

Cl. of Arr. Gabriel Loffe, Have you any Thing to ſay for yourſelf?

Loffe. My Lord, I was a Servant under Capt. *Kidd,* and always obeyed his Commands, and had no Share. I came home with Capt. *Kidd* to *Boſton,* and went to my Lord *Bellamont,* and the Men came and told us he had diſcharged us, and I went about my Buſineſs. And ſome Days after we were committed to Priſon, and I was ſick, and my Lord let me be in the Keeper's Houſe, and I was truſted by him four or five Months with the Keys to look after the Priſoners. Mr. *Davis* can teſtify this. If I had had a mind to have done any ill Thing, I might have done it then. (*Then Mr.* Davis *appeared.*) Pray, Mr. *Davis,* declare what you know of me when I came to *Boſton,* and how the Keeper intruſted me with the Priſoners.

Mr. *Davis.* I remember when we came there to the *Road-Iſland,* Capt. *Kidd* ſent him home: And when he came to *Boſton,* he was truſted with the Keys, and had liberty to go where he pleaſed not out of the Yard.

Mr. J. *Turton.* Was this after he was a Priſoner?

Mr. *Davis.* Yes, my Lord.

Gabriel Loffe. I hope the Jury will take notice of this.

Kidd. Mr. *Davis,* Did you not hear of any *French* Paſſes that I had?

Mr. *Davis.* I heard of them, and I ſaw them.

Mr. Sol. Gen. How do you know they were *French* Paſſes?

Mr. *Davis.* He told me they were *French* Paſſes; I did not know it, I could not read them.

Mr. J. *Turton.* They ſhewed you the Papers; Did you know what Ship they belonged to?

Mr. *Davis.* No, my Lord, not I.

Kidd. I deſire Captain *Hunt* may be called, to know what my Lord *Bellamont* ſaid of me.

Mr. B. *Hatſell.* That will ſignify nothing.

Cl. of Arr. Hugh Parrot, Have you any Thing to ſay for yourſelf?

Parrot. My Lord, I had no Share of the Goods.

Kidd. My Lord, I deſire this Commiſſion may be read.

Mr. B. *Hatſell.* Is it under the Broad-Seal?

Mr. *Crawley.* It is a Letter of Mart and Repriſals, my Lord.

[*Then the Commiſſion was read, dated the* 11*th of* December, 1695.]

William Kidd. Now, my Lord, in purſuance of this Commiſſion, I went and took theſe Ships, which had *French* Paſſes on board, and my Lord *Bellamont* took them by Force from me.

Mr. J. *Turton.* You took one *French* Ship, and acted in a regular Manner to condemn her; but, Did you do ſo with the reſt?

Kidd. I could not carry theſe Ships home, by reaſon my Men had left me.

Mr. J. *Turton.* Mr. *Bradinham,* with what Number of Men did you go out of *England?---Bradinham.* With about ſeventy Men.

Mr. J. *Turton.* What Number had you when you went from *New-York?*

Bradinham. About 155.

Mr. J. *Turton.* So that your Number was encreas'd.

Bradinham. Yes, my Lord.

Mr. J. *Turton.* Was there any other Ship condemn'd, beſides the *French* Banker?---*Bradinham.* No, my Lord.

Kidd. Theſe Men were ſome of them that left me, and took the Goods; what was left I carried with me.

Cl. of Arr. Hugh Parrot, have you any more to ſay?

Parrot. The Evidence cannot prove that I had any Share: I came with my Commander from *Madagaſcar,* and he paid me an hundred Pieces of Eight, and my Lord *Bellamont* ſeized all: And I had Opportunity enough to have gone a-pirateering with Capt. *Culliford,* but I told them I would not: And I came to my Lord *Bellamont,* and ſurrender'd myſelf.

Cl. of Arr. Robert Barlicorn, have you any thing to ſay in your own Defence?

Barlicorn. I deſire Witneſs may be call'd, to know whether I was not a Servant aboard?

Mr. J. *Turton.* The King's Evidence ſay you were.

Cl. of Arr. Abel Owens, what have you to ſay?

Owens. I own myſelf Guilty; I came in upon the King's Proclamation.

Cl. of Ar. Darby Mullins, what have you to ſay?

Mullins. I did what I did under the King's Commiſſion; I obey'd my Captain, and came home with him; I durſt not for my Life do otherwiſe. Examine the Witneſſes, and they will not ſay otherwiſe. Mr. *Bradinham,* did I do any thing againſt the Captain's Command?

Bradinham. I cannot ſay but he did always obey the Captain's Commands.

Mr. Sol. Gen. Did he not go aboard Capt. *Culliford* afterwards?

Bradinham. Yes, my Lord.

Mullins. I went for Want.

Cl. of Arr. Have any of you any more to ſay?

Parrot. My Lord, I did not go out of *England* with Capt. *Kidd,* but I ſhipp'd myſelf on board a Merchantman bound for *Newfoundland,* and I was taken by a *French* Privateer; and afterwards coming to *Madagaſcar,* Capt. *Kidd* was there, and he took a Piſtol to ſhoot me, but I avoided it: But hearing afterwards that Capt. *Kidd* had the King's Commiſſion, I went aboard him.

Mr. J. *Turton.* Had he any Commiſſion to take any Goods from the King's Subjects?

Mr. Bar. *Hatſell.* Capt. *Kidd* ſays, the Seamen forced him from the Ship, and you ſhared the Goods yourſelves.

Parrot. He does not ſay ſo of us. My Lord, with Submiſſion, be pleas'd to aſk my Commander, whether I ever diſobey'd his Commands, or was forward to attempt any ill Thing, or did any Thing of that which is alledged againſt me?

Kidd. Mr. *Bradinham,* are not you promis'd your Life, to take away mine?

Mr. J. *Turton.* He is not bound to anſwer that Queſtion: He is very fit to be made an Evidence for the King; perhaps there can be no other in this Caſe, than ſuch who are in his Circumſtances.

Parrot. With Submiſſion, I aſk the Evidence, whether I ever diſobey'd the Captain's Orders?

Mr. J. *Turton.* The Captain's Orders will excuſe you in honeſt Things, but not in unlawful Actions.

Parrot. As for the Ships that were taken, I had no Hand in it.

Mr. *Knapp.* But you receiv'd your Share, and knew of the robbing of the Ships.

Mr. J. *Turton.* Gentlemen of the Jury, here is *William Kidd, Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loffe, Hugh Parrot, Richard Barlicorn, Abel Owens,* and *Darby Mullins,* the Priſoners at the Bar, who are all indicted for Piracy, or piratical and felonious taking a *Mooriſh* Ship on the High Seas, about fifty Leagues from *Carrawar* in the *Eaſt-Indies,* and ſeizing the Goods that were in that Ship, to a conſiderable Value. And they are alſo indicted for the piratical and felonious taking another Ship, which was likewiſe a *Mooriſh* Ship, with the Tackle and Apparel thereof, to the Value of an Hundred and Five Pounds, four Leagues from *Callicut* in the *Eaſt-Indies.* Now to theſe Indictments they have pleaded Not guilty: And whether they are guilty or no, you are to determine, on the Evidence you have heard.

I need not tell you the Heinouſneſs of this Offence wherewith they are charged, and of what ill Conſequence it is to all Trading Nations. Pirates are called *Hoſtes humani Generis,* the Enemies to all Mankind; but they are eſpecially ſo to thoſe that depend upon Trade: And theſe Things that they ſtand charged with, are the moſt miſchievous and prejudicial to Trade that can happen. But as it is not my Buſineſs to aggravate the Offence, ſo it is yours to conſider, whether they, or any of them, are guilty, or not.

Two Witneſſes have been produced for the King, and both of them were concerned in all the Tranſactions relating to the Priſoners; and by their Evidence it appears, That in the Year 1696, about the Beginning of *May,* Capt. *Kidd,* who was Captain of *The Adventure-Galley,* was fitted out on a very good Deſign; for he was to take Pirates, and to ſeize the Ships and Effects of the King's Enemies: That was the End of this Expedition. He went out from *Plymouth* with about Seventy Men from *England;* they ſail'd to *New-York,* and in their Paſſage they ſeized a *French* Veſſel, and that Veſſel was condemned in a due Manner, and that was purſuant to their Commiſſion.

When they came to *New-York,* there were other Things in Contemplation. Then he made a Proclamation, to give Notice, That if any would come aboard him, he propos'd Terms for their Encouragement; That they ſhould be Sharers in all they could acquire; he himſelf would have Forty Shares, becauſe the Ship, Arms, Ammunition, and Proviſions were his; and the reſt ſhould be divided proportionable to thoſe that ſhould be aboard him. And whereas they went out with Seventy Men, there their Number was encreas'd to 155, for with that Number he ſail'd from *New-York.*

Gentlemen, The Witneſſes tell you whither they went afterwards; I will not mention all the particular Places, but only ſuch where any Thing remarkable was done. They ſay, they came to a Place called *Bab's-Key;* and there, it ſeems, they had an Intention to obſerve a Fleet, call'd *The Mocca Fleet:* There they ſtay'd about three Weeks, and in that Time Capt. *Kidd* ſent his Boat three Times to *Mocca,* where this Fleet was: The two firſt Times they brought no certain Account; but the laſt Boat that was ſent brought Intelligence, that there were fourteen or fifteen Ships lay in the River or Harbour there, and were ready to ſail; and that they had *Dutch* Colours, *Engliſh* Colours, and *Mooriſh* Colours. And Capt. *Kidd* ſaid then, He expected to make a conſiderable Advantage of them. And after this Advertiſement he ſent ſome Men to the high Lands, to obſerve the Motion of this Fleet; who, after ſome Time, gave Notice that the Fleet was coming; and then he went out with his Veſſel; and as they tell you, he went into this Fleet, and diſcharg'd ſome Guns at them; but they having a Convoy, he found he was not a Match for them, and that it would be in vain to attempt any thing further on ſo great a Diſadvantage; and ſo that Deſign was fruſtrated. But it muſt be obſerved, That theſe Ships were all *Engliſh, Dutch,* and *Mooriſh,* and none of them *French;* which ſhews Capt. *Kidd's* Inclination to take ſuch Ships, for which he had no Authority by any Commiſſion.

But they tell you, after this, when he had met with this Diſappointment, then he ſail'd towards the Coaſt of *Carrawar,* and there they met with the firſt *Mooriſh* Ship, that he is now charged with; and this Ship they ſeized, and took one *Parker,* who was the Captain: They ſeiz'd him, and alſo a *Portugueſe,* whom they made uſe of as an Interpreter; and ſome of the Men, whom they treated in a barbarous Manner. They tell you, That there happening to be an *Engliſh* Factory near that Place; they of that Factory underſtanding that this *Parker* and the *Portugueſe* were on board the Ship, they ſent to demand them, and Capt. *Kidd* deny'd them, and ſaid, There were no ſuch Men on board, and yet he had hid them under the Deck. You are alſo told by the Witneſſes what they found and ſeiz'd on board this Ship, *viz.* Pepper, Coffee, Myrrh, and ſome Gold. They have told you, the Gold was ſhar'd amongſt them, and in Specie, as I remember; every Meſs had two Pieces, and the reſt of the Goods were divided amongſt them in Proportion, according to their original Agreement, or they had their Shares of the Money for which they were ſold. This was the firſt Ship that he ſtands charged with the piratical taking of; and this Ship was a *Mooriſh* Ship, and did belong to the Natives of that Place.

And then it appears they went to the Coaſt of *Malabar,* and there they took the other Ship that he is charg'd with by the other Indictment; the firſt was taken in *September,* and this in *November.* There was on board that Ship two Horſes, and ſeveral Bales of Cotton, and ſome other Goods; and this alſo belong'd to the *Moors,* and one Skipper *Mitchell,* a *Dutchman,* was Captain of her. When they had taken this Ship, they went to *Madagaſcar,* and there, it is told you, they ſunk this Veſſel: And they having ſeveral other Goods that they had taken out of another Veſſel, the Goods were ſold, and divided between the Captain and the reſt of the Men, according to their ſeveral Proportions. And it is prov'd to you, that every one of theſe Priſoners had ſome Share of the Product of thoſe Goods. And now, to ſhew what Capt. *Kidd* was, and that he was a Favourer of thoſe he ought to have oppoſed, there was another Pirate there, one Capt. *Culliford,* who had a Veſſel that he us'd to the ſame Purpoſe, call'd *The Great Mahomet;* and he having heard of *Kidd's* Commiſſion, had a Jealouſy that Capt. *Kidd* had a Deſign to take him and his Company; but he told them, he had no ſuch Deſign; he was ſo far from that, that he aſſur'd them, nay ſwore, he would be true to them: And there were great Appearances of Friendſhip between Capt. *Kidd* and Capt. *Culliford;* they made mutual Viſits to each other; and Capt. *Kidd* did accommodate *Culliford* with ſome Guns, and gave him liberty to take any thing he had; and Capt. *Culliford* likewiſe preſented him with *China* Silks. Now this alſo is given in Evidence, to ſhew that Capt. *Kidd* had a piratical Deſign in all this, and that he did aſſiſt thoſe that were engag'd in the like Deſign with him, inſtead of endeavouring to ſuppreſs them.

Now, Gentlemen, the firſt Witneſs, *Robert Bradinham,* has declar'd all this to you; and likewiſe *Joſeph Palmer* has ſpoken to the ſame Purpoſe, tho' ſomething more than the other; and he tells you, how they went aſhore on one of the *Malabar* Iſlands, and how they burnt ſome Houſes, and did other very barbarous Things; but that concerns not this Matter for which they are now indicted. He tells you alſo, that when they took one of theſe Ships, whereof Capt. *Parker* was Commander, they took two of the Men on board that Ship, and hoiſted them up, and uſed them ſeverely; which they did, to cauſe them to diſcover what Things of Value they had on board; but it ſeems they had nothing of any conſiderable Worth on board: However, this ſhews, that Capt. *Kidd* had a Deſign to act Piratically. The Witneſs gives you an Account of all the Tranſactions in taking the two Ships, and diſpoſing of the Goods, and dividing of the Money: Indeed he ſays, when the Diſtribution was made, he was not in the Cabbin, but tells you, he heard the Liſt call'd over, and all the other Priſoners ſeverally went in, and brought out their Shares in their Hats, or otherwiſe, and did not hear any one complain that he had not his Share.

Gentlemen, there are three Perſons that were Servants, that is, *Robert Lamley,* he was Servant to *Owens* the Cook; *William Jenkins,* he was Servant to the Mate; and *Richard Barlicorn,* who was Servant to Capt. *Kidd:* Now, though theſe might have their Shares delivered them, yet it is to be preſum'd that they were to be accountable to their Maſters: And they being Servants, I ſuppoſe you will think to diſtinguiſh them from the reſt.

Gentlemen, this is the Sum of the Evidence given for the King; and, indeed, this ſeems to be as ſtrong an Evidence againſt the Priſoners at the Bar as can be: They did endeavour to take the *Mocca* Fleet, but they were too ſtrong for them: And they could have no Suſpicion that they were *French*, for they had *Engliſh*, *Dutch*, and *Mooriſh* Colours; ſo that Capt. *Kidd* could have no Pretence from his Commiſſion to look after theſe Ships: There were no *French* among them, and yet there he lay three Weeks waiting for them; but they did actually take theſe two Ships mention'd in the Indictments, and diſpos'd of the Goods, and ſhared the Product among themſelves. Here is all the Evidence that can be given of Piracy.

Now Capt. *Kidd*, when he comes to make his Defence, tells you, He had a Commiſſion, and it was produced (and that is no more than what is common in Time of War), whereby he is authoriz'd to take the Ships and Goods of any of the Subjects of the *French* King; but it is penn'd with great Caution; he is to take none but the Goods and Ships of the *French* King, or his Subjects; and he is to keep an exact Account of all that he takes, and to procure them to be condemned in the Admiralty. Now, if he had purſued this Commiſſion, and gone no further, it had been well: he had done juſtly, and anſwered the End on which he was ſent out. And it does appear, that the firſt Veſſel that he took in his Paſſage to *New-York* was thus condemn'd: But afterwards I do not find that he had any Regard to his Commiſſion, but waited for that great *Mocca* Fleet a conſiderable time, I think about three Weeks; and being diſappointed there, he afterwards did take theſe two Ships mention'd in the Indictment; and it does not appear that they were *French* Ships, neither were there any *French* Paſſes on board. One of the Witneſſes indeed ſays, He heard of *French* Paſſes; but neither he, or any other Perſon that has been produced, has ſeen one of them. Now I do not obſerve that his Commiſſion does any manner of way tend to excuſe the Captain in taking both, or either of theſe Ships: One of them was under an *Engliſh* Commander, which was *Parker*, the other under a *Dutchman*; there were no *Frenchmen* aboard, only *Le Roy*, who was made a kind of a Mock-Captain by *Kidd*, to ſerve a preſent Turn. But what Capt. *Kidd* has ſaid from his Commiſſion, is ſo far from juſtifying him, that it ſeems rather an Aggravation of his Crime: For he that will go out with the King's Commiſſion on a juſt and laudable Deſign, to take the Ships and Effects of the *French* King in War, and alſo to deſtroy Pirates (which were the principal Ends of his being fitted out to Sea), and inſtead thereof will turn Pirate himſelf, make uſe of the Force with which he was intruſted, for the promoting his Piratical Purpoſes, and for the felonious taking the Ships and Goods of thoſe that were in Amity with the King of *England*, appears to be guilty of a manifeſt Breach and Violation of his Truſt, attended with very aggravating Circumſtances.

Now, for thoſe Three that were Servants, I muſt leave it to you, whether they did act otherwiſe than they might do. A Servant is to obey his Maſter, but it muſt be in Things lawful and honeſt; if they did any Thing elſe, you, who have heard the Evidence, will conſider of their Guilt, and whether their Caſes differ from the reſt: But there is ſome Probability, that their Shares might be accounted for to their reſpective Maſters.

Now, as to the reſt, there are ſome of them that do pretend they did ſurrender themſelves; one of them to Mr. *Riches*, a Juſtice of Peace in *Surrey*; others, to Colonel *Baſs*, who was a Commander in *Eaſt-Jerſey*; and it does appear, that they did ſurrender themſelves accordingly: But that does not come under your Conſideration; you are to conſider only, whether they are Guilty of the Facts they are charg'd with, or no. As to what Effect their ſurrendering themſelves may have with his Majeſty, muſt be left to the King's Royal Pleaſure, but we are to conſider the Evidence. Now they generally ſay, They did obey the Captain, and that they underſtood he had the King's Commiſſion. Truly, ſo far as he purſued the King's Commiſſion, they were to obey him; but when he acts contrary to the King's Commiſſion, in Acts of Piracy upon the Ships, Goods and Effects of the King's Friends, and thoſe in Amity with the Crown of *England*, they ſhould have been ſo far from obeying and aſſiſting him, that they ſhould have obſtructed him, and ſeiz'd him, that he might have been brought to Juſtice, and that would have been a greater Vindication of their Innocencies. But, as the Matter now appears, I do not ſee that any thing they have ſaid tends to their Defence, and therefore I muſt leave it to your Conſideration.

Indeed, there are ſome Witneſſes appear for Capt. *Kidd*. Colonel *Hewſon* gives you this Account of Capt. *Kidd*, That he was under his Command in the Beginning of the War, and, that he fought, and behav'd himſelf very well, and was ſerviceable in the *Weſt-Indies*; and he ſays, he diſcours'd him about his going out on the Expedition he was ſent; and that *Kidd* ſaid he had no Inclination to go. And Mr. *Cooper* likewiſe tells you, That about ten or twelve Years ago he knew him, and that he fought the *French*, and behav'd himſelf very well at that Time; and that ſeveral of his Men ran away with his Ship when he was at *Antegoa*.

Then there is *Gabriel Loffe*, he has produced a Witneſs for himſelf, one *Davis*; and *Davis* tells you, He was a Priſoner in *New-York*, by Order from my Lord *Bellamont*; and at firſt they were ſome Days there before they were taken into Cuſtody; and there was ſo little Apprehenſion of his being a dangerous Man, that he had ſome Favour allow'd him, and had a great deal of Liberty. This is that he ſays. I find not that any of the reſt have produced any Evidence, only they ſay they were under the Commander, and were to obſerve him; but if that would excuſe them, then all Pirates would be excus'd. Now, as to Capt. *Kidd*, it ſeems he has woefully tranſgreſs'd the Buſineſs of his Commiſſion, and acted contrary to the End and Deſign of his being ſent out, and in the piratical taking the Ships and Goods mention'd in the Indictments, in which the other Priſoners at the Bar have join'd with him; and they were ſo far from being the Ship and Goods of the *French* King, or his Subjects, or Pirates, that they were the Ships and Goods of Perſons of other Nations in Amity with the King of *England*. Now if you believe theſe Witneſſes, that Capt. *Kidd* has taken theſe Ships in a piratical Manner, and that the other Perſons aſſiſted him in it, and had their Shares of the Money and Goods, which is an Evidence of their conſenting to, and ſpontaneous acting, I believe you will think fit to find them Guilty; but I leave it you. And as to theſe three Perſons that were Servants, I muſt leave their Caſe to your Conſideration, whether you will think fit to diſtinguiſh them from the reſt, or not.

[*Then an Officer was ſworn to keep the Jury.*]

[*And after about Half an Hour the Jury return'd, and brought in their Verdict.*]

Cl. of Arr. Gentlemen, anſwer to your Names: *William Smith.*

William Smith. Here, *&c.*

Cl. of Arr. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Arr. William Kidd, Hold up thy Hand: *(Which he did.)* Look upon the Priſoner: How ſay you? Is he Guilty of the Piracy and Robbery whereof he ſtands indicted by the firſt Indictment, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Nicholas Churchill* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *James Howe* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Robert Lamley* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *William Jenkins* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *Gabriel Loffe* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Hugh Parrot* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Richard Barlicorn* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *Abel Owens* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Darby Mullins* Guilty, or not Guilty?

Foreman. Guilty.

[*In like manner* Kidd, *and Six more, were found Guilty on the other Indictment, and the Three Servants Acquitted.*]

The Trial of *William Kidd*, and the other Nine Perſons, upon Two more Indictments of Piracy:

One committed on a *Mooriſh* Ship, four Leagues from *Callicut*; the other, on a *Portugueſe* Ship, twelve Leagues from *Callicut.*

THE Priſoners being call'd to the Bar, and the Jury call'd, and Capt. *Kidd* challenging thoſe that had Try'd him for the Murther, the Twelve that were ſworn are as followeth; *viz.*

JURY.

Joſ. Watſon,
Joſ. Villers,
Geo. Aſhby,
Ed. Fenwick,
Gilbert Eaſt,
Tho. Humfrevil,
Tho. Plaiſted,
Sam. Rown,
Marm. Bludder,
Jo. Scot,
Jo. Reynolds,
Rich. Drew.

Cl. of Arr. Cryer, count theſe: *Jo. Watſon.*

Cryer. One, *&c.* Twelve Good Men and True, ſtand together, and hear your Evidence.

Mr. J. *Turton.* With what will you proceed on now?

Cl. of Arr. With the two other Ships.

[*Then the uſual Proclamation for Information was made; and the Priſoners being bid to hold up their Hands, the* Cl. of Arr. *charg'd the Jury with them thus:*]

Cl. of Arr. You of the Jury, look upon the Priſoners, and hearken to their Cauſe. They ſtand Indicted by the Names of *William Kidd*, late of *London*, Mariner, *&c.* *(As before in the Indictment.)* Upon this Indictment they have been arraign'd, and thereunto have ſeverally pleaded Not Guilty, and for their Trial have put themſelves on God and their Country, which Country you are. Your Charge is to enquire, whether they be Guilty of the Piracy and Robbery whereof they ſtand indicted, or not Guilty, *&c.*

Churchill. I plead Guilty, my Lord, I ſubmit myſelf to the King's Proclamation.

Cl. of Arr. James Howe, Do you ſtand to your Plea?

Howe. Guilty, my Lord; I ſubmit to his Majeſty's gracious Proclamation.

Cl. of Arr. Robert Lamley, what do you ſay?

Lamley. Not Guilty.

Mr. J. *Turton.* You may enter their retracting their Pleas in Court.

Cl. of Arr. William Jenkins, what ſay you? Do you ſtand to your Plea?

Jenkins. Not Guilty.

Cl. of Arr. Gabriel Loffe, what ſay you?

Loffe. Not Guilty.

Cl. of Arr. Hugh Parrot, what ſay you?

Parrot. Not Guilty.

Cl. of Arr. Richard Barlicorn, what ſay you?

Barlicorn. Not Guilty.

Cl. of Arr. Abel Owens, what ſay you?

Owens. Guilty. I came upon the King's Proclamation.

Mr. *Knapp.* The Jury is not to be charged with them three then.

Cl. of Arr. Here is a ſecond Indictment againſt them, wherein they ſtand indicted by the Name of *William Kidd*, late of *London*, Mariner, *&c.* (as in the former Charge.) What muſt I ſay now?

Mr. J. *Turton.* Aſk them three, Whether they ſtand to their Plea to this Indictment, or retract it?

Cl. of Arr. *Nicholas Churchill*, Do you confeſs this Indictment?

Churchill. Yes, my Lord.

Cl. of Arr. *James Howe*, What ſay you?

Howe. Guilty of that, and all the other.

Cl. of Arr. *Abel Owens*, What do you ſay?

Owens. Guilty of that, and all the other.

Cl. of Arr. Set them three by. Gentlemen of the Jury, Here is one *William Kidd*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, and *Darby Mullins*, have been indicted upon two ſeveral Indictments that have been read; and for Trial have put themſelves on God and their Country, which Country you are.

Mr. *Knapp.* My Lord, and Gentlemen of the Jury, theſe are two ſeveral Indictments of Piracy, againſt *William Kidd*, and the Six other Priſoners at the Bar. The Firſt ſets forth, That theſe Priſoners, the 28th of *December*, in the Eighth Year of his Majeſty's Reign, about four Leagues from *Callicut*, did piratically enter a certain Ship, called a *Mooriſh* Ship, and that they took her, with the Apparel and Tackle, and took out of her ſeveral Goods that have been read to you in this Indictment. To this Indictment they have pleaded, Not Guilty. If we prove them guilty, you muſt Find them ſo. The other Indictment ſets forth, That on the 9th of *January*, *&c.* they took another Ship, a *Portugueſe* Ship; and to this alſo they have pleaded, Not Guilty. If we prove them guilty, you muſt Find accordingly. Call *Robert Bradinham* and *Joſeph Palmer*. *(Who appeared and were ſworn.)*

Mr. Sol. Gen. My Lord, and Gentlemen of the Jury, I am Counſel for the King againſt the Priſoners at the Bar: They ſtand indicted for ſeveral Piracies committed on two Ships; and our Evidence againſt them will be to this Purpoſe: Capt. *Kidd* had two Commiſſions, one was to take Pirates, the other was to take *French* Ships. *William Kidd*, in his Ship *The Adventure-Galley*, went out of *England* in the Year 1696: He afterwards went to *New-York*, and there he increaſed the Number of his Men: And from thence went away with a Reſolution to commit the Piracies, ſome of which he has been convicted of already: Then he went to *Babs-Key*, and laid in wait to intercept the *Mocca* Fleet; but was diſappointed of that, they being well guarded: He went afterwards to other Places, and took two Ships, which were not the Ships here mentioned. After that, he ſeized a Ship, called a *Mooriſh* Ship, ten Leagues from *Callicut*, and there ſeizes one of the Ships for which he is now indicted, a *Mooriſh* Ship, and takes out of her Sugar-Candy, and other Goods, to the Value of about Five-and-Twenty-Pounds. In *January* following, he meets another Ship, and ſeizes her too, and takes out of her to the Value of Sixty Pounds. Theſe Goods he diſpoſes of, and divides the Proceed of it between himſelf and the Crew of the Ship. And this is the Piracy for which he is now indicted. The Matter you are to enquire into, is, Whether they be guilty of Piracy on theſe two Ships, or no? We will call our Witneſſes; and, if we prove them guilty, I doubt not but you will do Right to your Country and them. Mr. *Bradinham*, theſe Gentlemen have not been upon the Jury before; therefore you muſt give an Account of the whole Matter from the Beginning, from your going out of *Plymouth*.

Bradinham. In the year 1696, the Beginning of *May*, we went from *Plymouth* to *New-York*.

Mr. Sol. Gen. What Ship did you go in?

Bradinham. The *Adventure-Galley*: And by the Way he took a *French* Ship, which he condemned when he came to *New-York*. At *New-York* he put up his Articles, to get Men aboard his Ship, and they were to have a Share of what was taken. About the Sixth of *September* we ſailed.

Mr. J. *Gould.* What Number of men had you when you went from *England?------Bradinham.* About ſeventy Men.

Mr. J. *Gould.* How many had you when you went from *New-York?*

Bradinham. About an hundred and fifty. The Sixth of *September* we ſailed from *New-York*, and went to *Maderas*, then to *Bonavis*, then to *St. Jauger*, then to *Madogaſcar*, then to *Joanna*, then to *Mahala*, then to *Joanna* again, then to *Meta* in the *Red-Sea*, and then to *Babs-Key*.

Mr. Sol. Gen. What did you do there?

Bradinham. He lay there about a Fortnight or three Weeks, to wait for the *Mocca* Fleet, and ſent out his Boat three times to make a Diſcovery; the two firſt times they made no Diſcovery; but the third time they brought Information that they were ready to ſail.

Mr. B. *Hatſell.* What was the *Mecca* Fleet?

Bradinham. They were *Mooriſh* Ships.

Mr. B. *Hatſell.* To what End did he wait for them?

Bradinham. He ſaid he would make a Voyage out of them.

Mr. Sol. Gen. What happened on that?

Bradinham. He ordered ſome Men to look out for them on the high Lands; and when they ſaw them coming, they were to give Notice, and he was to fetch them off in the Boat. This Fleet came, and he fell in with them, and fired at them; but they being under Convoy, he was forced to quit them: And then going to *Carrawar*, he met with one *Parker*'s Ship; he took this *Parker*'s Ship, and took him for a Pilot, and the *Portugueſe* for a Linguiſter.

Mr. Sol. Gen. How did he uſe the Men there?

Bradinham. Two of them were brought on board *The Adventure-Galley*, and they were hoiſted up, and drubb'd with a naked Cutlaſs.

Mr. Sol. Gen. Why did he do that?

Bradinham. That they might make Diſcovery of their Riches.

Mr. Sol. Gen. What did they take out of that Ship?

Bradinham. Some Coffee, Pepper, *&c.*

Mr. Sol. Gen. What did he do with the two Men?

Bradinham. He carried them with him to *Carrawar*; and when he came there, they were demanded by the *Engliſh* Factory there, and he denied them, and ſaid, He had no ſuch Men aboard.

Mr. Sol. Gen. Where had he put them?

Bradinham. He confined them aboard in the Hold.

Mr. Sol. Gen. Where did he go then?

Bradinham. He put to Sea, and the next Day he met with a *Portugueſe* Man of War, and fought her.

Kidd. He tells nothing but mere Lies.

Bradinham. Then he went to the *Malabar* Iſlands, and watered and wooded, and cauſed his Men to burn ſeveral Houſes, and plunder ſeveral Boats, and afterwards burnt them.

Mr. J. *Turton.* Did you ſee them burnt?

Bradinham. I was not aſhore, but I ſaw the Smoke.

Kidd. It is a fine Trade, that you muſt take away ſo many of the King's Subjects Lives, and know nothing at all of the Matter!

Mr. Sol. Gen. What did you do with that Ship?

Bradinham. He took her, and diſpoſed of the Goods, and carried her to *Madagaſcar*.

Mr. Sol. Gen. What did he do after that?

Bradinham. We went to the *Malabar* Iſlands ſome time in *December*, and he took a *Mooriſh* Ketch.

Kidd. How came you to keep this Account, when for five or ſix Months together you were under Deck?

Mr. Sol. Gen. Go on, Mr. *Bradinham*, and give an Account of your further Proceedings.

Kidd. I hope the King's Counſel will not put him in the Way. It is hard, that a Couple of Raſcals ſhould take away the King's Subjects Lives: They are a Couple of Rogues and Raſcals.

Bradinham. This Ketch was taken by the Ship's Crew, about *December*, 1697. and one of the Boat's Crew was wounded at the Taking of this Ketch.

Mr. Sol. Gen. What was there in this Ship?

Bradinham. Some Tubs of Sugar-Candy, Tobacco, *&c.*

Mr. Sol. Gen. What did he do with theſe Goods?

Bradinham. They were carried aboard, and ſhared into Meſſes, two Tubs and a half of Sugar-Candy to a Meſs.

Mr. Sol. Gen. Had the Priſoners at the Bar any Shares?

Bradinham. Yes; and then he ſet the Ship on Fire.

Cl. of Arr. Had Capt. *Kidd* himſelf any Share?-----*Brad.* Yes.

Cl. of Arr. How much had he?

Bradinham. He had forty Shares.

Mr. B. *Hatſell.* You ſhould tell this Jury how many Shares the Whole was divided into.

Bradinham. It was divided into one hundred and ſixty Shares, and Captain *Kidd* was to have forty Shares, let them be as many as they would, and the reſt were to be divided among the Men.

Cl. of Arr. Had *Robert Lamley* any Share?----*Brad.* Yes.

Cl of Arr. Had *William Jenkins* a Share?-----*Brad.* Yes.

Cl. of Arr. Had *Gabriel Loffe* any Share?------*Brad.* Yes.

Cl. of Arr. Had *Hugh Parrot* any Share?------*Brad.* Yes.

Cl. of Arr. Had *Richard Barlicorn* any Share?----*Brad.* Yes.

Cl. of Arr. Had *Darby Mullins* any Share?-----*Brad.* Yes.

Mr. Sol. Gen. What was done afterwards?

Bradinham. After they had done theſe things, they burnt the Ketch.

Knapp. What did they do then?

Bradinham. The *Moors* were driven aſhore by the Ship's Crew.

Kidd. How did you know they were *Moors?*

Bradinham. By Information of the Ship's Crew.

Kidd. He was not within five Leagues of the Place.

Knapp. What did you meet with afterwards?

Bradinham. A *Portugueſe* Ship. Some time in *January*, 169⅞, we met with a *Portugueſe* Ship on the Coaſt of *Malabar*, and he took her; and he took out of her ſome Opium, ſome *Eaſt-India* Goods, ſome Powder, and ſixty or ſeventy Bags of Rice.

Mr. Sol. Gen. My Lord, this is the other Ship for which they are indicted. What was the Value of theſe Goods?

Bradinham. There were ſome *Eaſt-India* Goods, Opium, Powder, and Rice.

Kidd. Did you ſee them brought aboard?

Bradinham. I am anſwering the Bench.

Mr. Sol. Gen. Were there any other Goods?

Bradinham. Yes, there was Bees-Wax, and thirty Jars of Butter.

Mr. Sol. Gen. What was the Value of theſe Goods?

Bradinham. About Four or Five Hundred Pounds.

Kidd. It is a fine Trade indeed, that he muſt be inſtructed what to ſay!

Bradinham. After he had plunder'd this Ship, he was purſued by ſome *Dutch* Ships; ſeveral Ships gave him chace, and he was forced to leave this Ship.

Mr. Sol. Gen. What did they do with the Goods?

Bradinham. He ſold the Opium on the Coaſt, and the reſt he kept for Proviſion.

Mr. Sol. Gen. What became of the Money?

Bradinham. Captain *Kidd* ſhared it.

Mr. Sol. Gen. Who had their Shares? Give an Account of that.

Bradinham. The Priſoners at the Bar.

Cl. of Arr. Had Capt. *Kidd* any Shares?-----*Brad.* Yes.

Cl. of Arr. Had *Robert Lamley* any Share?---*Brad.* He had half a Share.

Cl. of Arr. Had *William Jenkins* any Share?---*Brad.* He had half a Share.

Cl. of Arr. Had *Gabriel Loffe* any Share?---*Brad.* He had half a Share.

Loffe. How do you know that? Did you ſee me bring it out?

Bradinham. I did not ſee you take it; but you brought it out, and acknowledged it.

Kidd. Before, you ſwore I paid them firſt, and now you ſay they paid me firſt.

Bradinham. They had a Share as before.

Mr. *Knapp.* Now proceed in your Voyage. What did you do after this?

Bradinham. After this, we went a-cruizing on that Coaſt, and we met with the *Quedagh Merchant*, and took her; and afterwards, about fifty Leagues from the Cape, we met with a *Mooriſh* Veſſel; and

Captain *Kidd* ſent his Men on Board that Veſſel, and they took out of her ten Jars of Butter, and a Main-ſail; and he took out two of the Men (that he carried to *Madagaſcar*) becauſe he wanted Men.

Mr. *Knapp*. Can you tell of any Thing elſe?

Bradinham. He took about a Dozen *Malabar* Boats, and plunder'd 'em, and then let 'em go.

Mr. *Knapp*. Go on.

Bradinham. Then we came to *Madagaſcar*.

Mr. *Knapp*. What happen'd there?

Bradinham. There came a Canoo off; ſome of the Men in this Canoo belonged to the *Mocca* Frigate; they came off to Capt. *Kidd*; and they told him, they heard he was come to take them, and hang 'em.

Mr. *Knapp*. What were thoſe Men?

Bradinham. They were ſuppos'd to be Pirates.

Mr. *Knapp*. Who was the Commander of that Ship?

Bradinham. Capt. *Culliford*.

Kidd. How came you to know this? He ſays any thing.

Mr. *Knapp*. Go on with this Story, and give an Account what paſs'd between them.

Bradinham. This Canoo came aboard Captain *Kidd*, and they told him, they heard he was come to take them, and hang 'em; but he aſſur'd them it was no ſuch thing: And he went aboard the Frigate, and ſwore to be true to them, and that he would aid them in any thing he had: And Capt. *Culliford* came aboard him, and they made Preſents to one another.

Mr. *Knapp*. What Preſents did Captain *Kidd* make *Culliford*?

Bradinham. He gave him ſome Shirting-ſtuff.

Kidd. What! Did I give him Shirting-ſtuff?

Bradinham. Yes; and he gave him two Great Guns.

Kidd. Did I go aboard him, you Raſcal?

Mr. *Sol. Gen*. Mr. *Kidd*, aſk him what Queſtions you will.

Mr. J. *Turton*. Captain *Kidd*, will you aſk this Witneſs any Queſtions?

Kidd. My Lord, what ſignifies it? Were there not Ninety of the Men that mutinied? I ſaid, Let us take this Ship; and, Did they not all conſult and ſay, Where there is One that will fire againſt the Pirate, there are Ten that will fire againſt you. And ſo they went and took the Goods and left me. I aſk you, whether this be not true?

Bradinham. My Lord, he never ſpoke any thing like it, that he would take *Culliford*; but he ſwore to be true to them.

Kidd. Did not I propoſe to my Men to take Capt. *Culliford*? Did you never hear any body ſay ſo?

Bradinham. No.

Kidd. Did you not ſay Yeſterday, that I was come to take them?

Bradinham. I ſaid, they came and told you they heard ſo; and you aſſur'd them, you intended no ſuch thing.

Kidd. You ſwore I gave them four Guns Yeſterday, and now you ſay but two.

Mr. *Sol. Gen*. It was *Palmer* that ſaid Four.

Bradinham. I ſaid but Two, and no more.

Cl. of Arr. Captain *Kidd*, have you any thing more to aſk him?

Kidd. It ſignifies nothing to aſk him any thing.

Cl. of Arr. *Robert Lamley*, will you aſk this Witneſs any thing?

Lamley. I only aſk him, whether I was not an Apprentice?

Mr. J. *Turton*. Anſwer that Queſtion.

Bradinham. My Lord, he was a Servant.

Mr. J. *Turton*. To whom?

Bradinham. To Mr. *Owens*.

Mr. J. *Turton*. Was his Maſter aboard then?

Bradinham. Yes, my Lord.

Cl. of Arr. *William Jenkins*, will you aſk the Witneſs any thing?

Jenkins. I deſire him to ſay, whether I was a Servant, or not?

Bradinham. Yes, my Lord, he was Servant to the Mate.

Mr. J. *Turton*. Was his Maſter aboard then?

Bradinham. He was aboard then.

Cl. of Arr. *Gabriel Loffe*, will you aſk him any Queſtions?

Loffe. No, Sir.

Cl. of Arr. *Hugh Parrot*, will you aſk him any thing?---*Parrot*. No.

Cl. of Arr. *Richard Barlicorn*, Will you aſk this Witneſs any thing?

Barlicorn. I have nothing to aſk him; but deſire him to ſpeak the Truth, whether I was not the Captain's Servant?

Bradinham. He was, my Lord.

Cl. of Arr. *Darby Mullins*, will you aſk him any thing?

Mullins. I have nothing to ſay but what I ſaid before. I ſubmit myſelf to the King's gracious Proclamation.

Kidd. He has perjur'd himſelf in many things.

Mr. J. *Turton*. In what? Give an Inſtance.

Kidd. In a great many Inſtances: About the Guns, that is one Thing: And then he ſays, the Ship went from *Plymouth* the Beginning of *May*, and before he ſaid, it was in *April*, that is another Thing: And, my Lord, the Mariners came and took Anchors, and Cables, and what they would and he ſays I gave them to them, and this is falſe. And now he ſays contrary to what he did before; for then he ſaid, we went out in *April*, and now in the Beginning of *May*.

Mr. J. *Turton*. He did not confine himſelf to a Day; he ſaid, about the Beginning of *May*.

Mr. *Sol. Gen*. Call *Joſeph Palmer*. (*Who appear'd*.) Mr. *Palmer*, Pray, give my Lord and the Jury an Account of Capt. *Kidd* and his Crew, where they went, and what they did.

Palmer. We went from *Plymouth* to *New-York*, in the year 1696, and in the Way took a *French* Ship, and carried her to *New-York*, and ſold her; and there he put up Articles to invite Men aboard his Ship, and what they took was to be divided into ſo many Shares, whereof Captain *Kidd* was to have Forty, the reſt to be divided among the Men; and in *September* following we went from thence, and we had then about one hundred and ſixty Men: From thence we went to *Maderas*, from thence to *Bonavis*, then to *St. Jauger*, then to *Joanna*, then to *Mahala*, then to *Joanna* again, and then to *Meta* in the *Red-Sea*, where he watered and wooded his Ship, and then to *Babs-Key*, a ſmall Iſland in the *Red-Sea*; and when he came there, he ordered his Men to look out on the High Lands for the *Mocca* Fleet, and expected the Fleet to come that Way; and he ſent ſome Men in his Boat, with Orders either to take a Priſoner, or to bring Word what Ships were there. He ſent his Boat twice, and they made no Diſcovery; but the third time they went, they came within ſight of the Ships, and brought word, that there were fourteen or fifteen Sail lying there with *Dutch*, and *Engliſh*, and *Mooriſh* Colours, and a great Ship with red Colours, ready to ſail: And then Captain *Kidd* order'd his Men to look out on the other Side the high Lands, for fear the Ships ſhould paſs him: And at laſt the Ships came down.

Kidd. There is no great Occaſion for this.

Palmer. There were *Moors* and *Turks* belonging to theſe Ships. And about the 15th of *Auguſt* the Fleet came down, and Captain *Kidd* fell in with them: His Quarter-maſter and ſome of his Men were ſaying, Let us go aboard 'em To-night: No, ſays he, we will take our Choice of them in the Morning; and in the Morning he went among them, and fired at them, but took none of 'em; he found they were too ſtrong for him, and went away: And, after this, going to *Carrawar*, he took a Ship, call'd *The Maiden*: it was between *Carrawar* and this Place; they reckon'd they were not far from the Iſland of *St. John*: He took this Ship, and took out of her ſome Pepper, a Bale of Coffee; and ſome more Bales of Coffee came on board, but he retained only one Bale, and the Pepper, and ſaid, He would not cumber his Ship with ſuch Stuff: And *Parker* and a *Portugueſe* he took out, one for a Pilot, the other for a Linguiſter; and two of the Men he order'd to be hoiſted up, and whipp'd with a naked Cutlaſs.

Kidd. I aſk this one Thing: Did the *Mocca* Fleet fire firſt at me, or I at them?

Palmer. No, they fired firſt.

Kidd. And juſt now the other ſaid, I fir'd firſt: Is not he perjur'd?

Mr. J. *Turton*. Mr. *Bradinham*, Did he fire firſt, or no?

Bradinham. He fired at them; I only ſaid, you fired at them; I did not ſay firſt or laſt.

Palmer. After this he went to *Carrawar*, to an *Engliſh* Factory, and wooded and water'd his Ship, and one *Harvey* came and demanded theſe two Men; and Capt. *Kidd* denied that he had any ſuch Men on board, and kept them in the Hold.

Mr. *Sol. Gen*. Is that an *Engliſh* Factory?

Palmer. Yes: Several of Captain *Kidd*'s Men left him there, and ſeveral more would have left him, if they could have conveniently gone aſhore: And the ſame Evening he put to Sea, he met a *Portugueſe* Ship, and fought her.

Kidd. Who fired there firſt?

Palmer. The *Portugueze* fir'd firſt.

Kidd. You do not tell that Story right.

Palmer. After he left this *Portugueze* Ship, he went to the Iſland of *Malabar*, and robb'd the Natives, and ſet their Houſes on Fire, and took one of the Natives, and bound him to a Tree, and ſhot him to Death.

Mr. *Sol. Gen*. Did you ſee the Houſes on Fire?

Palmer. Yes; and afterwards we went to *Callicut*, and met with a *Mooriſh* Ship in *November*, Skipper *Mitchel* was Commander; and there were taken out of her two Horſes, and Cotton, and Quilts; and this Ship he carried to *Madagaſcar*. Some time in *December* following we came to the Coaſt of *Malabar*.

Mr. *Knapp*. Can you tell what Year it was?

Palmer. It was in *December*, 1697.

Mr. *Knapp*. Where was this?

Palmer. About twelve Leagues from *Callicut*.

Mr. *Knapp*. What Sort of Ship was it?

Palmer. A *Mooriſh* Ketch.

Mr. *Knapp*. What Burthen was ſhe?

Palmer. About fifty Ton.

Mr. *Knapp*. What did you do there?

Palmer. Capt. *Kidd* was lying at Anchor, and this Ketch came between him and the Shore; and he ſent the Boat, and they brought the Ketch to the Ship, and took out of her thirty Bales of Sugar-Candy, Tobacco, Sugar, and Myrrh.

Mr. *Knapp*. What did they do with theſe Goods?

Palmer. When they had taken them out, they were ſhared between the Men in Meſſes, ſeven Men to a Meſs, for their own ſpending.

Mr. *Knapp*. Had the Priſoners at the Bar any Share?

Palmer. All the Men had.

Mr. *Knapp*. What Share had Capt. *Kidd*?

Palmer. I cannot tell whether he had his forty Shares of that, or no.

Mr. *Knapp*. What did they do with the Ship?

Palmer. They burnt her.

Mr. *Sol. Gen*. Pray now go on. What did they do next?

Palmer. Some time in *January* they met with a *Portugueze* Ship.

Mr. *Sol. Gen*. Where?

Palmer. Off of *Anjingo*, an *Engliſh* Factory: It was a pretty way off Shore.

Mr. *Sol. Gen*. What Ship was it?

Palmer. A *Portugueze* Ship.

Kidd. You ſaid, it was juſt by *Callicut* Yeſterday.

Mr. *Sol. Gen*. Whereabouts was it?

Palmer. On the Coaſt of *Malabar*; it might be about ten or twelve Leagues from *Callicut*.

Mr. *Sol. Gen*. What Goods were in the Ship when ſhe was taken?

Palmer. There were two Cheſts of Indian Goods, two Cheſts of Opium, ſome Rice, Butter, Wax, and Iron.

Mr. *Sol. Gen*. What was the Value of thoſe Goods?

Palmer. Truly I cannot tell the Value of them.

Mr. *Sol. Gen*. What did they do with thoſe Goods?

Palmer. The Wax and Iron he put on board *The November*, and ſome on board his own Ship.

Mr. *Sol. Gen*. Did he ſell any of theſe Goods?

Palmer. No; but he ſold the Opium on the Coaſt.

Mr. *Sol. Gen*. Did he keep the Ship?

Palmer. No, but ſeven or eight Days, and then he quitted her; there were ſome *Dutchmen* coming, and he ſunk that Ship. The Produce of the Ship was ſhared.

Mr *Sol. Gen.* Had the Priſoners at the Bar any Share?---*Palmer.* Yes.

Cl. of Arr. Had *William Kidd* any Share?---*Palmer.* Yes.

Cl. of Arr. Had *Robert Lamley* any Share?

Palmer. Yes.

Cl. of Arr. Had *William Jenkins* any Share?---*Palmer.* Yes.

Cl. of Arr. Had *Gabriel Loffe* any Share?---*Palmer.* Yes.

Cl. of Arr. Had *Hugh Parrot* any Share?---*Palmer.* Yes.

Cl. of Arr. Had *Richard Barlicorn* any Share?---*Palmer.* Yes.

Cl. of Arr. Had *Darby Mullins* any Share?

Palmer. Yes; theſe Goods were ſhared, and we bought Proviſion with them.

Kidd. You ſay, this Ship was taken off of *Anjingo*, and that it was twelve Leagues from *Callicut*, and this *Anjingo* is fifty Leagues from *Callicut*.

Palmer. It is all upon one Coaſt.

Mr. Sol. Gen. Give an Account of your coming to *Madagaſcar*, and what followed.

Palmer. They found a Ship, called *The Reſolution*, Capt. *Culliford* was Commander; and ſeveral of the Men came off to Capt. *Kidd*, that were formerly acquainted with him; and they ſaid, We hear you are come to hang us: ſays he, It is no ſuch Thing: And afterwards they went aboard each other, and Capt. *Kidd* made Proteſtations to be true to them. There were four Guns in the Ship, and he preſented theſe Guns to *Culliford*.

Kidd. Did I preſent him with my Guns? Becauſe I would not turn Pirate, you Rogues, you would make me one!

Mr. Baron *Hatſell.* What did Capt. *Kidd* ſay to *Culliford*, when they were drinking together?

Palmer. They made a Tub of Bomboo, as they call it, (it is made of Water, and Limes, and Sugar) and there they drank to one another; and, ſays Capt. *Kidd*, Before I would do you any Damage, I had rather my Soul ſhould broil in Hell-fire.

Mr. Sol. Gen. Was you there then?

Palmer. This was on the Quarter-deck of the *Mocca* Frigate.

Mr. Sol. Gen. What were thoſe Men in that Ship? What did you apprehend them to be?

Palmer. They were Pirates.

Mr. Sol. Gen. Did Capt. *Kidd* or his Men offer to take them?

Palmer. He did never propoſe any ſuch Thing.

Mr. Sol. Gen. Now you may aſk him what Queſtions you will.

Kidd. There were twenty of them on board, and left me.

Palmer. Capt. *Kidd* and *Culliford* were as great Friends as could be.

Mr. Sol. Gen. Aſk him what Queſtions you pleaſe.

Kidd. It ſignifies nothing to aſk any Queſtions; a Couple of Rogues will ſwear any Thing.

Mr. Sol. Gen. Will you aſk him any Queſtions?

Kidd. No.

Cl. of Arr. *Robert Lamley*, Will you aſk him any Queſtions?

Lamley. No.

Cl. of Arr. *William Jenkins*, Will you aſk him any Queſtions?

Jenkins. No; I have no more to ſay, but what I ſaid before.

Cl. of Arr. *Gabriel Loffe*, Have you any Thing to aſk him?

Loffe. No.

Cl. of Arr. *Hugh Parrot*, Will you aſk the Witneſs any Queſtions?

Parrot. No.

Cl. of Arr. *Richard Barlicorn*, Will you aſk him any Thing?

Barlicorn. No.

Cl. of Arr. *Darby Mullins*, Will you aſk him any Thing?

Mullins. No; but only I ſay, I came Home upon his Majeſty's Proclamation; I came voluntarily, expecting to have the Benefit of it with the Evidence.

Mr. J. *Turton.* That does not fall under the Jury's Conſideration.

Cl. of Arr. You, the Priſoners at the Bar, Will you ſay any Thing for yourſelves upon theſe two Indictments?

Kidd. I will not trouble the Court any more, for it is a Folly.

Cl. of Arr. *Robert Lamley*, What have you to ſay for yourſelf?

Lamley. Nothing, but that I was a Servant.

Cl. of Arr. *William Jenkins*, What have you to ſay?

Jenkins. I was a Servant, my Lord.

Cl. of Arr. *Gabriel Loffe*, Have you any Thing to ſay?

Loffe. My Lord, I aſk him, Whether I ever acted any Thing in taking theſe Ships, but only under my Captain's Command?

Palmer. He acted as other Men did.

Cl. of Arr. *Hugh Parrot*, Have you any Thing to ſay?

Parrot. I can ſay no more than I have ſaid.

Cl. of Arr. *Richard Barlicorn*, Have you any Thing to ſay?

Barlicorn. My Lord, I am a Servant.

Cl. of Arr. *Darby Mullins*, What have you to ſay?

Mullins. Did not Capt. *Kidd* often ſay, his Commiſſion would bear him out in what he did?

Palmer. Yes; I have heard him often ſay that.

Mr. J. *Turton.* But how came you to go aboard *Culliford*?

Mullins. For Want, my Lord.

Mr. J. *Turton.* Gentlemen of the Jury, Here are ſeveral Perſons, *viz.* *William Kidd*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, and *Darby Mullins*, they all ſtand Indicted for Piracy: Indeed there are three more Indicted with them, *viz.* *Nicholas Churchill*, *James Howe*, and *Abel Owens*; but they have confeſſed themſelves Guilty, and you are now eaſed of any Enquiry concerning them, and are only to conſider of the other Seven, who are Indicted upon two ſeveral Indictments; One is, for the piratical and felonious taking away a *Mooriſh* Ketch, to the Value of Fifty Pounds, and the Goods therein to the Value of One hundred Pounds; this was in *December*, 1697: And the Other is, for piratically ſeizing and taking away Goods to the Value of Seventy Pounds from the *Portugal* Ship, twelve Leagues from *Callicut*, in the *Eaſt-Indies*. Now to theſe two Indictments theſe Priſoners at the Bar have pleaded, Not Guilty; and whether they are ſo or no, you are to determine upon the Evidence given you. There have been two Witneſſes produced for the King, *Robert Bradinham*, and *Joſeph Palmer*: I will not trouble you with the Repetition of their diſtinct Evidence, becauſe they agree in all Things; and if I mention what one has ſaid, it is, in effect, what the other ſaid alſo.

Gentlemen, It appears, that Capt. *Kidd*, with ſeventy Perſons aboard his Ship, called *The Adventure-Galley*, went from *England* in the Year 1696, having a Commiſſion of Mart and Repriſal, to take the Veſſels, Ships and Goods of the *French* King, or any of his Subjects, he then being at War with the King of *England*; and another Commiſſion for ſeizing Pirates. He has not indeed produced theſe Commiſſions to you now, though he did on another Trial. But he went out on a very honeſt Deſign, and in purſuance of it he took a *French* Ship in his Paſſage to *New-York*, and brought her thither, and had her legally condemned. But while he was there, it appears that he had other Thoughts poſſeſſed him, and wicked Intentions to turn Pirate, and not to take them; and that he might be well mann'd, he makes Proclamation amongſt the Mariners there, that ſuch of them as would come aboard his Ship, and aſſiſt him in his Enterprizes, ſhould have their Shares of what Prizes or Booties could be taken; and he propoſed, that he would have forty Shares for himſelf, and the reſt ſhould be equally diſtributed amongſt the Mariners according to Agreement, the whole being divided into 160 Shares, as I remember: By this means his Number was increaſed from 70 to 150. They ſet ſail from *New-York*, and (after many other Places mentioned by the Witneſſes) they came to a Place called *Babs-Key*, which it ſeems is in the *Red-Sea*; and there they ſtay'd a conſiderable Time, I think about three Weeks, and this was in Expectation to meet with the *Mocca* Fleet, which he intended to make a Prize; and during his Stay at *Babs-Key*, he ſent his Boat three ſeveral Times to get Intelligence of this Fleet; the two firſt Times there was no Account of any Thing; but the third Time there was notice brought, that they were ready to ſail, and that they had *Engliſh*, *Dutch*, and *Mooriſh* Colours: And when he had this Intelligence, to prevent their eſcaping him, he ſends Men aſhore, to go on the high Lands, to obſerve when they did actually ſail; and when he had notice that they were under ſail, he likewiſe ſailed, and went through the Fleet, and made ſome Shots at ſome of the Ships; but it appearing that they had a Convoy, and that they were too ſtrong for him, he quitted the Prize there, of which he had ſo great Expectation. But afterwards he went on, and took his Courſe towards *Carrawar*, and there he takes a *Mooriſh* Ship; and *Parker*, an *Engliſhman*, the Commander of her, and a *Portugueſe* alſo were taken out of her. From thence they went to *Malabar*, and there he ſent ſome Men aſhore, and there they burnt ſome Houſes; and after that took a *Mooriſh* Ship, for which they have been tried. Afterwards, in *December* 1697, (now I come to the firſt Indictment) upon that very Coaſt, ſome Leagues from *Callicut*, they took a *Mooriſh* Ketch, and this Ketch and the Goods aboard it, which were ſome Quantities of Sugar-candy, Sugar, and Tobacco: It ſeems theſe Goods were ſhared between them aboard the Ship; the Witneſs is not confident what Share the Captain then had, but what the Captain had not was divided amongſt them. The Witneſſes ſay, they burnt this Ketch, becauſe ſhe was not uſeful to them, and the Men that went on board were put aſhore. Now this is the Matter of the firſt Indictment, the piratically ſeizing and plundering this Ketch, and taking the Goods out of her, and dividing them amongſt the Priſoners; both the Witneſſes prove there was a Diſtribution of them.

They then come to the next Month, and that is *January*; and this is the Matter of the ſecond Indictment, for piratically taking ſeveral Goods, to the Value of Seventy Pounds, from the Mariners of the Ship called The *Portugal* Ship: And theſe Witneſſes prove the taking of this Ship on the Coaſt of *Callicut*; and there were aboard this Ship ſeveral Sorts of Goods, Opium, Rice, Bees-wax, Butter, and other Sorts of Goods, which they judge might be worth Four or Five hundred Pounds. Now after this, there were ſome *Dutch* Ships that gave Chace to the Captain, and he was forced to leave the Ship; but he took ſome of the Goods into his own Ship, and the reſt were ſold, and the Money divided among the Men: The Captain called them one by one into his Cabbin, and ſo they had their ſeveral Shares, according to the Propoſals at *New-York*. It is not poſſible for them to ſay they ſaw every Man's Share paid; but they ſay, that they were all called by Name to receive their Shares, and they went into the Cabbin for that Purpoſe, and they believe they had all their Shares according to Agreement, becauſe none complained that they had it not.

Gentlemen, There is but one Thing more that I will mention to you. When they came to *Madagaſcar*, there was one *Culliford*, who was a Pirate; and he ſent ſome of his Crew aboard, to know whether Capt. *Kidd* was not come with a Deſign to ſeize them, and hang them; and he declared, he had no ſuch Deſign: And he and *Culliford* were extremely kind to one another, and made Viſits and Preſents to each other; and Captain *Kidd* gave two Guns to *Culliford*, as one of the Witneſſes ſays; but the other Witneſs ſays, there were four Guns that he gave to *Culliford*, who was engaged in the ſame Deſign of Piracy; and *Culliford* preſented other Things to *Kidd*.

But now, Gentlemen, the Buſineſs you are to inquire into is, the piratical taking of theſe Ships: And the Witneſſes have poſitively and directly proved not only the taking the Ships, but the ſeizing the Goods, and ſelling them, and ſharing the Money: And if theſe Witneſſes ſay true, as nothing appears to the contrary by the Priſoners croſs-examining them, or otherwiſe, they are not at all contradicted, or their Credibility made queſtionable: And they are ſuch as are moſt likely to know what was done, being with them in the whole Voyage, and engaged with them in theſe Enterprizes. And if you can give entire Credit to the Witneſſes, you will probably find theſe Perſons guilty of the Piracy they are charg'd with; which I leave to your Conſideration.

Now indeed there are three of them that are Servants, and perhaps you may think their Caſe is different from the reſt; *Robert Lamley*, who was a Servant to *Owens* the Cook; *William Jenkins*, who was Servant to the Mate; and *Richard Barlicorn*, who was Servant to Capt. *Kidd*. And tho' the Witneſſes do prove, that they had their ſeveral Shares of the Goods and Money; yet, notwithſtanding, that they being Servants, their Maſters might be entitled to their Shares: So that if you believe they were Servants, and commanded to ſerve and aſſiſt their Maſters in what they did, I muſt leave it to you, whether you will think fit to diſtinguiſh their Caſe from the reſt. I do not find, that the others ſay any Thing material in their own Defence, they have called no Witneſſes at all. The Captain lays the Blame on the Men, and the Men ſeem to lay the Blame on him: He went out on a good Deſign, to take Pirates, had he purſu'd it; but inſtead of that, it appears that he turned Pirate himſelf, and took the Ships and Goods of Friends inſtead of Enemies, which was a notorious Breach of Truſt, as well as a manifeſt Violation of Law. The Evidence ſeems ſtrong againſt them, which I leave to you to conſider of.

[*Then the Jury withdrew, and after a ſhort Space brought in their Verdict.*]

Cl. of Arr. Gentlemen, anſwer to your Names: *Jo. Watſon.*

Jo. Watſon. Here, &c.

Cl. of Arr. Are you all agreed of your Verdict?—*Omnes.* Yes.

Cl. of Arr. Who ſhall ſpeak for you?—*Omnes.* Foreman.

Cl. of Arr. William Kidd, Hold up thy Hand. (*Which he did.*) Look upon the Priſoner. How ſay you? Is *William Kidd* guilty of the Piracy and Robbery whereof he ſtands indicted in the firſt Indictment, or not Guilty?—*Foreman.* Guilty.

Cl. of Arr. Is *Robert Lamley* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *William Jenkins* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *Gabriel Loffe* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Hugh Parrot* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Richard Barlicorn* Guilty, or not Guilty?

Foreman. Not Guilty?

Cl. of Arr. Is *Darby Mullins* Guilty, or not Guilty?

Foreman. Guilty.

[*The ſame Verdict was given to all the Priſoners upon the other Indictments.*]

Robert Culliford, *Nicholas Churchill*, *Darby Mullins*, and *John Eldridge*, were arraign'd for taking the Ship called The *Great Mahomet*, and ſeizing the Goods to a conſiderable Value; to which they pleaded, Not Guilty.

Robert Culliford, *Churchill*, *Howe* and *Mullins* were again indicted for another Ship taken piratically by them, to which they pleaded, Not Guilty.

Robert Culliford and *Robert Hickman* were again arraigned for piratically ſeizing another Ship, called The *Satisfaction*, to which they pleaded, Not Guilty.

Robert Culliford and *Robert Hickman* were again indicted for Piracy committed on a *Mooriſh* Ship; to which they pleaded, Not Guilty.

[*Then the Court proceeding to the Trials of the Perſons 'forementioned*; Robert Culliford *retracted his Plea, and pleaded Guilty, and argued his coming in upon his Majeſty's Proclamation; and his Caſe being particular, was argued by his Counſel, for the Benefit of his Majeſty's Pardon: And* Churchill, Howe, Mullins *and* Hickman, *likewiſe pleading Guilty*, John Eldridge *was tried by himſelf, and found Guilty.*]

[*After the Trials were over, Judgment againſt* Culliford *was reſpited, and he ſet aſide; the other Priſoners were called to the Bar in order to receive their Sentence, as follows:*]

Cl. of Arr. William Kidd, Hold up thy Hand. (*Which he did.*) What canſt thou ſay for thyſelf? Thou haſt been Indicted for ſeveral Piracies, and Robberies, and Murder, and hereupon haſt been convicted: What haſt thou to ſay for thyſelf, why thou ſhould'ſt not die according to Law?

Kidd. I have nothing to ſay, but that I have been ſworn againſt by perjured and wicked People.

Cl. of Arr. Nicholas Churchill, Hold up thy Hand, What haſt thou to ſay, &c.?

Churchill. I came in upon his Majeſty's Proclamation.

Cl. of Arr. James Howe, What haſt thou to ſay, &c.?

Howe. I came in upon the King's gracious Proclamation, and hope I ſhall receive the Benefit thereof.

Cl. of Arr. Gabriel Loffe, What haſt thou to ſay, &c.?

Loffe. Not Guilty.

Cl. of Arr. Hugh Parrot, What haſt thou to ſay, &c.?

Parrot. I came and ſurrendered myſelf to my Lord *Bellamont*.

Cl. of Arr. Abel Owens, What haſt thou to ſay?

Owens. I came in upon his Majeſty's Proclamation, and deſire the Benefit of it.

Cl. of Arr. Darby Mullins, What haſt thou to ſay, &c.?

Mullins. I came home upon the King's gracious Proclamation.

Cl. of Arr. John Eldridge, What haſt thou to ſay, &c.?

Eldridge. I have but little to ſay; I am accuſed but for one Thing, and that is all, and I have been falſly accuſed; I caſt myſelf on your Lordſhips and the Honourable Bench.

Cl. of Arr. Robert Hickman, What haſt thou to ſay, &c.?

Hickman. I came in according to the King's Proclamation; I came in within the Time limited.

[*Then Proclamation for Silence was made, while Sentence was pronouncing.*]

Dr. *Oxenden.* You the Priſoners at the Bar, *William Kidd*, *Nicholas Churchill*, *James Howe*, *Gabriel Loffe*, *Hugh Parrot*, *Abel Owens*, *Darby Mullins*, *Robert Hickman*, and *John Eldridge*; you have been ſeverally Indicted for ſeveral Piracies and Robberies, and you *William Kidd* for Murder. You have been tried by the Laws of the Land, and convicted; and nothing now remains, but that Sentence be paſſed according to the Law. And the Sentence of the Law is this:

> *You ſhall be taken from the Place where you are, and be carried to the Place from whence you came, and from thence to the Place of Execution, and there be ſeverally hang'd by your Necks until you be dead. And the Lord have Mercy on your Souls.*

Kidd. My Lord, It is a very hard Sentence: For my Part, I am the innocenteſt Perſon of them all, only I have been ſworn againſt by Perjured Perſons.

Captain Kidd *was afterwards Executed according to the Sentence.*]

CLXX. *Proceedings in Parliament againſt* William *Earl of* Portland, John *Lord* Sommers, Edward *Earl of* Orford, *and* Charles *Lord* Hallifax, *upon an Impeachment for* High Crimes *and* Miſdemeanors; *as alſo againſt* John *Lord* Haverſham, *for Words ſpoken at a Conference between the* Lords *and* Commons, 1701. 13 Will. III. *

Die Martis, 1° *Aprilis*, 1701.

Earl Portland *Impeached.*

A Meſſage was brought from the Houſe of Commons by Sir *John Leviſon Gower*, and others, who at the Bar of this Houſe, in the Name of the Houſe of Commons, and all the Commons of *England*, impeach'd *William* Earl of *Portland* of High Crimes and Miſdemeanors; and acquainted this Houſe, That the Houſe of Commons will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

A Committee appointed to inſpect the Journals of this Houſe, in relation to the Proceedings of this Houſe in Caſes of Impeachments for Miſdemeanors, and to report to the Houſe.

Die Martis, 1° *Aprilis*, 1701.

Lord Sommers *Impeach'd.*

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt* and others, who at the Bar of this Houſe, in the Name of the Houſe of Commons, and all the Commons of *England*, impeach'd *John* Lord *Sommers* of High Crimes and Miſdemeanors; and acquainted this Houſe, That the Houſe of Commons will, in due Time, exhibit particular Articles againſt the ſaid Lord, and make out the ſame.

Earl of Orford *Impeach'd.*

A Meſſage was brought from the Houſe of Commons by Colonel *Bierly* and others, who, at the Bar of this Houſe, in the Name of the Houſe of Commons, and all the Commons of *England*, impeach'd *Edward* Earl of *Orford* of High Crimes and Miſdemeanors; and acquainted this Houſe, That the Houſe of Commons will, in due Time, exhibit particular Articles againſt the ſaid Lord, and make good the ſame.

Lord Hallifax *Impeach'd.*

A Meſſage was brought from the Houſe of Commons by Mr. *Bruges* and others, who at the Bar of this Houſe, in the Name of the Houſe of Commons, and all the Commons of *England*, impeach'd *Charles* Lord *Hallifax* of High Crimes and Miſdemeanors; and acquainted this Houſe, That the Houſe of Commons will, in due Time, exhibit particular Articles againſt the ſaid Lord, and make good the ſame.

Die Mercurii, 2° *Aprilis*, 1701.

The Houſe being mov'd, That an Addreſs be made to his Majeſty, That he will be pleaſed to paſs no Cenſure or Puniſhment upon the Lords impeach'd, during the Dependance of the Impeachment in this Houſe,

After Debate, the Queſtion was put, That a Committee ſhall be immediately appointed to draw up an Addreſs to his Majeſty, That his Majeſty will be pleaſed not to paſs any Cenſure or Puniſhment againſt the Four Noble Lords, who ſtand impeached of High Crimes and Miſdemeanors, until the Impeachments depending againſt them in this Houſe ſhall be try'd? It was reſolv'd in the Affirmative.

A Committee appointed immediately to draw up an Addreſs to his Majeſty, That his Majeſty will be pleaſed not to paſs any Cenſure or Puniſhment againſt the Four Noble Lords, who ſtand impeach'd of High Crimes and Miſdemeanors, until the Impeachments depending againſt them in this Houſe ſhall be try'd.

The Houſe was adjourn'd during Pleaſure, and the Lords went to the Committee.

After ſome time the Houſe was reſum'd, and the Lord Steward reported, That the Committee had drawn an Addreſs, as order'd; which was read and agreed to, as followeth; *viz.*

'WE Your Majeſty's moſt Loyal and Dutiful Subjects, the Lords
'Spiritual and Temporal in Parliament aſſembled, beg leave to re-
'preſent to your Majeſty, That the Houſe of Commons have ſeverally
'impeach'd, at the Bar of our Houſe, *William* Earl of *Portland*, *John*
'Lord *Sommers*, *Edward* Earl of *Orford*, and *Charles* Lord *Hallifax*, of
'High Crimes and Miſdemeanors: And they having acquainted Us,
'That they will, in due Time, exhibit particular Articles againſt the
'ſaid Lords, and make good the ſame; We do moſt humbly beſeech your
'Majeſty, that your Majeſty will be pleaſed not to paſs any Cenſure upon
'them, until they are tried upon the ſame Impeachments, and Judgment
'be given according to the Uſage of Parliament, and the Laws of the
'Land.'

Order'd, That the Lord Steward and the Earl of *Romney* do attend his Majeſty with the Addreſs.

Die Lunæ, 5° *Maii*, 1701.

A Committee appointed to draw a Meſſage to be ſent to the Houſe of Commons, to put them in mind of the Impeachments brought up by them againſt the Earl of *Portland*, the Earl of *Orford*, the Lord *Sommers*, and the Lord *Hallifax*, and report to the Houſe.

Then the Houſe was adjourned during Pleaſure. After ſome time the Houſe was reſumed, and the Lord Steward reported the Meſſage; which was read and agreed to, as followeth, *viz.*

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Sir *Richard Holford*, to acquaint them, That they having, on the Firſt Day of *April* laſt, ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland*, of High Crimes and Miſdemeanors; and having alſo, on the Fifteenth Day of the ſame Month, ſeverally impeach'd *John* Lord *Sommers*, *Edward* Earl of *Orford*, and *Charles* Lord *Hallifax*, of High Crimes and Miſdemeanors, their Lordſhips think themſelves obliged to put them in mind, that as yet no particular Articles have been exhibited againſt the ſaid Lords; which, after Impeachments have been ſo long depending, is due in Juſtice to the Perſons concern'd, and agreeable to the Methods of Parliament in ſuch Caſes.

Die Veneris, 9° *Maii*, 1701.

A Meſſage was brought from the Houſe of Commons by Colonel *Bierly*, and others, with the Articles of Impeachment againſt *Edward* Earl of *Orford*; and to acquaint this Houſe, That the Matter of the Charge was contained in the Articles; and alſo, That he was commanded to pray and demand, that the Earl of *Orford* do give ſufficient Security to abide the Judgment of the Houſe of Lords.

A Committee appointed to conſider of the Manner of the Commons delivering Articles of Impeachment, and demanding Security to abide the Judgment of this Houſe, and report to the Houſe.

The Houſe was adjourn'd during Pleaſure, for the Committee to meet preſently. After ſome time the Houſe was reſumed, and the Earl of *Stamford* reported, That the Committee had met, and inſpected the Journals: That they do not find any mention of the Commons reading the Articles at the Bar; and as for giving Security, they find none.

Then the Articles were read by the Clerk, as follows; *viz.*

ARTICLES *exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves and of all the Commons of* England, *againſt* Edward *Earl of* Orford, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

I. THAT whereas for many Years paſt there hath been a long and expenſive War, both by Sea and Land, carried on by his Majeſty and his Allies againſt the *French* King for the preſerving the Balance of *Europe*, and for preventing the Growth of the immoderate Power of the ſaid *French* King; towards the Proſecution of which War great Sums of Money have been given and levied by Authority of Parliament, and many Debts have been contracted, which remain a very heavy Burden upon the People of *England*; the ſaid Earl being then of his Majeſty's moſt Honourable Privy Council; but always preferring his private Intereſt to the Good of the Publick, and taking Advantage of the ready Acceſs he had to his Majeſty's Perſon, during the Continuance of the ſaid War, in Violation of his Duty and Truſt, hath procur'd from his Majeſty one or more Grant or Grants of ſeveral Manours, Meſſuages, Lands, Tenements, and Hereditaments, within the Kingdoms of *England* or *Ireland*, or elſewhere within his Majeſty's Dominions, of a great Yearly Value; and alſo of exorbitant Sums of Money to be made to him, or others in Truſt for him, but

The ANSWER *of* Edward *Earl of* Orford, *to the Articles exhibited againſt him by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of* England, *in Maintenance of their Impeachment againſt the ſaid Earl for High Crimes and Miſdemeanors, ſuppos'd to be committed by him. Deliver'd in* 14° May, 1701.

THE ſaid Earl, ſaving to himſelf all Advantages of Exception to the ſaid Articles, and of not being prejudiced by any Words or Want of Form in this his Anſwer; and ſaving to him all Privileges and Rights belonging to him as one of the Peers of this Realm; for Anſwer to the Articles, humbly ſaith,

I. To the Firſt Article, That he having for ſeveral Years render'd his Majeſty his utmoſt Service and Duty, as a good and loyal Subject ought to do, his Royal Majeſty was graciouſly pleaſed, upon ſeveral Occaſions, to take notice of the ſame, and out of his wonted Bounty, and of his Free-will, was pleaſed to give the ſaid Earl two Grants, one whereof was a Reverſionary Grant for Years, of ſome Houſes depending upon a then precedent Eſtate for about Nine-and-Twenty Years; which being a Reverſionary Intereſt at ſo great a Diſtance, altho' the ſaid Earl thankfully received the ſame from his Majeſty, as his Grace and Bounty, yet the ſame was of no great Value: And the other of them was a Grant of the Remainder of a groſs Sum, amounting to about Two thouſand Pounds

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* *See* State-Trials, *Vol.* VIII. *p.* 493.

to his Uſe; the Profits whereof he now enjoys; whereby the Standing Revenues of the Crown of *England*, which ought to be applied to the Service of the Publick, are greatly diminiſh'd, and the People of *England* thereby burthen'd with Debts, and ſubject to grievous Taxes.

a Year, for Five Years: Which are the only Grants of any Manours, Meſſuages, Lands, Tenements, Hereditaments, or Sums of Money whatſoever, which he, or any in Truſt for him, hath had from his Majeſty; and which ſaid two Grants his Majeſty was graciouſly pleas'd, after many Years Service, freely to beſtow upon him the ſaid Earl, without any Surprize, ſiniſter or indirect Means of the ſaid Earl in obtaining the ſame, and which Grants he humbly conceives were not unuſual in like Caſes, the accepting whereof he humbly hopes was not any Violation of his Duty, or of any Truſt in him the ſaid Earl repos'd.

II. That in Breach of the Truſt repoſed in him whilſt he was Commander in Chief of the Navy Royal of *England*, in or near the *Streights* of *Gibraltar*, and within the Time aforeſaid, he, the ſaid Earl, did receive great Sums of the Publick Money, iſſued out to him for the Service of the Navy, which he hath converted to his own private Uſe, and unlawfully and unjuſtly procur'd a Privy-Seal, or Privy-Seals, to diſcharge him from accounting to the Publick for the ſame; and alſo hath receiv'd other great Sums of Money from his Majeſty's *Exchequer*, as Paymaſter or Receiver-General of the Navy, without giving a due and legal Account thereof; whereby he hath occaſion'd great Clamours and Diſcontents among the Seamen, and others belonging to his Majeſty's Navy, who are thereby reduced to great Miſeries and Neceſſities for want of their juſt Dues, to the great Diſcouragement and Diſcredit of the Publick Service.

II. To the Second Article the ſaid Earl anſwereth, and denieth, That he at any time converted to his own private Uſe any publick Money iſſued to him for the Service of the Navy; or that he the ſaid Earl ever procur'd, or had any Privy-Seal, or Privy-Seals, to diſcharge him from accounting for the ſame; but ſaith, That he the ſaid Earl did make up, and upon Oath paſs his Accounts for the Moneys impreſs'd to him for the Service in this Article mention'd; which Account was legally declar'd and paſs'd, upon very ſtrict and great Examination, by the Lords Commiſſioners of the Treaſury; and he, the ſaid Earl, hath his *Quietus eſt*, in due Courſe of Law upon the ſame. But the Commiſſioners of the Victualling-Office making ſome unuſual Objections to part of the ſaid Account, concerning ſome Proviſions furniſh'd to the Fleet by the ſaid Earl, in the King of *Spain*'s Dominions, altho' the ſame were truly and really had and ſpent by the Seamen in the Fleet, and paid for by him, the ſaid Earl; and which Objections in like Caſes had not been made or ſtood upon, nor could be reaſonably expected; his Majeſty was pleas'd to direct and order a Privy-Seal to diſpenſe with the Form in that Particular; but the ſaid Earl did make no Advantage to himſelf thereby; nor was his Majeſty, or the Government, in the leaſt defrauded therein; it appearing, upon a very ſtrict Examination, that leſs Rates were allow'd for the ſaid Proviſions than had been allow'd before in like Caſes; or, as the ſaid Earl is informed, hath been ſince allow'd. And to the latter Part of the ſaid Article ſaith, That for the Moneys by him receiv'd, as Treaſurer or Receiver-General of the Navy, he hath already deliver'd in his Accounts, and is ready to perfect the ſame, according to the ordinary Method, ſome of 'em plying ready with the Auditors to be declar'd, and the reſt of 'em being made up and deliver'd in to be examin'd, in order to be paſs'd; and ſaith, After juſt Allowances had, he does not believe he ſhall appear to be indebted upon the ſaid Accounts: And alſo denies, That any Perſons are Sufferers for want of their Dues, in reſpect of the ſaid Accounts, or that the Publick Service is, or hath been, any ways diſcourag'd or diſcredited thereby, as in the ſaid Article is alledg'd.

III. That the ſaid Earl, while he was in ſeveral Ports belonging to the King of *Spain*'s Dominions, did receive from the ſaid King of *Spain* and others conſiderable Sums of Money, and great Quantities of Wine, Oil, and other Proviſions for the Fleet, to a very great Value; for all which he ought to have accounted: But the ſaid Earl did convert the ſame to his own Uſe, and did either embezzle thoſe Proviſions, or reckon 'em as bought with the Money allow'd for furniſhing the Navy with freſh Proviſions; and that for advancing his own private Intereſt, and ſecuring himſelf from rendering any Account to the Publick, he, the ſaid Earl, during the ſaid War procur'd, enjoy'd, and poſſeſs'd divers great Offices, which were inconſiſtent, and in their Nature improper to be executed by one and the ſame Perſon, and which ought to be, and by the Laws and Uſages of this Realm were, and are appointed and deſign'd as Checks one upon the other, in Breach of the ſaid Laws, to the Diſhonour of his Majeſty, and Prejudice of his People.

III. To the Third Article the ſaid Earl anſwereth, and denies, That he receiv'd any Moneys whatſoever from the King of *Spain*, or any other Perſon, as in the Article is alledg'd; and ſaith, That what Wine, Oil, or other Proviſions were receiv'd from the King of *Spain*, or any others, for the Fleet, were duly deliver'd and diſtributed amongſt the Officers and Seamen thereof; and denies he did embezzle any of the Proviſions, or reckon'd them, or any Part of them, as bought with the Moneys allow'd for furniſhing the Navy with freſh Proviſions: And does alſo deny, That he the ſaid Earl did enjoy any Offices inconſiſtent in their Nature (as he is advis'd) one with the other, or which were, or ought to be, Checks one upon the other; or, that he any ways ſecur'd, or pretended to ſecure himſelf from rendering any Account to the Publick, by any Office or Offices whatſoever; or, that he is guilty of the Breach of any Laws to his Knowledge, by executing any Office or Offices, or ever executed the ſame to the Diſhonour of his Majeſty, or to the Prejudice of his People, as in the ſaid Article is alledged.

IV. That he the ſaid Earl, within the Time aforeſaid, hath clandeſtinely, contrary to the Law of Nations, ſold and diſpos'd of ſeveral Veſſels, with their Ladings and Cargo, taken under Pretence of Prize by his Majeſty's Ships of War, without Condemnation or judicial Proceedings, and converted the Money to his own Uſe; well knowing if they had been condemn'd, as by Law they ought to have been, one Tenth (after Cuſtoms allow'd) and one Third Part of the Value thereof, the Cuſtoms and the ſaid Tenth being deducted, are by Act of Parliament appropriated to eſpecial Uſes: By which Proceedings the Publick has been greatly endamag'd and defrauded, and the Debts of the Nation increas'd.

IV. To the Fourth Article the ſaid Earl anſwereth, and ſaith, He believes that the Prizes taken in the late War were appropriated as by the Act of Parliament in that Behalf is provided; but denies that he did, at any Time, ſell or diſpoſe of any Veſſel or Veſſels, or their Ladings or Cargo, taken as or under the Pretence of Prize, by any of his Majeſty's Ships of War, without Condemnation or judicial Proceedings; or converted the Moneys ariſing by Sale of any Veſſel or Veſſels, or their Lading or Cargo, taken as or under Pretence of Prize by any of his Majeſty's Ships of War, to his own Uſe; but, on the contrary, did from Time to Time, in his Station, give Orders, that the Prizes taken ſhould be carefully preſerved without Embezzlement, and duly proceeded againſt, and the Produce anſwered as the Law directs: And therefore humbly inſiſteth, that the Public hath been no ways endamaged, or the Debts of the Nation increaſed by any Neglect or Default of the ſaid Earl.

V. And whereas Complaints were made to the Commiſſioners for executing the Office of Lord High-Admiral of *England* (where the ſaid Earl at that Time preſided) by the Company trading to the *Eaſt-Indies*, of divers Piracies committed in the South-Eaſt Seas, to the Deſtruction of their Trade, deſiring they might have Letters of Mart granted to them, whereby to be empower'd (tho' at their own Charge) to ſuppreſs ſuch Pirates: But the ſaid Earl preferring his own Intereſt, diſcourag'd and rejected their Requeſt and Propoſal; and in ſome ſhort Time after, jointly with others, did procure a Commiſſion for one *William Kidd*; as likewiſe a Grant under the Great Seal of *England*, to and for the Uſe of him the ſaid Earl, and others, of the Ships and Goods of certain Perſons therein nam'd, and alſo of all Goods found on board the ſaid Ships. And the ſaid Company having Intimation of a Commiſſion granted to the ſaid *Kidd*, being apprehenſive of the ill Conſequences of the ſame, did apply themſelves to the ſaid Board of Admiralty, deſiring to know what Powers and Inſtructions were given: But ſuch their reaſonable Requeſt was deny'd; and *Kidd*, who was known to be a Perſon of ill Fame and Reputation, order'd to purſue the intended Voyage; in which he did commit divers Piracies and Depredations on the High-Seas, being thereto encouraged thro' the Hopes of being protected by the High Station and Intereſt of the ſaid Earl, in Violation of the Law of Nations, and the Interruption and Diſcouragement of the Trade of *England*.

V. To the Fifth Article the ſaid Earl ſaith, That the *Eaſt-India* Company, about the Beginning of *March*, One thouſand ſix hundred Ninety and ſix, did apply to the Admiralty Board, of which the ſaid Earl was one, to impower their Ships and Officers to ſeize and take all Pirates infeſting the Seas within the Limits of their Charter; and likewiſe to erect a Court of Admiralty in thoſe Parts, to try and condemn ſuch Pirates as they ſhould take. Upon which Application the Board of Admiralty did take Advice, and were inform'd, They had no Authority to grant the ſame; and denies, he the ſaid Earl ever diſcourag'd or rejected the Company's Requeſt therein, unleſs it were by telling them, That the Admiralty by Law could not grant the ſame: And denies that the Company was ever deny'd Letters of Mart in common Form, to the Knowledge of the ſaid Earl: And ſaith, as to the Matter of *Kidd*, in the Article mention'd, He was gone upon his Expedition about twelve Months before that Time. And as to his Commiſſion, and the Grant in the ſaid Article mention'd, the ſaid Earl humbly conceives, and is advis'd, the ſame were not contrary to Law; but ſure he is, the ſaid Expedition was intended for the Publick Good and Service; and ſaith, The ſaid *Kidd* had no Powers or Inſtructions from the Board of Admiralty, other than the ordinary and common Letters of Mart, the Contents whereof are common, and well known to Merchants. And the ſaid Earl doth deny, that he knew the ſaid *Kidd* to be of ill Fame and Reputation: But in caſe the ſaid *Kidd* hath committed any Piracies, he the ſaid *Kidd* is anſwerable, and ought to anſwer for the ſame, he never being order'd by the ſaid Earl ſo to do; nor had he ever any the leaſt Encouragement given him by the ſaid Earl, or any other, to his Knowledge, to expect or hope for any Protection therein, or in any illegal Action done or committed by him.

VI. That the ſaid Earl, within the Time aforeſaid, when an horrid Conſpiracy was diſcover'd againſt his Majeſty's ſacred Perſon, and the Kingdom was under an Apprehenſion of an immediate Invaſion from *France*, and divers Ships of War (particularly the Ship *Dutcheſs*) were Arm'd out, Equipp'd and Mann'd in Defence of the Realm, to oppoſe the intended Invaſion, did his utmoſt Endeavour to prejudice and weaken the Navy Royal of

VI. To the Sixth Article the ſaid Earl ſaith, He believes it to be true, that there was a horrid and barbarous Plot and Conſpiracy againſt his Majeſty's ſacred Perſon, and that there was an Apprehenſion of an immediate Invaſion; but the ſaid Earl hopes, no Neglect of Duty in his Station can be imputed to him to prevent the ſame. And as for the Ship *Dutcheſs*, which was, amongſt many others, arm'd and equipp'd in Defence of the of *England*; for that he, the ſaid Earl, by Colour of his Office (being then firſt Commiſſioner for executing the Office of Lord High-Admiral of *England)* without the Privity of the other Commiſſioners, contrary to his Oath and Duty, and preferring his Hopes of Gain to himſelf, to the Safety of the Publick, did order Capt. *Steward*, Commander of the Ship *Dutcheſs*, to deliver over, and put on board the ſaid *Kidd*, mention'd in the foregoing Article, out of the ſaid Ship *The Dutcheſs*, a great Number of able Seamen, levied and provided at the Expence of the Publick, and then diſcharging their Duty in Defence of their Country, and againſt their own Conſent, to the Prejudice of the Publick Security, and to the endangering of the ſaid Ship *The Dutcheſs*, if it had been attack'd by the Enemy.

the Realm, the ſaid Earl ſaith, That the Men in the ſaid Article mention'd to be taken from on board her, were but ſome of the very Perſons that were juſt before taken from on board Capt. *Kidd*, and returned by their own Conſent on board Capt. *Kidd* again, not being above twenty in Number; and ſaith, all Fears of the Invaſion were then over and at an end; and denies, that the ſame was intended to weaken, or did weaken the ſaid Ship, or the Navy Royal; or that the ſaid Seamen, ſo returning on board the ſaid *Kidd*, were levied or provided at the Expence of the Publick, or did return or were put on board the ſaid *Kidd* againſt their own Conſent, or to the Prejudice of the Publick Security; or that the Ship *Dutcheſs* was thereby endanger'd, if ſhe had been attack'd, as in the ſaid Article is alledg'd.

VII. That the ſaid Earl, during the ſaid War, and at a Time of the greateſt Exigency and Neceſſity, when Ships, Men, and Money were wanting to guard the Seas, and protect our Trade, did by Miſrepreſentations, and contrary to his bounden Duty, and the Truſt repoſed in him, procure a Grant or Order for his Majeſty's Ship *The Dolphin*, then fitted out, mann'd and equipp'd for the Service of the Publick, to be employ'd in a private Voyage and Undertaking, for the Advantage of himſelf and others concerned with him. In purſuance whereof, and for their private Gain, the Ship was, at the Publick Expence, continued in Foreign Parts for ſeveral Months, to the Deſtruction and Loſs of his Majeſty's Subjects on board the ſame, to the weakening the Navy, by rendering the ſaid Ship unſerviceable, and the increaſing the Debts of the Publick.

VII. To the Seventh Article the ſaid Earl anſwereth, and denies, That he did, by Miſrepreſentation, or otherwiſe, obtain or procure a Grant or Order for his Majeſty's Ship *Dolphin* to be employ'd in a private Voyage or Undertaking; but what was done therein, was done upon the Peace concluded, and by his Majeſty's Command, at the Inſtance and Requeſt of other Perſons, and not of the ſaid Earl, but contrary to his Opinion: Nor was the ſaid Earl any way concerned in Intereſt therein, till after his Majeſty's Orders were given about the ſaid Ship; and then, and not before, ſome of the Perſons concerned in the ſaid Adventure, deſired the ſaid Earl to take ſome Shares therein (the Number whereof he doth not remember), which the ſaid Earl accordingly did; but humbly inſiſts, that his Actings therein were not contrary to his Duty, or the Truſt in him repoſed, or the Debts of the Nation thereby increas'd.

VIII. That the ſaid Earl, during the Time of his Commanding the Navy Royal of *England*, did, through Neglect, and in Contempt of Orders, unneceſſarily hazard and expoſe to imminent Danger the ſaid Navy; and that during the Time aforeſaid, having had many Opportunities of taking or deſtroying the Ships belonging to the *French* King, the ſaid Earl, contrary to Advice, in Diſobedience to Orders, and in Neglect of his Duty, did ſuffer and permit the ſaid Ships to return ſafe into their own Harbours.

VIII. To the Eighth the ſaid Earl anſwereth, and denies, That at any Time while he commanded the Navy Royal, he did, through Neglect or Contempt of Orders, unneceſſarily hazard or expoſe to Danger the ſaid Navy; and alſo denies, that upon any Opportunity of taking or deſtroying the Ships of the *French* King, he did, contrary to Advice, or in Diſobedience to Orders, neglect to do the ſame: And alſo denies, That he did ſuffer or permit any of the *French* King's Ships to return into their own Harbours, when he had Opportunity to prevent the ſame; and humbly inſiſts, he is not guilty of any Neglect or Omiſſion of his Duty herein, nor did expect in this Particular to be charged therewith, conſidering his faithful Services rendered againſt the *French* Fleet.

IX. That the ſaid Earl, well knowing our Sovereign Lord the King to have been engaged in ſeveral Alliances with the Emperor of *Germany* and other Princes and States, particularly in a Treaty concluded with his Imperial Majeſty in the Year of our Lord One Thouſand Six Hundred Eighty-Nine, the End and Intention of all which Leagues and Treaties were to prevent the Growth of the Power of the *French* King, and to ſecure *England*, and the ancient Allies of *England*, againſt the ſame, did notwithſtanding, in concert with other Falſe and Evil Counſellors, adviſe our ſaid Sovereign Lord the King in the Year One Thouſand Six Hundred Ninety-Eight, to enter into one Treaty for dividing the Monarchy and Dominions of *Spain*; in purſuance whereof, in the Year One Thouſand Six Hundred Ninety-Nine, one other Treaty was entered into to the like Purpoſe; by which Treaties great Injuſtice was done to the Emperor, an ancient Ally of our ſaid Sovereign Lord the King, and a large Part of the ſaid *Spaniſh* Dominions were to be added to the Crown of *France*; both which Treaties were Prejudicial to the Intereſt of the Proteſtant Religion all over *Europe*, Ruinous to the Trade of *England*, and Diſhonourable to our Sovereign Lord the King, and the People of theſe Kingdoms.

IX. To the Ninth Article the ſaid Earl ſaith, He believes it to be true, that his Majeſty hath been engaged in ſeveral Alliances with ſeveral Princes, and particularly with the Emperor, in the Year One Thouſand Six Hundred Eighty-Nine; and that the End of thoſe Alliances was to prevent the Growth and Power of *France*, and to ſecure this Kingdom and its Allies: But the ſaid Earl does deny, that he did adviſe his Majeſty to enter into the Treaty of Partition, charged upon the ſaid Earl in this Article; and ſo far as the ſaid Earl was any ways acquainted therewith, he objected to, and gave his Opinion againſt the ſame.

All which Crimes and Miſdemeanors were committed and done by him, the ſaid Earl, againſt our Sovereign Lord the King, his Crown and Dignity, the Peace and Intereſt of this Kingdom, and in Breach of the ſeveral Truſts repoſed in him the ſaid Earl.

X. And he the ſaid Earl of *Orford* was One of the Lords Juſtices, during his Majeſty's Abſence beyond the Seas, the Firſt Commiſſioner for executing the Office of Lord High-Admiral of *England*, Commander in Chief of his Majeſty's Navy Royal, One of his Majeſty's Privy Council, and Treaſurer of his Majeſty's Navy, or in ſome or one of the ſaid Stations during the Time that all and every the Crimes ſet forth were done and committed.

X. To the Tenth Article the ſaid Earl anſwereth, and ſaith, That true it is, his Majeſty was pleaſed to employ and intruſt him in the ſeveral Offices and Stations in this Article mentioned, for ſeveral Years, as his Majeſty's Occaſions required, although not for all the Time in the ſaid Article mentioned; and hopes, and humbly inſiſteth upon it, that he the ſaid Earl did from time to time, according to his Duty, and the Truſts in him repoſed, diſcharge the ſaid Offices and Employments with Loyalty, Faithfulneſs and Zeal to his Majeſty and his People.

That the ſaid Commons, by Proteſtation, ſaving to themſelves the Liberty of Exhibiting, at any Time hereafter, any other Accuſation or Impeachment againſt the ſaid Earl, and alſo of Replying to his Anſwers, or to any of them, and of offering Proofs of all the ſaid Premiſſes, or any of them, or any other Impeachment or Accuſation that ſhall be exhibited by them, as the Caſe ſhall, according to the Courſe of Parliament, require; Do Pray and Demand, That the ſaid Earl may be put to Anſwer for all and every of the Premiſſes; and that ſuch Proceedings, Examinations, Trials and Judgments, may be upon every of them had and uſed, as is agreeable to Law and Juſtice.

And thus having laid his Caſe before your Lordſhips, he the ſaid Earl does humbly inſiſt, and anſwer to the ſaid Impeachment, and all and every the Articles aforeſaid, exhibited againſt him, That he is not Guilty of all or any of them, or of all or any the Matters or Things by the ſaid Articles charged, in Manner and Form as the ſame are therein and thereby alledg'd againſt him; and that the Matters by him before ſet forth to be done and tranſacted, or any of them, were not done or committed by him, the ſaid Earl, againſt our Sovereign Lord the King, his Crown and Dignity, or the Peace or Intereſt of this Kingdom, or in Breach of the Truſt repoſed in him, the ſaid Earl; and humbly ſubmits himſelf herein to your Lordſhips Judgment.

ORFORD.

After Reading in the Houſe the Articles of Impeachment brought up againſt *Edward* Earl of *Orford*, for High Crimes and Miſdemeanors, his Lordſhip humbly deſired to have a Copy of the ſaid Articles, and that he would put in his Anſwer to them in as ſhort a Time as the Houſe ſhould think fit: It is thereupon ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *Edward* Earl of *Orford* may have a Copy of the ſaid Articles.

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Pitt*, to acquaint them, That upon Search of the Journals of this Houſe, they do not find any Precedent of Security given to abide the Judgment of this Houſe by any Peer, upon an Impeachment of High Crimes and Miſdemeanors.

Die Mercurij, 14° *Maij*, 1701.

This Day *Edward* Earl of *Orford* delivered his Anſwer to the Articles of Impeachment of the Houſe of Commons againſt him, which was read by the Clerk.

The Committee appointed to conſider of the Manner in delivering Articles of Impeachments by the Commons being Revived, the Houſe was adjourned during Pleaſure; and the Lords went to the Committee. And ſome Time, the Houſe was reſumed, and the Earl of *Stamford* reported, That they had inſpected the Journals, and find the firſt Step, after Anſwers to Impeachments are delivered, is to ſend a Copy thereof to the Houſe of Commons. Whereupon it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Anſwer of *Edward* Earl of *Orford*, delivered this Day to the Articles of Impeachment depending againſt him, be Copied, in order to be ſent to the Houſe of Commons To-morrow Morning, by two Maſters of *Chancery*.

The Earl of *Orford* having this Day delivered in his Anſwer to the Articles of Impeachment againſt him, deſired that Mr. *Dodd* and Mr. *Pooley* might be aſſigned Counſel for him upon his Trial. It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Mr. *Dodd* and Mr. *Pooley* ſhall, and they are hereby aſſigned Counſel for the Earl of *Orford*, as deſired.

Die Jovis 15° *Maii*, 1701.

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Pitt*, to carry down a Copy of the Earl of *Orford*'s Anſwer to the Articles of Impeachment againſt him.

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Pitt*, to acquaint them, That they having, on the Firſt Day of *April* laſt, ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland* for High Crimes and Miſdemeanors; and having alſo, on the Fifteenth Day of the ſame Month, ſeverally impeached *John* Lord *Sommers* and *Charles* Lord *Hallifax* of High Crimes and Miſdemeanors, their Lordſhips think themſelves obliged to put them in mind, that as yet no particular Articles have been exhibited againſt the ſaid Lords, which, after Impeachments have been ſo long depending, is due in Juſtice to the Perſons concerned, and agreeable to the Methods of Parliament in ſuch Caſes.

The Meſſengers ſent to the Houſe of Commons return Anſwer, *viz.* That the Articles againſt *William* Earl of *Portland*, *John* Lord *Sommers* and *Charles* Lord *Hallifax*, are preparing, and in a ſhort Time their Houſe will ſend them up to the Houſe of Lords.

Die Lunæ 19° *Maii*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt* and others, with the Articles of Impeachment againſt *John* Lord *Sommers*; and to acquaint this Houſe, That the Matter of the Charge was contained in the Articles; and alſo, That he was commanded to pray and demand, that the Lord *Sommers* do give ſufficient Security to abide the Judgment of the Houſe of Lords.

The Articles were read by the Clerk, as follows; *viz.*

ARTICLES *exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of* England, *againſt* John *Lord* Sommers, *Baron of* Eveſham, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

I. THAT a Treaty and Alliance between *Leopold*, the Emperor of *Germany*, and the *States General* of the *United Provinces*, was made and concluded in the Year of our Lord One thouſand Six hundred Eighty-nine, upon their Conſideration of the Greatneſs of the Common Danger which then threatened all *Chriſtendom*, from the exceſſive Power of *France*, and the unconſtant Faith of the *French* in the Obſervance of Treaties; whereby it was agreed, That there ſhould be, and remain for ever, a conſtant, perpetual, and inviolable Friendſhip and good Correſpondence between his Imperial Majeſty and the *States General*; that each of them ſhould be obliged to promote the other's Intereſt, and, as much as in them lay, prevent all Damages and Inconveniencies to each other.

That during the Continuance of the War, there ſhould be not only a Defenſive, but alſo an Offenſive Alliance between the ſaid Parties; by Virtue whereof, they ſhould both of them act in an hoſtile Manner, with all their Forces by Sea and Land againſt the *French* King, and ſuch of his Allies as ſhould refuſe to ſeparate themſelves from him: That after the War ſhould be ended, and a Peace concluded, there ſhould remain between his Imperial Majeſty, his Heirs, and Succeſſors, and the *States-General*, a perpetual Defenſive Alliance againſt the Crown of *France* and its Adherents.

That if the Crown of *France* ſhould again attack either of the ſaid Confederate Parties, at what Time ſoever the ſame ſhould be done, they ſhould faithfully aſſiſt each other.

That his Imperial Majeſty and the *States-General* ſhould at all Times by all Means, with all their Forces, protect and defend all the Rights of each other againſt the Crown of *France*, and its Adherents.

And other Proviſions were thereby made for their mutual Security, as well during the Continuance of the War, as after the Concluſion of a Peace.

That certain Separate Articles were alſo at or about that Time made, whereby the *States-General* maturely conſidering that *France* had openly declared in ſeveral Courts, that (notwithſtanding the moſt ſolemn Renunciation) they continued their Pretenſions by Force of Arms to aſſert for *The Dauphin* the Succeſſion of the *Spaniſh* Monarchy, in Caſe the King of *Spain* ſhould die without Iſſue; and alſo conſidering what a Blow their State would receive, and what a Prejudice might happen thereby to the publick Affairs and Quiet, did promiſe, That in Caſe his ſaid Catholick Majeſty ſhould die without lawful Iſſue, they would with all their Forces aſſiſt his ſaid Imperial Majeſty or his Heirs in taking the Succeſſion of the *Spaniſh* Monarchy, lawfully belonging to that Houſe, together with its Kingdoms, Provinces, Dominions and Rights, and in their obtaining and ſecuring the quiet Poſſeſſion thereof, againſt the *French*, and their Adherents, who ſhould directly, or indirectly, oppoſe that Succeſſion, and with Forces repel the Force that ſhould be brought againſt them.

That at the Inſtance of the *States-General*, in purſuance of the ſaid Treaty and Separate Articles, our moſt Gracious Lord and Sovereign, his moſt Excellent Majeſty King *William* III. was invited to enter into an Alliance of the aforeſaid Treaty, and into the Agreement of the ſaid Separate Articles; and thereupon, for reſtoring and preſerving the publick Peace and Quiet, did afterwards, in the ſaid Year of our Lord One thouſand Six hundred and Eighty-nine, enter into, and under the Great Seal of *England*, accept, approve, and ratify, and in the moſt ſolemn Manner, engage and promiſe religiouſly and inviolably to obſerve the ſame, without violating the ſaid Treaty, or Separate Articles in any Article, or ſuffering the ſame to the utmoſt of his Power to be violated.

That in the Year of our Lord One thouſand Six hundred and Ninety-eight, a Treaty was projected and contrived in *France*, to be ſet on foot between his Majeſty, the *French* King, and the *States-General*, for a Partition of the *Spaniſh* Monarchy, whereby many large Territories thereunto belonging were to be allotted and delivered up to *France*.

That the Tenor and Deſign of the ſaid laſt mentioned Treaty, whilſt the ſame was in Negotiation, was communicated to the ſaid *John* Lord *Sommers*, then One of the Lords Juſtices of *England*, Lord Chancellor of *England*, and One of his Majeſty's moſt Honourable Privy Council.

That the ſaid Lord *Sommers*, well knowing the moſt apparent evil Conſequences, as well as the Injuſtice of the ſaid Partition, did not, according to the Truſt and Duty of his ſaid ſeveral Offices, diſſuade or endeavour to obſtruct its taking effect; but, on the contrary, having neither

The ANSWER *of* John *Lord* Sommers, *Baron* of Eveſham, *to the Articles exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of* England, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors, ſuppos'd to be by him committed. Delivered in* 24 May, 1701.

THE ſaid Lord *Sommers*, ſaving to himſelf all Advantages of Exception to the ſaid Articles, and of not being prejudiced by any Words, or want of Form in this his Anſwer; and alſo ſaving to himſelf all Rights and Privileges belonging to him, as one of the Peers of this Realm; for Anſwer to the ſaid Article humbly ſaith:

I. To the Firſt Article, That he believes the now Emperor of *Germany*, and the *States-General* of The *United Provinces*, being in the Year One thouſand Six hundred and Eighty-nine engaged in a War with *France*, a Treaty and Alliance was concluded between them, and a Separate Article then made, to the Effect in this Article mentioned; and that his Sacred Majeſty did afterwards enter into, ratify and approve the ſame; to which Treaty, Separate Article, and Ratification (for Certainty thereof) he referreth himſelf: And further ſaith, That in the Year One thouſand Six hundred and Ninety-eight, his Majeſty, before he left *England*, was pleaſed to tell him, That ſome Intimation had been given to the Earl of *Portland*, when in *France*, that the *French* King inclined to come to an Agreement with his Majeſty, concerning the Succeſſion to the Crown of *Spain*. And afterwards, in *Auguſt*, One thouſand Six hundred and Ninety-eight (his Majeſty being then in *Holland*, and the ſaid Lord *Sommers* at *Tunbridge-Wells*, by his Majeſty's Permiſſion, for Recovery of his Health), Mr. Secretary *Vernon* communicated to him a Letter he had then received, written by the Earl of *Portland*, by his Majeſty's Order, wherein it was mentioned, That Count *Tallard* (who was then Ambaſſador from the *French* King to his Majeſty) had declared an Accommodation might be found out in Relation to the Succeſſion of *Spain*, in Caſe of that King's Death: And that his Majeſty had ſounded *France*, upon what Terms an Agreement might be made; and the Conditions were near of this Nature; (*viz.*) That the Electoral Prince of *Bavaria* ſhould have the Kingdom of *Spain*, the *Indies*, the *Low-Countries*, and all that depends upon the *Spaniſh* Dominions (except the Kingdoms of *Naples* and *Sicily*, *Sardinia*, the Province of *Guypuſcoa* on this Side of the *Pyreneans*, *Fontarabia*, and *St. Sebaſtian*, *Final*, and the Places in *Tuſcany*, of which *Spain* then ſtood poſſeſſed): In Conſideration of which, *France* was abſolutely to renounce the Right it pretended to the Succeſſion of *Spain*, and *Milan* was to be given to the Arch-Duke, ſecond Son to the Emperor: And that his Majeſty commanded the ſaid Mr. Secretary to ſpeak to him, the ſaid Lord *Sommers*, touching that Matter; and that his Lordſhip ſhould diſcourſe it with thoſe he thought he might truſt with that Secret, which to keep with the utmoſt Care, was by the ſaid Letters mentioned to be of the higheſt Importance; and at the ſame Time, the ſaid Lord *Sommers* received a Letter from his Majeſty, ſigned by himſelf, intimating, that Count *Tallard* had made ſome Propoſitions, touching an Agreement with his Majeſty, concerning the Succeſſion of the Kingdom of *Spain*, the which the ſaid Earl of *Portland* would write to Mr. Secretary *Vernon*, to the End his Majeſty might have ſome Opinions upon that Affair, which required the greateſt Secrecy, and in which no time was to be loſt, if that Negotiation were to be carried on: And for that End his Majeſty thereby commanded the ſaid Lord *Sommers* to ſend full Powers to him under the Great Seal of *England*, with Blanks for the Names of Commiſſioners, to treat with Count *Tallard*; which his Majeſty, by his ſaid Letter, was pleaſed to ſay, he believed might be done ſecretly: That none but the ſaid Lord *Sommers* and Mr. Secretary *Vernon*, and thoſe to whom the ſaid Lord *Sommers* and Mr. Secretary ſhould communicate it, might have Knowledge thereof; and that the Clerks who were to write the full Powers, might not know what they were, or to the like Effect; and the ſaid Lord *Sommers* did immediately return the Earl of *Portland*'s ſaid Letter to Mr. Secretary *Vernon*, and deſired him to communicate the Contents thereof to the Earl of *Orford*, and the now Lord *Hallifax*, (Two of the then Lord Juſtices, who, as he was aſſured, were then in Town) and alſo to ſuch others as they and Mr. Secretary *Vernon* ſhould think fit; who, in regard of the King's Command to have that Affair kept a Secret, thought fit to impart it to the Duke of *Shrewſbury* only (as the ſaid Mr. Secretary afterwards acquainted the ſaid Lord *Sommers*): And ſome Time afterwards the ſaid Lord *Hallifax* came down to the ſaid Wells; and Mr. Secretary *Vernon* coming thither alſo about the ſame Time, they, and the ſaid Lord *Sommers*, had Diſcourſe together concerning the ſaid Propoſal; and the ſaid Lord *Sommers*, by Letter dated the

Regard to his Majeſty's Honour, engag'd by the ſaid Treaty with the Emperor and *States-General*, as aforeſaid, to the Trade and known Intereſt of this Kingdom, or the Peace of *Europe*, did adviſe his Majeſty to enter into the ſaid Treaty, and did ſo far encourage and promote the ſame, that the ſaid Treaty was concluded and ratified under the Great-Seal of *England* (then in the Cuſtody of the ſaid Lord *Sommers*), and thereby the Kingdoms of *Naples* and *Sicily*, the Places depending on the Monarchy of *Spain*, ſituate on the Coaſt of *Tuſcany*, or the adjacent Iſlands, comprehended under the Name of *Santo Stephano*, *Porto Hercole*, *Orbitello*, *Telamone*, *Porto Longone*, *Piombino*, the Town and Marquiſate of *Final*, the Province of *Guypuſcoa*, particularly the Towns of *Fontarabia* and *St. Sebaſtian*, ſituate in that Province, and eſpecially the Port of the Paſſage, which is therein compriz'd, with ſeveral other Parts and Things of, or belonging to, the ſaid Kingdom of *Spain*, were allotted to the *Dauphin* for his Share; and the Crown of *Spain*, and the other Kingdoms, Iſlands, States, Countries, and Places depending thereon (except ſuch Part as aforeſaid, which was thereby allotted to the *Dauphin* for his Share; and the Dutchy of *Milan* herein after mention'd), was given and aſſign'd to the Electoral Prince, eldeſt Son to the Elector of *Bavaria*, for his Share, to enjoy the ſame to him, his Heirs and Succeſſors, for ever, never to be moleſted therein on any Pretence of Right or Claim on the Part of the *French* King, or the *Dauphin*, or his Iſſue, Heirs or Succeſſors, nor on the Part of the Emperor, the King of the *Romans*, the Arch-Duke *Charles*, his ſecond Son, and other Children, or his Heirs or Succeſſors; and the Dutchy of *Milan* was thereby agreed to be given to the ſaid Arch-Duke for his Share, and in Extinction of all Pretenſions and Rights which the ſaid Emperor, the King of the *Romans*, the ſaid Arch-Duke *Charles*, all his other Children, Succeſſors, and Heirs, might have to the ſaid Succeſſion of *Spain*. By which Treaty it was alſo further agreed, That if any Prince whatſoever ſhould oppoſe the taking Poſſeſſion of the Shares thereby agreed on, as aforeſaid, his Majeſty, the *French* King, and the *States-General*, ſhould aſſiſt one another againſt ſuch Oppoſition, and hinder the ſame with all their Power.

That by a Secret Article of the ſaid Treaty, in like Manner ratified under the Great-Seal of *England*, 'twas provided, That if the King of *Spain* ſhould die without Iſſue, and the Electoral Prince of *Bavaria* ſhould afterwards die without Iſſue, his Electoral Highneſs of *Bavaria*, his Father, ſhould ſucceed him in all the Kingdoms, Iſlands, States, Countries, and Places aſſigned to the Electoral Prince aforeſaid, and enjoy the ſame to him and his Children, Succeſſors, and Heirs, then born, or to be born; ſo as neither the Emperor, his Children, nor any other Perſon, ſhould or might, under any Pretext, form the leaſt Pretenſion to that Succeſſion; his Majeſty, the *French* King, and *States-General*, thereby engaging themſelves to employ all their Power, by Land and by Sea, for maintaining the Order eſtabliſh'd by the ſaid ſecret Article, relating to the Succeſſion of the Monarchy of *Spain*.

That the ſaid Treaty was ratified under the Great-Seal of *England* (then in the Cuſtody of the ſaid Lord *Sommers*), as an Agreement between his Majeſty, the *French* King, and *States-General*, notwithſtanding the ſaid Lord *Sommers* well knew that the ſame had been concluded between his Majeſty's Commiſſioners and the *French* Ambaſſador, or the Commiſſioner of the *French* King only; and, that the Purport thereof had never been communicated to the *States-General* at the Time of the Ratification thereof under the Great-Seal of *England*, notwithſtanding the Negotiation thereof in *Holland*.

28th of *Auguſt*, One thouſand Six hundred and Ninety and Eight, did (as his own Thoughts, and as what he apprehended to be the Reſult of their Conſideration) humbly repreſent to his Majeſty, Firſt, That the entertaining of ſuch a Propoſal, as was mention'd by Count *Tallard*, ſeem'd to be attended with very many ill Conſequences, if the *French* did not act a ſincere Part; but that they were ſoon at Eaſe, as to any Apprehenſion of that ſort, being fully aſſur'd his Majeſty would not act but with the utmoſt Niceneſs in an Affair wherein his Glory, and the Safety of *Europe*, was ſo highly concerned. That the ſecond Thing they conſider'd, was the very ill Proſpect of what was like to happen upon the Death of the King of *Spain*, in caſe nothing was done previouſly towards the providing againſt that Accident, which ſeems probably to be very near; the King of *France* then having ſo great a Force in ſuch a Readineſs, that he was in a Condition to take Poſſeſſion of *Spain* before any other Prince could be ready to make a Stand. That his Majeſty was the beſt Judge whether that was the Caſe, who was ſo perfectly informed of the Circumſtances of all Parts abroad. But, ſo far as related to *England*, it would be the Want of Duty not to give his Majeſty this clear Account, That there was a Deadneſs, and want of Spirit, in the Nation univerſally, ſo as not at all to be diſpoſed to the Thoughts of entering into a new War; and that they ſeem'd to be tir'd out with Taxes, to a Degree beyond what was diſcerned, until it appeared upon the Occaſion of the then late Elections: That that was the Truth of the Fact, upon which his Majeſty would determine what Reſolutions were proper to be taken. The remaining Conſideration was, what would be the Condition of *Europe*, if the Propoſal took Place; but of that they thought themſelves little capable of judging; but it ſeem'd, that if *Sicily* were in the *French* hands, they would be entirely Maſters of the *Levant* Trade: That if they were poſſeſs'd of *Final*, and thoſe other Sea-Ports on that Side (whereby *Milan* would be entirely ſhut out from Relief by Sea, or any Commerce), that Dutchy would be of little Signification in the Hands of any Prince; and, that if the King of *France* had Poſſeſſion of that Part of *Guypuſcoa*, which is mention'd in the Propoſal, beſides the Ports he would have in the Ocean, it did ſeem he would have as eaſy a Way of invading *Spain* on that Side, as he then had on the Side of *Catalonia*. But it was not to be hoped, that *France* ſhould quit its Pretenſions to ſo great a Succeſſion, without conſiderable Advantages; and they were aſſured his Majeſty would reduce the Terms as low as could be done, and make them (as far as was poſſible in the then preſent Circumſtances of Things) ſuch as might be ſome Foundation for the future Quiet of *Chriſtendom*, which all his Majeſty's Subjects could not but be convinced was his true Aim. And if it could be brought to paſs, that *England* might be ſome way a Gainer by that Tranſaction, whether it was by the Elector of *Bavaria* (who was the Gainer by his Majeſty's Interpoſition in that Treaty), his coming to an Agreement to let the *Engliſh* into ſome Trade to the *Spaniſh* Plantations, or in any other manner, it would wonderfully endear his Majeſty to his *Engliſh* Subjects: That it did not appear, in caſe the Negotiation ſhould proceed, what was to be done on his Majeſty's Part, in order to make it take place; whether any more was requir'd, than that the *Engliſh* and *Dutch* ſhould ſit ſtill, and *France* itſelf was to ſee it executed; and if that were ſo, what Security ought to be expected, that if, by their being Neuters, the *French* ſhould be ſucceſsful, they would confine themſelves to the Terms of the Treaty, and not attempt to make further Advantages of their Succeſs. And the ſaid Lord *Sommers* ſaith, That after the writing of his ſaid Letter he had no Account whatſoever, nor heard any Thing of the ſaid Treaty, or knew or heard whether the ſame was proceeded upon, or not, until towards the latter End of *September* following; when he was acquainted by Mr. Secretary *Vernon*, That he had receiv'd an Account, that a Treaty relating to the Succeſſion of the Crown of *Spain* had been adjuſted, concluded, and ſign'd by the Commiſſioners named by his Majeſty for that Purpoſe, and the Ambaſſador and Plenipotentiary of the *French* King. And the ſaid Lord *Sommers* doth deny, That the ſaid Treaty of Partition, or any Propoſition for ſuch Treaty, or the Tranſaction thereof, was communicated to him, the ſaid Lord *Sommers*; nor was he acquainted with the ſame, or the Deſign thereof, or any other Matter relating thereto, at any other Time, or in any other Manner, before he was told of the concluding and ſigning thereof, as aforeſaid, than as is herein before mention'd to be done by his Majeſty, as aforeſaid, and by his and the ſaid Earl of *Portland*'s Letter, herein before-mention'd. And the ſaid Lord *Sommers* doth deny he did, at any Time whatſoever, adviſe his Majeſty to enter into the ſaid Treaty, or any way encourage or promote the ſame; but having made the Objections before-mention'd in his ſaid Letter to his Majeſty, againſt the Propoſitions ſo communicated to him, as aforeſaid, and clearly laid open ſuch Thoughts and Obſervations as occurr'd to him upon the ſaid Matter; he did thereby (as he conceived) fully and faithfully diſcharge his Truſt, and the Duty incumbent on him. And the ſaid Lord *Sommers* further ſaith, That afterwards Mr. Secretary *Vernon* did acquaint him, that he had receiv'd, by his Majeſty's Command, a Copy of the Treaty relating to the Succeſſion of the Crown of *Spain*, and of two ſecret Articles relating to the Matter of that Treaty; and, that he had likewiſe his Majeſty's Command to prepare the Inſtruments for the Ratification of the ſame, and to leave Blanks therein for the Names of the Commiſſioners of the *States-General*. And accordingly the ſaid Mr. Secretary did prepare the ſaid ſeveral Inſtruments, and did bring the ſame, ſo prepar'd, to the ſaid Lord *Sommers*, to paſs the ſame under the Great-Seal; which was done accordingly, the ſaid Lord *Sommers* having a good and lawful Warrant ſo to do; and the ſaid Ratification was tranſmitted to his Majeſty, to have the ſame perfected in his Preſence: Which Treaty and ſecret Articles were to ſuch or the like Effect, as in this Article is ſet forth; but, for more Certainty, he refers himſelf to the ſaid Treaty and Articles. And the ſaid Lord *Sommers*, not being privy in any other manner than as aforeſaid to the ſaid Treaty, or the Tranſaction thereof, doth not know when, or in what manner, the ſame was communicated to the *States-General*.

II. That for the more effectual carrying on the ſaid Treaty, one or more Commiſſion or Commiſſions was or were prepar'd, amended, enlarg'd, or alter'd by the ſaid Lord *Sommers*, without any lawful Warrant for his ſo doing; whereunto the ſaid Lord *Sommers*, contrary to the Duty of his ſaid ſeveral Offices, and in Violation of the great Truſt repos'd in him, in or about the Month of *September*, 1698, without communicating the ſame to the reſt of the then Lords Juſtices of *England*, or adviſing in Council with his Majeſty's Privy Council thereupon, did preſume to affix the Great-Seal of *England*.

That no certain Perſons of known Honour, Fidelity, and Experience were therein nominated Commiſſioners, at the Time of the affixing the Great-Seal of *England* thereto, but a Blank or empty Space was left in the ſaid Commiſſion or Commiſſions at the Time of the ſealing thereof, wherein the Commiſſioners Names were to be afterwards inſerted beyond the Seas; notwithſtanding which, an unlimited Power was thereby granted to the Commiſſioners, whoſe Names were therein afterwards to be inſerted, as aforeſaid, or to either of them, without any written Inſtructions whatſoever to reſtrain, guide, or direct them in the Exerciſe thereof, in his Majeſty's Name to confer and treat with the Commiſſioner or Deputy, or Commiſſioners or Deputies, of the *French* King, and alſo with the Commiſſioners or

II. and III. To the Second and Third Articles the ſaid Lord *Sommers* ſaith, That he having receiv'd his Majeſty's expreſs Commands, by his Letter mention'd in his Anſwer to his Firſt Article, to ſend to his Majeſty full Powers, under the Great-Seal of *England*, for negotiating the ſaid Treaty, with Blanks for his Majeſty's Commiſſioners Names; which he humbly conceives, and is adviſ'd, was a ſufficient Warrant for him to paſs a Commiſſion under the Great-Seal for that Purpoſe; and the ſame being prepar'd in uſual Form of Commiſſions of Full Powers, with Blanks for Commiſſioners Names, according to his Majeſty's Directions, he did affix the Great Seal to the ſame; and the ſaid Commiſſion was ſent to his Majeſty, then in *Holland*, to be perfected in his Preſence, by inſerting the Names of ſuch Perſons as his Majeſty ſhould think fit to commiſſionate therein (as he conceives might legally be done); which Commiſſioners were to receive their Inſtructions from his Majeſty, for the Execution of their ſaid Power, together with their ſaid Commiſſion, in uſual manner: But what Inſtructions, or whether any Inſtructions in Writing were given to the Commiſſioners, in relation to the executing the ſaid Power (the ſame no ways concerning the ſaid Lord *Sommers*) he knows not. And the ſaid Lord *Sommers* ſaith, He did deſire his Majeſty, that a particular Warrant for the ſaid Commiſſion (which had been before ſent by Mr. Secretary *Vernon* to

Deputies of the *States-General*, for preſerving the publick Peace, and touching the Succeſſion to the Crown of *Spain*; and his Majeſty did thereby engage himſelf to approve, ratify, and confirm whatſoever ſhould be thereupon concluded by them, or either of them.

III. That the ſaid Lord *Sommers*, contrary to the Duty of his ſaid Office of Lord Chancellor, did affix the Great-Seal of *England* to the ſaid Commiſſion or Commiſſions, not having firſt received any lawful Warrant for that Purpoſe: In hopes of concealing which evil and moſt dangerous Practice, the ſaid Lord *Sommers*, after he had ſealed the ſaid Commiſſion or Commiſſions, uſed his Endeavours to procure a Warrant to be tranſmitted to him, for affixing the Great Seal to the ſaid Commiſſion or Commiſſions, and that it might not be known but that he had it in due Time.

his Majeſty, as he informed the ſaid Lord *Sommers*, for his ſigning) might be ſigned and returned: Not that he doubted his Majeſty's ſaid Letter to be a ſufficient Warrant, but for that ſuch Warrant might be more proper to be produced, if Occaſion ſhould require, than his Majeſty's ſaid Letter; which, by reaſon of other Matters therein obtained, ought not to be produced without his Majeſty's Permiſſion, and which is now made uſe of by his Majeſty's gracious Leave. And the ſaid Lord *Sommers* further ſaith, That his Majeſty having by his own, and the Earl of *Portland*'s Letter before-mentioned, directed, That his Majeſty's ſaid Commands ſhould be kept ſecret; he did not communicate the making of the ſaid Commiſſion, otherwiſe than to the Perſons mentioned in his Anſwer to the ſaid Firſt Article.

IV. That the ſaid Lord *Sommers*, contrary to the Duty of his ſaid ſeveral Offices, affixed the Great-Seal of *England* to the Ratification of the ſaid Treaty, made in the Year of our Lord 1698, not having firſt communicated the ſame to the reſt of the then Lords Juſtices of *England*, or adviſed in Council with his Majeſty's Privy-Council thereupon; and at the Time of his affixing the Great-Seal thereto, one entire blank Sheet, and many other Blanks, were left in the ſaid Ratification, with an Intent to be afterwards filled up by other Perſons beyond the Seas, as ſhould be thought fit.

IV. To the Fourth Article he ſaith, That Mr. Secretary *Vernon* having prepar'd, by his Majeſty's Command, the Inſtruments for Ratification of the ſaid Treaty, with Blanks therein, as is before ſet forth, he did affix the Great-Seal to the ſaid Ratification with ſuch Blanks (which, he conceives, and is adviſed, he might lawfully do); and having alſo his Majeſty's Command, that the ſaid Treaty ſhould be kept ſecret, he did not communicate the ſame to the reſt of the then Lords Juſtices, or his Majeſty's Privy Council; which beſides he conceived was unneceſſary to be done, in regard his Majeſty had then, by his Commiſſioners, perfected the ſaid Treaty, ſo that the ſame could not be altered.

V. That in the Year of our Lord 1699, another Treaty was entered into, in purſuance of the ſaid Treaty made in the Year 1698, and concluded by and between his Majeſty, the *French* King, and the *States-General*, and alſo ratified under the Great-Seal of *England*, then in the Cuſtody of the ſaid Lord *Sommers*; whereby the Kingdom of *Spain* (in caſe his Catholick Majeſty ſhould die without Iſſue) was agreed to be divided, and many large Territories thereof were allotted to the *Dauphin* for his Share: Which Treaties were evidently deſtructive of the Trade of this Realm, diſhonourable to his Majeſty, highly injurious to the Intereſt of the Proteſtant Religion, and manifeſtly tended to diſturb the General Peace of *Europe*, by altering the Balance of Power therein, and ſtrengthening *France* againſt the good Friends and ancient Allies of our Sovereign Lord the King.

V. To the Fifth Article the ſaid Lord *Sommers* ſaith, He believes that in the Year One thouſand Six hundred Ninety and nine, another Treaty was entered into and concluded between his Majeſty, the *States-General*, and the *French* King, to ſuch or ſuch-like Effect as in this Article is mentioned; to which Treaty, for more Certainty thereof, he referreth himſelf: And denieth, that he had any Knowledge of ſuch Treaty, or any Tranſaction in order thereunto, ſave only that a Draught of the ſaid Treaty was read over in the Preſence of divers of the Lords of his Majeſty's Privy Council (whereof the ſaid Lord *Sommers* was one); to which Draught the ſaid Lord *Sommers*, as well as others then preſent, did make ſeveral Objections; but they were informed by his Majeſty's Plenipotentiaries for tranſacting the ſaid Treaty, who were then alſo preſent, That the ſaid Treaty was ſo far perfected, that nothing could then be altered therein; and his Majeſty afterwards, by his Warrant, requiring the ratifying of the ſaid Treaty under the Great-Seal, he did affix the Great-Seal to ſuch Ratification, being (as he conceives) obliged ſo to do.

VI. That whereas by the Laws and Uſages of this Realm all Commiſſions under the Great-Seal of *England*, for the making any Treaties or Alliances with any Foreign Princes, States, or Potentates, and all Ratifications under the Great-Seal of all ſuch Treaties and Alliances, ought to be enrolled and entered on Record in the Court of *Chancery*, with or by the Prothonotary of the ſaid Court, for a perpetual Memorial thereof; and that the Merchants and other Subjects of *England*, having Commerce or Correſpondence in Foreign Parts, may not, through Ignorance of the ſame, incur the Pains and Penalties by the Law due to thoſe who ſhall any way infringe, break, or act contrary to ſuch Treaties; he the ſaid Lord *Sommers*, not minding the Duty of his Office, did not in any manner enrol or enter on Record, or cauſe to be enroll'd or entered on Record, any of the ſaid Commiſſions or Ratifications in the foregoing Articles mentioned, as by the Duty of his Place he ſhould and ought to have done; but ſo to do did totally neglect and omit, in Breach of his Duty, and in Violation of the Laws of this Realm.

VI. To the Sixth Article he ſaith, He conceives it was not incumbent upon him, as Lord Chancellor, to ſee the Commiſſions or Ratifications, in this Article mentioned, enrolled, the ſame being prepared and brought to the Great-Seal by the Secretaries of State ready engroſs'd; and when ſealed taken away by them, and the Original Treaties remaining in their Cuſtody: But the Care of enrolling the ſame, if neceſſary, doth (as he conceives) belong to the Prothonotary of the Court of *Chancery*.

VII. That the ſaid Lord *Sommers*, when the Cuſtody of the Great-Seal of *England* was committed to him, did ſwear well and truly to ſerve our Sovereign Lord the King, and his People, Poor and Rich, after the Laws and Uſages of this Realm, and truly to counſel the King, and his Counſel to keep, and not to know nor ſuffer the Hurt or Diſinheriting of the King, or, that the Rights of the Crown ſhould be decreaſed, as far forth as he might lett it; and, if he could not lett it, that he would make it clearly and expreſly to be known unto the King, with his true Advice and Counſel; and that he ſhould do and purchaſe the King's Profit in all he reaſonably might, or to that effect; and the ſaid Lord *Sommers* afterwards took the ſaid Oath, as Lord Chancellor of *England*.

That the ſaid Lord *Sommers*, being Lord-Keeper of the Great-Seal, or Lord Chancellor of *England*, and One of his Majeſty's moſt Honourable Privy Council, whilſt this Nation was engaged in a tedious and moſt expenſive War againſt the *French* King, for preſerving the Balance and Liberties of *Europe*, and almoſt exhauſted with Supplies and Taxes for carrying on the ſame, and under ſuch heavy Debts, as without the utmoſt Frugality, or laying inſupportable Taxes on the Commons of *England*, were impoſſible to be ſatisfied; contrary to his ſaid Oath, did paſs many great, unreaſonable, and exorbitant Grants under the Great-Seal of *England*, of divers Manors, Lordſhips, Lands, Tenements, Hereditaments, Revenues, and Intereſts belonging to the Crown of *England*, amounting to a moſt prodigious and exceſſive Value; and did adviſe, promote, and procure divers great, unreaſonable, and exorbitant Grants to be made of ſeveral of the late forfeited Eſtates in *Ireland*, in Contempt of the Advice of his Majeſty's moſt Dutiful and Loyal Subjects the Commons of *England* in Parliament aſſembled, and without any Regard to his Majeſty's moſt gracious Aſſurance thereupon to both Houſes of Parliament; and engaged to procure, and accordingly did procure, divers Acts prepared for confirming the ſaid Grants in Parliament in *Ireland*, to be approv'd in Council in *England*, and afterwards remitted the ſame, under the Great Seal of *England*, to be paſſed into Laws in *Ireland*.

VII. To the Seventh Article he ſaith, That when the Great-Seal was committed to his Cuſtody, he took the Oath of Office, to the Effect in that Article ſet forth; and, during the Time he had the Cuſtody thereof, he did carefully, diligently, and honeſtly endeavour to keep the ſaid Oath, and hopes and believes he hath duly obſerved the ſame; and doth acknowledge, That during the Time he was Lord Keeper and Lord Chancellor, he did paſs ſeveral Grants to divers Perſons, of ſeveral Lands, Tenements, and Hereditaments, belonging to his Majeſty in Right of his Crown of *England*; but ſaith, That before any of them came to the Great-Seal, the ſame were regularly paſſed through the proper Offices, and brought with ſufficient Warrants for the Great-Seal; and believes more conſiderable Grants have paſſed in the like Number of Years, in moſt of his Predeceſſors Times; and conceives, and is adviſed, That being required by his Majeſty, by Warrant, to paſs the ſame, he ought ſo to do; and denies, That he did ever adviſe, promote, or procure any Grant to be made to any Perſon whatſoever, of any Forfeited Eſtate in *Ireland*, or did procure any Act or Bill prepared for confirming any ſuch Grant in the Parliament in *Ireland*, to be approved in the Privy Council in *England*; and ſaith, That what Bills of this Nature were remitted under the Great-Seal of *England*, to be paſſed into Laws in *Ireland*, the ſame were firſt approved and paſſed in the Privy Council in *England*, according to the uſual Form in ſuch Caſes; and being ſo approved, were, by Order of Council, ſent to the ſaid Lord *Sommers*, who was by the ſaid Order required to affix the Great-Seal thereto.

VIII. That the ſaid Lord *Sommers*, during the Time of his being Lord Keeper of the Great Seal, and Lord Chancellor of *England*, did not only receive and enjoy the Fees, Profits, and Perquiſites of or belonging to the Great Seal, eſtabliſhed by Law, as a ſufficient and ample Recompence and Reward for the faithful Diſcharge of that high Station; but alſo, as a further Encouragement, through his Majeſty's moſt abundant Grace and Bounty, received an annual Penſion or Allowance from the Crown, of Four Thouſand Pounds, and many other Profits and Advantages; notwithſtanding which, the ſaid Lord *Sommers*, not being contented therewith, contrary to his ſaid Oath, begg'd and procured, for his own Benefit, many great, unreaſonable, and exorbitant Grants of ſeveral Manors, Lands,

VIII. To the Eighth Article he ſaith, He did, during the Time he had the Cuſtody of the Great-Seal, receive the Profits and Perquiſites thereto belonging, which before his Time were become very inconſiderable; and did alſo receive an annual Penſion or Allowance from his Majeſty of Four thouſand Pounds, being the like Penſion that had been allowed to ſeveral of his Predeceſſors; but denies, that he did ever beg, or uſe any Means to procure any Grant whatſoever from his Majeſty for his own Benefit; but ſaith, That what his Majeſty was pleaſed to give, proceeded from his Majeſty's own Motion, and of his mere Bounty; and (as his Majeſty was pleaſed to declare upon that Occaſion) as an Evidence of his Gracious Acceptation of the ſaid Lord *Sommers*'s zealous Endeavours for his Service;

Tenements, Rents, Hereditaments, and Revenues belonging to the Crown of *England*.

That in or about the Month of *April*, 1697, the ſaid Lord *Sommers*, being then Lord Chancellor of *England*, and One of his Majeſty's moſt Honourable Privy Council, contrary to his ſaid Oath, did procure and paſs a Grant, under the Great Seal of *England*, without any real Conſideration whatſoever, to *Joſeph Jekyll*, Eſq; and his Heirs for ever, of the Manour or Manours of *Rygate* and *Howleigh*, with all and ſingular their Rights, Members, and Appurtenances, ſituate and being in the Pariſh of *Rygate*, or elſewhere, within the County of *Surry*; and of all Quit-Rents, Rents of Aſſize, Free-Rents, Conventionary-Rents, Copyhold and Cuſtomary-Rents, and all other Rents whatſoever, to the ſaid Manour or Manours belonging or appertaining, with the Site of the ruined Caſtle, and of all other Demeſne-Lands of the ſaid Manour or Manours, with the Rents reſerved on any Leaſes then in being, of any Parts thereof, and of all other Lands, Meadows, Feedings, Paſtures, Meſſuages, Houſes, Edifices, Buildings, Barns, Stables, Dove-houſes, Tolls of Markets, or Fairs, with the Market-houſe there; and alſo of all Warrens, Chaſes, Parks, Commons, Woods, Underwoods, Woodlands, Waſte-grounds, Courts-Leet, Courts-Baron, and other Court-Services, Franchiſes, Heriots, Fines, Iſſues, Amerciaments, and all other Profits and Perquiſites of the ſaid Courts, Rights, Royalties, Juriſdictions, and of divers other Matters, Hereditaments, and Appurtenances to the ſaid Manour or Manours, or either of them, or to the Royalties thereof belonging, or in any wiſe appertaining, which Premiſſes were Parcel of the Demeſnes and Revenues of the Crown, and of the Value of Twelve thouſand Pounds, and upwards.

That under Pretence of purchaſing divers Fee-Farm Rents, and other Rents, veſted in Truſtees for Sale thereof, in purſuance of ſeveral Acts of Parliament made in the Reign of his late Majeſty King *Charles* the Second, the ſaid Lord *Sommers*, in the Year of our Lord 1697, procured a Warrant from his Majeſty, under his Sign-Manual, to the Commiſſioners of the Treaſury then in being, to contract, or give Warrant to the Truſtees for Sale of Fee-Farm Rents to contract, with *Humphry Hetherington*, Eſq; or ſuch as he ſhould nominate, for as many Fee-Farms and other Rents, then remaining unſold (except ſuch Rents as were ſet apart for Payment of Penſions in the Penſion-Deed), as ſhould amount unto Eight hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchaſe; and that, upon ſuch Contract, the ſaid Commiſſioners of the Treaſury ſhould give Warrant for conveying the ſaid Rents to the ſaid *Humphry Hetherington*, or ſuch as he ſhould appoint, and his Heirs.

and the ſame was done without any previous Sollicitation by him the ſaid Lord *Sommers*, or any other to his Knowledge or Belief. And that in the Year One thouſand Six hundred Ninety-ſeven, his Majeſty, of his own Motion, did grant, for the Benefit of the ſaid Lord *Sommers*, the Manour or Manours, of *Rygate* and *Howleigh*, as in the ſaid Article is mentioned; but the ſame was, and is far ſhort of the Value thereby ſuggeſted. And the ſaid Lord *Sommers* further ſaith, He never pretended to purchaſe in his own Name, or in the Name or Names of any other Perſon or Perſons in Truſt for him, any of the Fee-Farm Rents, or other Rents veſted in Truſtees for Sale. But his Majeſty taking notice, that ſeveral of the ſaid Fee-Farm Rents, and other Rents ſo veſted in Truſtees, were unſold, and the ſaid Truſtees being, by the Acts of Parliament veſted in them the ſaid Rents, declared to hold the ſame for the Benefit of his Majeſty, his Heirs and Succeſſors, his Majeſty did, in the Year One thouſand Six hundred Ninety-ſeven, of his own Motion, without any Sollicitation, Procurement or Means uſed by the ſaid Lord *Sommers*, acquaint the then Lords Commiſſioners of the Treaſury, or ſome or one of them, That it was his Majeſty's Pleaſure, that Two thouſand One hundred Pounds *per Annum* of thoſe Rents ſhould be granted to or for the Benefit of the ſaid Lord *Sommers*, and his Heirs; and that all proper Methods ſhould be uſed for veſting the ſame for his Benefit, as of his Majeſty's Free-Gift. And the ſaid Acts of Parliament having directed, That the ſaid Truſtees for Sales ſhould convey the ſaid Rents, purſuant to Contracts to be ſigned by the Lord Treaſurer, or Lords Commiſſioners of the Treaſury for the Time being, or any two of them, for the Satisfaction of the ſaid Truſtees only, and according to the Method that had been uſed from the Time of making the ſaid Acts, in paſſing Grants of any of the ſaid Rents, even ſuch as were meerly of the Bounty of his Majeſty's Predeceſſors, and of his Majeſty; ſuch Warrants were made by his Majeſty to the Lords Commiſſioners of the Treaſury, to contract, or give Warrants to the Truſtees to contract for the ſaid Rents; and ſuch Contracts were purſuant thereunto made, and ſuch Grants of the ſaid Rents were paſſed, as in the ſaid Article is mentioned; and the Money mentioned in ſuch Contracts was for the perfecting of his Majeſty's ſaid intended Free Gift, diſcharged by Tallies ſtruck for that Purpoſe. And the ſaid Lord *Sommers* ſaith, The ſaid Contracts were not intended, or deſigned to make the Grantees of the ſaid Rents appear to be Purchaſers; but the ſaid Lord *Sommers* always acknowledged he received the ſaid Grants of his Majeſty's Bounty; and he humbly conceives it was lawful for him ſo to accept the ſame.

That under the like Pretence, and at or about the ſame Time, the ſaid Lord *Sommers* procured another Warrant from his Majeſty, under the Sign-Manual, to the ſaid Commiſſioners of the Treaſury, to contract, or give Warrant to the ſaid Truſtees to contract, with *Richard Adney*, Eſq; or ſuch as he ſhould nominate, for as many Fee-Farm and other Rents, then remaining unſold (except as aforeſaid), as ſhould amount to Seven hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchaſe; and that, upon the ſaid Contract, the ſaid Commiſſioners ſhould give Warrant for conveying the ſaid Rents unto the ſaid *Richard Adney*, or ſuch as he ſhould nominate, and his Heirs.

That under the like Pretence, and at or about the ſame Time, the ſaid Lord *Sommers* procured another Warrant from his Majeſty, under his Sign-Manual, to the ſaid Commiſſioners of the Treaſury, to contract, or give Warrant to the ſaid Truſtees to contract, with *Samuel Newton*, Eſq; or ſuch as he ſhould nominate, for as many Fee-farm and other Rents, then remaining unſold, (except as aforeſaid) as ſhould amount to Six hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchaſe; and that, upon ſuch Contract, the ſaid Commiſſioners ſhould give Warrant for conveying the ſaid Rents unto the ſaid *Samuel Newton*, or ſuch as he ſhould nominate, and his Heirs.

That in Purſuance of Warrants of the ſaid Commiſſioners of the Treaſury thereupon, certain Contracts were made, or pretended to be made, with the ſaid *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, for the real Sale of divers Fee-farm Rents, and other Rents, of the ſeveral and reſpective yearly Values aforeſaid; by Virtue whereof the ſaid *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton* became oblig'd to pay into the Receipt of his Majeſty's *Exchequer* at *Weſtminſter*, for the Purchaſe of the ſeveral and reſpective Rents to them reſpectively to be convey'd, as aforeſaid, the Sums herein after-mentioned; that is to ſay, the ſaid *Humphry Hetherington* Twelve thouſand Eight hundred Pounds, the ſaid *Richard Adney* Eleven thouſand Two hundred Pounds, and the ſaid *Samuel Newton* Nine thouſand Six hundred Pounds.

That in Purſuance of ſuch Contracts, or pretended Contracts, thro' the Power of the ſaid Lord *Sommers*, and by his Means and Procurement, divers Fee-farm Rents, and other Rents, were, by certain Indentures Tripartite of Bargain and Sale, bearing Date on or before the Sixth Day of *January*, 1697, in Conſideration of Three thouſand Two hundred Pounds, therein mention'd to have been paid by the ſaid *Humphry Hetherington* unto his Majeſty at the Receipt of his *Exchequer* at *Weſtminſter*, or by other Aſſurance in the Law, granted and convey'd by the ſaid Truſtees, by the Appointment of the ſaid *Humphry Hetherington*, to *Leonard Hancock*, of *Cheſhunt* in the County of *Hertford*, Eſq; and *John Warner*, of the Pariſh of *St. Clement Danes* in the County of *Middleſex*, Goldſmith, and their Heirs.

And by other Indentures of Bargain and Sale of the ſame Date, or other Aſſurance in the Law, divers other Fee-farm Rents, and other Rents therein mention'd, in Conſideration of Nine thouſand Six hundred Pounds, therein mention'd to have been paid by the ſaid *Humphry Hetherington* to his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter* (being the Reſidue of the ſaid Sum of Twelve thouſand Eight hundred Pounds) were, by the ſaid Truſtees, granted and convey'd to the ſaid *Humphry Hetherington*, and his Heirs; which Fee-farm, and other Rents, ſo convey'd unto or by the Appointment of the ſaid *Humphry Hetherington*, amount to the full yearly Value of Eight hundred Pounds.

And by other Indentures of Bargain and Sale, of the ſame Date, or other Aſſurance in the Law, and in Conſideration of Two thouſand Four hundred Pounds, therein mention'd to have been paid by the ſaid *Richard Adney* unto his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter*, other Fee-farm Rents, and other Rents, were, by the Appointment of the ſaid *Richard Adney*, granted and conveyed by the ſaid Truſtees to the ſaid *Leonard Hancock* and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale, of the ſame Date, or other Aſſurance in the Law, in Conſideration of Eight thouſand Eight hundred Pounds, in the ſame Indentures mention'd to have been paid by the ſaid *Richard Adney* to his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter* (being the Reſidue of the ſaid Sum of Eleven thouſand Two hundred Pounds), divers other Fee-farm Rents, and other Rents therein mention'd, were granted and convey'd by the ſaid Truſtees to the ſaid *Richard Adney* and his Heirs; which Fee-farm, and other Rents ſo convey'd to, or by the Appointment of the ſaid *Richard Adney*, amount to the full yearly Value of Seven hundred Pounds *per Annum*.

And by other Indentures of Bargain and Sale, bearing Date on or about the Twenty-fifth Day of *April*, 1698, or other Aſſurance in the Law, in Conſideration of Two thouſand Four hundred Pounds, therein mention'd to have been paid by the ſaid *Samuel Newton* to his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter*, other Fee-farm Rents, and other Rents therein mention'd were, by the Appointment of the ſaid *Samuel Newton*, granted and convey'd by the ſaid Truſtees to the ſaid *Leonard Hancock* and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale, of the ſame Date, or other Aſſurance in Law, in Conſideration of Seven thouſand Two hundred Pounds, therein mention'd to have been paid by the ſaid *Samuel Newton* to his Majeſty, at the Receipt of his *Exchequer*, at *Weſtminſter* (being the Reſidue of the ſaid Sum of Nine thouſand Six hundred Pounds) divers other Fee-farm Rents, and other Rents therein mention'd, were granted, and convey'd by the ſaid Truſtees, to the ſaid *Samuel Newton*, and his Heirs; which ſaid ſeveral Rents ſo convey'd unto, or by the Appointment of the ſaid *Samuel Newton*, amount to the yearly Value of Six hundred Pounds.

That the ſaid ſeveral Manours and Rents aforeſaid were granted to the ſaid *Joſeph Jekyll*, *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and their Heirs reſpectively, as aforeſaid, in Truſt for the ſaid Lord *Sommers* and his Heirs.

IX. That the ſaid Lord *Sommers*, in order to procure a Grant of the ſaid Fee-farm Rents for his own Benefit, whilſt he was Lord-Chancellor of *England*, and One of his Majeſty's moſt Honourable Privy-Council, whilſt his Majeſty was engaged in the ſaid War, and the Nation under ſuch heavy Debts, as aforeſaid, did enter into ſeveral Treaties, and had many Communications with divers Perſons entruſted with the Care and

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IX and X. To the Ninth and Tenth Articles the ſaid Lord *Sommers* ſaith; That after his Majeſty had given ſuch Directions to the Lords of the Treaſury, for granting Fee-farm Rents, and other Rents, to the yearly Value aforeſaid, for the Benefit of the ſaid Lord *Sommers* and his Heirs; and after Warrants were ſigned by the Lords of the Treaſury to the ſaid Truſtees, for making Contracts for conveying Rents of the ſaid

Yearly

Management of the ſaid Fee-farm Rents; and particularly with *Reginald Marriott*, of the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, Auditor of the Rates, or acting as Auditor; and with *John Digby*, of the Pariſh of St. *Bride's*, *London*, Clerk of the Truſtees for Sale of the ſaid Fee-farm Rents, and other evil-diſpoſed Perſons; and for encouraging the ſaid *Marriott*, *Digby*, and others, to diſcover to him ſuch particular Fee-farm and other Rents as then remained undiſpoſed of, to the Intent the ſaid Lord *Sommers* might beg the ſame; he the ſaid Lord *Sommers* contracted and agreed with the ſaid Mr. *Marriott*, to give the ſaid *Marriott*, for himſelf and his Accomplices, as a Reward for the ſaid Diſcovery, one full Fourth-part of all ſuch Rents ſo diſcovered, whereof the ſaid Lord *Sommers* ſhould procure a Grant from the Crown: And accordingly the ſaid ſeveral Grants from the ſaid Truſtees to the ſaid *Hancock* and *Warner*, being together of the yearly Value of Five Hundred Pounds *per Annum*, and upwards, were ſo made by the Direction of the ſaid Lord *Sommers*, in Truſt for the ſaid *Marriott*, *Digby*, or others.

X. That notwithſtanding the ſaid pretended Contracts and Payments, there was not any Sum of Money whatſoever really and *bona fide* paid, as the Conſideration of the Conveyances of the ſaid Rents from the ſaid Truſtees; but ſuch Contracts and Payments of the ſaid ſeveral Conſiderations (amounting in the whole to Thirty-three Thouſand Six Hundred Pounds) were colourably and fraudulently contrived and made by Direction of the ſaid Lord *Sommers*, contrary to his ſaid Oath, in Deceit of his Majeſty, and Eluſion of the ſaid Acts of Parliament.

yearly Value, for the Benefit of the ſaid Lord *Sommers*, it did appear, that the ſaid intended Contracts and Grants could not be perfected, for that neither the Lords of the Treaſury, nor the ſaid Truſtees, were ſufficiently informed what Fee-farm Rents, or other Rents, remained undiſpoſed of; ſo that the whole Benefit of his Majeſty's intended Bounty would have been loſt, without Information could be gained of ſuch particular Rents. And the ſaid Lord *Sommers* being informed, that *Reginald Marriott* and *John Digby*, in this Article named, were the moſt likely, if not the only Perſons capable, to give Information therein, Application was made to them for that Purpoſe; and the ſaid *Marriott* and *Digby* being ſo applied to, after the ſaid Warrants of his Majeſty and the ſaid Lords of the Treaſury were executed, as aforeſaid, did refuſe to give any Account of ſuch Rents, unleſs they might have, as a Reward for their ſo doing, Rents amounting to near a Fourth Part of ſuch Rents whereof they ſhould give ſuch Account, conveyed in Truſt for them in ſuch Manner as in the ſaid Article is mentioned; which the ſaid Lord *Sommers* did (as he conceives he lawfully might, it being only to his own Loſs and Prejudice) comply with, not in order to any ſuch End as is ſuggeſted in the ſaid Article, but that he might perfect the Grant before deſigned and appointed to be made to him by his Majeſty, of his own Free-will, and not at the ſaid Lord *Sommers's* Sollicitation; the Diſcovery of any of the ſaid Rents not being made by the ſaid *Marriott* and *Digby*, or any other Perſon, till after the ſaid Warrants of his Majeſty and the Lords of the Treaſury, as aforeſaid. And accordingly the ſeveral Grants, in this Article mentioned, were made to *Hancock* and *Warner*, in Truſt for the ſaid *Marriott* and *Digby* (as was affirmed to the ſaid Lord *Sommers*); and the ſaid Lord *Sommers* ſaith, There was not any Sum of Money paid as the Conſideration of the Grants of the ſaid Rents; but the Contracts were made, and the Payment of the ſeveral Conſiderations thereof were diſcharged, in the Manner, and for the Reaſons herein before ſet forth; and were not colourably or fraudulently contrived in Deceit of his Majeſty, or Eluſion of the ſaid Acts of Parliament.

XI. That many Quit-Rents and Copyhold-Rents ſtanding in Charge as Parcel of, or belonging to ſeveral Manours, or reputed Manours, Rents reſerved upon Leaſes or Eſtates, the Reverſion whereof was in his ſaid Majeſty King *Charles* the Second at the making the ſaid Acts, Rents conveyed before in Leaſe, or granted to other Perſons; Rents appropriated by, or in purſuance of Act or Acts of Parliament, for Payment of Penſions, Stipends, Salaries, Annuities, Alms, and Allowances for the Maintenance of Grammar-Schools or Scholars; or for, or towards the Reparation of Churches, Chapels, Highways, Cauſeys, Bridges, Schools, Alm-houſes, Caſtles, or other Uſes; and many Quit-Rents of Manours, and other Rents by Act of Parliament united and annexed to the Caſtle of *Windſor*, with Intent to ſupport and maintain the yearly Reparations and Charges of the ſaid Caſtle, and diſcharge and pay the Fees and Wages of the Officers, Servants, and Attendants in the ſame Caſtle, and the Foreſts, Chaſes, and Parks to the ſame belonging, and for many Years applied according to the Intention of the ſaid Act; and alſo many Quit-Rents of or belonging to divers ancient Manours, heretofore and yet Parcel of the Demeſnes or Poſſeſſions of the Crown, as if the ſame had been entire Fee-farm Rents iſſuing out of thoſe Manours, were, by the aforeſaid ſeveral Indentures of Bargain and Sale, through the Direction and Power of the ſaid Lord *Sommers*, conveyed by the ſaid Truſtees for Sale of Fee-farm Rents, to the ſaid *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and to the ſaid *Hancock* and *Warner*, and their Heirs, or unto ſome of them, contrary to the true Intent and Meaning of the ſaid Acts of Parliament, to the great Vexation and Oppreſſion of many of his Majeſty's good Subjects, and creating many new and unreaſonable Charges on other Revenues of the Crown.

XI. To the Eleventh Article the ſaid Lord *Sommers* ſaith, He believeth, that ſeveral of the Rents mentioned to be granted in Truſt for him, as aforeſaid, had been before granted to other Perſons by the ſaid Truſtees; and, that others of them were not in the Power of the ſaid Truſtees to grant, which was and is very much to his Prejudice; and believes the ſame were inſerted by miſtaken Informations given touching the ſame, and not out of any Deſign; and the like Miſtakes have frequently happened in other Grants of other of the ſaid Rents; and denies, that to his Knowledge or Belief, any of the ſaid Rents ſo granted for his Benefit, were ever united or annexed to the Caſtle of *Windſor*, for any Purpoſe whatſoever; or, that any Oppreſſion or Vexation hath happened to any of his Majeſty's Subjects by reaſon of the granting of any of the ſaid Rents; and, as he believes, little or no new Charge to the Crown.

XII. That by the Direction of the ſaid Lord *Sommers*, the ſaid *Humphry Hetherington*, *Richard Adney*, *Samuel Newton*, *Leonard Hancock*, and *John Warner*, ſurrendered ſeveral of the ſaid Rents to them granted as aforeſaid, amounting to the yearly Value of Three Hundred Forty-ſeven Pounds Eleven Shillings and Five-pence Farthing, on Suggeſtion, that the ſame were either conveyed before in Leaſe ſet apart for Payment of Penſions, old Supers bad or illeviable, or Part thereof bad or illeviable, or wrong conveyed: And the ſaid Lord *Sommers*, in the Year of our Lord 1699, being then Lord-Chancellor of *England*, and one of his Majeſty's moſt Honourable Privy-Council, in Breach of his Duty, and contrary to the Laws and Statutes of this Realm, procured other Rents of the yearly Value of Three Hundred Ninety-one Pounds Three-pence Half-penny, to be allowed by way of Repriſe, and to be conveyed to the ſaid *Richard Adney* and his Heirs, in Truſt for the ſaid Lord *Sommers* and his Heirs, as if the ſaid yearly Rents of Three Hundred Forty-ſeven Pounds Eleven Shillings and Five-pence Farthing, ſo ſurrendered, had been really and *bona fide* purchaſed in purſuance of the ſaid Acts for Sale of Fee-farm Rents.

XII. To the Twelfth Article the ſaid Lord *Sommers* ſaith, That his Majeſty having deſigned, of his Bounty to him, the ſaid Lord *Sommers*, and his Heirs, Fee-farm and other Rents, to the annual Value of the ſaid Grants mentioned; and the ſaid Truſtees having covenanted, as was uſual for them to do, That they had not made any former or other Grant or Conveyance of the ſaid Rents, or any of them; and Three Hundred Forty-ſeven Pounds Eleven Shillings and Three-pence Farthing *per Annum* of the ſaid Rents, ſo granted as aforeſaid, having appeared to be granted before, or not to be grantable by the ſaid Truſtees, or not leviable on Surrender of ſuch Rents; the ſaid Truſtees, by Warrant of the Lords Commiſſioners of his Majeſty's Treaſury (who were thereunto ſufficiently authorized), in Lieu and Satisfaction of the ſaid Rent, and Arrears thereof, and in Diſcharge of the Covenants of the ſaid Truſtees, did, the Twenty-firſt Day of *October*, 1699, grant divers other Rents, amounting to the yearly value of Three Hundred Ninety-one Pounds and Three-pence Half-penny, to *Richard Adney* and his Heirs, as in the ſaid Article is mentioned; which were not ſo granted, as if the ſaid yearly Rents of Three Hundred Forty-ſeven Pounds Eleven Shillings and Three-pence Farthing had been *bona fide* purchaſed, but was in Lieu and Repriſe for the ſame as granted of his Majeſty's Bounty, for the Benefit of the ſaid Lord *Sommers* and his Heirs, as aforeſaid; which he conceives might be, and was lawfully done.

XIII. That in the Year of our Lord 1695, the ſaid Lord *Sommers*, being then Lord-Keeper of the Great-Seal of *England*, and alſo one of his Majeſty's moſt Honourable Privy-Council, together with *Edward* Earl of *Orford*, then Firſt Commiſſioner for executing the Office of Lord High-Admiral of *England*, and Commander in Chief of his Majeſty's Navy-Royal, and one of his Majeſty's moſt Honourable Privy-Council, *Richard* Earl of *Bellamont*, in the Kingdom of *Ireland*, Governor of *New-York*, *New-England*, and others then in high Stations, and in great Power and Authority, procured a Commiſſion to be granted unto one *William Kidd*, a Perſon of evil Fame and Reputation, and ſince that time convicted of Piracy, to apprehend and take into his Cuſtody divers Perſons therein named, and all ſuch Pirates as the ſaid *Kidd* ſhould meet with upon the Coaſts or Seas of *America*, or in any other Seas or Parts, with their Ships and Veſſels, and alſo ſuch Merchandizes, Goods, and Wares, as ſhould be found on board or with them. And afterwards the ſaid Lord *Sommers*, in the Year of our Lord 1697, with the Aſſiſtance of the ſaid Earl of *Orford*, and other Perſons aforeſaid, procured a Grant from his Majeſty, and the ſaid Lord *Sommers* paſſed the ſame under the Great-Seal of *England*, whereby all

XIII. To the Thirteenth Article the ſaid Lord *Sommers* doth admit, That in the Year 1695, he being then Lord-Keeper of the Great-Seal of *England*, his Majeſty being informed, as the Truth was, That *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and ſeveral other of his Majeſty's Subjects in his Plantations of *America*, had aſſociated themſelves, and did frequently commit great Piracies, Robberies, and Depredations on the Seas in the Parts of *America*, and other Parts, to the Hindrance and Diſcouragement of Trade and Navigation; for preventing the ſaid Miſchiefs, did grant a Commiſſion, as in this Article is mentioned, unto *William Kidd*, in this Article named (who was then Commander of the Ship called *The Adventure Galley*, and was not then, to the Knowledge or Belief of the ſaid Lord *Sommers*, eſteemed a Perſon of ill Fame or Reputation), to apprehend, ſeize, and take into his Cuſtody the ſaid *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and all ſuch other Pirates as he ſhould meet with in the Seas of *America*, or any other Seas, with their Ships and Veſſels, and ſuch Merchandizes, Monies and Wares as ſhould be found on board or with them, and to cauſe ſuch Pirates to be brought to a legal Trial; the granting of which Commiſſion was then apprehended and whatſoever Ships, Veſſels, Goods, Merchandizes, Treaſure, and other Things whatſoever, which, ſince the Thirtieth Day of *April*, 1696, had been taken or ſeiz'd upon or with, or did belong to, or which ſhould be taken or ſeiz'd upon or with, or did, or ſhould belong to *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze* (in the ſaid Letters Patents mention'd to have been complain'd of, and inform'd againſt, for committing many Robberies, Piracies, and Depredations upon the Seas in the Parts of *America*, and other Places, but never convicted or attainted for the ſame), or which, ſince the ſaid Thirtieth Day of *April*, 1696, had been taken or ſeiz'd upon, or which did, or ſhould belong to any of the Adherents of the ſaid *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, or any other Pirates, Free-booters, and Sea-rovers, by the ſaid *William Kidd*, or other Commander of *The Adventure Galley*; or which by, or by means of, the ſaid Ship or Galley ſhould be taken, or forced on Shore in any of his Majeſty's Plantations of *America*, were granted unto the ſaid *Richard* Earl of *Bellamont*, and unto *Edmund Harriſon* Merchant, *Samuel Newton* Gent. *William Rowley* Gent. *George Watſon* Gent. and *Thomas Reynolds*, of *St. Martins*, their Executors, Adminiſtrators, and Aſſigns, to their own ſole Uſe and Benefit, and as their own proper Goods and Chattels, without any Account thereof or therefore to be made: In which Grant the Name of the ſaid *Samuel Newton* was uſed in Truſt, and for the only Benefit and Advantage of the ſaid Lord *Sommers*: Which ſaid Grant, under the Great-Seal of *England*, manifeſtly tended to the Obſtruction and Diſcouragement of Trade and Navigation, the great Loſs and Prejudice of Merchants and others, being his Majeſty's Subjects, or Subjects of the Friends and Allies of his Majeſty, and the Diſhonour of the King and Kingdom; and the ſaid Lord *Sommers* was, by procuring and paſſing the ſaid Grant, Guilty of a notorious Breach of his Duty.

to be neceſſary for the Preſervation of Trade and Navigation: And the ſaid Lord *Sommers* doth alſo admit, That a Grant, dated the Twenty-ſeventh Day of *May*, 1697, did paſs under the Great-Seal of *England*, as in this Article is mention'd, whereby reciting the ſaid Commiſſion ſo granted to the ſaid *William Kidd*; and that the ſaid *Adventure Galley* was with his Majeſty's Knowledge and Royal Encouragement bought and fitted out to Sea for the Execution of the ſaid Commiſſion, at the Charge of the Earl of *Bellamont*, *Edmund Harriſon*, *Samuel Newton*, *William Rowley*, *George Watſon*, and *Thomas Reynolds*, in this Article named; his Majeſty, for encouraging and rewarding the ſaid Undertaking, did grant unto the ſaid Earl of *Bellamont*, *Edmund Harriſon*, *William Rowley*, *George Watſon*, *Thomas Reynolds*, and *Samuel Newton* (who was named by, and in Truſt for, the ſaid Lord *Sommers*), their Executors and Adminiſtrators, all and whatſoever, Ships, Veſſels, Goods, Merchandizes, Treaſure, and other Things whatſoever which ſince the Thirtieth Day of *April*, 1696, had been taken or ſeiz'd upon or with, or did belong to, or ſhould happen to be taken or ſeiz'd upon or with, or which did or ſhould belong to the ſaid *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, or their Adherents, or any other Pirates, by the ſaid *William Kidd*, or other Commanders of the ſaid *Adventure Galley*; or which by, or by Means of the ſaid Ship or Galley ſhould be taken, or forced on Shore, on any of his Majeſty's Plantations in *America*, ſo far as the ſaid Premiſſes, or any of them, did, ſhould, or might belong to his Majeſty, or could or might be granted or grantable by him, or was or were in his Power to diſpoſe of: Which Grant was not intended to be without an Account. For the ſaid Lord *Sommers* ſaith, That by Indenture, bearing Date the Two-and-twentieth Day of *May*, 1697, made (after the Warrant for the ſaid Grant was ſign'd, and before it was paſs'd) between his Majeſty of the one Part, and the ſaid Earl of *Bellamont*, *Edmund Harriſon*, *William Rowley*, *George Watſon*, *Thomas Reynolds*, and *Samuel Newton* of the other Part; They, the ſaid Earl of *Bellamont*, *Edmund Harriſon*, *William Rowley*, *George Watſon*, *Thomas Reynolds*, and *Samuel Newton*, did Covenant, Promiſe, and Agree with his Majeſty, his Heirs and Succeſſors, well and truly to account for, and deliver upon Oath to the Uſe of his Majeſty, his Heirs and Succeſſors, or the Commiſſioners of his or their Treaſury, or his or their High-Treaſurer, a clear Tenth Part (the whole in Ten equal Parts to be divided) of all and every ſuch Ships, Veſſels, Goods, Merchandizes, and other Things whatſoever, which in and by the ſaid Grant ſhould be given, or which ſhould from Time to Time be taken, or ſeiz'd, or ſecur'd by them, or any of them, their, or any of their Executors or Adminiſtrators, Officers, Agents, Servants, or Aſſigns, by Virtue or Colour thereof. To which Grant and Indenture the ſaid Lord *Sommers*, for more Certainty, referreth himſelf; and further ſaith, He conceives, and is adviſed, That the ſaid Grant did not any way tend to the Obſtruction or Diſcouragement of Trade or Navigation, or to the Loſs or Prejudice of Merchants, or others his Majeſty's Subjects, or the Subjects of his Friends or Allies, nor to the Diſhonour of his Majeſty or the Kingdom; nor was the paſſing of the ſame any Breach of the Duty of the ſaid Lord *Sommers*; but the ſaid Grant was form'd as a Recompence to the ſaid Grantees, who, at their own Charge, had provided and fitted out the ſaid Ship, to enable the ſaid *William Kidd* to execute the Powers in the ſaid Commiſſion mention'd, whereby the Publick might have receiv'd great Benefit, had the ſaid *William Kidd* faithfully diſcharg'd the Truſt in him repoſed by his Majeſty and the ſaid Grantees: Which he failing to do, the Owners of the ſaid Ship have loſt their Expences, and have not receiv'd any Benefit of his Majeſty's ſaid Grant.

XIV. That the ſaid *John* Lord *Sommers*, to the great Oppreſſion of the Subject, and contrary to *Magna Charta*, and divers good Statutes of this Realm, and in manifeſt Breach and Violation of his Oath, as Lord High-Chancellor of *England*, hath in ſeveral Cauſes depending before him, by many extraordinary Methods, and unwarrantable Practices for ſeveral Years, delay'd Proceedings in the ſaid Cauſes; and, by Colour of his Office, hath made divers Arbitrary and Illegal Orders, in Subverſion of the Laws and Statutes of this Realm; and hath, of his own Authority, revers'd Judgments given in the Court of *Exchequer*, and without calling before him the Barons of the *Exchequer*, to hear their Informations, and the Cauſes of their Judgments, as the Statutes in thoſe Caſes expreſly direct; aſſuming thereby to himſelf an Arbitrary and Illegal Power; and hath declar'd and affirm'd in publick Places of Judicature, That particular Subjects might have Rights and Intereſts without any Remedy for Recovery of the ſame, unleſs by Petition to the Perſon of the King only, or to that effect: Which Poſition was highly dangerous to the legal Conſtitution of this Kingdom, and abſolutely deſtructive to the Property of the Subject.

XIV. To the Fourteenth Article the ſaid Lord *Sommers* ſaith, He did not delay any Proceedings in any Cauſe or Cauſes depending before him, as Chancellor of *England*, longer or otherwiſe than as the Circumſtances and Juſtice of each Cauſe requir'd; but did, to the very manifeſt impairing of his Health, conſtantly apply himſelf to the Diſpatch of the Cauſes depending before him; and denies, that he did ever make, by Colour of his Office, any Arbitrary or Illegal Order, to the Subverſion of any Law or Statute of this Realm, or did ever aſſume to himſelf any Arbitrary or Illegal Power, or ever reverſe any Judgment given in the Court of *Exchequer*, otherwiſe than as is warranted and allow'd by the Law, and in the Preſence of the Barons of the Court of *Exchequer*, who were always preſent in the Court of *Exchequer*-Chamber when their Judgments were examin'd, as the Statute in ſuch Caſes directs; nor did ever deliver in any Court of Judicature, or other Place whatſoever, any Poſition whatſoever dangerous to the Legal Conſtitution of the Kingdom, or deſtructive to the Property of the Subject, as is charg'd by the ſaid Articles.

And the ſaid Knights, Citizens, and Burgeſſes, by Proteſtation, ſaving to themſelves the Liberty of exhibiting, at any Time hereafter, any further Articles, or other Accuſation or Impeachment againſt the ſaid Lord *Sommers*; as alſo of replying to his Anſwer which he ſhall make unto the ſaid Articles, or any of them; and offering Proofs to all and every the aforeſaid Articles, and to all and every other Articles, Impeachment or Accuſation which ſhall be exhibited by them, as the Cauſe ſhall, according to the Courſe of Parliament, require; do pray, That the ſaid *John* Lord *Sommers* may be put to anſwer the ſaid Crimes and Miſdemeanors; and that ſuch Proceedings, Examinations, Trials, and Judgments may be thereupon had and given as is agreeable to Law and Juſtice.

And as to all other Matters and Things in the ſaid Articles contain'd, and not herein before particularly anſwer'd unto, the ſaid Lord *Sommers* ſaith, He is not Guilty of them, or any of them, in Manner and Form as the ſame are charg'd upon him in and by the ſaid Articles; and humbly ſubmitteth himſelf to your Lordſhips Judgment.

SOMMERS.

After reading this Day the Articles of Impeachment brought up from the Houſe of Commons againſt *John* Lord *Sommers*, and hearing his Lordſhip thereupon, who deſir'd a Copy of the ſaid Articles, and ſaid, He would put in his Anſwer ſo ſoon as poſſible he could; It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord *Sommers* may have a Copy of the ſaid Articles againſt him.

Die Martis 20° *Maii*, 1701.

The Earl of *Orford* deſiring that a Day may be appointed for his Trial, the Houſe thereupon order'd, That the Committee appointed to conſider of the Manner in delivering Articles of Impeachments by the Commons be reviv'd, to inſpect the Books, and meet immediately.

Then the Houſe was adjourn'd during Pleaſure, and the Lords went to the Committee.

After ſome Time the Houſe was reſumed, and the Earl of *Stamford* reported the Precedents following; *viz.*

'21 *Decem.* 1680. That Mr. *Seymour* was impeach'd, and Articles delivered.

'23 *Decemb.* 1680. He deliver'd in his Anſwer.

'3 *Jan.* That he petition'd for a Trial; whereupon the ſame Day a 'Meſſage was ſent to the Commons, That the Houſe finding no Iſſue 'join'd by Replication from the Commons, thought fit to give them 'Notice thereof.

'Then Counſel were aſſign'd him.

'8 *Jan.* *Saturday* the Fifteenth was appointed for his Trial.

'27 *Apr.* 1695. the D. of *Leeds* was Impeach'd.

'29 *Apr.* the Articles were brought up.

'30 *Apr.* the Duke of *Leeds* put in his Anſwer, and a Copy thereof 'was ſent to the Commons.

'1 *May*, the Lords ſent to the Commons, to know when they ſhould 'be ready to make good the ſame.

'3 *May*, the Commons deſir'd a Conference on the Lords Meſſage; 'and at the Conference acquainted the Lords, That Mr. *Robart*, a material Witneſs, was withdrawn. The Lords mov'd the King, that a Proclamation might be iſſued for his Apprehenſion. The ſame Day the 'Parliament was Prorogued.'

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Mr. *Gery*, to acquaint them, 'That the Houſe having been deſir'd 'by the Earl of *Orford*, that a Day may be appointed for his ſpeedy 'Trial, their Lordſhips finding no Iſſue join'd by Replication of the 'Houſe of Commons, think fit to give them Notice thereof.

A Meſſage was brought from the Houſe of Commons by Mr. *Bromley* and others (the 31ſt of *May*) to acquaint this Houſe, 'That in anſwer 'to the Meſſage of the One-and-twentieth Inſtant, the Commons have 'prepar'd a Replication to the Earl of *Orford*'s Anſwer to the Articles of 'Impeachment of High Crimes and Miſdemeanors exhibited againſt 'him, A Meſſage was alſo ſent to the Houſe of Commons by Sir *Robert Legard* and Mr. *Gery*, to acquaint them, ‘ That they having, on the Firſt Day of *April* laſt, ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland* for High Crimes and Miſdemeanors; and having alſo, on the Fifteenth Day of the ſame Month, Impeach'd *Charles* Lord *Hallifax* for High Crimes and Miſdemeanors; and there being as yet no particular Addreſſes exhibited againſt the ſaid Lords, their Lordſhips think themſelves oblig'd to put them in mind thereof; which, after Impeachments have ſo long depended, is a Hardſhip to the Perſons concern'd, and not agreeable to the uſual Methods and Proceedings of Parliament in ſuch Caſes.’

‘ him, and at preſent defer bringing it up to your Lordſhips, becauſe in the Trials of the ſeveral Impeachments now depending, the Commons think it moſt proper, from the Nature of the Evidence that will be given at the ſaid Trials, to begin with the Trial of the Impeachment of *John* Lord *Sommers* of High Crimes and Miſdemeanors. And as to your Lordſhips other Meſſage, the Commons take it to be without Precedent, and Unparliamentary; they, as Proſecutors, having a Liberty to exhibit their Articles of Impeachment in due Time; of which they who are to prepare them are the proper Judges: And therefore, for your Lordſhips to aſſert, That having not yet exhibited particular Articles againſt *William* Earl of *Portland* and *Charles* Lord *Hallifax*, is a Hardſhip to them, and not agreeable to the uſual Methods and Proceedings in Parliament in ſuch Caſes; does, as they conceive, tend to the Breach of that good Correſpondence betwixt the two Houſes, which ought mutually to be preſerv'd.’

Die Mercurii 21° *Maii*, 1701.

The Meſſengers ſent Yeſterday to the Houſe of Commons return Anſwer, That the Commons will ſend an Anſwer to the ſaid Meſſages relating to the ſaid Impeachments, by Meſſengers of their own.

Die Sabbati 24° *Maii*, 1701.

The Lord *Sommers* deliver'd his Anſwer to the Articles of Impeachment of the Houſe of Commons againſt him, which was read by the Clerk, See *Page* 355.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That a Copy of the Anſwer of *John* Lord *Sommers* (deliver'd this Day) to the Articles of Impeachment depending againſt him, be ſent to the Houſe of Commons; and accordingly a Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Sir *John Hoſkins*, to carry down a Copy of the Lord *Sommers*'s Anſwer to the Articles of Impeachment againſt him.

Die Veneris 30° *Maii*, 1701.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That *Monday* the Ninth Day of *June* next ſhall be, and is hereby appointed for the Trial of *Edward* Earl of *Orford*, in *Weſtminſter-Hall*, upon the Articles brought up againſt him by the Houſe of Commons, whereby he ſtands charg'd with ſeveral High Crimes and Miſdemeanors.

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Sir *John Hoſkins*, to let them know, ‘ That this Houſe hath appointed *Monday* the Ninth Day of *June* next, for the Trial of *Edward* Earl of *Orford*, in *Weſtminſter-Hall*, upon the Articles ſent up againſt him; and that the Commons may reply, if they think fit.’

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Sir *John Hoſkins*, to acquaint them, ‘ That they having, on the Firſt Day of *April* laſt, ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland*, for High Crimes and Miſdemeanors; and having alſo, on the Fifteenth Day of the ſame Month, Impeach'd *Charles* Lord *Hallifax* for High Crimes and Miſdemeanors; and there being as yet no particular Articles exhibited againſt the ſaid Lords, their Lordſhips think themſelves oblig'd to put them in mind thereof; which, after Impeachments have ſo long depended, is a Hardſhip to the Perſons concern'd, and not agreeable to the uſual Methods and Proceedings of Parliament in ſuch Caſes.’

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt* and others (the Fifth of *June*), to acquaint this Houſe, ‘ That the Commons, on Conſideration of your Lordſhips Meſſage to them of the One-and-thirtieth of *May*, concerning the Earl of *Orford*, think it their Undoubted Right, when ſeveral Perſons ſtand Impeach'd before your Lordſhips, to bring to Trial ſuch of them, in the firſt place, as the Commons apprehend, from the Nature of the Evidence, ought firſt to be proceeded againſt; to the Intent all ſuch Offenders may, in due time, be brought to Juſtice: And, That no Day ought to be appointed by your Lordſhips for the Trial of any Impeachment by the Commons, without ſome previous Signification to your Lordſhips from the Commons, of their being ready to proceed thereon.

‘ The Commons could not receive this Meſſage from your Lordſhips without the greateſt Surprize; your Lordſhips Proceedings in this Caſe being neither warranted by Precedents, nor (as the Commons conceive) conſiſtent with the Methods of Juſtice, or with Reaſon: Wherefore the Commons cannot agree to the Day appointed by your Lordſhips for the Trial of the Earl of *Orford*.

‘ As to your Lordſhips Meſſage, at the ſame time, relating to the Earl of *Portland*, and *Charles* Lord *Hallifax*, the Commons take the ſame to be without Precedent; and Unparliamentary; and conceive your Lordſhips frequent Repetition thereof, in ſo ſhort a Time, after the Commons had tranſmitted to your Lordſhips their Articles againſt Two of the Impeached Lords, and were daily preparing their Articles againſt the others, manifeſtly tends to the Delay of Juſtice, in obſtructing the Trials of the Impeached Lords, by introducing Diſputes, in Breach of that good Correſpondence between the Two Houſes, which ought inviolably to be preſerved.’

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord Great-Chamberlain do attend his Majeſty, humbly to acquaint his Majeſty, That this Houſe hath appointed *Monday* the Ninth Day of *June* next, for the Trial of *Edward* Earl of *Orford*, in *Weſtminſter-Hall*; and humbly to move his Majeſty, that he will be pleaſed to give Order for a Place to be prepar'd in *Weſtminſter-Hall* againſt the ſaid Time, for this Houſe to proceed upon the ſaid Trial.

Die Sabbati 31° *Maii*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *Bromley*, and others. See *Page* 356.

The Meſſengers ſent Yeſterday to the Houſe of Commons return Anſwer, That the Commons will ſend an Anſwer by Meſſengers of their own.

Die Lunæ 2° *Junii*, 1701.

Order'd, That the Committee appointed to conſider of the Manner in delivering Articles of Impeachments by the Commons, be revived, to meet on *Monday* next, to draw an Anſwer to be ſent to the Houſe of Commons to their Meſſage receiv'd the 31ſt Inſtant.

The Houſe was adjourn'd during Pleaſure. After ſome Time, the Houſe was reſum'd, and the Earl of *Stamford* reported from the Lords Committees, appointed to conſider of the Manner in delivering Articles of Impeachments by the Commons, the Precedents following; *viz.*

‘ 7 *Feb.* 25 *H.* VIII. The Biſhop of *London* impeached by the Commons, for impriſoning *Tho. Phillips* on Suſpicion of Hereſy.

‘ 9 *Feb.* The Articles were read.

‘ 20 *March*, 1620. The Commons, at a Conference, accuſed the Lord Chancellor *St. Alban* and the Biſhop of *Landaff* of Bribery and Corruption.

‘ 16 *April*, 1624. The Commons, at a Conference, accuſe the Earl of *Middleſex*, Lord-Treaſurer, of Bribery.

‘ 19 *May*, 1624. The Commons accuſe the Biſhop of *Norwich* of ſeveral Matters by them then particularly mentioned at a Conference.

‘ 29 *Decemb.* 1640. The Commons accuſe Sir *George Radcliffe* of High-Treaſon.

‘ 31 *Decemb.* They delivered the Articles at a Conference.

‘ 22 *Decemb.* 1640. The Lord-Keeper *Finch* was Impeached.

‘ 29 *Jan.* 1640. Report of what he was accuſed of at a Conference.

‘ 18. *Decemb.* 1641. *Daniel O-Neal* Impeached.

‘ 30 *Auguſt*, 1641. The Earl of *Bridgwater* Impeached, and Articles read, but not entered.

‘ 6 *Decemb.* 1660. *William Drake* Impeached, and Articles brought up.

‘ 24 *April*, 1668. Sir *William Pen* was Impeached, and the Articles delivered at a Conference the ſame Day.

‘ 29 *Decemb.* 1666. The Commons, at a Conference, Impeached the Lord Viſcount *Mordaunt*.

‘ 3 *Jan.* The Conference was reported, and the Articles read.

‘ 23 *Decemb.* 1678. *Poſt Meridiem*, the Earl of *Danby* was Impeached, and Articles brought up againſt him at the ſame Time.

‘ 5 *Decemb.* 1678. The Earl of *Powis*, Lord *A. Wardour*, Lord *Bellaſyſe*, Lord *Petre*, and Lord Viſcount *Stafford*, were Impeached.

30 *Decemb.* The Parliament was prorogued to the 4th of *February*, and was diſſolved the 24th of *January*.

‘ 6 *March.* A new Parliament met.

‘ 7 *April*, 1679. Articles were brought up againſt them.

‘ 21 *Decemb.* 1680. Mr. *Edward Seymour* was Impeached, and Articles brought up at the ſame Time.

‘ 7 *Jan.* 1680. Sir *William Scroggs* was Impeached, and Articles brought up at the ſame Time.

‘ 7 *Jan.* 1680. The Earl of *Tyrone* was Impeached, but no Articles brought up.

‘ 10 *Jan.* The Parliament was prorogued to the 20th. Diſſolved the 18th.

‘ 26 *March*, 1681. Mr. *Fitz-Harris* was Impeached: No Articles brought up.

‘ 28 *March.* The Parliament was diſſolved.

‘ 26 *June*, 1689. *Blaire*, *Vaughan*, *Noel*, *Elliot*, and *Grey* were Impeached, and Articles brought up.

‘ 26 *Octob.* The Earl of *Saliſbury* and Earl of *Peterborough* were Impeached. Special Matter aſſigned the ſame Day.

‘ 27 *April*, 1695. The Duke of *Leeds* was Impeached.

‘ 29 *April.* Articles were brought up.

‘ 10 *May*, 1698. *Goudet* and others were Impeached.

‘ 17 *May.* Articles brought up.

‘ 28 *May*, 1698. *John Auriol* and *John Dumaiſtre* were Impeached.

‘ 8 *June.* Articles were brought up againſt them.’

The Lord Great-Chamberlain acquainted the Houſe, That he had attended his Majeſty with their Addreſs for a Place to be prepared in *Weſtminſter-Hall*, for the Trial of the Earl of *Orford*; and his Majeſty was pleaſed to ſay, *He would give Order for the Place to be prepar'd, as deſir'd.*

Order'd, That the Committee, appointed on *Saturday* laſt, do meet preſently, to draw an Anſwer to be ſent to the Houſe of Commons, to their Meſſage received the One-and-Thirtieth of *May* laſt.

Then the Houſe was adjourned during Pleaſure.

After ſome time the Houſe was reſumed, and the Earl of *Stamford* reported the Anſwer drawn by the Committee, to be ſent to the Houſe of Commons, to their Meſſage received the One-and-Thirtieth of *May* laſt, which was read as follows, *viz.*

“ The Lords do think fit, upon Occaſion of the Meſſage of the Commons of the 31ſt of *May*, to acquaint that Houſe, That having been deſired by the Lord *Sommers*, that a Day may be appointed for his ſpeedy Trial, and their Lordſhips finding no Iſſue joined by Replication of the Houſe of Commons, judge it proper to give them Notice thereof, that the Commons may reply, if they think fit; and at the ſame time their Lordſhips let the Commons know, that they will proceed to the Trial of any of the impeached Lords, whom the Commons ſhall be firſt ready to begin with, ſo as there may be no Occaſion taken from thence for any unreaſonable Delay in the Proſecution of any of them: And further to acquaint them, That having ſearched their own Journals, they do not find, that after a general Impeachment, there has ever been ſo long a Delay of bringing up the particular Articles of Impeachment, ſitting the Parliament: And therefore the Lords do think they had Reaſon to aſſert, That it was a Hardſhip to the two Lords concerned, (eſpecially after this Houſe had put the Houſe of Commons in mind of exhibiting ſuch Articles) and not agreeable to the uſual Proceedings in Parliament. And as the Lords do not controvert what Right the Commons may have of impeaching in general Terms, if they pleaſe; ſo the Lords, in whom the Judicature does entirely reſide, think themſelves obliged to aſſert, That the Right of limiting a convenient Time for bringing the particular Charge before them, for avoiding of Delay in Juſtice, is lodged in them.

“ The Lords hope the Commons, on their Part, will be as careful not to do any thing that may tend to the Interruption of the good Correſpondence between the Houſes, as the Lords ſhall ever be on their Part: And the beſt Way to preſerve that, is for neither of the two Houſes to exceed thoſe Limits which the Law and Cuſtom of Parliament hath already eſtabliſhed.”

Mr. *Harcourt*, at a Conference (the ſixth of *June*) delivered himſelf in the following Manner:

“ The Commons have deſired this Conference upon your Lordſhip's Meſſage of the Fourth of *June*, in order to preſerve a good Correſpondence with your Lordſhips; which will always be the Endeavour of the Commons, and is at this time particularly neceſſary, in order to bring the impeached Lords to a ſpeedy Trial. And becauſe the Meſſages which your Lordſhips have thought fit to ſend to the Commons, and the Anſwers thereunto, ſeem not to tend towards expediting the Trials, which the Commons ſo much deſire, but may rather furniſh Matter of Diſpute between the two Houſes; the Commons, therefore, chuſe to follow the Methods formerly uſed with good Succeſs upon the like Occaſions: And for the more ſpeedy and eaſy adjuſting and preventing any Differences which have already happened, or may ariſe, previous to, or upon theſe Trials, the Commons do propoſe to your Lordſhips, That a Committee of both Houſes be nominated, to conſider of the moſt proper Ways and Methods of proceeding on Impeachment, according to the Uſage of Parliament.”

The Houſe went into Conſideration of this Report; and after Debate, it was ordered, That the further Conſideration thereof, and Debate thereupon, be adjourned till To-morrow Twelve a-Clock.

Die Martis 3º *Junii*, 1701.

The Houſe reſumed the adjourned Debate Yeſterday, in relation to the Report of the Anſwer drawn by the Committee to be ſent to the Houſe of Commons, to their Meſſage received the One-and-Thirtieth of *May* laſt.

The Report was read by Paragraphs, and agreed to, and ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Pitt*.

Die Jovis 5º *Junii*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others. *See Page* 357.

Upon receiving a Meſſage from the Houſe of Commons, in Anſwer to a Meſſage ſent to them by this Houſe the One-and-Thirtieth of *May* laſt, it is ordered, That the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, do meet To-morrow at Nine of the Clock in the Forenoon, to conſider the ſaid Meſſage, inſpect the Journals, and report to the Houſe what they ſhall think proper in this Caſe.

Die Veneris 6º *Junii*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *St. John*, and others, to deſire a Conference with this Houſe upon the Subject Matter of the Meſſage of this Houſe of the Fourth Inſtant.

It being propoſed to return Anſwer, That this Houſe will ſend an Anſwer by Meſſengers of their own, and Debate thereupon:

The Houſe agreed to a preſent Conference.

Then the Commons being called in, were told, That the Lords agreed to a Conference as deſired, and appoint it preſently in the *Painted-Chamber*.

Lords were named Managers of the Conference.

The Commons being come to the Conference, the Houſe was adjourned during Pleaſure, and the Lords went to the Conference; which being ended, the Houſe was reſumed, and the Lord-Steward reported, That the Lords had attended the Conference, and that Mr. *Harcourt* managed the Conference, and ſaid, *As above.*

Ordered, That the Lords Committees appointed to conſider of the Manner of the Proceedings on Impeachments, do meet To-morrow upon the Report of this Conference, and inſpect the Journals, and Report to the Houſe.

Die Sabbati, 7º *Junii*, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, That they have inſpected the Journals, and ordered him to report the Precedents following, *viz.*

‘ 16 *April*, 1624. Report is made of the Commons Complaint and Charge at a Conference againſt the Earl of *Middleſex*, Lord-Treaſurer.

‘ 24 *April*, 1624. *Ordered*, That the Lord-Treaſurer ſhall appear on *Tueſday* next at Nine a-Clock, to anſwer his Charge at the Bar; and that if he hath any Witneſſes to be examined, they may in the mean time be ſworn and examined.

‘ 27 *April*, The Lord-Treaſurer petitioned, That his Witneſſes might not be examined, till he hath anſwered; but the Houſe did not think fit to alter the Day.

‘ 28 *April*, The Lord-Treaſurer deſires the Interrogatories to his Witneſſes may be reſpited till he hath anſwered; and that he may have Copies of the Depoſitions taken on both Sides.

‘ His Lordſhip was anſwered, That his deſire is ſo unfit, as the Lords think him ill adviſed to make ſuch a Requeſt; and according to the former Order, expect his Appearance To-morrow, and to hear ſuch Anſwer as he ſhall make.

‘ 29 *April*, The Lord-Treaſurer petitions, That in regard of his being indiſpoſed, he may have a further Day for preſenting his Anſwer. The Houſe, in reſpect of his Indiſpoſition, is pleaſed to reſpite his Appearance this Day; but enjoin, that *Saturday* next he brings in his Anſwer, according to former Orders; and the Lords do peremptorily aſſign *Friday*, the ſeventh of *May*, for his Appearance in Perſon, and for the final hearing and determining of the Cauſe.

‘ 7 *May*, The Lord-Treaſurer was accordingly brought to the Bar, and the Trial proceeded.

‘ 30 *Aug.* 1641. The Earl of *Bridgwater* was impeached by the Commons.

‘ 6 *Sept.* 1641. *Ordered*, To anſwer the ſecond *Tueſday* in *November*.

‘ 17 *Octob.* 1641. *Ordered*, To be heard on the ninth of *December*.

‘ 2 *November*, 1641. *Ordered*, That the Earl of *Bridgwater* may anſwer on the ninth of *November*.

‘ 31 *March*, 1642. At a Conference deſired by the Commons, they deſired Articles of Impeachment againſt *George Benyon*. *Benyon* was ordered to anſwer in four Days, and to have Liberty, with his Keeper, to go any where, and Counſel aſſigned.

‘ 4 *April*, 1642. *Benyon* put in his Anſwer: Then it was ordered, That this Cauſe againſt *George Benyon*, upon the Impeachment of the Houſe of Commons, ſhall be proceeded in on *Wedneſday* next at this Bar.

‘ 5 *April*, 1642. A Meſſage was ſent to the Houſe of Commons, to acquaint them, That the Lords have appointed to proceed in the Cauſe againſt *Benyon* To-morrow.

‘ The Houſe of Commons return Anſwer, That they will ſend a Committee of their Houſe, to manage their Evidence againſt *Benyon* To-morrow.

‘ 6 *April*, 1642. The Committee of the Houſe of Commons being come to manage the Evidence againſt him, had the Articles read, *&c.* and the Trial proceeded.

‘ 5 *July*, 1642. Sir *Robert Gurney*, Lord-Mayor, was impeached at a Conference, and brought to the Bar, and heard the Articles read, had Counſel allowed him, and was ordered to anſwer on *Friday* next.

‘ 8 *July*, He delivered in his Anſwer, which was read, and the Cauſe was ordered to be heard on *Monday* next, and the Commons were acquainted therewith by Meſſage.

‘ 11 *July*, The Commons at a Conference deliver in a further Impeachment againſt him, and the Articles were read to him at the Bar, and he deſired Counſel, which was allowed, and he had time given him to anſwer till To-morrow Seven-night.

‘ 19 *July*, Sir *Richard Gurney* put in his Anſwer; and the ſame Day it was ordered, That this Houſe will proceed againſt him on *Friday* next, on both the Impeachments; and the Houſe of Commons are then to produce all their Proofs to prove the ſaid Impeachments: And a Meſſage was ſent to the Commons to acquaint them with the ſaid Order.

‘ 22 *July*, The Committee of Commons being come to manage the Evidence, the Trial was proceeded in.

‘ 17 *July*, 1645. The Earl of *Stamford* deſiring Time to put in his Anſwer to the Impeachment of the Houſe of Commons againſt him, it was ordered he put in his Anſwer on *Monday* next.

‘ 21 *July*, The Earl of *Stamford* delivered in his Anſwer; which was read, and ordered to be heard at the Bar on *Friday* next; and the Commons were acquainted therewith by Meſſage.

‘ 25 *July*, A Meſſage from the Commons to deſire another Day for hearing of the Cauſe of the Earl of *Stamford*'s Impeachment, becauſe they cannot be ready this Day.

‘ *Eodem Die*, A Meſſage to the Commons, That they have appointed *Monday* next; and in regard it concerns his Lordſhip ſo much, their Lordſhips have appointed ſo ſhort a Day.

‘ 26 *July*, 1645. A Meſſage from the Commons, to deſire a further Day, in regard their Witneſſes cannot be ready.

‘ 28 *July*, 1645. *Ordered*, That the Earl of *Stamford*'s Buſineſs ſhall be heard the firſt *Tueſday* after *Michaelmas*.

‘ 30 *Septemb.* The Clauſe of the Earl of *Stamford*, upon the Impeachment of the Houſe of Commons, was heard, a Committee of the Commons managing the Evidence againſt him.

‘ 21 *Decemb.* 1680. *Edward Seymour*, Eſq; was impeached of High Crimes, *&c.* the Articles were brought up againſt him; he had the Articles read to him, and ordered to anſwer.

‘ 23 *Decemb.* He delivered in his Anſwer.

‘ 3. *January*, Mr. *Seymour* petitions for a ſpeedy Trial: Whereupon a Meſſage was ſent to the Houſe of Commons, That the Houſe finding no Iſſue join'd by Replication from the Houſe of Commons, thought fit to give them Notice thereof.

‘ 8. *January*, Order'd, That *Saturday* the Fifteenth is appointed for the Trial of Mr. *Seymour*.’

Upon Conſideration of the Precedents above-mentioned, it is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, do meet on *Monday* next, at Ten a-Clock in the Forenoon, to draw an Anſwer to be ſent to the Houſe of Commons, to their Meſſage receiv'd the Fifth Inſtant.

Die Lunæ 9° *Junii*, 1701.

The Earl of *Stamford* reported from the Lord Committees (appointed to conſider of the Manner of Proceedings on Impeachments) what was drawn by them, to be ſent to the Commons, in Anſwer to their Meſſage of the Fifth Inſtant; which was read, amended, and agreed to, as follows, *viz.*

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Gerv*, to acquaint them, ‘ That in Anſwer to the Meſſage of the Houſe of Commons, of the Fourth Inſtant, the Lords ſay, by their Meſſage ſent on the Third, wherein they declare themſelves ready to proceed to the Trial of any of the Impeach'd Lords whom the Commons ſhould be firſt ready to begin with, They have given a full Proof of their Willingneſs to comply with the Commons in any thing which may appear reaſonable, in order to the ſpeedy determining of the Impeachments now depending: And therefore, as the Lords conceive the Commons had no Occaſion to begin any Diſpute on that Head, ſo their Lordſhips are careful to decline entering into a Controverſy, which ſeem to them to be of no Uſe at preſent.

‘ The Lords think themſelves obliged to aſſert their undoubted Right to appoint a Day for the Trial of any Impeachment depending before them, if they ſee good Cauſe for it, without any previous Signification from the Commons of their being ready to proceed; which Right is warranted by many Precedents, as well as conſonant to Juſtice and Reaſon; and their Lordſhips, according to the Example of their Anceſtors, will always uſe that Right with a Regard to the equal and impartial Adminiſtration of Juſtice, and with a due Care to prevent unreaſonable Delays.

‘ This being the Caſe, the Lords cannot but wonder, that the Commons, without any Foundation for it, ſhould make uſe of Expreſſions which, as their Lordſhips conceive, have never been uſed before by one Houſe of Parliament to another, and which, if the like were return'd, muſt neceſſarily deſtroy all good Correſpondence between the two Houſes.

‘ The laſt Part of the Commons Meſſage being in effect a Repetition only of their former, of the Thirty-firſt of *May*, to which the Lords have already returned a full Anſwer, their Lordſhips think it not requiſite to ſay more, than that they cannot apprehend with what Colour their calling upon the Houſe of Commons to ſend up Articles againſt Two Lords, whom the Commons have ſo long ſince impeach'd in general Terms, can be ſaid to tend to the Delay of Juſtice: And therefore, as the Lords think the Commons ought to have forborn that Reflection, ſo their Lordſhips, in ſaying no more upon the occaſion of this Meſſage of the Commons, think they have given a convincing Proof of their Moderation, and of their ſincere Deſire of preſerving a good Correſpondence between the two Houſes, which is ſo neceſſary for the Publick Security, as well as doing Right upon the Impeachments.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others, (on the Tenth of *June*) to acquaint this Houſe, ‘ That the Commons, in hopes of avoiding all Interruptions and Delays in proceeding againſt the Impeach'd Lords, and the many Inconveniencies which might ariſe thereby, having propoſed to your Lordſhips, at a Conference, that a Committee of both Houſes might be nominated, to conſider of the moſt proper Ways and Methods of Proceedings on Impeachments, think they might have juſtly expected your Lordſhips Compliance with their ſaid Propoſition, inſtead of your Lordſhips Anſwer to their Meſſage of the Fourth Inſtant, which they Yeſterday receiv'd: In which Anſwer of your Lordſhips, tho' many Matters of great Exception are contain'd, a ſuitable Reply whereunto would inevitably deſtroy all good Correſpondence between the two Houſes; yet the Commons, from an earneſt Deſire inviolably to preſerve the ſame, as well as give the moſt convincing Proof of their Moderation, and to ſhew their Readineſs to bring the Impeach'd Lords to ſpeedy Juſtice, at preſent inſiſt only on their Propoſition, for a Committee of both Houſes to ſettle and adjuſt the neceſſary Preliminaries to the Trials; particularly, Whether the Impeach'd Lords ſhall appear on their Trials at your Lordſhips Bar as Criminals? Whether, being under Accuſations of the ſame Crimes, they are to ſit as Judges on each other's Trial for thoſe Crimes; or can vote in their own Caſes, as we find, from your Lordſhips Journals ſince their being impeach'd, they have been admitted ſo to do? Which Matters, and ſome others, being neceſſary to be adjuſted, the Commons cannot but inſiſt on a Committee of both Houſes to be appointed for that Purpoſe; their departing from which would be giving up the Rights of the Commons of *England*, known by unqueſtionable Precedents, and the Uſages of Parliaments, and making all Impeachments, the greateſt Bulwark of the Laws and Liberties of *England*, impracticable for the future.’

The Earl of *Stamford* alſo reported from the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, what Precedents they have found in purſuance of the Order of the Seventh Inſtant; which are as follow; *viz.*

‘ 21. *May*, 1614, A Meſſage from the Commons, to deſire a Conference upon the Point of Impoſitions.

‘ 24. *May*, The Queſtion being propoſed, Whether this Houſe ſhall meet with the Lower Houſe, and give them Hearing, touching the Point of Impoſitions? The greater Number of the Lords anſwered, *Not Content*.

‘ 26. *May*, A Meſſage to the Commons, That the Lords are, and always will be, ready and willing to hold loving and mutual Correſpondence with them; but their Lordſhips having entered into a grave and ſerious Conſideration, as well of the Matter itſelf, as of divers incident and neceſſary Circumſtances, do not think it convenient to enter into any Conference of this Cauſe, concerning the Point of Impoſitions, at this Time.

‘ 1. *February*, 1666, A Meſſage from the Commons, to deſire a Conference touching the Manner of Proceedings upon the Impeachment againſt the Lord Viſcount *Mordaunt*.

‘ The Lords anſwer, That they will ſend Anſwer by Meſſengers of their own.

‘ Then a Committee was appointed to conſider, whether ever the Commons deſired any Conferences concerning the Manner of Proceedings upon Judicature before their Lordſhips?

‘ 4. *February*, 1666, After Report of the Conference ſo had, the Lords reſolved to let the Commons know at a Conference, That they are reſolved, that their former Anſwer given them the Eight-and-twentieth of *January*, and confirmed the One-and-thirtieth of the ſame Month, ſhall ſtand.

‘ 31. *January*, Which Anſwer was, That they judge it a Right inherent in every Court, to order and direct ſuch Circumſtances and Matters of Form, that can have no Influence to the Prejudice of Juſtice, in ſuch Way as they ſhall judge fit, where the ſame are not ſettled otherwiſe by any poſitive Rule.

‘ 4. *February*, *poſt Meridiem*, A Conference was accordingly had at the Deſire of the Lords.

‘ 5. *February*, A Meſſage from the Commons to deſire a Free Conference upon the Subject-Matter of the laſt Conference.

‘ The Anſwer returned was, That the Lords have already ſtated the Manner of Proceedings in the Impeachment of the Lord *Mordaunt*, and have declared it in their laſt Conference; and in that Conference gave the Houſe of Commons Notice, That they were ready to proceed this Morning in that Buſineſs.

‘ They adhere to their former Reſolution, and are ready to proceed in the Trial.

‘ 6. *February*, A Meſſage from the Commons to deſire a Conference upon the laſt-mentioned Anſwer.

‘ 7. *February*, The Lords gave the Conference deſired; whereat the Commons acquainted their Lordſhips, That Conferences and Free Conferences, when deſired, are eſſential to the Proceedings of Parliament, the only Means to preſerve the good Correſpondence between the Two Houſes; and the Denial thereof, deſtructive to the Proceedings of Parliament, and unprecedented.

‘ *Eodem Die*, A Free Conference was had at the Deſire of the Lords, concerning the Subject-Matter of the laſt Conference; whereat the Managers were to let the Commons know, That their Lordſhips deſire not this Conference in reference to the Free Conference lately deſired by them, but in relation to the Aſſertion of the Commons in their laſt Conference, which their Lordſhips can no way allow; and therefore commanded the Lords that are to manage this Free Conference, as to juſtify the Proceedings of their Lordſhips, ſo to make it appear to the Commons, that what they have done is neither deſtructive to the Proceedings of Parliament, nor unprecedented.

‘ 27. *May*, 1694, The Lords did not agree to a Conference deſired by the Commons on the One-and-twentieth, becauſe it was deſired upon the Anſwer ſent by the Lords of the Seventeenth Inſtant, wherein the whole Matter concerns the Judicature of the Lords, on which they can admit no Debate, nor grant any Conference: But the Lords agree to a Conference deſired concerning the Privileges of the Commons, always provided nothing be offered thereat that may concern their Lordſhips Judicature.

‘ 6. *May*, 1679, A Meſſage to the Commons, to acquaint them, That the Lords have appointed to try the Five Lords on the Thirteenth Inſtant.

‘ 8. *May*, *poſt Meridiem*, A Meſſage from the Commons, to deſire a Conference concerning the Matter of their Lordſhips Meſſage concerning the Trial of the Lords in the *Tower*; and a Conference was had thereupon.

‘ At the Conference, the Commons propoſed to have a Committee of both Houſes nominated, to conſider the proper Ways of Proceedings upon Impeachment; and upon the Queſtion, it was carried, Not to agree with the Commons in this Propoſal.

‘ 9. *May*, A Meſſage to the Commons for a Free Conference of the Subject-Matter of the laſt Conference, which was had; and at the Conference the Lords told the Commons, That they did not agree to the nominating a Committee of both Houſes, becauſe they do not think it conformable to the Rules and Orders of Proceedings of this Court, which is, and muſt be, tender in Matters relating to Judicature.

‘ 10. *May*, A Meſſage from the Commons for a Conference, *&c.* which was had; and the Commons told the Lords, That Things ſtanding thus, they cannot proceed to the Trials of the Lords, before the Method of Proceedings be adjuſted between the Two Houſes.

‘ 11. *May*, A Meſſage to the Commons for a Conference, *&c.* which was had; and the Lords alſo aſked the Commons, What were the Methods of Proceedings they would confer about? The Commons anſwer, They had no Directions from their Houſe concerning the ſame.

‘ Meſſage from the Commons for a Free Conference, which was had; and upon the Report of it, the Lords appointed a Committee to meet with a Committee of the Houſe of Commons, to conſider of Propoſitions and Circumſtances, in reference to the Trials of the

Five Lords in the *Tower*; and a Meſſage ſent to the Commons to let them know it.

‘ 12 *May*, A Report from the Committee of both Houſes, That (*inter alia*) the Commons propoſe a longer Day for the Trial of the Lords; whereupon the Lords order'd their Trials to be put off till further Order.

‘ 16 *May*, The Lords appointed a Day for the Trial of the Five Lords.

‘ 19 *May*, The Commons tell the Lords, That when the Methods of Proceedings are adjuſted, their Houſe will be ready to proceed upon the Trial of the Earl of *Danby*, againſt whom they already demanded Judgment, and afterwards to the Trial of the Five Lords; and propoſed ſeveral Difficulties, in reſpect of the Biſhops being preſent at the Trial of the Earl of *Danby*. They ſay further, That the Lords ſeem to lay the Stop at the Commons Door, by naming a Day; which they conceive ought not to have been apppointed before the Methods be conſidered; that the Lords may as well make the Judges Part of their Court, as the Biſhops, in this Point. The Commons will give no Diſturbance to the ancient Judicature, and they conceive they have a Right to know before what Court they ſhall appear.

‘ 20 *May*, Upon Debate of the Report from the Committee of both Houſes, the Lords appoint a Day for the Trial of the Five Lords.

‘ 22 *May*, The Lords ſent a Meſſage to the Houſe of Commons to acquaint them, That the Lords have appointed a Day for the Trial of the Five Lords.’

Then it being moved to have a Conference with the Commons, to let them know, That the Lords do not agree to a Committee of both Houſes, in relation to the Trials of the impeached Lords, and Debate thereupon: The Queſtion was put, Whether a Committee of this Houſe ſhall be appointed to meet with a Committee of the Houſe of Commons, in relation to the Proceedings upon the Impeachments?

It was reſolved in the Negative.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, do meet To-morrow at Ten of the Clock in the Forenoon, and draw Reaſons to be given at a Conference with the Houſe of Commons, Why their Lordſhips cannot agree, that a Committee of both Houſes be nominated to conſider of the Methods of Proceedings on Impeachments?

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *Friday* the Thirteenth Day of this Inſtant *June*, is hereby appointed for the Trial of *John* Lord *Sommers*, in *Weſtminſter-Hall*, upon the Articles brought up againſt him by the Houſe of Commons, whereby he ſtands charged with ſeveral High Crimes and Miſdemeanors.

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Gery*, to let the Commons know, ‘That the Lords have appointed *Friday* next for the Trial of *John* Lord *Sommers*, upon the Impeachment againſt him.’

A Meſſage was brought from the Houſe of Commons, by Mr. *Harcourt* and others (the 11th of *June*), to acquaint this Houſe, ‘That the Commons on *Monday* laſt received a Meſſage from your Lordſhips, that your Lordſhips had appointed the Trial of *John* Lord *Sommers* upon *Friday* next, upon their Impeachment againſt him: In which they obſerve, your Lordſhips have not nominated any Place for his Trial, tho' your Lordſhips thought fit to make that Matter, on the laſt Impeachment for Miſdemeanors, the Subject of a long Debate.

‘And they cannot but take Notice, that your Lordſhips have taken as long a Time to give your Anſwer to the common Deſire of a Committee of both Houſes delivered at a Conference on *Friday* laſt, as you are pleaſed to allow the Commons to have of a Day appointed by your Lordſhips for the ſaid Trial.

‘Your Lordſhips appointing ſo ſhort a Day, eſpecially whilſt the Propoſition made to your Lordſhips for a Committee of both Houſes was undetermin'd, the Commons take to be ſuch a Hardſhip to them, and ſuch an Indulgence to the Perſon accuſed, as is not to be parallel'd in any Parliamentary Proceeding.

‘The Commons muſt likewiſe acquaint your Lordſhips, that their Experience of the Interruption of a former Trial on an Impeachment for Miſdemeanor, for want of ſettling the Preliminaries between the two Houſes, obliges them to inſiſt on a Committee of both Houſes, for preventing the like Interruption.

‘And they conceive, 'twould be very prepoſterous for them to enter upon the Trials of any of thoſe Lords, till your Lordſhips diſcover ſome Inclination to make the Proceeding thereupon practicable; and therefore they think they have Reaſon to inſiſt upon another Day to be appointed for the Trial of the Lord *Sommers*. And the Commons doubt not but to ſatisfy your Lordſhips, at a Free Conference, of the Neceſſity of having a Committee of both Houſes, before they can proceed upon the ſaid Trial.’

Die Martis 10º *Junij*, 1701.

The Earl of *Stamford* reported from the Lords Committees (appointed to conſider of the Manner of Proceedings on Impeachments) the Reaſons drawn by them, to be given to the Houſe of Commons, at a Conference upon the Subject-Matter of the laſt Conference: Which Report was read, and agreed to, as follows; *viz.*

‘The Lords have deſired this Conference, upon occaſion of the laſt Conference, in order to preſerve a good Correſpondence with the Houſe of Commons, which they ſhall always endeavour. As to the late Meſſages between the Two Houſes, their Lordſhips are well aſſured, that on their Part, nothing has paſſed, but what was agreeable to the Methods of Parliament, and proper to preſerve that good Underſtanding between both Houſes, which is neceſſary for the carrying on of the Publick Buſineſs.

‘As to the Propoſal of the Commons, That a Committee of both Houſes ſhould be appointed, to conſider of the Ways and Methods of Proceeding on Impeachments, their Lordſhips cannot agree to it:

I. ‘Becauſe they do not find that ever ſuch a Committee was appointed, on occaſion of Impeachments for Miſdemeanors; and their Lordſhips think themſelves obliged to be extremely cautious in admitting any thing new, in Matters relating to Judicature.

II. ‘That although a Committee of this Nature was agreed to, upon the Impeachments of the Earl of *Danby*, and the five Popiſh Lords, for High-Treaſon, yet it was upon occaſion of ſeveral conſiderable Queſtions and Difficulties which did then ariſe; and their Lordſhips do not find, that the Succeſs in that Inſtance was ſuch as ſhould encourage the purſuing the ſame Methods again, though in the like Caſe; the Lords obſerving, that after much Time ſpent at that Committee, the Diſputes were ſo far from being there adjuſted, that they occaſioned the abrupt Concluſion of a Seſſion of Parliament.

III. ‘Their Lordſhips are of Opinion, That the Methods of Proceedings on Impeachments for Miſdemeanors, are ſo well ſettled by the Uſage of Parliament, that they do not foreſee any Difficulties likely to happen, at leaſt none have been yet ſtated to them; and all the Preliminaries in the Caſe of *Stephen Goudet*, and others (which was the laſt Inſtance of Impeachments for Miſdemeanors), were eaſily ſettled and agreed to, without any ſuch Committee.

IV. ‘The Lords cannot but obſerve, that this Propoſal of the Commons comes ſo very late, that their Lordſhips can expect no other Fruit of ſuch a Commtitee, but the preventing of the Trials during this Seſſion.

‘The Lords aſſure the Commons, that in caſe any Difficulties ſhall ariſe in the Progreſs of theſe Trials (which their Lordſhips do not foreſee), they will be ready to comply with the Commons in removing them, as far as Juſtice and the Uſage of Parliament will admit.’

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Gery*, to deſire a preſent Conference in the *Painted Chamber*, upon the Subject-Matter of the laſt Conference.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others. *See Page* 361.

Ordered, That the Meſſage received this Day from the Houſe of Commons, ſhall be conſidered To-morrow at Twelve a-Clock.

The Meſſengers ſent to the Houſe of Commons return Anſwer, That the Commons will give a Conference as deſired.

Then the Commons being come to the Conference, the Managers Names of the laſt Conference were read, and the Houſe adjourn'd during Pleaſure, and the Lords went to the Conference; which being ended, the Houſe was reſumed, and the Lord Steward reported, that the Lords had been at the Conference, and delivered their Reaſons as ordered.

Die Mercurii 11º *Junii.*

The Meſſage received Yeſterday from the Houſe of Commons was read; and after Debate of the ſeveral Particulars contained in it, this Queſtion was propoſed:

That no Lord of Parliament Impeached of High Crimes and Miſdemeanors, and coming to his Trial, ſhall, upon his Trial, be without the Bar?

Then the previous Queſtion was put, Whether this Queſtion ſhall be now put?

It was reſolved in the Affirmative.

Then the main Queſtion was put,

That no Lord of Parliament, impeached of High Crimes and Miſdemeanors, and coming to his Trial, ſhall, upon his Trial, be without the Bar?

It was reſolved in the Affirmative, *Nemine Contradicente.*

Reſolved, by the Lords Spiritual and Temporal in Parliament aſſembled, *Nemine Contradicente*, That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, and coming to his Trial, ſhall, upon his Trial, be without the Bar.

Then after further Debate, this Queſtion was propoſed,

That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, can be precluded from Voting, on any Occaſion, except in his own Trial?

Then the previous Queſtion was put, Whether this Queſtion ſhall be now put?

It was reſolved in the Affirmative.

Then the main Queſtion was put,

That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, can be precluded from Voting, on any Occaſion, except in his own Trial?

It was reſolved in the Affirmative.

Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, can be precluded from Voting, on any Occaſion, except in his own Trial.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Committee appointed to conſider of the Method of Proceedings on Impeachments, do meet To-morrow at Ten of the Clock in the Forenoon, and do draw an Anſwer to the Meſſage received Yeſterday from the Houſe of Commons upon the Reſolutions of the Houſe this Day; and that the Committee do aſſert in their Anſwer, That by the Journals of this Houſe, it doth not appear the Lords Impeached have Voted, as is inſerted in the Commons Meſſage.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others. *See Page* 361.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Debate which hath aroſe upon the Common Meſſage received this Day, be adjourn'd to To-morrow Eleven a-Clock, and no other Buſineſs to intervene; and all the Lords ſummoned to attend.

Die Jovis 12° *Junii*, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, what was drawn by them in Anſwer to a Meſſage from the Houſe of Commons of the Tenth Inſtant; which was read and agreed unto as follows:

A Meſſage was ſent to the Houſe of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, ‘ That in Anſwer to the Meſſage from the Houſe of Commons of the Tenth Inſtant, the Lords ſay, That although they take it to be Unparliamentary in many Particulars, yet to ſhew their real Deſire of avoiding Diſputes, and removing all Pretence of delaying the Trials of the Impeached Lords, they will only take notice of that Part of their Meſſage, wherein the Commons propoſe ſome Things as Difficulties, in reſpect of the Trials; which Matters relating wholly to their Judicature, and to their Rights and Privileges as Peers, they think fit to acquaint the Commons with the following Reſolutions of the Houſe of Lords:

‘ I. *That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, and coming to his Trial, ſhall, upon his Trial, be without the Bar.*

‘ II. *That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, can be precluded from Voting on any Occaſion, except in his own Trial.*

‘ Their Lordſhips further take notice of a Miſtake in point of Fact alledged in the Meſſage of the Commons; it no way appearing upon their Journals, that the Lords Impeached have voted in their Caſe.

‘ The Lords being well aſſured, that all the Steps that have been taken by them, in relation to theſe Impeachments, are warranted by the Practice of their Anceſtors, and the Uſage of Parliament, have Reaſon to expect the Trials ſhould proceed without Delay.’

A Meſſage was brought from the Houſe of Commons by Mr. *St. John*, and others (the 13th of *June*), to acquaint this Houſe, ‘ That the Houſe of Commons find great Reaſons to inſiſt upon their Propoſal of a Committee of both Houſes, from the two Meſſages received Yeſterday from your Lordſhips; for their Ambiguity and Uncertainty do ſhew the Methods of former Parliaments to be the moſt proper Way for Diſpatch of Buſineſs.

‘ The Commons have been obliged to employ that Time in conſidering and anſwering your Lordſhips Meſſages, which otherwiſe would have been ſpent in preparing for the Lord *Sommers*'s Trial; ſo that the Delay muſt be charged where the Occaſion ariſeth. And the Commons having deſired a Committee of both Houſes, to adjuſt the Preliminaries of the Trials, cannot but think it ſtrange your Lordſhips ſhould come to Reſolutions upon two of thoſe Points, while the Propoſal of the Houſe of Commons is under Debate at Conferences between the Two Houſes; the Commons having other Difficulties to propoſe, which concern them as Proſecutors, and all future Impeachments.

‘ And though the Commons leave the Subject of your Lordſhips Reſolutions, with other Things, to be debated at a Committee of both Houſes; yet they cannot but obſerve, that your Lordſhips ſecond Reſolution is no direct Anſwer to the Commons Propoſal, which was, Whether Peers impeached of the ſame Crimes, ſhall vote for each other upon their Trial for the ſame Crimes? And the Commons cannot believe that any ſuch Rule can be laid down in plain Words where there is a due Regard to Juſtice.

‘ And as to what your Lordſhips obſerve, That there is a Miſtake in Point of Fact alledged by the Commons, this Houſe may take Notice of the Caution uſed by your Lordſhips, in wording that Part of your Meſſage; for they know your Lordſhips are too well acquainted with the Truth of the Fact, to affirm, That the Impeached Lords did not vote in their own Caſes: And though the appearing or not appearing upon your Lordſhips Journal, does not make it more or leſs agreeable to the Rules of Juſtice; yet the Commons cannot but add this further Obſervation from your Lordſhips Journal, That the Impeached Lords Preſence is not only recorded when thoſe Votes paſſed, but they alſo find ſome of them appointed of Committees for preparing and drawing up the Meſſages and Anſwers to the Houſe of Commons; which they do not think has been the beſt Expedient for preſerving a good Correſpondence between the Two Houſes, or adjuſting what will be neceſſary upon theſe Trials: And therefore the Commons cannot think it agreeable to the Rules of Parliament for them to appear at a Trial, till all neceſſary Preliminaries are firſt ſettled with your Lordſhips.’

A Meſſage was brought from the Houſe of Commons by Mr. *Granvill* and others, to deſire a Free Conference with this Houſe, upon the Subject-Matter of the laſt Conference.

The Commons were called in, and told, That the Lords will return an Anſwer by Meſſengers of their own.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *John* Lord *Sommers* ſhall be tried in *Weſtminſter-Hall*, upon the Articles of Impeachment againſt him, on *Tueſday* the 17th Day of this Inſtant *June*, at Ten of the Clock in the Forenoon.

Ordered, That the Committee appointed to conſider of the Manner of Proceeding upon Impeachments, do meet preſently, and draw an Anſwer to the Meſſage received Yeſterday from the Houſe of Commons.

The Earl of *Stamford* reported from the Lords Committees, appointed to conſider of the Manner of Proceedings on Impeachments, what is drawn by them to be ſent to Houſe of Commons, in Anſwer to their Meſſage of the Eleventh Inſtant; which was read and agreed to, as follows:

A Meſſage was ſent to the Houſe of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, ‘ That in Anſwer to the Meſſage of the Houſe of Commons Yeſterday, the Lords ſay, That they cannot give a greater Evidence of their ſincere and hearty Deſires of avoiding all Differences with the Houſe of Commons, and proceeding on the Trials of the Impeachments, than by not taking Notice of the ſeveral juſt Exceptions to which that Meſſage is liable, both as to the Matter and Expreſſions.

‘ The Lords have nothing further from their Thoughts, than the going about to do any thing which might have the leaſt Appearance of Hardſhip in relation to the Commons.

‘ But the Anſwer of the Lord *Sommers* to the Articles exhibited againſt him, having been ſent down to the Commons on the Four-and-twentieth of *May* laſt; and they having by their Meſſage of the One-and-thirtieth of *May*, ſignify'd to their Lordſhips their Intention of beginning with the Trial of his Impeachment in the firſt place:

‘ The Lords conſidering how far the Seſſion is advanced, thought it reaſonable to appoint the Thirtieth Inſtant for the ſaid Trials; their Lordſhips finding ſeveral Precedents of appointing Trials on Impeachments within a ſhorter Time.

‘ The Lords alſo think it incumbent upon them to endeavour to diſpatch the Trials of all the Impeached Lords before the Riſing of the Parliament. This is what Juſtice requires, and cannot be looked upon as a Matter of Indulgence. Nevertheleſs, that the Commons may ſee how deſirous their Lordſhips are to comply with them in any thing which may be conſiſtent with Juſtice, they have appointed the Trial of Impeachment againſt *John* Lord *Sommers*, on *Tueſday* the Seventeenth Day of this Inſtant *June*, at Ten of the Clock in the Forenoon in the Houſe of Lords, which will be then ſitting in *Weſtminſter-Hall*.’

A Meſſage was ſent to the Houſe of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That the Lords agreee to a Free Conference, as deſired, and appoint the ſame to be To-morrow at One a-Clock in the *Painted Chamber*.

Die Veneris 13° *Junij*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *St. John* and others. *See Page* 365.

The Meſſengers were called in, and told, That the Lords will ſend an Anſwer to the Commons Meſſage, by Meſſengers of their own.

The Commons being come to the Free Conference, the Managers Names were read; then the Houſe was adjourned during Pleaſure, and the Lords went to a Free Conference: Which being ended, the Houſe was reſumed, and the Lord Steward reported, That the Lords had attended the Free Conference, as commanded; and that Mr. *Harcourt* opened the Free Conference, and argued againſt the Reaſons given by this Houſe, Why they could not agree to a Committee of both Houſes; and that the Lord *Haverſham*, in Anſwer to ſome Part of the Arguments of Mr. *Harcourt* and Sir *Bartholomew Shower*, uſed ſome Expreſſions, at which the Commons taking Exceptions, abruptly broke up the Conference.

After Debate thereupon, a Meſſage was ſent to the Houſe of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That the Lords having been informed by their Managers, that ſome Interruption happened at the Free Conference, which their Lordſhips are concerned at, becauſe they wiſh that nothing ſhould interrupt the publick Affairs, do deſire the Commons would come again preſently to the ſaid Free Conference, which they do not doubt will prove the beſt Expedient to prevent the Inconvenience of a Miſunderſtanding upon what has paſs'd.

The Meſſengers ſent to the Houſe of Commons return Anſwer, that they have delivered their Meſſage to the Commons, as ordered; and that the Commons ſay, they will return Anſwer by Meſſengers of their own.

A Meſſage was brought from the Houſe of Commons by Sir *Chriſtopher Muſgrave* and others, to acquaint this Houſe, *That the Commons deſiring to keep up a good Correſpondence with your Lordſhips, do think it neceſſary to acquaint your Lordſhips with what has happened at the Free Conference.*

‘ One Thing there is, tho' I can't ſpeak to it, becauſe I am bound up by the Orders of the Houſe; yet it muſt have ſome Anſwer: That is, as to the Lords voting in their own Caſe, it requires an Anſwer, tho' I can't go into the Debate of it. The Commons themſelves have made this Precedent; for in theſe Impeachments they have allow'd Men guilty of the ſame Crimes to Vote in their own Houſe; and therefore we have not made any Diſtinction in our Houſe, that ſome ſhould Vote, and ſome not. The Lords have ſo high an Opinion of the Juſtice of the Houſe of Commons, that they hope Juſtice ſhall never be made uſe of as a Maſk for any Deſign: And therefore give me Leave to ſay, (tho' I am not to argue it) 'tis a plain Demonſtration, that the Commons think theſe Lords innocent: And I think the Propoſition is undeniable; for there are ſeveral Lords in the ſame Crimes, in the ſame Facts, there is no Diſtinction; and the Commons leave ſome of theſe Men at the Head of Affairs, near the King's Perſon, to do any Miſchief, if their Perſons were inclined to it, and Impeach others, when they are both alike guilty, and concerned in the ſame Facts. This was a Thing I was in hopes I ſhould never have heard aſſerted, when the Beginning of it was from the Houſe of Commons.’

Theſe were the Words ſpoken by John *Lord* Haverſham; *and the Commons have ordered me to communicate this Reſolution to your Lordſhips.*

Reſolved, *That* John *Lord* Haverſham *be charged before the Lords, for the Words ſpoken by the ſaid Lord this Day at the Free Conference; and that the Lords be deſired to proceed in Juſtice againſt the ſaid Lord* Haverſham, *and to inflict ſuch Puniſhment upon the ſaid Lord, as ſo high an Offence againſt the Houſe of Commons doth deſerve.*

Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords, who were at the Free Conference, do meet preſently at a Committe, and draw up what was offered at the Free Conference, and report to the Houſe To-morrow at Eleven a-Clock.

Die Sabbati 14° *Junii*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *Bruges* and others, with the Articles of Impeachment againſt *Charles* Lord *Hallifax*, and to acquaint this Houſe, That the Matter of the Charge was contained in the Articles; and alſo, that he was commanded to pray and demand, That *Charles* Lord *Hallifax* do give ſufficient Security abide the Judgment of the Houſe of Lords.

The Articles were read by the Clerk, as follows; *viz.*

ARTICLES *exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in Maintenance of their Impeachment againſt* Charles *Lord* Hallifax, *of High Crimes and Miſdemeanors.*

WHereas ſeveral Perſons, contrary to their Duty and Allegiance to his Majeſty and his late Royal Conſort, of ever bleſſed Memory, traitorouſly adhering to their Majeſties Enemies, did levy and maintain, within their Majeſties Realm of *Ireland*, a deſperate and bloody War and Rebellion againſt their Majeſties; and were, by his Majeſty's Conduct and Courage, at the great Expence of his *Engliſh* Subjects, reduced to their due Obedience to the Crown of *England.*

And whereas upon the Fourth Day of *April*, in the Year of our Lord One thouſand Six hundred and Ninety, 'twas reſolved by the Commons of *England* in Parliament aſſembled, That a Bill ſhould be brought in, to attaint all Perſons guilty of Rebellion in *Ireland* or elſewhere, againſt their Majeſties King *William* and Queen *Mary*, and to enact and declare their Eſtates to be Forfeited, and to be Sold for the reducing of that Kingdom.

And whereas his Majeſty, in his gracious Speech to both Houſes of Parliament, did, upon the Fifth day of *January* One thouſand Six hundred and Ninety, aſſure them, That he would not make any Grants of the Forfeited Lands in *Ireland*, till there ſhould be another Opportunity of ſettling that Matter in Parliameut, in ſuch Manner as ſhould be thought moſt expedient.

And whereas the Commons of *England* in Parliament aſſembled, by their humble Addreſs to his Majeſty, upon the Fourth Day of *March*, One thouſand Six hundred Ninety-two, did humbly beſeech his Majeſty, That (according to the Aſſurances his Majeſty had been pleaſed to give them) no Grant might be made of the Forfeited Eſtates in *Ireland*, till there ſhould be an Opportunity of ſettling that Matter in Parliament, in ſuch Manner as ſhould be thought moſt expedient: To which his Majeſty was pleaſed to give a moſt gracious Anſwer. Whereby, and by many other Endeavours of the Commons in the following Seſſions of Parliament, it appears, That what has ſince been declared by Act of Parliament, was the continual Senſe of the Commons of *England*; That it was highly reaſonable, That the Forfeited Eſtates of Rebels and Traitors in *Ireland*, ſhould be applied in Eaſe of his Majeſty's faithful Subjects of the Kingdom of *England.*

And whereas 'twas the apparent Duty of every Officer or Miniſter of State, to have had ſo much Regard to the Reſolutions and Addreſs of the Houſe of Commons, to the Publick Good, and his Majeſty's Honour, as to have diſſuaded and prevented (as much as in them lay) the procuring or paſſing any Grant or Grants of the ſaid Forfeited Eſtates in *Ireland*; yet *Charles* (now) Lord *Hallifax*, then the Honourable *Charles Montagu*, Eſq; being a Member of the Honourable Houſe of Commons, One of the Lords of the Treaſury, Chancellor of the *Exchequer*, and One of his Majeſty's moſt Honourable Privy Council, hath, ſince the aforeſaid Fourth Day of *March*, One thouſand Six hundred Ninety-two, preſumed to adviſe, paſs, or direct the paſſing a Grant to *Thomas Railton*, Eſq; in Truſt for himſelf, of ſeveral Debts, Intereſts, Sum and Sums of Money, amounting in the whole to the Sum of Thirteen thouſand Pounds, or thereabout, due, owing, and which ought to have accrued to his Majeſty, by reaſon of Attainders, Outlawries, or other Forfeitures of the reſpective Perſons for whom the ſame were entered on Record; whereby he hath much contributed to the contracting great Debts upon the Nation, the laying heavy Taxes upon the People, hath highly reflected on his Majeſty's Honour, and failed in the Performance of his Truſt and Duty.

II. Whereas by an Act of Parliament, made in the Eleventh and Twelfth Years of his Majeſty's Reign, entitled, *An Act for granting an Aid to his Majeſty by Sale of the Forfeited and other Eſtates and Intereſts in* Ireland, *and by a Land-Tax in* England, *for the ſeveral Purpoſes therein mentioned*, 'tis amongſt other Things enacted, That all and every Perſon or Perſons whatſoever, who had by Virtue of any Grant or Diſpoſition from his Majeſty, or from his Majeſty and the late Queen, received for his or their own Uſe or Benefit, any Debt or Debts, or Sum or Sums whatſoever, due from any Debt or Debts of any Forfeiting Perſon, mentioned or deſcribed in the ſaid Act, or from any Perſon or Perſons, ſubject or liable to the Payment of any Sum or Sums of Money whatſoever, to any of the ſaid Forfeiting Perſons, ſhould be, and they are thereby declared to be reſpectively liable, and are required to repay every ſuch Debt or Debts, Sum or Sums of Money whatſoever, ſo by him, her or them reſpectively received, into the Receipt of his Majeſty's *Exchequer* in *Ireland*, on or before the Four-and-twentieth Day of *Auguſt*, One thouſand Seven hundred.

And whereas the ſaid *Charles* Lord *Hallifax* had, before the making of the aforeſaid Act, procured for *Thomas Railton*, Eſq; in Truſt for himſelf, a Grant of ſeveral Debts by Judgments and otherwiſe, to ſeveral of the ſaid Forfeiting Perſons, amounting to the Sum of Thirteen thouſand Pounds, or thereabouts, forfeited to his Majeſty by the Attainder, Outlawries, or other Forfeitures of the reſpective Perſons to whom ſuch Debts were originally due; and, by Virtue of the ſaid Grant, the ſaid Lord *Hallifax* actually received to his own Uſe the Sum of One thouſand Pounds, part of the before-mentioned Sum of Thirteen thouſand Pounds; which ſaid Sum of One thouſand Pounds he the ſaid *Charles* Lord *Hallifax* ought to have repaid before the ſaid Four-and-twentieth Day of *Auguſt*, One thouſand Seven hundred, into the Receipt of his Majeſty's *Exchequer* in *Ireland*, as

by

The ANSWER *of* Charles *Lord* Hallifax *to the Articles exhibited againſt him by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in Maintenance of their Impeachment againſt the ſaid Lord* Hallifax, *for High Crimes and Miſdemeanors ſuppoſed to be committed by him.*

THE ſaid Lord *Hallifax*, ſaving to himſelf all Advantages of Exceptions to the ſaid Articles, and of not being prejudiced by any Words, or want of Form; and ſaving to himſelf all Privileges and Rights belonging to him, as One of the Peers of this Realm; for Anſwer to the ſaid Articles humbly ſaith,

I. To the Firſt Article he ſaith, True it is, that ſeveral Perſons did levy and maintain a deſperate and bloody War and Rebellion in *Ireland* againſt their Majeſties, and were by his Majeſty's Courage and Conduct, at the great Expence of his *Engliſh* Subjects, ſuppreſſed and reduced to their Obedience, as in this Article is alledged. And he further anſwereth and ſaith, He believes it to be true, that on the Fourth of *April* 1690, ſuch Vote or Reſolve was made by the then Houſe of Commons for that Purpoſe, and ſuch Aſſurance was given by his Majeſty, and ſuch Addreſſes were made by the Houſe of Commons in the Year 1690 and 1692, That no Grant ſhould be made of the Forfeited Lands in *Ireland* till there ſhould be another Opportunity of ſettling that Matter in Parliament, in ſuch Manner as ſhould be thought moſt expedient; and ſuch Anſwers were given thereunto as in this Article is and are ſet forth, as by the ſaid ſeveral Votes, Reſolves, Speeches, Addreſſes and Anſwers, to which the ſaid Lord craves Leave, for more Certainty, to refer himſelf, may appear.

That in the Years 1693, 1694, 1695, the Parliament of *England* did meet, and no Act was paſſed touching the Forfeited Eſtates, tho' by other Ways great Sums were raiſed for the carrying on and defraying the Charges of the War in thoſe Years; and his Majeſty did after, as Rewards to ſeveral Perſons who had ſerved him in *Ireland* and elſewhere, grant to them ſome of the Forfeited Eſtates in *Ireland*, and the Grantees did enjoy the ſame.

And the ſaid Lord *Hallifax* further ſaith, That his Majeſty did never grant to him, or any in Truſt for him, or to his Uſe, any of the ſaid Forfeited Lands; but of his Grace and Favour, and as a Reward for his Faithful Services (which his Majeſty was pleaſed to accept) did, by Letters Patents under the Great Seal of *England*, bearing Date on or about the Eleventh Day of *May*, 1697, grant to *Thomas Railton*, Eſq; in Truſt for the ſaid Lord *Hallifax*, (who was then One of the Commiſſioners of the Treaſury, Chancellor of the *Exchequer*, and One of the Members of the Houſe of Commons, (as in this Article is ſet forth) ſeveral Debts, Intereſts, Sum or Sums of Money, amounting in the whole to the Sum of 11546 Pounds, 17 Shillings and 8 Pence, or thereabouts: Which Grant he conceives, and is adviſed, his Majeſty might then lawfully make, and was lawful for him to accept, without Breach of his Duty, or the Truſt repoſed in him: and denies, That he did aſk for, or procure the ſaid Grant; but confeſſeth, He accepted the ſame as a Mark of his Majeſty's Grace and Favour; and ſaith, The ſaid Grant hath ſince been taken away by Act of Parliament; and ſaith, That the ſaid Grant, made to *Thomas Railton*, is the ſame which was mentioned, or intended, by the ſaid Article of Impeachment; and although the Debts, therein mentioned to be granted, amount to 11546 Pounds, 17 Shillings and 8 Pence, and no more, yet the ſaid Grant itſelf, at the Time of making thereof, or at any Time afterwards, would not be valued at near the ſaid Sums, becauſe a great part of the ſaid Debts were not recoverable; and he hath not made clear thereof, as yet, above 400l. and humbly hopes the ſaid Grant hath very little, if at all, contributed to the contracting any Debts upon the Nation, or laying heavy Taxes upon the People, or any ways reflected upon his Majeſty's Honour, or, that he had failed in the Performance of his Truſt or Duty, as in the Article is ſuggeſted.

II. To the Second Article the ſaid Lord *Hallifax* ſaith, That he believes it to be true that ſuch Act was made, and ſuch Clauſe therein as in this Article is mentioned; and alſo in the ſaid Act there is a further Clauſe, That the Grantees from the King of any of the Forfeited Eſtates thereby reſumed, ſhould not be accountable for the Rents, Iſſues, and Profits of the ſame, by them received before the Second Day of *November*, 1699, but might retain the ſame to their own Uſes.

And the ſaid Lord *Hallifax* doth acknowledge, That after the making the ſaid Grant before-mentioned to the ſaid *Thomas Railton*, the Agents of the ſaid Lord *Hallifax* did receive ſome Monies, not exceeding One thouſand Pounds (as he is informed) out of the Rents and Profits of the Forfeited Eſtate of the Earl of *Clancarty*, of which no more than the abovesaid Sum did come clear to him the ſaid Lord *Hallifax*; and no more, to his Knowledge or Belief, hath been received or recovered upon the aforeſaid Grant. That the ſaid Lord *Hallifax* gave Direction, after the ſaid Act paſſed, to his Agents in *Ireland*, to do, in relation to the Money received, as ſhould be adviſed by Counſel there; by whom his Agents were adviſed (as they informed the ſaid Lord, and which he believes to be true) that the ſaid Monies, being received out of the Mean Profits which were remitted by that Act, were not within the firſt-mentioned Clauſe in the ſaid Act: And therefore the ſaid Lord does believe and admit, the ſame were not paid into the Receipt of his Majeſty's *Exchequer* in *Ireland*, nor ought to have been paid into the *Exchequer*, as he humbly inſiſts, and is adviſed: And he doth deny, That the Non-payment of the ſaid Money into the ſaid Receipt is any Wrong to his Majeſty or the Publick, or any Miſapplication; and in caſe the ſaid Money ought to have been paid into the ſaid Receipt, there are proper Methods and Remedies in the ſaid Act preſcribed, to compel the Payment of the ſame.

III. To

by the ſaid Act he was requir'd to have done; yet the ſaid *Charles* Lord *Hallifax* did not repay the ſaid Sum of One thouſand Pounds, as by the ſaid Act he was requir'd to do; but has hitherto, in contempt of the Act, refus'd or neglected to repay the ſame: Which Neglect or Refuſal of him the ſaid *Charles* Lord *Hallifax*, to repay the ſaid Sum of One thouſand Pounds, is a manifeſt Wrong to his Majeſty and the Publick; and a Miſapplication of that Sum to other Uſes and Purpoſes than by the Act 'tis appropriated, and ought to have been apply'd.

III. That the ſaid *Charles* Lord *Hallifax*, being a Member of the Honourable Houſe of Commons, One of the Commiſſioners for executing the Office of Lord-Treaſurer of *England*, Chancellor of the *Exchequer*, and One of his Majeſty's moſt Honourable Privy-Council, not contented with the many Employments and Places of Honour beſtow'd upon him by his Majeſty, nor with the large and exceſſive Gains by him made, by the Incomes and Profits ariſing from ſuch Offices and Preferments, did (in oppoſition to what he well knew to be the true Intereſt of *England*, and contrary to his Oath as a Privy-Counſellor, and his Duty as a Publick Miniſter, at a Time when the Nation was engag'd in a tedious and expenſive War againſt *France*, for preſerving the Balance and Liberties of *Europe*, and under ſuch heavy Debts as, without laying unſupportable Taxes on the People, were impoſſible to be ſatisfied) Adviſe, Procure, and Aſſent, not only to the paſſing of divers Grants to others in *England* and *Ireland*, but did obtain and accept of ſeveral beneficial ones to, or in Truſt for himſelf: Which ſaid Practices of him, the ſaid Lord *Hallifax*, were a moſt notorious Abuſe of his Majeſty's Goodneſs, a great Breach of his Truſt, and a very high Vexation and Oppreſſion of his Majeſty's other Subjects.

IV. Whereas by the Common-Law, and by many Statutes and Ordinances of this Realm, it appears to have been the great Care of our Anceſtors, that the King's Foreſts ſhould be preſerv'd, and in particular the Timber therein growing, for the building and repairing of the Navy Royal, which has ever been accounted (as it undoubtedly is) the great Security of this Realm: And whereas *Charles* Lord *Hallifax* was, in the Year of our Lord One thouſand Six hundred Ninety-ſeven, One of the Commiſſioners of the Treaſury, Chancellor of the *Exchequer*, and of his Majeſty's Privy-Council, and oblig'd, as well by repeated Oaths, as by the Duty he ow'd to his Majeſty and his Country, to have adviſed, conſulted, and promoted ſuch Matters and Things as ſhould, or at leaſt were moſt likely to redound to his Majeſty's Honour and the Nation's Safety; yet the ſaid *Charles* Lord *Hallifax*, not regarding the Laws and Ordinances of this Realm, nor his ſaid Duty to his Majeſty and the Publick, but purſuing his private Intereſt, did, by Letters of Privy-Seal, bearing Date on or about the Sixth Day of *May*, which was in the Year of our Lord One thouſand Six hundred Ninety-ſeven, (the Kingdom being then engag'd in an expenſive War, and the Debts of the Nation requiring the beſt and moſt frugal Management) procure from his Majeſty a Grant to *Henry Segar*, Gent. in Truſt for himſelf, of the Sum of Fourteen thouſand Pounds, of ſo much ſcrubb'd Beech, Birch, Holly, Hazle, Thorns, and Orle, as ſhould by Sale raiſe the ſaid Sum of Fourteen thouſand Pounds, to be fallen in his Majeſty's Foreſt of *Dean*, in the County of *Glouceſter*, within the ſpace of Seven Years time, from the Five-and-twentieth Day of *December*, One thouſand Six hundred Ninety-ſeven: Under colour of which Grant, Beech of a much greater Value, a great Number of Sapling-Oaks, which might and would have been ſerviceable to the Realm, and alſo many Tons of the well-grown Timber, fit for the preſent Uſe of the Navy, have been cut and fallen, and ſold and diſpoſed of for the Benefit of the ſaid Lord *Hallifax*.

V. Whereas there is not any thing that ſo much conduceth to his Majeſty's and the Nation's Honour and Safety, as the due Ordering and Managing of the King's Treaſure, and the Publick Revenues; for the Receiving and Iſſuing forth of which, the Wiſdom and Policy of this Nation has provided and appointed ſeveral and diſtinct Officers with beneficial Salaries, in order that they may be a Check to each other, and that no Loſs may accrue to his Majeſty or the Publick, by the Corruption, Unſkilfulneſs, or Negligence of any particular Officer: Yet he, the ſaid *Charles* Lord *Hallifax*, being one of the Lords of the Treaſury, when by the Death of the Honourable Sir *Robert Howard* the Office of the Auditor of the Receipts, and Writer of the Tallies, became vacant, not regarding the ancient Conſtitution and approv'd Methods in ordering his Majeſty's Treaſury, and the publick Revenues, did grant, or procure to be granted, to *Chriſtopher Montagu*, Eſq. the Brother of him the ſaid *Charles* Lord *Hallifax*, and then One of the Commiſſioners of the Exciſe, the ſaid Place and Office of Auditor of the Receipts, and Writer of the Tallies; which ſaid Grant was ſo made and procur'd by the ſaid Lord *Hallifax* in Truſt, as to the Profits thereof, for himſelf: So that from and after the paſſing of the ſaid Grant, he, the ſaid Lord *Hallifax*, was in effect at the ſame Time one of the Commiſſioners of the Treaſury, Chancellor of the *Exchequer*, and Auditor of the Receipts, and Writer of the Tallies, and enjoy'd the Profits of the ſaid ſeveral Offices; which, by the Conſtitution of the Treaſury, are manifeſtly inconſiſtent, and never were, or ought to be, truſted in the ſame Perſon: The making and procuring of which ſaid Grant by him, the ſaid *Charles* Lord *Hallifax*, as aforeſaid, was a manifeſt Violation of the eſtabliſh'd Courſe and Conſtitution of the *Exchequer*, a Breach of his Truſt, of evil Example, and tending very much to the great Loſs and Prejudice of his Majeſty and the Publick, by opening a Way to all manner of corrupt Practices in the future Management of the Revenues.

III. To the Third Article he ſaith, He was a Member of the Houſe of Commons, One of the Commiſſioners of his Majeſty's Treaſury, Chancellor of the *Exchequer*, and Privy-Counſellor, as in the Article is ſet forth; and ſerv'd his Majeſty faithfully, as he hopes and believes, in thoſe Stations, and was contented with the Employments and Places of Honour beſtow'd upon him, and with the Incomes and Gains by him made by the juſt and lawful Fees and Profits of the ſame, and his Majeſty graciouſly accepted of ſuch his Services; and, as a Mark of his Royal Favour to him, did make, for his Benefit, the Grant in the Anſwer to the precedent Article, and the Grant in the Anſwer to the ſubſequent Article mention'd; which were all the profitable Grants he, or any in Truſt for him, ever had from his Majeſty: And the ſaid Lord *Hallifax* ſays, He conceives, and is adviſed, that his accepting ſuch Grants were not any Abuſe of his Majeſty's Goodneſs, nor Breach of the Truſt repoſed in him, nor were any of his Majeſty's Subjects thereby oppreſs'd: And denies, that he ever did, in oppoſition to what he knew to be the true Intereſt of *England*, or contrary to his Oath or Duty, at any time Adviſe, Procure, or Aſſent to the paſſing of any Grant or Grants to himſelf, or to any Perſon in Truſt for him, or to any other Perſon or Perſons whatſoever; but ſaith, He, as One of the Commiſſioners of the Treaſury, in conjunction with the other Commiſſioners, did ſign ſeveral Warrants and Dockets for ſuch Grants as his Majeſty was pleas'd to direct to be paſs'd by them; and which, he humbly conceives and is adviſ'd, he was, by the Duty of his Place, oblig'd to do.

IV. To the Fourth Article he ſaith, He believes it to be true, That our Anceſtors did take great care to preſerve the King's Foreſts, and the Timber therein growing, for the building and repairing the Navy Royal, which the ſaid Lord doth own hath ever been accounted (and as he believes very rightly) the great Security of the Realm: And ſaith, True it is, he was in the Year 1697 One of the Commiſſioners of the Treaſury, Chancellor of the *Exchequer*, and One of his Majeſty's Privy-Council, and did from time to time adviſe and promote ſuch Matters and Things as were moſt likely to redound to his Majeſty's Honour, and the Nation's Safety; and denies, that he, at any time, preferr'd his Private Intereſt to that of the Publick: But doth confeſs and admit, that his Majeſty, by his Letters of Privy-Seal, dated the Sixth of *May*, 1697, did, out of his Grace and Favour deſign'd to the ſaid Lord *Hallifax*, grant unto *Henry Segar*, in the Article mention'd, and which was in Truſt for the ſaid Lord, the Sum of 2000 *l. per Annum*, to be rais'd by the Fall of ſcrubbed Beech, Birch, Holly, Hazle, Thorns, and Orle, in the Foreſt of *Dean*, in the County of *Glouceſter*, for the ſpace of Seven Years from the 25th of *December* 1697, as by the ſaid Letters of Privy-Seal, to which the ſaid Lord, for more Certainty, referreth himſelf, may appear; which Grant was not, nor could be, prejudicial to any Timber growing in the ſaid Foreſt; and believes no Sapling-Oaks, or Timber, or Trees likely to be Timber, were cut down by colour of the ſaid Grant; and if any Abuſe were in cutting the Wood, he conceives he is not anſwerable for the ſame, ſuch cutting not having been by his Direction, nor he any ways concerning himſelf therein, the Setting-out and Cutting whereof did belong to his Majeſty's Surveyor-General, and other his Majeſty's Officers, who (as the ſaid Lord hath been inform'd and believes) faithfully diſcharged their Truſt in the Execution thereof, and took particular Care to preſerve the Timber there.

V. To the Fifth Article the ſaid Lord *Hallifax* anſwereth and ſaith, He believes it to be true, that the Ordering and Management of the King's Treaſure and publick Revenues conduceth very much to the Honour and Safety of his Majeſty and the Nation; and that there are ſeveral diſtinct Officers with Salaries, for the better receiving and iſſuing forth of the ſame, and that are Checks upon each other, to prevent any Loſs to his Majeſty or the Publick: And the ſaid Lord ſaith, True it is, he was One of the Commiſſioners of the Treaſury, when, by the Death of Sir *Robert Howard*, his Office of Writer of the Tallies and Counter-Tallies, commonly call'd *Auditor of the Receipt of Exchequer*, became vacant; and thereupon the then Commiſſioners of the Treaſury did grant the ſaid Office to *Chriſtopher Montagu*, then One of the Commiſſioners of Exciſe, and Brother to the ſaid Lord; which the ſaid Lord does own and admit was done at his Deſire and Requeſt; but humbly inſiſteth, the ſame was not granted contrary to the ancient Conſtitution, or approv'd Methods, in ordering his Majeſty's Treaſury, or Publick Revenue: And ſaith, He the ſaid Lord did procure the ſaid Office to be granted to his Brother, intending, in a ſhort time after, by his Majeſty's Permiſſion, when his Majeſty's Affairs would permit thereof, to leave his the ſaid Lord's Employments and Places in the Treaſury, and to obtain a Surrender from his ſaid Brother of the ſaid Office, and procure a Grant thereof to himſelf; which he hopes, and humbly inſiſts, was lawful for him to do: And ſaith, His ſaid Brother duly executed the ſaid Office till after the ſaid Lord had left, or laid down by his Majeſty's Leave, his Places in the Treaſury; and then, and not before, his ſaid Brother ſurrender'd the ſaid Office, and he, the ſaid Lord, obtain'd a Grant of the ſame, as he conceives was lawful for him to do. In all which Proceedings nothing was done by him, the ſaid Lord, as he is adviſ'd, in violation of the eſtabliſh'd Courſe and Conſtitution of the *Exchequer*, or to the Loſs or Prejudice of his Majeſty, or the Publick: And ſaith, He does not know, or believe, that the ſaid ſeveral Offices, as they were executed, were in their Nature inconſiſtent with one another; and is very ſure his Majeſty, or the Publick, were no ways prejudic'd by the Execution of the ſame.

VI. Whereas a Treaty and Alliance between *Leopold* the Emperor of *Germany*, and the *States-General* of the *United-Provinces*, was made and concluded in the Year of our Lord One thouſand ſix hundred eighty-nine, upon the Conſideration of the Greatneſs of the common Danger which then threatened all *Chriſtendom*, from the exceſſive Power of *France*, and the unconſtant Faith of the *French* in the Obſervance of Treaties; whereby it was agreed, That there ſhould be, and remain for ever, a Conſtant, Perpetual, and Inviolable Friendſhip and good Correſpondence between his Imperial Majeſty and the *States-General*; that each of them ſhould be obliged to promote the other's Intereſt; and, as much as in them lay, prevent all Damages and Inconveniencies to each other.

And whereas certain ſeparate Articles were alſo at or about that Time made and annexed to the aforeſaid Treaty, whereby the *States-General*, maturely conſidering that *France* had openly declared in ſeveral Courts, that (notwithſtanding the moſt ſolemn Renunciation) they continued their Pretenſion by Force of Arms to aſſert for the *Dauphin* the Succeſſion of the *Spaniſh* Monarchy, in caſe the King of *Spain* ſhould die without Iſſue; and alſo conſidering what a Blow their State would receive, and what Prejudice might happen thereby to the Publick Affairs and Quiet, did promiſe, That in caſe his ſaid Catholic Majeſty ſhould die without Iſſue, they would, with all their Force, aſſiſt his ſaid Imperial Majeſty, or his Heirs, in taking the Succeſſion of the *Spaniſh* Monarchy lawfully belonging to that Houſe, together with its Kingdoms, Dominions, and Rights, and in their obtaining and ſecuring the quiet Poſſeſſion thereof, againſt the *French* and their Adherents, who ſhould directly or indirectly oppoſe that Succeſſion, and with Force repel that Force which ſhould be brought againſt them.

That at the Inſtance of the *States-General*, in purſuance of the ſaid Treaty and Separate Articles, our moſt Gracious Lord and Sovereign, his moſt Excellent Majeſty King *William* the Third, was invited to enter into the Alliance of the aforeſaid Treaty, and into the Agreement of the ſaid Separate Articles; and thereupon, for reſtoring and preſerving the Public Peace and Quiet, did afterwards, in the Year of our Lord One thouſand ſix hundred eighty-nine, enter into, and under the Great-Seal of *England* accept, approve, and ratify, and in the moſt ſolemn Manner engage and promiſe Religiouſly and Inviolably to obſerve the ſame, without violating the ſaid Treaty or Separate Articles in any Article, or ſuffering the ſame, to the utmoſt of his Power, to be violated.

That in the Year of our Lord One thouſand ſix hundred ninety-eight, a Treaty was projected and contrived in *France*, to be ſet on foot between his Majeſty, the *French* King, and the *States-General*, for a Partition of the *Spaniſh* Monarchy, whereby many large Territories thereunto belonging, in caſe of the Deceaſe of the King of *Spain* without Iſſue, were to be allotted and delivered up to *France*.

The Tenor and Deſign of which laſt-mentioned Treaty, whilſt the ſame was in Negotiation, was communicated to the ſaid *Charles* Lord *Hallifax*, then one of the Commiſſioners for executing the Office of Lord High-Treaſurer, Chancellor of the Exchequer, and one of his Majeſty's moſt Honourable Privy Council: That the ſaid *Charles* Lord *Hallifax*, well knowing the moſt apparent evil Conſequences, as well as the Injuſtice of the ſaid Partition, did not, according to the Truſt and Duty of his ſaid ſeveral Offices, diſſuade, or endeavour to obſtruct its taking Effect; but, on the contrary, having neither Regard to his Majeſty's Honour, engaged by the above-mentioned Treaty with the Emperor and the *States-General*, to the Trade and known Intereſt of theſe Kingdoms, or the Peace of *Europe*, did adviſe his Majeſty to enter into the ſaid Treaty; and did ſo far encourage and promote the ſame, that the ſaid Treaty was concluded and ratified under the Great-Seal of *England*: Which ſaid Treaty was evidently deſtructive of the Trade of this Realm, a Breach of the former Treaty made with the Emperor in One thouſand ſix hundred and eighty-nine, diſhonourable to his Majeſty, highly injurious to the Intereſt of the *Proteſtant* Religion, and manifeſtly tended to diſturb the general Peace of *Europe*, by altering the Balance of Power therein, and ſtrengthening *France* againſt the good Friends and ancient Allies of our Sovereign Lord the King.

And the ſaid Knights, Citizens, and Burgeſſes, by Proteſtation, ſaving to themſelves the Liberty of exhibiting, at any Time hereafter, any further Articles, or other Accuſation or Impeachment againſt the ſaid Lord *Hallifax*; and alſo of replying to his Anſwers which he ſhall make unto the ſaid Articles, or any of them, and of offering Proofs to all and every the aforeſaid Articles, and to all and every other Articles, Impeachment, or Accuſation, which ſhall be exhibited by them, as the Caſe ſhall, according to the Courſe of Parliament, require, do pray, That the ſaid *Charles* Lord *Hallifax* may be put to anſwer the ſaid Crimes and Miſdemeanors, and that ſuch Proceedings, Examinations, Trials and Judgments, may be thereupon had and given, as is agreeable to Law and Juſtice.

VI. To the Sixth Article the ſaid Lord *Hallifax* ſaith, That he believes, that in the Year 1689, ſuch Treaty, and Alliance, and Separate Article were made between the Emperor of *Germany* and the *States-General* of the *United-Provinces* (into which his Majeſty and the late Queen entered), and ſuch Ratifications thereof were made as in this Article is mentioned; and alſo ſaith, He hath heard and believes, that in the Year of our Lord 1698, a Treaty was made to ſuch Effect as in this Article is mentioned; and ſaith, He never ſaw the ſaid Treaty, or heard the ſame read, or does as yet know the Articles or Agreement it contains; and denies, that he ever adviſed his Majeſty to enter into, or make the ſaid Treaty, or was ever conſulted upon any Clauſe or Article thereof, or ever encouraged or promoted the ſame. And the ſaid Lord ſaith, That, as he remembers, Mr. Secretary *Vernon* did at one Time ſend for him, and diſcourſe with him and others upon an Intimation that was given by a Letter from the Earl of *Portland*, as he remembers, that the *French* King was diſpoſed to commence a Negotiation upon ſome general Terms that were then mentioned, to prevent a War in caſe of the King of *Spain*'s Death, who was then reported to be very ill; and afterwards the ſaid Matter was diſcourſed between the Secretary, the then Lord-Chancellor, and the ſaid Lord *Hallifax*, at *Tunbridge-Wells*, when and where the ſaid Lord *Hallifax* made ſeveral Objections to the ſame; and denies, That he gave any Opinion to encourage or promote the ſaid Treaty, or ever afterwards was informed of any one Particular relating to it; or was ever conſulted or adviſed upon any Clauſe or Article of it, or was ever after told or informed, that the ſaid Negotiation or Treaty did go on or proceed; and ſaith, That not being adviſed with, or anyways knowing of the ſaid Treaty or Negotiation (except as aforeſaid), he could not diſſuade or obſtruct its taking Effect; and ſaith, As he cannot tell what the Effects of the Treaty might have been, if the ſaid Treaty had been obſerved; ſo he conceives and inſiſteth, that he is not, nor ought to be anſwerable for the ſame.

And having thus laid his Caſe before your Lordſhips, he humbly ſaith, and inſiſteth upon it, That he is Not Guilty of all or any the Matters by the ſaid Articles charged, or in them ſpecified, in Manner and Form, as the ſame are therein and thereby charged againſt him.

HALLIFAX.

After reading this Day the Articles of Impeachment brought up from the Houſe of Commons againſt *Charles* Lord *Hallifax*, and hearing his Lordſhip thereupon, who deſired a Copy of the ſaid Articles, and ſaid he would put in his Anſwer ſo ſoon as poſſible he could: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord *Hallifax* may have a Copy of the Articles againſt him.

Ordered, That the Lords Committees (appointed to draw what was offered at the Free Conference) do inſpect the Journals as to what hath happened upon any Occaſion, in relation to what paſſed at a Free Conference Yeſterday, and what hath been done thereupon, and Report to the Houſe.

A Meſſage was ſent to the Houſe of Commons by Sir *John Hoſkins* and Dr. *Newton*, to acquaint them, ‘ That upon the Occaſion of their laſt Meſſage Yeſterday, in order to continue a good Correſpondence between the Two Houſes, their Lordſhips did immediately appoint a Committee to ſtate the Matters of the Free Conference, and alſo to inſpect Precedents of what has happened of the like Nature: And that the public Buſineſs may receive no Interruption, the Time deſired by their Lordſhips for renewing the Free Conference being elapſed, their Lordſhips deſire a preſent Free Conference in the *Painted-Chamber*, upon the Subject-Matter of the laſt Free Conference.’

A Meſſage was brought from the Houſe of Commons by my Lord *Cheney* and others (*Eodem Die*), to acquaint this Houſe, *viz.* ‘ That the Commons are extremely deſirous to preſerve a good Correſpondence between the Two Houſes, and to expedite the Trials of the Impeached Lords; but conceive it is not conſiſtent with the Honour of the Houſe of Commons to renew the Free Conference, until they have received Reparation, by your Lordſhips doing Juſtice upon *John* Lord *Haverſham*, for the Indignity he Yeſterday offered to the Houſe of Commons.’

The Lord Steward reported from the Committee appointed to draw up what was offered at the Free Conference, *viz.*

That Mr. *Harcourt* opened the Conference, and argued firſt againſt the Reaſons given by this Houſe, why they could not agree to a Committee of both Houſes; but afterwards entered into a Debate againſt the Two Reſolutions of this Houſe, relating to Impeachments depending, *viz.*

Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, *Nemine Contradicente*, ‘ That no Lord of Parliament, impeached of High Crimes and Miſdemeanors, and coming to his Trial, ſhall, upon his Trial, be without the Bar.’

Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, ‘ That no Lord of Parliament, impeached of High Crimes and Miſdemeanors, can be precluded from Voting on any Occaſion, except in his own Trial.’

And in his Arguments he uſed this Expreſſion, ‘ That he wiſhed their Lordſhips had ſent their Reaſons, as well as their Reſolutions.’

Sir *Bartholomew Shower* ſpoke next, in Purſuance of the Argument begun by Mr. *Harcourt*, againſt the aboveſaid Reſolutions; and in giving Reaſons againſt the latter of the ſaid Reſolutions, amongſt other Things did affirm, ‘ That ſuch a Proceeding would be abhorrent from Juſtice.’

In Anſwer to thoſe Gentlemen, the Lord *Haverſham* uſed ſome Arguments and Expreſſions, which the Managers for the Houſe of Commons took Exceptions at; but what thoſe were, the Committee cannot ſo charge their Memories as to give the Houſe a particular Account of them: And the Lord *Haverſham* being deſired by the Committee to recollect what he had ſaid, did inform their Lordſhips, That obſerving in the Free Conference ſeveral Things ſaid by Mr. *Harcourt* and Sir *Bartholomew Shower*, that reflected on the Honour and Juſtice of this Houſe, as he apprehended, and that he took to be foreign to the Subject-Matter of the Free Conference, he thought it his Duty to take Notice thereof; but in what Expreſſions, he hoped their Lordſhips would excuſe him from giving a particular Account; but denies that he ſaid ſeveral Things contained in the Paper ſent up by the Houſe of Commons: but ſays, That he deſired to be heard out, and that the Words he had ſpoken might be writ down; but the Managers for the Commons broke up abruptly.

The Lord *Haverſham* this Day moved, That he may have a Copy of the Commons Charge againſt him, and Time to anſwer. It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord *Haverſham* ſhall have a Copy of the Charge againſt him, and do Anſwer thereunto; and that he ſhall have Counſel allowed him, in order to anſwer the Charge againſt him.

The Meſſengers ſent to the Houſe of Commons return Anſwer, That the Commons will ſend an Anſwer by Meſſengers of their own.

A Meſſage was brought from the Houſe of Commons by the Lord *Cheney*, and others, to acquaint this Houſe——*See Page* 372.

The Houſe being moved, To inſiſt not to have a Committee of both Houſes, touching the Trial of the Impeached Lords; and Debate thereupon:

The Queſtion was put, Whether this Houſe ſhall inſiſt upon their Reſolutions, of not allowing a Committee of both Houſes?

It was reſolved in the Affirmative.

A Meſſage was ſent by the Houſe of Commons by Sir *Robert Legard* and Dr. *Newton*, to acquaint them, ‘ That the Lord *Sommers* having informed this Houſe, That Sir *Stephen Fox*, *John Smith*, Eſq; *William Lowndes*, Eſq; *Stephen Harvey*, Eſq; and *William Gulſton*, Eſq; Members of their Houſe, may be material Witneſſes for him at his Trial on *Tueſday* next in *Weſtminſter-Hall*, this Houſe deſires, That they may have leave to attend, and give their Teſtimonies at the ſaid Trial; and that a Letter which his Majeſty was pleaſed to write to him in One Thouſand Six Hundred Ninety-eight, being now in their Houſe, will be neceſſary for his Defence at his Trial; this Houſe deſires that the ſaid Letter may be produced at the ſaid Trial.’

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That an humble Addreſs be made to his Majeſty from this Houſe, That he will be pleaſed to give Order, that the Original Treaties of Partition, of One thouſand Six hundred Ninety-eight and One thouſand Six hundred Ninety-nine, and the Earl of *Portland*'s and Mr. Secretary *Vernon*'s Letters relating thereunto, or Authentic Copies of them, may be laid before this Houſe on *Monday* next, at Eleven of the Clock; and that the Lords with White Staves attend his Majeſty with this Addreſs.

Die Lunæ 16° *Junii*, 1701.

The Meſſengers ſent on *Saturday* laſt to the Houſe of Commons, to deſire ſome of their Members may give Evidence for the Lord *Sommers* at his Trial in *Weſtminſter-Hall*, return Anſwer, That they will ſend an Anſwer by Meſſengers of their own.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords with White Staves do humbly attend his Majeſty from this Houſe, to deſire, That the Lord *Haverſham* may have Liberty to inſpect the Treaſury-Books, in relation to ſeveral Commiſſions from Time to Time renewed, and Grants of the Forfeited Eſtates in *Ireland*, which are neceſſary for him towards his Defence.

The Earl-Marſhal reported from the Lords Committees appointed to conſider of the Methods and Preliminaries, in order to the Trials of the Lords Impeached; *viz.*

That the Serjeant at Arms be continued in the Houſe, to make Proclamations; which are to be made in the King's Name.

That the whole Body of the Houſe of Peers ſhall meet in the Houſe.

That being ſo met, they ſhall go to Prayers as a Houſe, and after Prayers they ſhall adjourn into *Weſtminſter-Hall.*

That from this Houſe the Lords ſhall go in this Manner.

Firſt the Clerks, then the Maſters of the Chancery, then the Judges, the Gentleman Uſher of the Black Rod, then the Lords two and two, the youngeſt Barons to go firſt, and ſo in Order according to their Precedency, *Garter* King at Arms calling them in their due Places by a Liſt; and when they come into *Weſtminſter-Hall*, the Lords are to place themſelves according to their Precedency in the Houſe there, till all the Peers are placed.

That the Serjeant at Arms do go before the Lord-Keeper.

That in *Weſtminſter-Hall* (the Houſe ſitting there) the other Ceremonies to be obſerved by Officers neceſſary to manage the ſaid Trial, be left to be performed according to the uſual Methods of ſuch Trials.

That the Lord-Keeper aſk Leave of the Houſe for the Judges to be covered.

That Proclamation be made for keeping Silence.

That at the Trial of the Impeached Lord, the lower Barons Bench ſhall be removed, and a Stool ſet near the Bar, where the ſaid Lord is to ſit Uncovered, as a Peer, but not in the Capacity of a Judge; and that he ſhall be admitted Counſel for his Defence.

That the Lord Great-Chamberlain be ordered to take care that the Places behind the Lords be kept for Peereſſes and their Daughters; and that his Majeſty's Surveyor be required to view the Court and Scaffold in *Weſtminſter-Hall*, and ſee that they be ſtrong and firm.

A Meſſage was ſent to the Houſe of Commons by Sir *John Franklyn* and Sir *Richard Holford*, to acquaint them, ‘ That the Lords taking into their Care the Ordering of the Trial of *John* Lord *Sommers* on *Tueſday* the Seventeenth of *June* Inſtant, at Ten of the Clock in the Forenoon, in *Weſtminſter-Hall*, have prepared ſome Notes and Rules to be obſerved at the ſaid Trial, which the Lords have thought fit to communicate to them, as follows; *viz.*

A Meſſage was brought from the Houſe of Commons by the Earl of *Dyſart* and others (the 17th of *June*), to acquaint this Houſe, ‘ That the Commons, in this whole Proceeding againſt the Impeached Lords, have acted with all imaginable Zeal to bring them to a ſpeedy Trial; and they doubt not but 'twill appear, by comparing their Proceedings with all others upon the like Occaſion, that the Houſe of Commons have nothing to blame themſelves for, but that they have not expreſſed the Reſentment *THEIR ANCESTORS* have

‘ That the whole Impeachment is to be read, and then the Anſwer; which being done, the Lord-Keeper is to tell the Commons, That now they may go on with their Evidence.

‘ Then the Lord-Keeper is to declare, That now the Court is proceeding to hear the Evidence, and deſire the Peers to give Attention.

‘ If any of the Peers, or the Members of the Houſe of Commons, that manage the Evidence, or the Lord Impeached, do deſire to have any Queſtion aſked, they muſt deſire the Lord-Keeper to aſk the ſame.

‘ If any Doubt doth ariſe at the Trial, no Debate is to be in the Court but the Queſtion ſuſpended to be debated in this Houſe.

‘ The Members of the Houſe of Commons to be there before the Peers come.

‘ None to be covered at the Trial but the Peers.

‘ That ſuch Peers, at the Trial of the Impeached Lords, who at the Inſtance of the ſaid Lord, or of the Commons, ſhall be admitted Witneſſes, are to be ſworn at the Clerks Table, and the Lord-Keeper to adminiſter the Oath, and to deliver their Evidence in their own Places.

‘ Thoſe Witneſſes that are Commoners are to be ſworn at the Bar by the Clerk, and are to deliver in their Evidence there.

‘ The Oath to be: *The Evidence which you ſhall give upon the Impeachment of , ſhall be the Truth, the whole Truth, and nothing but the Truth: So help you God, and the Contents of this Book.*

‘ The Impeached Lords may croſs-examine Witneſſes *viva voce.*’

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords with White Staves do humbly move his Majeſty, from this Houſe, That he will be pleaſed to give Order, that ſuch Guards do attend at the Trial of the Lord *Sommers* To-morrow in *Weſtminſter-Hall*, as has been uſual in ſuch Caſes.

Sir *Chriſtopher Wren* being come, he was called in—ſays, The Court is made like this Houſe, and a Place for the Commons. He was told, he muſt take away the loweſt Form, and a Stool muſt be ſet within the Bar, for the Lord to be tried.

Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That all the Lords be ſummoned to attend this Houſe in their Robes, To-morrow at Nine of the Clock, otherwiſe to incur the utmoſt Diſpleaſure of this Houſe.

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord Great Chamberlain be deſired to take Care, and give Order, That the Place for the Houſe of Commons in *Weſtminſter-Hall* be kept clear for the Commons only; and alſo, That a Place be made for the Managers of the Commons.

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That Mr. Serjeant *Prat* ſhall be, and he is hereby aſſign'd Counſel for the Lord *Sommers*, at his Trial upon the Articles of Impeachment againſt him.

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That Sir *John Talbot*, Sir *Edmund Harriſon*, *Robert Yard*, *John Ellis*, *John Tucker*, *Leonard Hancock*, Eſqrs; *John Tench*, and *William Popple* jun. Gent. do, and they are hereby required to attend this Houſe To-morrow at Ten of the Clock in the Forenoon, as Witneſſes on the behalf of *John* Lord *Sommers.*

The Meſſengers ſent to the Houſe of Commons return Anſwer, That they have delivered their Meſſage.

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to acquaint them, ‘ That the Lords, in order to keep a good Correſpondence between the Two Houſes, and to put the Charge againſt *John* Lord *Haverſham* in a Courſe of Juſtice, have ordered (at his Lordſhip's Motion) his Lordſhip a Copy of the Charge againſt him, and that he do put in his Anſwer thereunto, in order to bring that Matter to a ſpeedy Judgment.’

The Lord *Hallifax* delivered in his Anſwer to the Articles of Impeachment of the Houſe of Commons againſt him, which was read by the Clerk. *See Page* 367.

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to carry down a Copy of the ſaid Anſwer, and to acquaint them, ‘ That they having, on the Firſt Day of *April* laſt, ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland*, for High Crimes and Miſdemeanors; and there being as yet no particular Articles exhibited againſt him, their Lordſhips think themſelves obliged to put them in mind thereof.’

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That *Henry Baldwyn*, *Samuel Baldwyn*, *Thomas Engeham*, *George Liddel*, *Charles Saunderſon*, *Edward Hayman*, *John Mum*, *Benjamin Baldwin*, *Reginald Marriot*, and *John Digby* do, and they are hereby required to attend this Houſe To-morrow at Ten of the Clock, as Witneſſes on the behalf of *John* Lord *Sommers.*

Die Martis 17° *Junii*, 1701.

The Lord *Wharton* reported his Majeſty's Anſwer to the Addreſs, in relation to the Original Treaties; *viz.*

‘ That his Majeſty would do what he could towards it; and that he had not the Original Papers.

‘ As to the Addreſs for Guards, his Majeſty hath complied with it, and given Order for them accordingly.’

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn* and Sir *Lacon-William Child*, on the 20th Inſtant, to acquaint them, ‘ That the Lords, in Anſwer to the Meſſage of the Commons of the Seventeenth Inſtant, ſay, The only true Way of determining which of the Two Houſes has acted with the greateſt Sincerity, in order to bring the Impeached Lords to their Trials, is to look back upon the reſpective Proceedings.

‘ The Lords do not well underſtand what the Commons mean by

‘ juſtly ſhewed, upon much leſs Attempts which have been made, their Power of Impeachments.

‘ The Commons, on the 31ſt of *May*, acquainted your Lordſhips, That they thought it proper, from the Nature of the Evidence, to proceed in the firſt place upon the Trial of the Lord *Sommers*. Upon the firſt Intimation from your Lordſhips, ſome Days afterwards, That you would proceed to the Trial of any of the Impeached Lords whom the Commons ſhould be firſt ready to begin with, notwithſtanding your Lordſhips had before thought fit to appoint which Impeachment ſhould be firſt tried, and affix a Day for ſuch a Trial, without conſulting the Commons, who are the Proſecutors.

‘ The Commons determining to expedite the Trials to the utmoſt of their Power, in hopes of attaining that End, and for the more ſpeedy and eaſy adjuſting and preventing any Differences which had happened, or might ariſe, previous to or upon theſe Trials, propoſed to your Lordſhips, at a Conference, the moſt Parliamentary and Effectual Method for that Purpoſe, and that which in no manner intrenched upon your Lordſhips Judicature; That a Conference of both Houſes ſhould be nominated, to conſider of the moſt proper Ways and Methods of Proceedings upon Impeachments, according to the Uſage of Parliament.

‘ In the next Meſſage to the Commons, upon *Monday* the 9th of *June*, your Lordſhips thought fit, without taking the leaſt Notice of this Propoſition, to appoint the *Friday* then following for the Trial of the ſaid Lord *Sommers*; whereunto, as well as to many other Meſſages and Proceedings of your Lordſhips upon this Occaſion, the Houſe of Commons might have juſtly taken very great Exceptions; yet, as an Evidence of their Moderation, and to ſhew their Readineſs to bring the Impeached Lords to ſpeedy Juſtice, the Commons inſiſted only on their Propoſition for a Committee of both Houſes, to Settle and Adjuſt the neceſſary Preliminaries to the Trial; particularly, Whether the Impeached Lords ſhould appear on their Trial at your Lordſhips Bar as Criminals? Whether being under Accuſations of the ſame Crimes, they ſhould ſit as Judges on each other's Trial for thoſe Crimes; or ſhould Vote in their own Caſes, as 'tis notorious they have been permitted by your Lordſhips to do in many Inſtances which might be given? To which Particulars your Lordſhips have not yet given a direct Anſwer, though put in mind thereof by the Commons.

‘ Your Lordſhips, at a Conference, having offered ſome Reaſons why you could not agree to a Committee of both Houſes, to adjuſt the neceſſary Preliminaries, the Commons thereupon deſired a free Conference, and your Lordſhips agreed thereunto; at which 'tis well known to many of your Lordſhips, who were then preſent, what moſt ſcandalous Reproaches and falſe Expreſſions, highly reflecting upon the Honour and Juſtice of the Houſe of Commons, were uttered by *John* Lord *Haverſham*; whereby the Commons were under a Neceſſity of withdrawing from the ſaid Free Conference: For which Offence the Commons have, with all due regard to your Lordſhips, prayed your Lordſhips Juſtice againſt the Lord *Haverſham*; but have as yet received no manner of Satisfaction.

‘ The Commons reſtrain themſelves from enumerating your Lordſhips very many irregular and unparliamentary Proceedings upon this Occaſion, but think 'tis what they owe to Publick Juſtice and all the Commons of *England*, whom they repreſent, to declare ſome few of thoſe Reaſons, why they peremptorily refuſe to proceed to the Trial of the Lord *Sommers* on the Seventeenth of *June*.

‘ *Firſt*, Becauſe your Lordſhips have not yet agreed, That a Committee of both Houſes ſhould be appointed for ſettling the neceſſary Preliminaries; a Method never, until this Time, deny'd by the Houſe of Lords, whenſoever the Commons have thought it neceſſary to deſire the ſame.

‘ *Secondly*, Should the Commons (which they never will do) be contented to give up thoſe Rights which have been tranſmitted to them from THEIR ANCESTORS, and are of abſolute Neceſſity to their Proceedings on Impeachments; yet, whilſt they have any regard to Public Juſtice, they never can appear as Proſecutors before your Lordſhips, till your Lordſhips have firſt given them Satisfaction, that Lords impeach'd of the ſame Crimes ſhall not ſit as Judges on each other's Trials for thoſe Crimes.

‘ *Thirdly*, Becauſe the Commons have, as yet, receiv'd no Reparation for the great Indignity offer'd to them at the Free Conference by the Lord *Haverſham*; the Commons are far from any Inclination, and cannot be ſuppos'd to be under any Neceſſity of delaying the Trial of the Lord *Sommers*: There is not any Article exhibited by them in maintenance of their Impeachment againſt the Lord *Sommers*; for the Proof whereof they have got full and undeniable Evidence, which they will be ready to produce as ſoon as your Lordſhips ſhall have done Juſtice upon the Lord *Haverſham*; and the neceſſary Preliminaries, in order to the ſaid Trial, ſhall be ſettled by a Committee of both Houſes.

‘ The Commons think it unneceſſary to obſerve to your Lordſhips, That moſt of the Articles whereof the Lord *Sommers* ſtands impeach'd, will appear to your Lordſhips to be undoubtedly true, from Matters of Record, as well as by the Confeſſion of the ſaid Lord *Sommers*, in his Anſwer to the ſaid Articles, to which the Commons doubt not but your Lordſhips will have a due regard, when his Trial ſhall regularly proceed.’

‘ that Reſentment which they ſpeak of in their Meſſage. Their Lordſhips own, that the Houſe of Commons have a Right of Impeaching: And the Lords have the undoubted Power of doing Juſtice upon thoſe Impeachments, by bringing them to Trial, and condemning or acquiting the Parties in a reaſonable Time. This Power is derived to them from their Anceſtors, which they will not ſuffer to be wreſted from them by any Pretences whatſoever.

‘ Their Lordſhips cannot but wonder, that the Commons ſhould not have propoſed a Committee of both Houſes much ſooner, if they thought it neceſſary for the beginning on the Trials; no Mention being made of ſuch a Committee, from the Firſt of *April* to the Sixth of *June*, although, during that Interval, their Delays were frequently complained of by the Houſe of Lords.

‘ The Manner in which the Commons demand this Committee, the Lords look upon as a direct invading of their Judicature; and therefore, as there never was a Committee of both Houſes yielded to by the Lords, in caſe of any Impeachment for High Crimes and Miſdemeanors; ſo their Lordſhips do inſiſt, that they will make no new Precedent upon this Occaſion. Many Impeachments for Miſdemeanors have in all Times been determined without ſuch a Committee: And if now the Commons think fit, by an unprecedented Demand, to form an Excuſe for not proſecuting their Impeachments, it is demonſtrable where the Obſtruction lies.

‘ As to the Preliminaries, which the Commons mention in particular, as proper to be ſettled at ſuch a Committee, they have received the Reſolutions of the Houſe of Lords therein by their Meſſage of the Twelfth Inſtant; from which (being Matters relating entirely to their Judicature) their Lordſhips cannot depart.

‘ As to the laſt Pretence the Commons would make to ſhelter the delaying the Trials, from ſome Expreſſions which fell from the Lord *Haverſham* at the Free Conference, at which Offence was taken; their Lordſhips will only obſerve,

‘ *Firſt*, That they have omitted nothing which might give the Commons all reaſonable Satisfaction of their Purpoſe to do them Juſtice in that Matter, ſo far as is conſiſtent with doing Juſtice to that Lord; and alſo to preſerve all good Correſpondence with them, as appears by the ſeveral Steps they have taken.

‘ *Secondly*, That this Buſineſs has no relation to the Trials of the Impeached Lords: And therefore their Lordſhips cannot imagine why the Commons ſhould make Satisfaction and Reparation againſt the Lord *Haverſham* a neceſſary Condition for the going on with the Trials, and at the ſame time find no Difficulty in proceeding on other Buſineſs.’

The Houſe being mov'd to go into *Weſtminſter-Hall*, in order to the Trial of the Lord *Sommers*:

After Debate, this Queſtion was put, Whether this Houſe ſhall go this Day into the Court in *Weſtminſter-Hall*, in order to proceed upon the Trial of the Lord *Sommers*, according to the Order of the Day?

It was reſolved in the Affirmative.

A Meſſage was ſent to the Houſe of Commons by Mr. Baron *Tracey* and Mr. Baron *Berry*, to acquaint them, that the Lords intend preſently to proceed to the Trial of *John* Lord *Sommers* in *Weſtminſter-Hall*.

The Meſſengers being return'd, acquainted the Houſe, That the Commons were adjourn'd.

Then this Queſtion was propoſed, Whether the Earl of *Orford* and Lord *Hallifax* may withdraw at the Trial of Lord *Sommers*?

Then this previous Queſtion was put, Whether this Queſtion ſhall be now put?

It was Reſolv'd in the Affirmative.

Then the main Queſtion was put, Whether the Earl of *Orford* and Lord *Hallifax* ſhall have Leave to withdraw at the Trial of the Lord *Sommers*?

It was reſolved in the Affirmative.

Then the Lord-Keeper deſir'd, That ſome further Directions be given to him, in order to the Trial in the Hall; and thereupon it was propoſed, that this Proclamation be made in the Hall, *viz.*

Whereas a Charge of High Crimes and Miſdemeanors has been exhibited by the Houſe of Commons, in the Name of Themſelves and all the Commons of England, *againſt* John *Lord* Sommers, *all Perſons concern'd are to take Notice, that he now ſtands upon his Trial, and they may now come forth, in order to make good the ſaid Charge.*

After Debate, the Queſtion was put, Whether this Proclamation ſhall be made?

It was reſolved in the Affirmative.

Ordered, That the ſaid Proclamation be made in the Hall before the reading the Articles of Impeachment, and the Lord *Sommers*'s Anſwer, and alſo after they are read.

Ordered, That the Court in *Weſtminſter-Hall* be clear'd for the Lords.

Then the Houſe adjourn'd to *Weſtminſter-Hall*, and the Lords were called by the Herald, and went as order'd; and being ſeated in the Hall, the Houſe was reſumed.

Then Proclamation was made for Silence, as follows:

Our Sovereign Lord the King ſtrictly Charges and Commands all manner of Perſons to keep Silence, upon pain of Impriſonment.

Then the Lord-Keeper aſk'd Leave for the Judges to be cover'd: Which was agreed to.

Then Proclamation, as order'd, was made.

After which, the Articles againſt *John* Lord *Sommers* were read, and alſo his Lordſhip's Anſwer to them.

After which the ſame Proclamation was again made.

Then the Lord-Keeper declar'd, the Houſe was ready to hear the Evidence againſt *John* Lord *Sommers*, and therefore deſir'd the Lords to give Attention.

The Lord *Sommers* mov'd to have his Counſel heard.

Whereupon the Houſe adjourn'd to the Houſe above, and went back in the ſame Manner as they came down; and, being there, the Houſe was reſumed.

The Houſe being mov'd to acquit the Lord *Sommers*; and after long Debate, and hearing the Judges to ſeveral Queſtions aſk'd them by the Lords, this Queſtion was propopoſed:

That *John* Lord *Sommers* be acquitted of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contain'd; and that the ſaid Impeachment be diſmiſs'd.

Then this Queſtion was put, Whether the Queſtion now ſtated ſhall be put in the Court below?

It was Reſolv'd in the Affirmative.

Then it was agreed and order'd, That in *Weſtminſter-Hall* the Lord-Keeper ſhall read the Queſtion, and then call the junior Baron preſent firſt, and aſk every Lord, Whether *Content?* or *Not Content?* and, That every Lord ſtand up when call'd to, and give his Vote *Content*, or *Not Content*; and that the Lord-Keeper, having taken their Votes, declare the Majority; and if the Majority be for Acquitting the Lord *Sommers*, the Lord-Keeper is to declare it ſo, and particularly to the Lord *Sommers*.

Then the Houſe adjourn'd again to *Weſtminſter-Hall*, and the Lords went in the ſame Manner as before: And being come there, the Houſe was reſumed, and Proclamation was made for Silence.

The Lord-Keeper put the Queſtion as follows:

That *John* Lord *Sommers* be Acquitted of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contain'd, and that the ſaid Impeachment be diſmiſs'd.

Then the Lord-Keeper aſk'd every Lord, Whether *Content*, or *Not?*

Lord *Haverſham*	Content
Lord *Herbert*	Content
Lord *Jeffreys*	Not cont.
Lord *Godolphin*	Not cont.
Lord *Guilford*	Not cont.
Lord *Dartmouth*	Not cont.
Lord *Oſſulſton*	Content
Lord *Osborne*	Content
Lord *Cornwallis*	Content
Lord *Granville*	Content
Lord *Berkely*	Content
Lord *Lexington*	Not cont.
Lord *Rockingham*	Content
Lord *Lucas*	Content
Lord *Colepeper*	Content
Lord *Byron*	Content
Lord *Jermyn*	Not cont.
Lord *Mohun*	Content
Lord *Howard Eſcrick*	Not cont.
Lord *Lovelace*	Content
Lord *Hunſdon*	Not cont.
Lord *North*	Content
Lord *Wharton*	Content
Lord *Eure*	Content
Lord *Fitzwalter*	Content
Lord *Lawarr*	Not cont.
Lord *Bergavenny*	Content
Lord Biſhop of *Chicheſter*	Content
Lord Biſhop of *Lincoln*	Content
Lord Biſhop of *St. Aſaph*	Content
Lord Biſhop of *Briſtol*	Content
Lord Biſhop of *Glouceſter*	Content
Lord Biſhop of *Peterborough*	Content
Lord Biſhop of *Norwich*	Content
Lord Biſhop of *Coventry* and *Lichfield*	Content
Lord Biſhop of *Ely*	Content
Lord Biſhop of *Bangor*	Content
Lord Biſhop of *Sarum*	Content
Lord Biſhop of *Exeter*	Not cont.
Lord Biſhop of *Rocheſter*	Not cont.
Lord Biſhop of *London*	Not cont.
Lord Viſcount *Weymouth*	Not cont.
Lord Viſcount *Say* and *Seale*	Content
Earl of *Rochford*	Content
Earl of *Romney*	Content
Earl of *Warrington*	Not cont.
Earl of *Scarborough*	Content
Earl of *Marlborough*	Not cont.
Earl of *Montagu*	Content
Earl of *Portland*	Content
Earl of *Plymouth*	Not cont.
Earl of *Abingdon*	Not cont.
Earl of *Rocheſter*	Not cont.
Earl of *Nottingham*	Not cont.
Earl of *Berkeley*	Content
Earl of *Radnor*	Content
Earl of *Macclesfield*	Content
Earl of *Feverſham*	Not cont.
Earl of *Shaftsbury*	Content
Earl of *Burlington*	Content
Earl of *Bath*	Content
Earl of *Eſſex*	Content
Earl of *Scarſdale*	Not cont.
Earl of *Thanet*	Not cont.
Earl of *Carnarvon*	Not cont.
Earl of *Kingſton*	Content
Earl of *Stamford*	Content
Earl of *Peterborough*	Not cont.
Earl *Rivers*	Content
Earl of *Denbigh*	Not cont.
Earl of *Dorſet*	Content.
Earl of *Suffolk*	Content.
Earl of *Huntingdon*	Content.
Earl of *Derby*	Not cont.
Earl of *Oxford*	Not cont.
Lord Chamberlain	Not cont.
Earl-Marſhal	Content
Lord Great-Chamberlain	Not cont.
Marquis of *Normanby*	Not cont.
Duke of *Newcaſtle*	Content
Duke of *Schomberg*	Content
Duke of *Bolton*	Content
Duke of *St. Albans*	Content
Duke of *Northumberland*	Not cont.
Duke of *Somerſet*	Not cont.
Lord Steward	Content
Lord Privy-Seal	Content
Lord Archbiſhop of *Canterbury*	Content

The Lord-Keeper declar'd, the Majority was for Acquitting; and then declar'd,

That *John* Lord *Sommers* was Acquitted of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contain'd; and, That the ſaid Impeachment was diſmiſs'd.

And alſo declar'd to the Lord *Sommers*, That he was acquitted.

Then the Houſe adjourn'd to the Houſe above; and being come thither, the Houſe was reſumed, and the following Order made:

It is Conſider'd, Order'd, and Adjudg'd by the Lords Spiritual and Temporal in Parliament aſſembled, That *John* Lord *Sommers* ſhall be, and he is hereby Acquitted of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contain'd; and, That the ſaid Impeachment ſhall be, and is hereby diſmiſs'd.

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Proceedings in this Houſe upon the Impeachments be printed; and, That the Lords Committees appointed to conſider of the Manner of Proceeding on Impeachments, do meet To-morrow at Ten a-Clock, and inſpect the Journals, and draw up the Matter relating thereunto, in order to be printed, and report to the Houſe.

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn* and Dr. *Edisbury*, to acquaint them, *That this Houſe hath appointed* Monday, *the Three-and-twentieth Day of this Inſtant* June, *for the Trial of* Edward *Earl of* Orford, *in* Weſtminſter-Hall, *at Ten a-Clock.*

Die Mercurii 18° *Junii*, 1701.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will proceed to the Trial of *Edward* Earl of *Orford* on *Monday* the Three-and-twentieth Day of this Inſtant *June*, at Ten of the Clock in the Forenoon, in *Weſtminſter-Hall.*

A Meſſage from the Houſe of Commons by the Lord *Mordaunt* and others (on *June* the 20th), to acquaint this Houſe, *That in Anſwer to the Meſſage of the Lords, appointing* Monday *next for the Trial of the Earl of* Orford; *That the Lords have been acquainted, that the Commons would proceed, in the firſt place, againſt the Lord* Sommers; *and they are ready to go to that Lord's Trial, as ſoon as ever the Commons have receiv'd Satisfaction for the Affront offer'd to the Houſe of Commons by the Lord* Haverſham *at the Free Conference, and that the neceſſary Preliminaries are adjuſted by a Committee of both Houſes.*

Die Jovis 19° *Junii*, 1701.

The Houſe being mov'd, That an Anſwer be drawn to the Meſſage receiv'd from the Houſe of Commons the Seventeenth Inſtant, it is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Committee appointed to conſider of the Manner of Proceeding on Impeachments, do withdraw preſently, to draw an Anſwer to the ſaid Meſſage.

Then the Houſe was adjourn'd during Pleaſure, and the Lords went to the Committee; which being ended,

The Houſe was reſumed, and the Earl of *Stamford* reported what they had drawn in Anſwer to the Meſſage receiv'd from the Houſe of Commons the Seventeenth Inſtant; which was read, and agreed to.

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn* and Sir *Lacon-William Child.* See Page 374.

This Day *John* Lord *Haverſham* delivered his Anſwer to the Charge of the Houſe of Commons exhibited againſt him the Thirteenth Inſtant; which was read by the Clerk, as follows; *viz.*

The ANSWER *of* John *Lord* Haverſham, *to the Charge exhibited againſt him by the Commons, for Words ſpoken at a Free Conference on the Thirteenth Day of this Inſtant* June, *One Thouſand Seven Hundred and One.*

THE ſaid Lord *Haverſham* ſaving to himſelf all Advantages of Exception to the ſaid Charge, and of not being prejudic'd by any want of Form in this his Anſwer; and alſo ſaving to himſelf all Rights and Privileges belonging to him as one of the Peers of this Realm; for Anſwer to the ſaid Charge, ſaith, That on the Sixth Day of *June*, One thouſand Seven hundred and One, the Commons, by a Meſſage ſent to the Lords, deſir'd a Conference upon their Meſſage to the Commons of the Fourth of *June*; in which Conference they propos'd to the Lords, That a Committee of both Houſes ſhould be nominated, to conſider of the moſt proper Ways and Methods of proceeding on the Impeachments of the Lords, according to the Uſage of Parliament. That on the Tenth of *June* the Lords deſir'd another Conference with the Commons; in which they deliver'd them their Reaſons why they could not agree to the appointing ſuch Committee, *viz. Firſt*, That they could not find that ever ſuch a Committee was appointed on Occaſion of Impeachments for Miſdemeanors; and their Obligation to be cautious in admitting any thing new in Matters relating to Judicature. *Secondly*, That altho' a Committee of this Nature was agreed to, upon the Impeachments of the Earl of *Danby* and the five Popiſh Lords for High-Treaſon; yet the Succeſs, in that Inſtance, was not ſuch as ſhould encourage the purſuing the ſame Method, tho' in the like Caſe: And, that after much Time ſpent in that Committee, the

Diſputes were ſo far from being adjuſted, that they occaſion'd the abrupt Concluſion of a Seſſion of Parliament. *Thirdly*, That the Method of Proceedings on Impeachments for Miſdemeanors are ſo well ſettled by the Uſage of Parliament, that no Difficulties were likely to happen, nor none had been ſtated to them: And that all the Preliminaries in the Caſe of *Stephen Goudett* and others, (which was the laſt Inſtance of Impeachments for Miſdemeanors) were eaſily ſettled and agreed to without any ſuch Committee. *Fourthly*, That the Propoſal of the Commons came ſo very late, that no other Fruit could be expected of ſuch a Committee, but the preventing of the Trials during this Seſſion. Whereupon the Commons, on the Twelfth of *June*, deſir'd of the Lords a Free Conference on the Subject-Matter of the laſt Conference. That the Lords, on the ſaid Twelfth of *June*, came to Two Reſolutions in relation to the Lords impeach'd: *Firſt*, "That no Lord of Parliament, impeach'd of High Crimes and Miſdemeanors, and coming to his Trial, ſhall, upon his Trial, be without the Bar. *Secondly*, That no Lord of Parliament, impeach'd of High Crimes and Miſdemeanors, can be precluded from Voting on any Occaſion, except in his own Trial." And by Meſſengers of their own the Lords acquainted the Commons with the ſaid two Reſolutions, and alſo, that they agreed to a Free Conference with the Commons, and appointed the next Day. That upon the Thirteenth of *June* Mr. *Harcourt*, one of the Managers, began the Free Conference on the Part of the Commons, and argued upon the Four Reaſons given by the Lords, why they could not agree to the appointing a Committee of both Houſes; and principally relied upon the Inſtance in the Caſe of the Popiſh Lords; and inſiſted upon the Delay that the not agreeing to the Nomination of ſuch a Committee would neceſſarily occaſion, whereby the Lords Trials, and the Juſtice due to the Nation would be retarded. And departing from the Subject-Matter of the ſaid Conference, (which was, Whether it was requiſite to appoint or not appoint ſuch a Committee?) the ſaid Manager diſcourſed upon the latter of the Two Reſolutions of the Lords communicated to the Commons, and ſaid, *That he wiſhed the Lords had ſent down their Reaſons, as well as their Reſolutions:* Which Words ſeemed to the Lord *Haverſham* to carry therein an Implication, as if the ſaid Reſolution could have no Reaſon to juſtify it. That Sir *Bartholomew Shower*, another Manager for the Commons, obſerved the ſame Method of Diſcourſe: And having argued upon the Lords Reaſons, departed from the Subject-Matter of the Free Conference; and inveighing againſt the Manner of the Lords Judicature, aſſerted by their Reſolutions, ſaid, *That it was abhorrent to Juſtice.* Which Expreſſion being foreign (as the ſaid Lord *Haverſham* apprehended) to the Subject-Matter of the ſaid Free Conference, which was, Whether ſuch Committee of both Houſes ſhould be appointed or not? the ſaid Lord being appointed by the Lords for one of the Managers of the ſaid Free Conference on their Behalf, in Vindication of the Honour and Juſtice of the Houſe of Peers, and of their Judicature and Reſolutions, in Anſwer to what has been ſaid by the Managers for the Commons, he ſpoke to the Effect following:

'*Gentlemen*, I ſhall begin what I have to ſay, as that worthy Member who opened this Conference, That there is nothing the Lords more deſire, than to keep a good Correſpondence, which is ſo neceſſary to the Safety of the Nation, and the Diſpatch of the publick Buſineſs; and nothing they have more carefully avoided, than what may create a Miſunderſtanding between the Two Houſes. A greater Inſtance of which could not be given, than the Meſſages my Lords returned to ſome the Commons had ſent them up; in which they took care to expreſs themſelves ſo curiouſly, that no Heat might ariſe from any Expreſſion of theirs. And as to what the worthy Members mentioned, in relation to Delay, the repeated Remembrances ſent the Commons, with Relation to the ſending up the Articles againſt the Impeached Lords, are a ſufficient Inſtance how deſirous they are that theſe Matters ſhould proceed. And the Lords have this Satisfaction, that it is not on their Part that the Trials are not in a greater Forwardneſs; they cannot but look upon it as a great Hardſhip, that any ſhould lie under long Delays of Impeachment: Perſons may be incapable; Facts may be forgotten; Evidences may be laid out of the way; Witneſſes may die; and many the like Accidents may happen. The Inſtance the worthy Members give of the Popiſh Lords, as it is a Crime of another Nature, and not fully to the Point, ſo it ſeems to make againſt what it was brought for: For the worthy Members ſay, There was but one of the Lords brought to Juſtice, though Four more (as I take it) were accuſed. And can any Man believe, that the Commons have a mind to bring only One of theſe Lords to Trial? It is inconſiſtent with the Opinion that every body muſt have of their Juſtice. And as to the Point of Judicature, it were very hard upon the Lords, that no Perſon ſhould be brought to Trial, till the Judicature of the Houſe be ſo firſt. The Judicature of the Lords is their Peculiar, and hath in former Ages been ſacred with the Commons themſelves. And this Houſe perhaps hath as much Reaſon to be jealous and careful of it, as any other Houſe ever had, eſpecially when one ſingle Precedent is ſo urged and inſiſted upon. One Thing there is, which a worthy Member mentioned, though I cannot ſpeak to it at large, becauſe I think myſelf bound up by the Reſolutions of the Houſe; yet it muſt have ſome Anſwer; (this is) As to the Lords voting in their own Caſe: It requires an Anſwer, though I cannot enter into the Debate of it. The Commons themſelves have made this Precedent; for in theſe Impeachments they have allowed Men, equally concerned in the ſame Facts, to vote in their Houſe: And we have not made the Diſtinction in ours, that ſome ſhould vote, and ſome not. The Lords have ſo high an Opinion of the Juſtice of the Houſe of Commons, that they believe Juſtice ſhall never be made uſe of as a Maſk for any Deſign. And therefore give me leave to ſay, though I am not to argue it, 'Tis to me a plain Demonſtration, that the Commons think theſe Lords innocent; and I think the Propoſition is undeniable: For when there are ſeveral Lords in the ſame Circumſtances, in the ſame Facts, there is no Diſtinction; and the Commons leave ſome of theſe Men, at the Head of Affairs, near the King's Perſon, to do any Miſchief, if they were inclinable to it; it looks as if they thought them all innocent. This is a Thing I was in Hopes I ſhould never have heard aſſerted, when the Beginning of it was from the Houſe of Commons.'

The ſaid Lord being here interrupted, he deſired to be heard out, and that his Words might be taken down in Writing. But the Managers for the Conference broke up, and departed, refuſing to hear any Explanation. Now the ſaid Lord, as to any implicit Charge of a Deſign to reflect on, or diſhonour the Houſe of Commons, denies any ſuch Deſign or Intention, having for many Years had the Honour to ſit in the Houſe of Commons, and having ever had an honourable and reſpectful Senſe thereof: But the ſaid Lord was led to expreſs himſelf in the Manner aforeſaid, for the Reaſons aforeſaid, and takes himſelf to be juſtified therein, by the Facts and Reaſons following.

That the Nature of that Conference was, That it ſhould be free: The Occaſion of it, becauſe either Houſe apprehended the other to be in an Error: And the End of it, That each Side may urge ſuch Facts as are true, and ſuch Reaſons as are forcible to convince. That one Article of Impeachment againſt *John* Lord *Sommers* was, That the Treaty of Partition, of One thouſand Six hundred Ninety-nine, was ratified under the Great-Seal, which then was in the Cuſtody of the ſame Lord, then Lord Chancellor of *England*. That the Commons, on the Firſt of *April*, One thouſand Seven hundred and One, reſolved, That the Earl of *Portland*, by negotiating and concluding the Treaty of Partition, was guilty of a High Crime and Miſdemeanor; and purſuant thereto, lodged an Impeachment againſt him in the Houſe of Peers. Which Vote and Impeachment could not have Reference to any Treaty, other than the Treaty of Partition of One thouſand Six hundred Ninety-nine, the Treaty of One thouſand Six hundred Ninety-eight not being before the Houſe of Commons till after the Time of that Vote and Impeachment; and yet the Earl of *Jerſey*, who then was Secretary of State, and Privy-Councillor, and actually ſigned the ſaid Treaty of One thouſand Six hundred Ninety-nine, as a Plenipotentiary with the Lord *Portland*, ſtands Unimpeached, and continues at the Head of Affairs, being Lord Chamberlain, near his Majeſty's Perſon, and in his Preſence and Councils (without Complaint). That the Earl of *Orford*, and the Lord *Sommers* and *Hallifax* are ſeverally Impeached for adviſing the Treaty of Partition of One thouſand Six hundred Ninety-eight; and yet Mr. Secretary *Vernon*, who then was Secretary of State, and a Privy-Councillor, and acted in the promoting of the Treaty of Partition of One thouſand Six hundred Ninety-eight, ſtands Unimpeached, and ſtill continues one of the Principal Secretaries of State: And Sir *Joſeph Williamſon*, who then was a Privy-Councillor, and tranſacted and ſigned the Treaty of Partition of One thouſand Six hundred ninety-eight, as a Plenipotentiary, ſtands Unimpeached. That the Lord *Hallifax* is Impeached, for that he, being a Commiſſioner of the Treaſury, aſſented to the paſſing of divers Grants from the Crown, to ſeveral Perſons, of Lands in *Ireland*; and yet Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, who being ſeverally Lords Commiſſioners of the Treaſury did ſeverally aſſent to the paſſing of divers like Grants from his Majeſty of Lands in *Ireland*, ſtand Unimpeached. That in the Impeachments againſt the Earl of *Orford* and Lord *Sommers*, one of the Articles againſt them is for procuring a Commiſſion to Capt. *William Kidd*; and likewiſe a Grant under the Great-Seal, of the Ships and Goods of certain Perſons therein named, to certain Perſons in Truſt for them; and yet other Lords, equally concerned in procuring the ſaid Commiſſion and Grant, ſtand Unimpeached. That the ſaid Mr. Secretary *Vernon*, Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, notwithſtanding their being Parties in the ſame Facts charged in the ſame reſpective Impeachments, have been permitted to ſit and vote in the Houſe of Commons touching the ſaid Impeachments, and the Matters thereof. That theſe Facts being true, and publickly known, the Conſequences reſulting therefrom (as the Lord *Haverſham* apprehended) are undeniable; *viz.* That the doing of the ſame Thing by two Perſons in equal Circumſtances, cannot be a Crime in one, and not in the other. That the Commons had no Reaſon to inſiſt, That the Lords ſhould not permit that in their Members, which the Commons had firſt permitted, and continued to permit; and ſo begun the firſt Precedent in their own Members. That it muſt be thought, that the Impeached Lords (notwithſtanding the Facts alledged in the Impeachments) are innocent of Danger to the King, when the Lord *Jerſey* and Mr. Secretary *Vernon*, who are reſpectively concerned in the Partition Treaties, are permitted, without complaint, to be at the Head of Affairs, and in the King's Preſence, and of his Councils, as not dangerous. That the Word *Innocent*, uſed in the Words ſpoken by the ſaid Lord *Haverſham*, can extend no farther than to ſuch Matters as were done by the Impeached Lords, of the ſame Nature with what was done by thoſe Unimpeached. All which Facts being true, and the Conſequences obvious, the ſaid Lord being ready to prove the ſame; he inſiſts, that the Words ſpoken by him at the ſaid Free-Conference, were not ſcandalous or reproachful, nor falſe, or reflecting on the Honour or Juſtice of the Houſe of Commons; but were ſpoken upon a juſt Occaſion given, in Anſwer to ſeveral Expreſſions that fell from the Managers for the Commons, remote (as he conceives) from the Matter in Queſtion, and reflecting on the Honour and Juſtice of the Houſe of Peers; and in Maintenance and Defence of the Lords Reſolution and Judicature, and comformable to the Duty he owes to the ſaid Houſe. And the ſaid Lord humbly demands the Judgment of this Honourable Houſe therein. And the ſaid Lord *Haverſham* denies, That he ſpoke the Words ſpecified in the ſaid Charge, in ſuch Manner and Form as the ſame are therein ſet down. And having thus given a true Account of this Matter; and it being true and indiſputable, That ſome Lords in this Houſe, equally concerned in Facts for which other Lords are Impeached by the Houſe of Commons, are ſtill near the King's Perſon, in the greateſt Places of Truſt and Honour, and Unimpeached; and alſo, That ſeveral Members of the Houſe of Commons, equally concerned in the ſame Facts, for which ſome of the Lords are Impeached, do however remain Unimpeached; the ſaid Lord thinks ſuch a Truth could never have been more properly ſpoken, in the Maintenance and Defence of your Lordſhips Judicature and Reſolutions: And inſiſteth, That what he had ſaid at the Free Conference was not any ſcandalous Reproach, or falſe Expreſſion, or any ways tended to make a Breach in the good Correſpondence between the Lords and Commons, or to the interrupting the Public Juſtice of the Nation, by delaying the Proceedings on the Impeachments, as in the ſaid Charge alledged; but agreeable to Truth, in Diſcharge of his Duty, and in the Defence of the undoubted Right and Judicature of this Houſe.

HAVERSHAM.

Ordered, That a Copy of the Lord *Haverſham*'s Anſwer be ſent to the Houſe of Commons.

Then a Meſſage was ſent to the Houſe of Commons, by Sir *John Francklyn* and Sir *Lacon-William Child*, to carry down a Copy of the abovesaid Anſwer.

Die Veneris 20° *Junii*, 1701.

A Meſſage from the Houſe of Commons by the Lord *Mordaunt*, and others. *See Page* 378.

Order'd, That the Committee appointed to conſider of the Manner of Proceedings on Impeachments do meet preſently, and draw an Anſwer to this Meſſage.

The Earl of *Stamford* reported from the Lords Committees, appointed to conſider of the Manner of Proceedings on Impeachments, the Anſwer drawn by them, in Anſwer to the Commons Meſſage this Day: Which was read, and agreed to, as follows:

A Meſſage was ſent to the Houſe of Commons by Mr. *Gery* and Dr. *Newton*, to acquaint them, "That in Anſwer to the Meſſage of the Houſe "of Commons this Day, the Lords do acquaint the Commons, That "they might have known, by the Records of the Houſe of Lords, that "the Lords have proceeded to the Trial of the Lord *Sommers*, on *Tueſday* "laſt, being the Day appointed; and the Commons not appearing to "maintain their Articles againſt the ſaid Lord, the Lords have, by Judg"ment of their Houſe, acquainted him of the Articles of Impeachment "againſt him exhibited by the Houſe of Commons, and all things there"in contain'd, and have diſmiſs'd the ſaid Impeachment.

"And the Lords have appointed *Monday* next for the Trial of the Earl "of *Orford*; on which Day they will proceed on the ſaid Trial.

"The Commons ſtill preſſing for a Committee of both Houſes (which "the Lords never can conſent to, for the Reaſons already given), their "Lordſhips can infer nothing from their perſiſting in that Demand, than "that they never deſign'd to bring any of their Impeachments to a Trial.

"As to the Lord *Haverſham*, his Anſwer is now before the Houſe of "Commons, and the Lords reſolve to do Juſtice in the Matter."

Die Sabbati 21° *Junii*, 1701.

The Houſe being mov'd to conſider what is fit to be done in relation to the Charge of the Houſe of Commons againſt *John* Lord *Haverſham*; and after due Conſideration thereof, and the Lord *Haverſham* deſiring to be proſecuted, it was propoſed as follows:

That the Anſwer of *John* Lord *Haverſham* to the Charge ſent up againſt him by the Houſe of Commons, having been ſent down to that Houſe; It is reſolv'd by the Lords Spiritual and Temporal in Parliament aſſembled, That unleſs the ſaid Charge ſhall be proſecuted againſt the ſaid Lord *Haverſham* with Effect by the Commons, before the End of this Seſſion of Parliament, the Lords will declare and adjudge him wholly Innocent of the ſaid Charge.

Then this Queſtion was put, Whether this Reſolution ſhall be agreed to?—It was reſolved in the Affirmative.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That Sir *David Mitchell*, Sir *Edmund Harriſon*, *George Dorrington*, Eſq. *Joſeph Burchet*, Eſq. Capt. *George Bynns*, *Brooke Bridges*, Eſq. *George Cornwall*, Eſq. Capt. —— *Griffith*, —— *Holmes*, *Edmund Hayman*, and —— *Traverſe*, Eſq. his Majeſty's Surveyor-General, do, and they are hereby requir'd to attend this Houſe on *Monday* next, at Ten of the Clock in the Forenoon, as Witneſſes on the behalf of *Edward* Earl of *Orford*.

A Complaint being this Day made of certain printed Votes of the Houſe of Commons, dated the 20th Inſtant, wherein there are ſeveral Things highly reflecting on the Houſe of Peers; It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Conſideration thereof ſhall be adjourn'd to *Monday* next, and all the Lords ſummon'd to attend with ſpecial Notice of this Order.

Die Lunæ 23° *Junii*, 1701.

The Earl of *Stamford* acquainted the Houſe, from the Lords Committees appointed to draw, or extract out of the Books, what is to be printed in relation to the Lords Impeach'd, and the Proceedings thereupon, what was tranſcrib'd in order thereunto; and that there was more to be extracted, which as yet was not tranſcrib'd: Whereupon it was ordered, by the Lords Spiritual and Temporal in Parliament aſſembled, That any Three of the Lords of the ſaid Committee do meet when they pleaſe, after the Houſe is up, and give Order to the Clerk for what ſhall be further tranſcrib'd out of the Journals, in order to the printing thereof.

The Houſe reſumed the adjourn'd Debate upon the printed Votes of the Houſe of Commons of the Twentieth Inſtant. After Debate, it was propoſed to declare, That the Reſolutions of the Houſe of Commons, in their Votes of the Twentieth Inſtant, contain moſt unjuſt Reflections on the Honour and Juſtice of the Houſe of Peers, and are contriv'd to cover their affected and unreaſonable Delays in proſecuting the Impeach'd Lords.

The Queſtion was put, Whether this ſhall be the Reſolution of the Houſe?—It was reſolv'd in the Affirmative.

I. It is reſolv'd by the Lords Spiritual and Temporal in Parliament aſſembled, that the Reſolutions of the Houſe of Commons, in their Votes of the Twentieth Inſtant, contain moſt unjuſt Reflections on the Honour and Juſtice of the Houſe of Peers, and are contriv'd to cover their affected and unreaſonable Delays in proſecuting the Impeach'd Lords.

It being alſo propoſed to declare, That the ſaid Reſolutions do manifeſtly tend to the Deſtruction of the Judicature of the Lords, to the rendering Trials on Impeachments impracticable for the future, and to the ſubverting the Conſtitution of the *Engliſh* Government,

The Queſtion was put, Whether this ſhall be the Reſolution of the Houſe?—It was reſolv'd in the Affirmative.

II. It is reſolv'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Reſolutions do manifeſtly tend to the Deſtruction of the Judicature of the Lords, to the rendering Trials on Impeachments impracticable for the future, and to the ſubverting the Conſtitution of the *Engliſh* Government.

It being alſo propoſed to declare, That whatever ill Conſequences may ariſe from the ſo long deferring the Supplies for this Year's Service, are to be attributed to the fatal Counſel of putting off the Meeting of a Parliament ſo long, and to the unneceſſary Delays of the Houſe of Commons,

After Debate, the Queſtion was put, Whether the laſt Words ſhall ſtand Part of the Reſolution?—It was reſolv'd in the Affirmative.

Then the whole Reſolution was read, and the Queſtion was put, Whether theſe Words ſhall be the Reſolution of the Houſe?

It was reſolv'd in the Affirmative.

III. It is reſolv'd by the Lords Spiritual and Temporal in Parliament aſſembled, That whatever ill Conſequences may ariſe from the ſo long deferring the Supplies for this Year's Service, are to be attributed to the fatal Counſel of putting off the Meeting of a Parliament ſo long, and to the unneceſſary Delays of the Houſe of Commons.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſeveral Reſolutions made this Day be printed, with what was formerly order'd to be printed out of the Journals relating to the Lords that were Impeach'd.

Then the Houſe was adjourn'd during Pleaſure to Robe.

Then the Houſe was reſumed.

The Houſe was call'd over by the Clerk, and the Names of the Lords preſent ſet down by the Heralds.

Then the Houſe was adjourn'd to *Weſtminſter-Hall*, and the Lords went in the ſame Order as they did to the Lord *Sommers*'s Trial: And being come to the Hall, and ſeated, the Houſe was reſumed.

Leave was given to the Judges to be cover'd.

Proclamation being made for Silence, the following Proclamation was made for Proſecution; *viz.*

> *Whereas a Charge of High Crimes and Miſdemeanors has been exhibited by the Houſe of Commons, in the Name of Themſelves and all the Commons of* England, *againſt* Edward *Earl of* Orford; *all Perſons concern'd are to take Notice, that he now ſtands upon his Trial, and that they may now come forth, in order to make good the ſaid Charge.*

Then the Articles of Impeachment againſt *Edward* Earl of *Orford* were read, and alſo his Lordſhip's Anſwer to the ſaid Articles.

Then the ſame Proclamation as before was made for Proſecution; and the Lord-Keeper declar'd, That the Court is now ready to proceed upon the Trial of *Edward* Earl of *Orford*, and therefore their Lordſhips are to give Attention.

The Earl of *Orford* ſaid, His Counſel were ready to be heard, if the Houſe pleas'd.

Then the Houſe was mov'd, and did adjourn to the Houſe above, and return'd in the ſame Manner as they went down.

Then the Houſe was reſumed, and order'd, That the ſame Method be obſerv'd, in giving Judgment in the Hall, as was at the Lord *Sommers*'s Trial, and the like Queſtion put in the Hall.

The Houſe being call'd over, and the Name of every Lord preſent writ down for the Lord-Keeper.

The Houſe was again adjourn'd to *Weſtminſter-Hall*, where the Houſe was reſumed, and Proclamation made for Silence.

Then the Lord-Keeper put this Queſtion,

That *Edward* Earl of *Orford* be Acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons, and all Things therein contain'd; and, That the ſaid Impeachment be diſmiſs'd?

The Lord-Keeper aſk'd every Lord preſent, Whether *Content*, or *Not Content*, beginning at the loweſt Baron.

Lord *Haverſham*	Content
Lord *Herbert*	
Lord *Oſſulſton*	
Lord *Cornwallis*	
Lord *Berkeley*	
Lord *Rockingham*	
Lord *Lucas*	
Lord *Colepeper*	
Lord *Mohun*	
Lord *Lovelace*	
Lord *North*	
Lord *Wharton*	
Lord *Eure*	
Lord *Fitzwalter*	
Lord *Bergavenny*	
Lord Biſhop of *Chicheſter*	Content

Lord Biſhop of *Peterborough* Content
Lord Biſhop of *Lincoln*
Lord Biſhop of *Norwich*
Lord Biſhop of *Coventry* and *Lichfield*
Lord Biſhop of *Ely*
Lord Biſhop of *Sarum*
Lord Viſcount *Say and Seale*
Earl of *Rochford*
Earl of *Scarborough*
Earl of *Montagu*
Earl of *Portland*
Earl of *Berkeley*
Earl of *Radnor*
Earl of *Macclesfield*
Earl of *Shaftſbury*
Earl of *Burlington*
Earl of *Eſſex*
Earl of *Kingſton*
Earl of *Stamford*
Earl *Rivers*
Earl of *Huntingdon*
Earl-Marſhal
Duke of *Newcaſtle*
Duke of *Schomberg*
Duke of *Bolton*
Lord Steward
Lord Arch-Biſhop of *Canterbury* Content

After which the Lord-Keeper declar'd, That the Votes were Unanimous in the Affirmative.

Then the Lord-Keeper declar'd, That *Edward* Earl of *Orford* was Acquitted of the Articles of Impeachment againſt him, exhibited by the Houſe of Commons, and all Things therein contain'd; and that the ſaid Impeachment be diſmiſs'd.

And his Lordſhip alſo declared to the Earl of *Orford*, That he was Acquitted.

Then the Houſe adjourn'd to the Houſe above; and being reſumed, It is Conſider'd, Order'd, and Adjudg'd, by the Lords Spiritual and Temporal in Parliament aſſembled, That *Edward* Earl of *Orford* ſhall be, and is hereby Acquitted of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contain'd; and, That the ſaid Impeachment be diſmiſs'd.

Die Martis 24° *Junii*, 1701.

It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That all the Articles of Impeachments, and Anſwers to them; The Lord *Haverſham*'s Charge and Anſwer; The Lord *Sommers*, and the Earl of *Orford*'s Trial, and all other Things relating thereunto, and the Reſolutions of *Monday* laſt, be tranſcrib'd and printed; and, That the Duke of *Bolton*, the Earl of *Stamford*, the Lord *Wharton*, the Lord *North*, Lord *Haverſham*, and Lord *Sommers*, or any Three of them, do inſpect the Journals, and take care that what is or ſhall be tranſcrib'd, in order for printing, be perfect; and give Order to the Clerk for printing thereof.

Then the Houſe taking into Conſideration, That there were ſeveral Lords charg'd and impeach'd by the Commons, and no Proſecution againſt them; Order'd as follows; *viz.*

The Houſe of Commons not having proſecuted their Charge, which they brought up againſt *John* Lord *Haverſham*, for Words ſpoken by him at a Free Conference the Thirteenth Inſtant; it is this Day Order'd, by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Charge againſt *John* Lord *Haverſham* ſhall be, and is hereby diſmiſs'd.

The Earl of *Portland*, being Impeach'd by the Houſe of Commons of High Crimes and Miſdemeanors, the Firſt Day of *April* laſt; It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Impeachment againſt *William* Earl of *Portland* ſhall be, and is hereby diſmiſs'd, there being no Articles exhibited againſt him.

The Houſe of Commons having Impeach'd *Charles* Lord *Hallifax* of High Crimes and Miſdemeanors, on the Fifteenth Day of *April* laſt, and on the Fourteenth Day of this Inſtant *June* exhibited Articles againſt him; to which he having anſwer'd, and no further Proſecution thereupon; It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Impeachment, and the Articles exhibited againſt him, ſhall be, and they are hereby diſmiſs'd.

The Houſe of Commons having Impeach'd *Thomas* Duke of *Leeds* of High Crimes and Miſdemeanors, on the Seven-and-twentieth of *April*, One thouſand Six hundred Ninety-five, and on the Nine-and-twentieth of the ſaid *April* exhibited Articles againſt him, to which he anſwer'd; but the Commons not proſecuting, It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Impeachment, and the Articles exhibited againſt him, ſhall be, and they are hereby diſmiſs'd.

CLXXI.

The Trial of PATRICK HURLY, *of* Moughna, *in the County of* Clare, *Gent. at the* King's-Bench *in* Ireland, *upon Two (ſeveral)* Indictments, *the one for* Perjury, *and the other for* Conſpiring *with* Daniel Hicky, *&c. to* Cheat *the Popiſh Inhabitants of the County of* Clare, *&c.* May 31, 1701. *Paſchæ* 13 Will. III.

THE *Priſoner* being brought from the *Marſhalſea* to the *Bar*, and a Full Jury appearing, the *Clerk* of the *Crown* bid him look to his Challenges: And after ſome Challenged by him, the Jury Sworn were,

Edmund Perry,
James Mac Donnel,
John Brady,
Dennis Mac Mahone,
Richard Hen,
Thomas Brown,
John Drew,
Hugh Brady,
Edward Mealing,
Auſtin Bennis,
Joſeph Cecil,
Patrick Connel.

Cl. of the Crown. Gentlemen of the Jury, you are to underſtand, *That* Patrick Hurly *ſtands indicted of Perjury, for Swearing before* Neptune Blood, *Dean of* Kilfenora, *One of his Majeſty's Juſtices of the Peace for the County of* Clare, *That he was Robbed of Three Hundred Piſtoles in Gold, and ſeveral other Things, by four Perſons altogether unknown to him, but whom, by the Tone of their Voice, he believed to be* Iriſhmen *and* Papiſts; *whereas, in Truth and Fact, he well knew them by their Names and Perſons, being ſet on by himſelf, and did not take any thing at all from him.*

Mr. Att. Gen. Clerk of the Crown, You have another Indictment againſt the Priſoner at the Bar; pray charge him with it.

Clerk of the Crown. Gentlemen of the Jury, you ſhall likewiſe underſtand, That the ſame *Patrick Hurly ſtands here indicted, for that he did falſly and deceitfully conſpire with one* Daniel Hicky *and ſeveral other Malefactors, unjuſtly to oppreſs the Popiſh Inhabitants of the County of* Clare, *and cheat them of a great Sum of Money, by colour of the* Rapparee Act.

Mr. Att. Gen. May it pleaſe your Lordſhips, and you Gentlemen of the Jury, the Priſoner at the Bar, *Patrick Hurly*, is here indicted for Perjury; and the Perjury is this, That the Sixth of *March*, 1699, he came before Dean *Neptune Blood*, one of his Majeſty's Juſtices of the Peace for the County of *Clare*, and made Oath before him, purſuant to the late Statute for ſurpreſſing Tories, Robbers and Rapparees, That being at his Father's Houſe in the aforeſaid County of *Clare*, ſeveral Perſons, with their Faces maſked, came unto the ſaid Houſe in the Night-time, and forced into his Chamber, made a ſhot at him, and tied him and another Man with Cords faſt to a Bedſtead; that by the Tone of their Speech they ſeemed to be *Iriſhmen*, and that he believed them to be *Papiſts*; that he knew not one of them either by their Names or Perſons; that immediately they broke open ſeveral Trunks, and took out of one of them a Bag, wherein were 374 *Guineas*, and 345 *Piſtoles*; a Gold Croſs ſet with Diamonds, and ſeveral other Diamonds to a great Value, and a great Number of Holland Sheets and Holland Shirts, all to the Value of about 1300 Pounds; all which he ſwore they took away from him; and this he ſwore, in order that he might (according to the late Act, called the *Rapparee Act*) make the Country re-imburſe this 1300 Pounds to him. Gentlemen, this was all falſe, and nothing at all in it but a Mock-Robbery, acted by Perſons employed and ſet on by himſelf, whom he very well knew, and who took nothing at all from him, but it was only deſigned to Cheat the Country; and in truth he was not robbed at all, not of the Value of a Farthing. The Second Indictment is for a Cheat, in Conſpiring with the Malefactors to wrong the ſaid Country, and deceitfully and unjuſtly to raiſe Money upon the Country, under Colour of the Act of Parliament.

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, Mr. *Attorney-General* has given you an Account of the Indictments: The Second is the Conſequence of the Firſt. If Mr. *Hurly* was really and truly Robbed, then he did not deſign to cheat the Country: But if he was not really and truly Robbed, but that his Examinations be all falſe, then he was not only perjured, but did likewiſe conſpire to Cheat the Country. We will begin with our Evidence of the Perjury, and the Force of our Evidence is this: Mr. *Hurly* pretends to be robbed of about Thirteen Hundred Pounds, in *March* 1699. We will ſhew you, That Mr. *Hurly*, inſtead of being a Man of ſo much Caſh at that Time, was the contrary, to an extreme Degree: That to prevent Arreſts, he had ſeveral Protections; and he told a Gentleman, there could not be a readier Way to get Money, than by the Act of Parliament; if he could fix a Robbery on the Country, he could Tax what Sum he pleaſed. We ſhall ſhew you with whom he concerted this pretended Robbery, and by whom 'twas acted, and that Mr. *Hurly* himſelf contrived the whole Matter; and the ſeveral Goods that he pretended to loſe, he had back again, and they were ſent another Way afterwards by Mr. *Hurly*; and that the Gold he pretended to loſe, was but Counters. We will trace you the whole Drift and Contrivance of the Matter. My Lord, we ſhall firſt produce the Information of Mr. *Hurly*, ſworn before Dean *Blood*.

[*Dean* Neptune Blood *ſworn.*]

Court. Look on that Paper: Was that Examination ſworn before you, Sir?

D. *Blood.* Pleaſe your Lordſhip to give me leave to read it.

Court. Do ſo, Sir; take your own Time——You have read that Paper?

D. *Blood.* Yes.

Court. Was that Examination taken before you upon Oath?

D. *Blood.* Yes, my Lord.

Court. Who was the Perſon that ſwore it?

D. *Blood.* *Patrick Hurly.*

Court. Is that the Man that ſtands there?

D. *Blood.* Yes, that is he.

[*Clerk reads the Examination.*]

Com. Clare. The Information of *Patrick Hurly* of *Moughna*, in the ſaid County, Gent. taken before *Neptune Blood*, Dean of *Killfenora*, One of his Majeſty's Juſtices of the Peace for the ſaid County.

"THE ſaid Informant being duly ſworn on the Holy Evangeliſts, and examined, ſaith, That on *Sunday*, the Third of *March*, One thouſand Six hundred and Ninety-nine, about Eleven of the Clock at Night, being then at his Father's Houſe at *Moughna* aforeſaid, and in his Chamber, he ſaw three Men armed burſt in an Out-door of the ſaid Houſe, which opened into a Garden, threw down Mr. *Ronane*, who was near the ſaid Door, in a rude Manner, with Swords and Piſtols in their Hands, entered into the ſaid Chamber, dragging the ſaid Mr. *Ronane* with them: Inſtantly there appeared a fourth Perſon armed, and with their Faces maſked; and making a Shot at the Informant, they immediately tied him and the ſaid Mr. *Ronane* with Cords faſt to a Bedſtead, calling the Informant Rogue, Raſcal, Son of a Whore, Treacherous Villain to his Country, and many abſurd Words to that Effect. The ſaid Informant further ſaith, That the ſaid Perſons, by the Tone of their Speech, ſeemed to be *Iriſhmen*, and believes them to be *Papiſts*, but knows not any one of them by their Names or Perſons. That immediately they broke open three large Trunks, and took out of one of the ſaid Trunks a Bag, wherein were Three hundred Seventy and Four *Guineas*, and Three hundred Forty and Five *Piſtoles*, amounting in all to the Sum of Eight hundred Forty and Eight Pounds, Nine Shillings Sterling, or thereabouts, together with a Gold Croſs ſet with Diamonds, and ſeveral other Diamonds, to the Value of Two hundred Twenty and Five Pounds Sterling; and alſo the Number of Twenty-four large *Holland* Sheets, each of them containing Ten Yards, or thereabouts, Price Seventy and Two Pounds Sterling; and Thirty-five *Holland* Shirts, amounting to the Value of One hundred Fifty and Seven Pounds Ten Shillings Sterling. The ſaid Informant further ſaith, He heard a great Buſtle and Noiſe, and Shots made in the other Parts of the ſaid Houſe at the ſame Time, which he underſtands was done by others of the ſaid Robbers. And further ſaith, That the ſaid Robbers took away all the aforeſaid Gold, Diamonds, Sheets and Shirts, and left the ſaid Informant and Mr. *Ronane* tied as aforeſaid, and locked the ſaid Door on the outſide. He further ſaith, That he never got any of the ſaid Gold or Goods ſince the ſaid Robbery. And further ſaith, That when he perceived the ſaid Robbers were gone away, he, this Informant, ſent ſome of his Servants out through a Window about Four of the Clock next Morning, to make a Hue and Cry, and to raiſe the Country, to purſue after the Robbers. The ſaid Informant being aſked, Whether the ſaid Robbery was committed by any Contrivance of his own, or any Friend of his, with Expectation to get Money raiſed on the Country, or for any other Self-end? declares, That it was not, nor does know of any ſuch Contrivance or Deſign, by any Perſon whatſoever, either directly or indirectly. The ſaid Informant further ſaith, That two of the ſaid Robbers, which came into his Chamber, had red Cloaths, and underſtands that there were in and about the ſaid Houſe the Number of ſeven more of the ſaid Robbers, beſides the aforeſaid four that entered into the ſaid Chamber. He further ſaith, That he cannot give any Deſcription of any of the ſaid Perſons, more than is herein ſet forth. And being examined, Whether any of his Servants or Family were from home at the ſame Time when the ſaid Robbery was committed? he ſaid, That he ſent one *Calaghan Carty*, a Servant of his, that ſame Day to Mr. *John Forſter*, at *Rathorpa* in the County of *Galiway*, for a Suit of Mourning Cloaths, which the ſaid Mr. *Forſter* brought from *Dublin* for the ſaid Informant; and the ſaid *Calaghan* returned the next Day, being *Monday* the Fourth of *March* Inſtant, with a Letter from the ſaid Mr. *Forſter*; and that the ſaid Informer's Wife and her Brother, Mr. *Edmond Tirrey*, and Mr. *Ulick Bourk*, who is married to her Siſter, were the ſame Night when the ſaid Robbery was committed at Captain *Chriſtopher O-Brien*'s Houſe at *Imiſhtiman*, in the ſaid County of *Clare*. The ſaid Informant further ſaith, That *Moughna* aforeſaid, where the ſaid Robbery was committed, is in the Barony of *Corcumoroe*, and County aforeſaid. He further ſaith, That he had about Four Hundred Pounds of the aforeſaid Gold from Alderman *Walton* in *Dublin*, and had the reſt ſometime before from Mr. *Chriſtopher Fitz-Symonds*, Merchant in *Dublin*. The ſaid Informant further ſaith, That he knows not who any of the aforeſaid ſeven Perſons were, that were in and about the ſaid Houſe, nor yet any of the Four Perſons as aforeſaid, nor from whence any of them came, nor whither they went, and further ſaith not."

Jurat. coram me 6° Martii, 1699.

NEP. BLOOD.

Vera Copia

GUL. TISDAL.

Court. Mr. Dean *Blood*, Is this the very Examination that Mr. *Hurly* gave in upon his Oath before you?

D. *Blood.* Yes, Sir.

K. Counſel. Did he ſwear it all?

D. *Blood.* Yes, he ſwore all the Contents of this Examination to be true.

Mr. Sol. Gen. My Lord, and you Gentlemen of the Jury, the Scope of the Evidence againſt the Gentleman at the Bar is thus: We will ſhew you the great Neceſſity he was under, and the preſſing Occaſions he had for Money; and that being in great Straits, he was contriving how to ſtave off his Creditors, and ſave his Reputation. We will produce the Perſons that he had Diſcourſe with about the probable Way of getting Money; and ſome of the very Perſons that were to act in order to it; and that when Mr. *Ronane* was in the Houſe, theſe Actors were to ruſh in, and to tie him and Mr. *Patrick Hurly* together; and then to look in ſuch a Trunk, and there they ſhould find ſomething like Gold. That the Actors did lurk in and about the Houſe by Mr. *Hurly*'s Appointment; and came into the Dwelling-houſe, as was contrived between them, ruſhing in with the ſaid Mr. *Ronane*, who went out into the Garden after Supper, as was contrived beforehand. When Mr. *Hurly* was giving in his Information, Mr. *Blood* aſked him, What Witneſſes he had beſides himſelf? He ſaid, a Servant of his, one *Calaghan Carty*. We will produce that ſame *Calaghan Carty*, who will give a full Relation of the Matter.

Calaghan Carty *call'd.*

Mr. *Bernard.* My Lord, one Word for the Traverſer. My Lord, this *Calaghan Carty* and others were the Perſons taken up for this Robbery, and actually in Gaol for it; they were the Perſons that did actually rob us. My Lord, they were put into Irons, and threatened to be hang'd unleſs they would ſwear it was a Sham-Robbery; and thereupon were diſcharged; and after came to this Town, and went before my Lord Chief-Juſtice *Pyne*, and they ſwore, That their Examination was forced from them. It is here in Court.

Calaghan Carty *ſworn.*

Court. Do you know *Patrick Hurly*?——*Carty.* Yes, my Lord.

Court. How long have you been acquainted with him?

Carty. Since he came into this Kingdom from *England.*

Court. How long was he come before he was proſecuted?

Court. 'Twas about two Years.

K. Counſel. Will you give the Court and the Jury an Account what you know concerning this Robbery? Tell the whole Truth, and nothing but the Truth.

Carty. My Lord, I was one of his Servants. He came to me, and called me out to his Stable, and drew out a Purſe of Gold, and ſhewed it me, and told me, he was to pay one Mr. *Arthur* ſome Money, who was to come ſuch a Day to compound with him for the Money; and if he did give him that Money, he would be ruin'd for ever; but that if I would do as the reſt would, I would do him a Kindneſs: And ſays, That when Mr. *Arthur* ſhould hear the Money was robbed, he would compound with him: And he told me where the Money was to be, and the Trunk he would put it into.

Court. Did you, according to his Deſire, take away the Gold and the Linnen?———*Carty.* Yes, my Lord.

Court. Was there any others to do it beſides yourſelf?

Carty. Yes, Four more, *Donagh O-Brien Andrews*, *Daniel Hicky*, *Daniel Carty*, and *Teigue Carty.*

Court. What did you do with the Linnen?

Carty. It was *Daniel Hicky* took it out, and, he ſaid, he gave it all back again to his Maſter.

Court. Were you diſguiſed?

Carty. Yes; we had ſome of us Blue Coats, and ſome of us Red Coats and Vizards.

Court. Where had you the Coats?

Carty. Mr. *Hurly*'s Man threw them into the Barn to us.

Court. Had you any Arms?——*Carty.* Yes, my Lord, we had Swords.

Court. Who gave the Arms to you?

Carty. *Daniel Mac-Cay*, Mr. *Hurly*'s Footman.

Court. Whoſe were the Swords?

Carty. I was told they were brought from *Dublin* by Mr. *Hurly.*

Court. Was there any Fire-Arms?

Carty. Yes, there was Fire-Arms left on a Table by the Door, and charged with Powder.

Court. Had you any Directions about them?

Carty. Yes, my Lord; they were laid there on purpoſe for the Men.

Court. Who gave thoſe Directions about the Fire-Arms?

Carty. It was *Daniel Mac-Cay.*

Court. Were they charg'd?——*Carty.* Yes, with Powder only.

Court. Was any of 'em fired off then?—*Carty.* Yes, there was.

Mr. Sol. Gen. My Lord, though they were fired off, there was no Ball in them: It was not to do Harm, but only to fright thoſe who were not in the Secret.

Court. Did you take the Gold in the Purſe, or whatever it was?

Car. My Lord, we were directed by Mr. *Hurly* to pour it on the Table, that Mr. *Ronane* might ſee it.

Court. How long had Mr. *Ronane* been there?

Car. Two Nights.

Sir *J. Mead.* Was there any particular Time appointed when you was to do this Fact?

Car. There was, my Lord; when Mr. *Ronane* ſhould come out of the Back-door.

Court. Had you any Directions in particular what to do with the Servants?

Car. Yes; we had Directions to tie Mr. *Hurly* and *Ronane* together, and there was a Bed-cord laid in the Room ready for the Purpoſe.

Mr. Recorder. Who gave you the Directions to tie them?

Car. Mr. *Hurly.*

Mr. Sol. Gen. Do you know one *Walter Neylan?*——*Car.* Yes.

Mr. Sol. Gen. Where was he?

Car. He was in Gaol at *Ennis*, for Mr. *Hurly*'s Debt.

Mr. Sol. Gen. You were Mr. *Hurly*'s Servant.——Pray, did he appear publickly about that Time? or, Was he on his Keeping?

Car. He was on his Keeping.

Court. Explain yourſelf.———What was the Keeping?

Car. My Lord, he was on his Keeping, for fear of being taken upon Writs and Executions: He had Servants in his Houſe, and he kept one watching conſtantly, for fear of being taken.

Court. At whoſe Suit?——*Car.* At Mr. *Arthur*'s Suit.

Mr. Att. Gen. My Lord, I am told his Houſe was a Sort of Garriſon, and there were regular Works about it.

Court. You ſay there were Scouts abroad, and ſome Wall: Pray, give an Account what Works there were about the Houſe.

Car. Yes; there was a Brick-Wall about one Side of the Houſe.

Court. Do you imagine it was to prevent his being arreſted that he built that Wall?———*Car.* Yes, it was, my Lord.

Mr. *Recorder.* What ſort of Money was there when you open'd the Bag?----What did it appear to be?

Car. It was yellow Pieces; and Mr. *Hurley* gave his Seal, to ſeal the Bag up again.

Court. Was Mr. *Ronane* there at that Time?

Car. The Seal was given before, my Lord.

Mr. Sol. Gen. He ſays, It was not he that pour'd the Money out.-----Did you judge the Money to be Gold, or Counters?

Car. That, my Lord, I did not know.

Mr. Sol. Gen. My Lord, Mr. *Hurly* pretends that this Man gave an Examination contrary to this. Now we will ſhew you, That that was done by another Perſon employ'd by Mr. *Hurly* to perſonate this Man. But before that, pleaſe to aſk him as to the Linnen that was carried away, what became of it, and who diſpoſed of it?

Court. You ſay, there was Linnen taken away---What Linnen?

Car. There was *Holland* Sheets, and they were put into a Cheſt in the Barn; and we brought them in again.

Court. Who brought them in?---*Car. Daniel Hicky*, and I myſelf.

Court. Who did you deliver them to?---*Car.* To Mr. *Hurly*'s Wife.

Court. Was he privy to it?---*Car.* Yes, he was.

Court. Did you ever make Mr. *Hurly* acquainted, that you had reſtor'd the Linnen?

Car. Yes, my Lord.

Mr. Recorder. Pray, was there any Jewels or Diamonds taken away?

Car. My Lord, he ſaid there was ſome in a little Bag, ſome Jewels and Diamonds; and he bid us not open it; and we did not.

Court. Was that Bag in the ſame Drawer with the other Money?

Car. Yes, my Lord, it was.

Sir *J. Mead.* Pray, my Lord, I deſire to know, whether he was ever tamper'd with by any body; and who it was?

Court. Was you ever tamper'd with, to take off your Evidence?

Car. Yes, my Lord, I was---by *Daniel Carty*, and I refus'd it.

Court. Was you by Mr. *Hurly?*

Car. No;---but he ſent his Brother to me.

Mr. *Forſter.* Pray, my Lord, let us ſee that Examination: He, after that Examination, gave Evidence contrary to what he has now given.

Court. Do you admit that there was an Examination?

Mr. Sol. Gen. That there was an Examination ſworn before my Lord Chief-Juſtice----But that this was not the Man.

Mr. *Recorder.* Was you ſworn before my Lord Chief-Juſtice *Pyne?*

Car. Never in my Life.

Court. Look on it; Is that your Hand?---*Car.* It's none of my Hand.

Mr. Recorder. Pray, look upon it.

Car. It's none of my Hand.

Mr. *Forſter.* (*Produces another Paper.*)---Pray, look on that Paper, and ſee if that be your Hand or not.

Car. I don't know whether it be or no; I believe it may.

Mr. Sol. Gen. Pray, mind which he owns to be his Hand, and which not.

Recorder. We have to deal with a nimble Perſon.

Court. What will you have next?

Mr. *Bernard.* The next Thing is, What Time of the Day or Night the Robbery was committed?

Car. My Lord, it was about Ten a-Clock at Night, before the People went to Bed.

Court. What Month?---*Car.* The Month of *March.*

Court. What Day of the Month?

Car. As I underſtand, the Third of *March.*

Court. What Day of the Week?

Car. Sunday.

Mr. *Bernard.* Where was you on *Monday* Morning?

Car. I was at *Corrofin.*

Mr. *Bernard.* How far is that from Mr. *Hurly*'s?

Car. It is five Miles.

Court. How long did you ſtay at *Corrofin?*

Car. I ſtay'd there till News came, that the Robbery was committed; I ſtay'd till Night.

Mr. *Bernard.* Pray, was Mr. *Ronane* privy at all to this Robbery?

Car. I don't know; I believe he may, for I know no other Buſineſs he had there, nor I ſaw no other Buſineſs he did there.

Court. Mr. *Bernard*, he ſays this---As Mr. *Ronane* was to go out of the Back-door, then at that very Time they came thro' the Garden.

Car. Yes, my Lord; Mr. *Hurly*'s Man came to give us a Call.

Court. He ſays, *Hurly*'s Man did give them Notice when Mr. *Ronane* did go abroad.

Mr. *Bernard.* Do you believe that Mr. *Ronane* went abroad?

Court. He ſays, It was uſual for Mr. *Ronane* to go abroad.

Mr. Att. Gen. My Lord, the next Witneſs we ſhall produce is another Servant, that was in the Houſe with Mr. *Hurly* the ſame Time.

Margaret Connene.

Mr. Sol. Gen. This Lady goes in the Family by the Name of *Peggy Rabbet*; *Margaret* is *Peggy*, and *Connene*, *Rabbet.*

[*An Interpreter ſworn, becauſe ſhe could not ſpeak* Engliſh-----*Then ſhe was ſworn.*]

Mr. Sol. Gen. Pray, aſk her, Whether ſhe knew *Patrick Hurly*, and let her point at him.

Con. There he is.

Mr. Sol. Gen. What does ſhe know of this Robbery, this pretended Robbery?

Court. Pray, aſk her how long ſhe has been acquainted with Mr. *Hurly?*

Interp. This Year and a half.

Court. Was ſhe a Servant, or no?

Interp. Yes, a Servant in the Houſe for a Year and half.

Court. Does ſhe know of any Robbery, or pretended Robbery committed on Mr. *Hurly?*

Interp. She knows there was a Robbery.

Court. Was ſhe a Servant in his Houſe at that Time?

Interp. Yes, my Lord, ſhe was.

Court. Let her tell what ſhe knows of it from the Beginning to the End.

Mr. Recorder. The whole Story, the whole Intrigue.

Interp. She ſays, one *Hicky*, and *Calaghan Carty*, *Donogh O-Brien Andrews*, came into the Houſe at Night, and *Teigue Carty* and *Daniel Carty.*

Court. Were they disfigur'd?---*Interp.* Yes, ſhe ſays, they were.

Court. How did ſhe know them?---*Interp.* As *Calaghan Carty* told her.

Court. When was that?

Interp. After he came out of Gaol.

Court. Did ſhe know any of them when their Diſguiſe was on?

Interp. No, ſhe did not.

Court. Did ſhe know of any Contrivance of a Robbery?

Interp. No, ſhe did not.

Court. What Time of the Day or Night was this Robbery committed?

Interp. She ſays, my Lord, about Ten of the Clock at Night.

Court. What Month? or, What Time of the Month?

Interp. She does not know; but it was about Ten of the Clock at Night, as ſhe believes.

Court. Pray, in what Manner was it that they came into the Houſe?

Interp. She ſays, my Lord, that about that Hour of the Night ſhe came in before Mr. *Ronane* went out at the Back-door; and that theſe Five Perſons came in at that time into the Houſe.

Court. What Part of the Houſe was ſhe in then, when theſe five Perſons came in?---*Interp.* She was in the Kitchen.

Court. Aſk her, How could ſhe ſee theſe Perſons, when they came into the Houſe, from the Kitchen?---*Interp.* She ſays, ſhe could not.

Court. How ſoon after they got in had ſhe Notice the Robbers were got into the Houſe?

Interp. She ſays, that as ſoon as they came in, one *Mac-Caie* cry'd Murder, and ſaid, his Maſter was kill'd.

Court. Where were the Robbers then?

Interp. In the Parlour, near her Maſter's Chamber.

Court. What Arms had they that Time there?

Interp. She ſays, that they had Fire-Arms and a Sword; and that they ſhot at them.

Court. Which of them had Arms?

Interp. She ſays, All that ſhe ſaw had Arms.

Court. Was there any Body wounded? or, Was there any Oppoſition given by any Servants, that occaſion'd them to fire?

Interp. There was nobody to oppoſe them.

Court. What made 'em fire off the Gun then?

Interp. She does not know, unleſs it was to keep them in, and frighten 'em.

Court. How far was this Houſe where Mr. *Hurly* liv'd from any Neighbours?

Interp. She believes there were ſome Neighbours half a Mile off.

Court. Was ſhe in the Parlour? or, Did ſhe ſee any Arms in the Houſe before the Robbers came in? or, Did they bring the Arms with 'em?

Interp. She ſays, there were Arms in the Parlour when they came in.

Court. Were theſe Arms ſhe ſaw with them the ſame that ſhe ſaw in the Parlour before they came in?

Interp. They were the ſame Arms.

Court. Did ſhe ſee thoſe Arms?---How long did ſhe ſee 'em there before the Robbers came in?

Interp. She ſays, that the Arms lay there all the Evening before.

Court. Was it uſual for the Arms to lie there before?

Interp. 'Twas ſo ſometimes.

Mr. Sol. Gen. What was Mr. *Hurly*'s Motive for keeping Arms always ready at the Door? What Occaſion had he for them?

Interp. She does not know any other, than that her Maſter was in Debt, and apprehenſive of Trouble; and that he kept thoſe Arms for his Defence.

Court. Pray, does ſhe know what was taken away from her Maſter at that Time?

Interp. She knows that they took twelve Pair of *Holland* Sheets.

Court. Did ſhe ever ſee any of the Linnen that was taken away from her Maſter with him afterwards?

Interp. There were Sheets in the Houſe after the Robbery, and ſhe believes they were the ſame Sheets.

Mr. *Butler.* The Sheets in the Robbery were large, double Holland Sheets.—Pray, what Sheets were they ſhe ſaw afterwards in the Houſe?

Interp. Large Holland Sheets.

Mr. Sol. Gen. How many Pair of Holland Sheets did ſhe ſee in the Houſe after the Robbery?

Interp. She ſaw four or five Pair of Holland Sheets in the Houſe after the Robbery.

Mr. Sol. Gen. Pray, how ſoon after the Robbery did ſhe ſee thoſe Sheets in the Houſe?---*Interp.* After the Aſſizes.

Mr. Att. Gen. Pray, aſk her, Whether any Goods were ſent out to any Neighbour's Houſe, and what Neighbour's, and what Goods?

Interp. She believes 'twas uſual, when *William Haloway* came to the Houſe, that was a Perſon who proſecuted Mr. *Hurly* for Debt, to ſend away the Goods, to ſecure them.

Mr. Att. Gen. As I underſtand this Woman, when theſe Robbers had come into the Parlour, *Daniel Mac Caie* ran into the Kitchen, and cry'd, Murder! Murder! I would fain know, ſince *Daniel Mac Caie* was not tied, and that the Robbers did not tie her, why they did not go out to make Hue and Cry, and raiſe the Country.

Interp. She ſays, my Lord, that there was none of them tied; but they did not go out.

Court. Pray, how came it about, that after the Shots went off, no Neighbours came in?

Interp. She ſays, ſhe believes they could not hear.

Mr. Att. Gen. Pray, when they fired off the Fire-Arms, did they preſent them at her, or at *Daniel Mac Caie?* or, Did they find any Holes the Shots had made in the Cieling, or Marks of the Bullets in the Wall, or in any other Place?

Interp. She ſays, they hurt nobody, and they ſaw no Holes or Marks of Shot or Bullets.

Mr. Att. Gen. Aſk her, Whether the Arms that were in the Parlour did not uſually hang on Racks or Hooks; and where were they a little before the Robbers came into the Parlour?

Interp. They were upon the Table, my Lord, near the Door.

Court. Where did theſe Arms uſe to be at other times?

Interp. She ſays, at the ſame Place, near the Door.

Mr. *Forſter.* What number of Arms did Mr. *Hurly* uſe to have in the Houſe? and, Of what Sort?

Interp. A couple of Fuzees, a Blunderbuſs, a couple of Carbines, and Piſtols.

Mr. *Bernard.* Pray, how many Swords were there uſually?

Interp. She did not know of any but her Maſter's Sword; ſhe ſaw but Two.

Mr. *Bernard.* How does ſhe know the Shots were made out of theſe Arms that were Mr. *Hurly*'s?

Interp. She ſays, that ſhe was ſhot at twice.

Mr. *Bernard.* And was it out of theſe Arms that uſed to be in the Parlour?---*Interp.* She was ſhot at with a Piſtol.

Mr. *Bernard.* Was it with Mr. *Hurly*'s Piſtol?

Interp. She believes it was.

Court. Whether theſe Arms, that were fired off, were the Arms that lay on the Table?

Interp. She was told afterwards, by the Perſon that did it, that they were her Maſter's Arms.

Court. Who told her of it?---*Interp.* *Calaghan Carty.*

Mr. *Bernard.* She has no other Knowledge of this but as *Calaghan Carty* told her.—When was it he told you this?

Interp. After he came out of Gaol.

Mr. *Bernard.* How long was that after the Robbery?

Interp. They were long in Gaol——ſhe does not know.

Mr. *Bernard.* Tho' ſhe was our Servant then, we ſhall ſhew whoſe Servant ſhe is now, and how ſhe has been promis'd to be Portion'd and Petticoated.——Does ſhe know *Teigue Carty?*

Interp. Yes, ſhe does.

Mr. *Bernard.* Does ſhe know *Daniel Hicky?*---*Interp.* Yes, my Lord.

Mr. *Bernard.* Does ſhe know *Donogh O-Brien?*--*Interp.* Yes, ſhe does.

Mr. *Bernard.* Had ſhe this Account from any of thoſe Perſons?

Interp. She did not aſk them.

Sir *John Mead.* Whether the Arms Mr. *Hurly* had, were carried away by theſe Perſons, or left there?

Interp. She ſays, they took 'em out, and lock'd the Door, and left 'em without the Houſe.

Mr. Sol. Gen. Upon my Word, a Man that had robb'd Thirteen hundred Pounds, would hardly have parted with his Arms till he was ſafe lodg'd.—What became of the Arms? Who had 'em afterwards?

Interp. She ſaw the Arms in the Houſe again.

Court. Were the Arms abuſed any ways?

Interp. She heard they were ſtuff'd with Gravel; but ſhe does not know whether it was ſo or no.

Court. Who did ſhe hear ſay ſo?

Interp. She heard the Family ſay ſo.

Mr. *Bernard.* Pray, when did ſhe ſee that *Calaghan Carty?* How long was it from the Time of the Robbery to the Time he told her this?

Interp. Next Day in the Evening ſhe ſaw him after the Robbery.

Mr. *Bernard.* About what Time?

Interp. She does not know certainly what Time of the Day.---It was Afternoon, pretty late, after the Cows were milk'd.

Mr. *Hurly.* She ſays, the next Day this Man came back.---The Man ſays, he was at *Corroſin* till Night.

Mr. Sol. Gen. He ſays, That after the Robbery was committed, he went that Night as far as *Corroſin*; and, that being weary himſelf, he ſent his Father with the Letter to Mr. *Forſter*'s, and afterwards came back again in the ſame Evening.

Mr. Sol. Gen. My Lord, we are inform'd, that this Woman can give direct Proof, that ſome of the Goods, and particularly the Linnen, came back to the Houſe; and that, being dirty, ſhe waſh'd them.

Court. What Goods were taken away, does ſhe know, the Night Mr. *Hurly* was robb'd?

Interp. She ſays, they took Twelve Pair of Holland Sheets, and about Three and Thirty Shirts.

Mr. Sol. Gen. I deſire to know, Did ſhe afterwards waſh any Linnen, Sheets or Shirts, and how they were dirty'd with ordinary wearing, as by going abroad?

Interp. She ſays, there was at leaſt four or five Pair of Holland Sheets that were ſoil'd.

Mr. Sol. Gen. Did ſhe waſh any Linnen?

Interp. She was at the Waſhing of 'em.

Mr. Sol. Gen. Did ſhe obſerve after what manner they were dirtied, by People lying in them, or otherwiſe?---*Interp.* She does not know.

Mr. *Butler.* Does ſhe know of any Holland Sheets ſent to any Gentleman in the Country from Mr. *Hurly?*

Interp. She knows that ſome of his Linnen was ſent to Mr. *O-Brien*'s.

Mr. *Dean.* How came ſhe to ſtay in the Room after Shots made at her? How came ſhe to be ſo ſtout?

Interp. She ſays, ſhe durſt not ſtir: One had a Piſtol in one Hand, and a Sword in the other, and ſhe durſt not ſtir.

Mr. *Dean.* How long before the Robbery did ſhe ſee *Calaghan Carty?*

Interp. That Day the Robbery was committed, which was *Sunday*, he dined there.

Mr. *Bernard.* My Lord, I deſire to know whether ſhe did not ſee *Calaghan Carty* very often after the Time the Robbery was committed, and how often?

Interp. My Lord, ſhe ſays, that after the Robbery was committed, *Calaghan Carty* was in the Houſe after his Return from his Errand: He continued in the Houſe until ſuch time as he was taken.

Mr. *Bernard.* Pray, who took him?

Interp. One *Haloway*, ſhe ſays, one *Buck*, and ſome Dragoons.

Mr. *Bernard.* Pray, did *Calaghan Carty* tell her any thing of this Robbery during the Time he was in Priſon? --*Interp.* She ſays, he did not.

Mr. *Bernard.* Whether ſhe did not believe this to be a real Robbery, until he told her after he came out of Priſon?

Interp. She did then believe it was a real Robbery.

Mr. *Bernard.* Does ſhe believe now, in her Conſcience, it was a real Robbery?----*Interp.* She does not.

Mr. *Bernard.* What is the Cauſe ſhe does not believe it now?

Interp. She ſays, that ſhe found it out ſince to be otherwiſe.

Mr. Sol. Gen. Aſk her again,---What is the Reaſon that ſhe does not believe it to be a real Robbery, as well now as at the Time it was committed?

Interp. She ſays, my Lord, the Reaſon for believing that it was not a real Robbery, is, That ſhe found it out to be otherwiſe, not only by the Actors, but by the Servants and the Neighbours.

Mr. Sol. Gen. Pray, ask her again.

Interp. She believes it was not, for ſhe found it out, and they confeſs'd it: And a Portmanteau with ſome Linnen, that was ſent away to Mr. *O-Brien*'s, being afterwards come back from Mr. *O-Brien*'s, when the Linnen was taken out of it, ſhe ſaw there the Table-Cloth that was taken away by the Robbers that Night.

Mr. Att. Gen. Pray, was that Table-Cloth uſed that Night of the Robbery at Mr. *Hurly*'s Table?---*Interp.* She ſays it was.

Mr. Sol. Gen. She was aſk'd, Whether or no ſhe believes it was a real Robbery? and ſhe ſays, It was not a real Robbery; and her Reaſon was, That in a Portmanteau that came from Mr. *O-Brien*'s Houſe, there came back a Table-Cloth that was uſed and taken away that very Night of the Robbery at Mr. *Hurly*'s Houſe.

Court. Aſk her, whether ſhe took Notice of any Table-Cloth that was in Mr. *Hurly*'s Houſe the Night of the Robbery, that afterwards came back from Mr. *O-Brien*'s?

Interp. She ſays, they had that Table-Cloth in the Houſe that Night of the Robbery.

Court. Was it taken away by the Robbers?

Interp. They did take it away that Night: It was upon the Table in the Parlour, and they took it away.

Court. She ſays, the Table-Cloth was in the Parlour, on the Table, the ſame Night the Robbery was committed: Pray, ask her, Was it on the ſame Table where the Arms were?

Interp. It was upon a Side-board, my Lord.

Mr. *Bernard.* Pray, when did ſhe leave Mr. *Hurly*'s Service?

Interp. She ſays, that ſhe left his Service, and continued in his Father's Houſe till about *Chriſtmas.*

Mr. *Bernard.* Pray, whoſe Service did ſhe go to afterwards?

Interp. She went to Service to one Mr. *Wogan.*

Mr. *Bernard.* Was ſhe at Sir *Donogh Obrien*'s Houſe after that Time?---Whether ſhe was ſent for by Sir *Donogh O-Brien*--and for what?

Interp. She was there after ſhe left her Service.

Mr. *Bernard.* How long after ſhe left her Service?

Interp. She believes, within two or three Days after.

Mr. *Bernard.* Did ſhe go of herſelf, or was ſhe ſent for?

Interp One *Conſtance Davoir* brought her there.

Mr. *Bernard.* Is he a Servant?----*Interp.* No.

Mr. *Butler.* He is a Man that keeps an Ale-houſe in *Corroſin.*---Did he tell her Sir *Donogh O-Brien* ſent for her?---*Interp.* No, he did not.

Mr. *Bernard.* What Buſineſs had ſhe there?

Interp. He did not tell her what Buſineſs.

Mr. *Bernard.* To what End or Purpoſe did ſhe go there?

Interp. She ſaid, that he was her Friend, and ſhe went along with him.

Mr. Sol. Gen. What did ſhe go thither for?

Interp. To give an Account of what ſhe knew concerning this Robbery.

Mr. *Bernard.* Mr. *Hurly* was very ſevere on Sir *Donogh O-Brien.*-----Did ſhe ſee Sir *Donogh O-Brien?*

Interp. She did.

Mr *Bernard.* Had he any Diſcourſe with her?

Interp. She ſaid nothing to Sir *Donogh*, nor Sir *Donogh* to her---but ſhe was carried before a Juſtice of Peace.

Mr. *Bernard.* What Juſtice of Peace?

Interp. She does not know that.

Mr. *Bernard.* Whether Sir *Donogh O-Brien* was there?---Whether ſhe did not hear the Country, and all the Neighbourhood, ſay, That if they did not make this no Robbery, Sir *Donogh* would be ruin'd?

Interp. She ſays, ſhe heard no ſuch thing; but was deſir'd to ſay nothing but Truth.

Mr. *Bernard.* Was there any Promiſe made you of a Portion?

Interp. No, there was not.

Mr. *Bernard.* Was ſhe tamper'd with by any?

Interp. She ſays, No.

Mr. Sol. Gen. Don't aſk her if ſhe has been tamper'd with, for ſhe does not underſtand it; but, whether ſhe was offer'd any thing at all for ſwearing in this Cauſe?

Interp. She ſays, No; ſhe was offer'd nothing at all.

Mr. Sol. Gen. Now we will call *Walter Neylan*, who will give an Account of this Matter out of Mr. *Hurly*'s own Mouth.

Walter Neylan *ſworn.*

Court. Give an Account to the Jury what you know in this Matter.

Mr. Sol. Gen. Let him tell if he was in Priſon in *Ennis* Gaol, and on what Account, and what paſs'd there between him and *Hurly*.

Neylan. My Lord, the ſame time that Mr. *Hurly* was committed upon Suſpicion of the Robbery, I was in Priſon myſelf.

Court. On what Occaſion was you there then?

Neylan. I was bound for Mr. *Hurly*, and was confin'd for his Debt. I was in Converſation with him during his Confinement.

Court. Was he confined in the ſame Gaol?

Neylan. Ay, and in the ſame Room.

Court. Who was in the Gaol with you? Was there one *Donogh O-Brien Andrews* there?

Neylan. There was four Servants of Mr. *Hurly*'s; *Donogh O-Brien Andrews*, *Daniel Hicky*, *Calaghan Carty*, and, I think, *Daniel Carty*.

Court. What paſs'd between you and Mr. *Hurly*?

Neylan. My Lord, Three of them diſcover'd the Robbery, and the other held out for two or three Days. But, as I was coming out of the Room where I was confined, this Man *Donogh O-Brien Andrews* ſaid to me, Do you know whether my Maſter is working any thing for my Liberty? No, ſays I, I do not. Pray, ſays he, tell him out of Charity, that he take Care for my Releaſement, or elſe I muſt diſcover as well as the reſt.

Jury. We do not hear him.

Court. He ſays, he was in Priſon at the ſame Time with Mr. *Hurly* and four of his Men at *Ennis*: That he was converſant with *Hurly*, being Chamber-fellows: That Three of the Perſons, that were thus confined, confeſs'd the Robbery; but there was *Donogh O-Brien Andrews*, he ſtood out, and diſown'd it for ſome Time; and afterwards this *Donogh O-Brien Andrews* came, and ſaid to him, Pray, do you know whether my Maſter is doing any thing for my Releaſement? and he ſaid No, he did not. Pray, tell my Maſter, out of Charity, that if he does not ſoon work out my Liberty, I muſt diſcover as well as the reſt of my Fellow-ſervants.

Neylan. My Lord, upon this I came to Mr. *Hurly*, and told him the whole Matter. Says Mr. *Hurly*, If this Man does own it, I am undone, for he is the Man that knows moſt of it; and call'd me aſide, gave me a Piece of Money, and deſir'd me to give it to him, that he might not diſcover; and to tell him, that he would ſend for Security, and get him diſcharg'd, tho' it were from the County of *Gallway*. I went down accordingly with the Piece of Money into the Gaol; and becauſe I was unwilling to hold any Diſcourſe with the ſaid *Donogh O-Brien Andrews* alone, I gave the Piece of Money to *Calaghan Carty* to give him, and told him what Mr. *Hurly* ſaid. Says *Donogh O-Brien Andrews*, This will not do, for I love Liberty better than my Life, and I will diſcover. At the Time of this Man's ſaying he would diſcover, Mr. *Hickman*, a Juſtice of Peace, came into the Gaol; whereupon Mr. *Hurly* deſired me to ſpeak to Mr. *Hickman*, and pray him to ſpeak to the Gaoler, that this ſame *Donogh O-Brien Andrews* may have more Liberty than he had, and deſired me to be Security for him, and that he would give me Counter-Security. I told him, I would not ſpeak to him: Says Mr. *Hurly*, You ought to do it, if not in point of Friendſhip, yet in point of Gratitude; for it is through your Means I was forced to take thoſe Meaſures.

Court. Mr. *Neylan*, Pray, Sir, what did Mr. *Hurly* ſay to you when you came to him, and told him what *Donogh O-Brien* ſaid to you?

Neylan. He ſaid, That was the Firſt Man to whom he communicated the Contrivance of the Robbery; and, That it was moſt dangerous if he ſhould diſcover it.

Mr. Sol. Gen. Who ſaid ſo?

Neylan. Mr. *Hurly* ſaid, That this Man was the Firſt Man that he ſpake to of the Contrivance; and he ſaid, he was the Principal of the Four that contriv'd it.

Mr. Sol. Gen. Who did you give this Information to?

Neylan. I gave it to Mr. *Butler*; and there was preſent three or four Juſtices of Peace more.

Court. At the Time he was examined before the Juſtices of the Peace, he did not give the latter Part of the Evidence: I aſk'd him why he did not? He ſays, Becauſe he did not recollect himſelf. The firſt Part he did not give, concerning the Piece of Money.

Mr. *Forſter.* The Priſoner deſires to know after what Diſtance of Time he recollected himſelf?

Court. After he had given his Examination into the Juſtices of Peace.

Neylan. A Month or Six Weeks, I think, my Lord---But I told ſeveral People of it before.

Mr. *Forſter.* How came he to ſend for a Juſtice of Peace to take his Examination at firſt, and not to do ſo afterwards, when the latter Part of it came to his Memory?

Neylan. Becauſe Mr. *Hurly* was in Gaol at the firſt Time, and I thought he might have come to a Trial; but after he was remov'd up here, I deſpair'd of his coming to a Trial, and ſo did not think it material.

Mr. *Hurly.* My Lord, this is a Man that was in Trouble for me, and bound to *Thomas Arthur* on my Account: He had a Pique to me, and I to him; he lampoon'd me, and I him. I appeal to the Gentlemen of the Jury, whether I, that had my Wife and Siſter with me, whether they don't think I ſhould rather have truſted them with ſuch a Thing? All that he here ſays is out of Pique and Malice, which the Gentlemen of the Country do know.

Court. Mr. *Hurly*, you are a Man of Parts, and you know what is uſed to be done in this kind: If you pleaſe, you may have Pen, Ink, and Paper, to take Notes: and, when it comes to your Turn, you ſhall aſk what Queſtions you pleaſe.

Mr. *Hurly.* My Lord, 'tis all Malice.

Neylan. My Lord, I did contrive to make him pay the Debt of Two hundred Pounds (for which I was bound for him); but I ſuffer'd Damage above Threeſcore Pounds more---I did indeed get an Execution againſt his Goods.

Court. He ſays, he was mightily damnified by being bound for you; and that, having Counter-Security, he did order Judgment to be enter'd up againſt you; knowing that you had valuable Goods in the Goal, he order'd them to be taken.

Mr. *Hurly.* He ſays, my Lord, that he was ſo much damag'd: I'll prove, my Lord, that his Debt was ſatisfied, and over and over.

Mr. Att. Gen. My Lord, we will produce a Witneſs, that ſaw this Rapparee Act perus'd in Mr. *Hurly*'s Houſe at *Moughna*; and we'll ſhew you what paſs'd at reading the Act.

Capt. Charles Mac-Donogh *ſworn.*

Mr. Att. Gen. My Lord, Captain *Mac-Donogh* will give your Lordſhips and the Jury an Account of the Neceſſity the Priſoner was under; and that the Rapparee Act being read on ſome certain Occaſion at a certain Place, what happen'd thereupon.

Court. Pray, Sir, give an Account to the Jury what you know of Mr. *Hurly*, and his Circumſtances.

Capt. *Mac-Donogh.* My Lord, I was very well acquainted with Mr. *Hurly* ſince the Time he came out of *England*; I receiv'd Letters from him, and I was employ'd by him in negociating ſeveral Affairs in the Country, and particularly againſt his Brother, that ow'd him ſome Money. I thought he was very ſevere againſt his Brother, and I charg'd him for being ſo unkind to him: He ſaid, he was in want of Money, and ſo could not help it. And I was with him when he was reading the late Act of Parliament relating to the Article-men; and he ſaid, He would paſs his Adjudication according to the Articles of *Gallway*. I ſaid, I thought he was in *France*, and not in *Gallway*. Said he, It's no matter, I will prove it. And he came after to *Dublin*, and paſs'd his Adjudication. And after he came down again from *Dublin* I was with him; and he brought with him the Act of Parliament, commonly call'd *The Rapparee Act*; and he ſaid, That the Rapparee Act was a clever Way to recover Money from the Country.

Court. When was this?

Capt. *Mac-Donogh.* The latter end of *Chriſtmas*, before the Robbery.

Court. Pray, what Year?

Capt. *Mac-Donogh.* My Lord, it was *Chriſtmas* 1699.

Mr. *Butler.* Have you any of thoſe Letters of Mr. *Hurly*, that ſhews he was in great Want of Money?

Capt. *Mac-Donogh.* Yes, I have.

Mr. Recorder. Pray, in what Circumſtances was he at *Chriſtmas* 1699?

Capt. *Mac-Donogh.* He was poor and indigent; and he ſaid, He was ſo great a Friend to his Brother, and lov'd him ſo well, that he would not have proſecuted him, if he had not wanted Money.

Mr. Att. Gen. Had you any Diſcourſe with Mr. *Hurly* after the Robbery? Pray, what was it?

Capt. *Mac-Donogh.* My Lord, Capt. *O-Brien* writ me a Letter after he came to the Place, and was perſuaded by him, that it was a real Robbery, and deſir'd me to come, that we might conſult the Matter: And knowing, that he had no ſuch Money, I wrote him a Drolling Letter, That I believ'd it was ſome *Papiſts* robb'd him; and that he would recover his Money of the County. I came to *Ennis*, and he told me, He had loſt all that he had in his Houſe to pay his Debts; which I ſmil'd at, becauſe I was before in his Houſe when he came from *Dublin*; and I ſaid to him, I hope you have brought Money, for otherwiſe the Country will be too hot for you now, becauſe Mr. *Neylan* lies in Goal for you; and this Sheriff is not your Friend. And he did not pretend that he had Money; but ſaid he, Never matter that, for Sir *Toby Butler* and Colonel *John Macnamarra* will make my Intereſt good with the Sheriff. And ſo the Letter coming after from Capt. *O-Brien* to me, that Mr. *Hurly* had loſt ſuch a Sum of Money, I laugh'd at it, becauſe I knew that he had no ſuch Sum. And when he told me, at the Aſſizes at *Ennis*, how that he was robb'd, he ſaid, He would give me Two hundred Guineas if I manag'd the Buſineſs for him, to get the Money from the County.

Mr. Att. Gen. You had ſeveral Letters from Mr. *Hurly*: Pray, let us ſee 'em.

[*Shews the Letter.*]

Mr. Recorder. Did you receive this Letter from Mr. *Hurly*?

Capt. *Mac-Donogh.* Yes; 'tis his Hand-writing---There has paſs'd many Letters between him and I.

Mr. *Recorder.* Did you ever diſcourſe with him ſince you receiv'd this Letter about the Subject and Matter of it?

Capt. *Mac-Donogh.* Yes, I did.

Court. Did you ever anſwer it?

Capt. *Mac-Donogh.* Yes, I did.

[*The Letter read.*]

Thurſday, Auguſt 17 1699.

Dear Couſin,

‘JUST now I received the encloſed from our never-failing little Agent. What we have hitherto done, is but very inſignificant to the main Matter. If this be not duly executed, and without Loſs of Time, there is no other Way on Earth to do it, but that we thought of and propoſed; that is, When the *Colonel* comes in Perſon, immediately after the Aſſizes, to execute the Surplus of the *Fier. Fac.* the Gentleman will, no doubt on't, ſend to him (as he did before) to know if he has any againſt his Perſon? When he ſends him Word he has not, he will come to him; and when they are together, you muſt get ſome Clever Fellow that will put it into his Hands. Spare no Coſt to do this, my Dear Friend: You poſſeſs the Matter fully, and I have ſeveral convincing Proofs of the Sincerity of your Intentions towards me; therefore will ſay no more, but refer it wholly and ſolely to yourſelf; and deſire once more, you will ſpare no Coſt to compaſs it. The great Friend arrived in *Dublin*, and he expects our *Couſin* there *Wedneſday* next: He goes away *Saturday* Night to *Solomon* his Brother-in-Law's Houſe, where it would be a vaſt Comfort for him, towards his Journey, and the carrying on the Clever Touch, to receive a Box of Pills from you, which will be very much wanting. If not, and that you could get a Bill for't from *Pierce Verrony*, who will be there to meet my Brother *John*, it ſhall be highly ſerviceable; make it payable to our Agent, at Mr. *Thomas Hewlet*'s Houſe in *Smithfield*, and ſhe will pay it to Mr. *Baldwin*. Let not our generous Friend's Good-Nature be prevail'd upon to give any Time or Forbearance; for, I do aſſure you, that and more muſt be laid out to carry on the Clever Touch; which I have the greater Hope will not fail taking the good Effect, ſince you are ſo poſitive in it. I hope you have a Will. Do your Buſineſs with Sir *Theo.* —— and ſend his Opinion about the *Elegit*. Our Couſin will write to you from *Dublin*, directed as you ſhall appoint in the Anſwer to this. I will take Leave, begging the Favour you will remember me moſt thankfully to our worthy Friend, whoſe Services I ſhall find a Way to return as he deſerves. The longer he ſtays after the Aſſizes, the worſe 'twill be for us. Diſpatch me back the Bearer as ſoon as you can, and pay an Expreſs, if you do not come yourſelf, of *Saturday* Night to *Solomon*'s: Our *Couſin* will go from thence on *Sunday* before Day. My Service to Mr. *Conner*, and know whether he delivered and ſeconded the Letter to my Lord *C. J.* Put this Letter and the encloſed into your Fob, leſt you ſhould drop it. As you have appeared all along a true Friend for me, my Dear Kinſman, go through with it, and aſſure yourſelf your Pains ſhall not be ill beſtowed. The executing this, is the Clever Touch indeed; and I am ſure it will ſucceed, ſince you undertake it. My moſt kind Service to my worthy Friend; I hope he hunted well.’

Mr. Sol. Gen. Pray give me that Letter——My Lord, I ſhall take leave to read it, and aſk ſome Queſtions out of it.----Sir, by the Oath you have taken, pray what does he mean by Our never-failing little Agent?

Capt. *Mac-Donogh.* That was his Wife, that was here in *Dublin*----There was a *Fieri Facias* againſt the Goods of his Brother *John*; but that would not do, ſo he deſired his Wife to ſend an Execution againſt his Body.

Mr. Sol. Gen. Our great Friend is arrived at *Dublin*----Who does he mean by that?

Capt. *Mac-Donogh.* Really, Sir, by what I underſtand, it was the *Attorney-General.*

Mr. Sol. Gen. Who was his Couſin here, *Solomon?*

Capt. *Mac-Donogh.* He is one *Donogh O-Dea*, married to his Siſter, whom he thought an inſignificant Man; and therefore he called him *Solomon*, by way of Ridicule.

Mr. Sol. Gen. What was the Clever Touch, and the Box of Pills?

Capt. *Mac-Donagh.* The Clever Touch, was the Adjucation; and the Box of Pills, was the Money to be ſent to *Dublin*, to paſs the Adjucation.

Mr. *Butler.* Have you any other Letters?

Capt. *Mac-Donagh.* Yes, I have.

Moughna, *October* the 5th, 1699.

‘I Have Advice from a very ſure Hand, Dear Sir, that I am liked to be Blocked up very ſoon, or rather regularly Beſieged by the formidable Captain *Thomas Bourk*, and a ſelect Party he brags to have hired of the *Enniſkillin* Dragoons for that Purpoſe. He received Fifty Pounds Sterling for that generous Undertaking, and entered into Bonds of Two Hundred Pounds Penalty, to have me in *Salv. Cuſtod.* before the Firſt Day of next Term. And, as I am reſolved to keep my Ground, and maintain this Poſt to the laſt Extremity, I have detached Corporal *Malone* for Ammunition to put myſelf in a Condition to receive the Thrice-worthy Captain; for this is no Time of Day for me, (*poſt varios Caſus*) to give my Head for the Waſhing. The *Corporal* is but very lately arrived into my Service, and conſequently has but young Skill in Powder and Ball: Therefore muſt entreat you to chuſe and ſend me a Pound of the beſt Powder, and three Dozen of Carbine, Muſket, and Piſtol-Ball.

‘Poor *Tom* is very much in the right on't, to revenge his Quarrel with a Party, ſince his Courage never inſpired him to do it ſingle Hand: And his ſelect Party (as he calls them) are reſolved to follow the *Col.* *General* of the *French* Dragoons (*Mareſchal* de *Boufflers*) Maxim: for he was of Opinion, No Man was fit for a Dragoon, that in Time of War out-liv'd two Campaigns; or, in Peace, did not once, at leaſt, in every fifteen Days, ſeek Adventures for a broken Head: Pray diſpatch me back the *Corporal*; and though the Enemies Lines of Circumvallation ſhould be perfect, nay, their very Batteries be rais'd and fix'd, if you let me know the Day preciſely that you intend to call this Way, I will make a *Sortie* to facilitate your Entrance. I have not one Word from our Friend ſince I ſaw you. If your Leiſure will permit it, pray let me know what Progreſs you have made in the laſt Affair that was communicated and recommended to you by, Dear Sir,

‘*Your affectionate Kinſman,*

‘*and very humble Servant,*

‘Patrick Hurly.’

For Capt. Charles Mac-Donogh, *at* Ennis.

Mr. Sol. Gen. You ſee that the Gentleman was very apprehenſive of Debt, and guarding himſelf againſt it at this Time.

Mr. Att. Gen. I deſire to know, in this firſt Letter, who it was that was his good Friend?

Capt. *Mac-Donogh.* He told me, Sir, he look'd upon you to be his great Friend.

Court. Had you any Communication or Diſcourſe with Mr. *Hurly* about this Robbery? Did he confeſs it?

Capt. *Mac-Donogh.* I did not put it to him: But I told him he would be Indicted for Perjury, and loſe his Ears. He ſaid, Twenty Pounds would ſave them.

Mr. *Hurly.* He ſaid, I muſt not ſtay in the Country, if I did not pay Mr. *Arthur.* I deſire to know, Whether I did not tell him I was to meet Mr. *Arthur?*

Capt. *Mac-Donogh.* You told me you would make an end with Mr. *Arthur*: And you ſaid at the ſame Time, that you had Sir *Toby Butler* and Mr. *Macnamarra* to make the Sheriff your Friend: And that did imply to me, that you had no Money.

Mr. *Hurly.* I came to *Dublin* in *Auguſt*, and they arreſted me. I went to perfect Bonds to Mr. *Arthur* for the Debt, which was 723 Pounds. He exacted upon me, and I was forced to conſent to him a Bond for the whole Demand. I ſent for Sir *Toby Butler*, and we made up the Account; and Mr. *Arthur* made it up near 1000 Pounds, for which I gave him my Bond. Mr. *Butler* told me, You will be reliev'd, by preferring a Bill in *Chancery* againſt *Arthur*. I did not ſerve him with a *Subpœna*, but he abſconded, and ſo I got no Remedy to this Day. And the Reaſon why I paid him not, was to make him come to Terms, that I might retrench the extravagant Charge.

Court. Did he give that as a Cauſe why he would not pay *Arthur*, becauſe he had exacted upon him?

Capt. *Mac-Donogh.* He did not tell me ſo.

Court. Was this the Reaſon, as you apprehended, why Mr. *Hurly* abſconded, that he was on his keeping for fear of *Arthur?*

Capt. *Mac-Donogh.* For aught I know, it was for fear of others as well as Mr. *Arthur.* I remember the Night he came home from *Dublin*, ſome few Days before the Robbery, that he was barricading his Door, and telling me of making the Sheriff his Friend; whereby I concluded, that he could not have that Money that he afterwards pretended he had loſt.

Court. How came you, Mr. *Hurly*, to barricade that Houſe, when Mr. *Arthur* had promiſed not to diſturb you at the Aſſizes of *Ennis?* He ſwears, the very Night you came from *Dublin* you were barricading that Houſe.

Mr. Att. Gen. I deſire to know, whether he believes that he had Money in his Houſe the Night he was robbed?

Capt. *Mac-Donogh.* He did tell me ſo; but I did not believe him.

Court. Do you know any thing of thoſe Counters?

Capt. *Mac-Donogh.* My Lord, about *February* laſt, the Wife of *Daniel Hicky*, who was ſuſpected to be in the Robbery, came to me and ſaid, that her Huſband was like to be undone for paſſing ſome Counters: That if he could get his Liberty, he would go to *Dublin*, and ſwear the Cheat of the Robbery; and, ſays ſhe, We have ſome of the Counters that they ſaid was Gold, in our keeping, and we will produce them.

Court. Did you ſee any of thoſe Counters at any Time?

Capt. *Mac-Donogh.* Yes, I did, when the Conſtable took them out of *Hicky*'s Houſe.

Mr. Sol. Gen. It ſeems that *Daniel Hicky*'s Wife told him, that ſhe could produce the Counters. We ſhall ſhew you, that there was Search for them accordingly. To whom did you make a Diſcovery of this of *Hicky*'s Wife?

Capt. *Mac-Donogh.* I told it to Mr. *Butler*, who is a Juſtice of the Peace in the County of *Clare*, and to Capt. *Bindon*: The Woman was taken and Indicted for paſſing theſe Counters.

Mr. *Forſter.* How came ſhe to be diſcharged after ſhe was taken?

Capt. *Mac-Donogh.* She was bail'd at the Quarter-Seſſions.

Mr. Sol. Gen. My Lord, we ſhall ſhew you where the Counters were found, and who found them.

Mr. *Bernard.* And we ſhew, that the Man that found them hid them.

The High-Conſtable Walter Huonin *ſworn.*

Court. Had you any Warrant, and from whom, to ſearch for Counters or Counterfeit Money?

Huonin. Yes, my Lord, I had a Warrant from Dean *Blood*, to ſearch for Goods that were pretended to be robb'd from *Patrick Hurly*. I came to the Town of *Moughna*, and brought with me five Men and a Petty Conſtable; and I went to the Houſe of *John Hurly*, *Patrick Hurly*'s Father, who was Bed-ridden, and removed him out of his Bed: And I went to *Carty*'s Houſe, and dug there, and found none; and I came to *Daniel Hicky*'s, and digged about; and there was a Bed of Dung by the ſide of the Houſe, where they fodder their Cattle, and it was a Foot above the Floor of the Houſe; and after ſearching the reſt of the Houſe, I ordered the Dung to be removed out of the Place; and I bid the Fellows come and dig there, and they did; and *Hicky*'s Wife held the Candle herſelf; and one of the Men that was next the Wall hit a Stone in the Ground, and it was a Slate over a Hole in the Floor, and the next of them threw it out, and along with it a Suggane and a Purſe; and when I ſaw the Purſe, I would not let him handle it. I opened it, and found it full of yellow Counters, and took an handful of them out, and called the People of the Town, and reckon'd them all before their Faces.

Court. What did you find in the Purſe?

Huonin. My Lord, nothing but Counters.

Court. Have you them?

Huonin. Yes, I have all that was found----I came to the Aſſizes at *Ennis*, and my Lord Chief-Juſtice *Haly* ordered me to keep them till I ſhould appear at the Trial.

[*Shews the Suggane and Purſe with the Counters, which was opened, and were* 121 *in Number.*]

The reaſon why I was ſo careful to ſearch there, was becauſe *Hicky*'s Wife was preſſing for my not touching the Dung; and after they were found, when ſhe ſaw the Counters, ſhe dropt the Candle, and went away. Says I, Good Woman, you muſt go along with me. I brought the Woman to *Ennis*; and I was brought before my Lord Chief-Juſtice, who deſired me to keep the Counters againſt the Trial.

Mr. *Hurly.* Whether it be likely, that this Woman, that was Indicted for theſe Counters, would not have removed them, and thrown them into a by-hole; and if they were in the Ground, whether the Purſe would not be rotten?

Court. He ſays, when it was taken up, the Suggane that was about it was mouldy and wet, for the Purſe itſelf is damnified.

Mr. Sol. Gen. Pray, what is the Name of the Village where the Houſe ſtands?

Huonin. It is *Moughna*, where the Father of Mr. *Hurly* lives.

Mr. *Bernard.* How long after the Robbery was this found?

Huonin. It was a whole Twelve-month.

Mr. *Bernard.* Was you directed to ſearch that Dunghill before you went to the Houſe?

Huonin. No, I was not; only a Fellow told me that he ſuſpected that Place.

Mr. *Recorder.* Was it in the firſt Place, or in the laſt Place, you ſearch'd, that you found theſe Counters?

Huonin. It was in the laſt Place.

Mr. *Recorder.* How near is this *Hicky*'s Houſe to Mr. *Hurly*'s?

Huonin. About a Quarter of a Mile, or leſs.

Alderman Walton *ſworn.*

Mr. *Forſter.* Sir, Mr. *Hurly* calls you, to know what Money you paid him?

Ald. *Walton.* My Lord, I came over with Mr. *Hurly* in *October*, 1697. And ſometime after he was here, he came to me and told me, he had ſome Money to receive, and aſk'd me if I would receive it for him? I told him it was Mr. *Burton*'s buſineſs; but he ſaid he was a Stranger to him, and ſo let my Servant receive 400 Pounds from Mr. *Arthur*, and 100 Pounds from Mr. *Fitz-Symmons*.

Mr. *Bernard.* I deſire Ald. *Walton* to tell, when they came over in the War-time, whether he ſaw any Jewels with Mr. *Hurly*?

Ald. *Walton.* We did ſee a Ship, that we thought was a Privateer, but it prov'd a Friend: He then told me, he had ſome things of great Value, which he was going to ſecure; but I did not ſee them.

Sir *John Mead.* How long was the Money in your Hands?

Ald. *Walton.* It was all drawn out in three or four Months time.

Mr. Att. Gen. Pray, was it all drawn out of your Hands before 99?

Ald. *Walton.* Yes, yes.

Mr. Sol. Gen. The next thing that was drawn out was Writs and Proviſo's, to force Mr. *Hurly* to pay back the Money to Mr. *Fiſher*. My Lord, we will call two that were by when theſe Counters were found by the Conſtable.

Thomas Edwards *ſworn.*

Court. Do you know of any Search made in any Body's Houſe concerning Gold or Money?

Edwards. My Lord, I was commanded by the High-Conſtable, *Walter Huonin*, to the Houſe of *Daniel Hicky*; and when I came, I found a Youth on his Knees making up the Dung: I aſked him, what he was doing there? The Woman ſaid, He was endeavouring to hide ſome Potatoes. I told her, there was nobody would take them away. Now, my Lord, there was no Potatoes there; but we found the Counters under the Dung, about eight Inches deep in the Ground; they were in a Leather Wallet, whip'd about with a Thumb-Rope of Hay.

Court. How did the Woman behave herſelf?

Edwards. When the High-Conſtable told her, You muſt go along with me; ſhe ſaid, Now theſe are found, I believe I muſt.

Mr. *Forſter.* Did you ſee the Counters when they were taken?

Edwards. Yes, I did.

Mr. *Forſter.* Did they look freſh?---*Edwards.* Yes, they did.

Mr. Sol. Gen. My Lord, before we go any further, the Gentlemen that are Counſel for the Traverſer would fain inſinuate, that the Counters were laid there,--that *They that hide can find.* Now, therefore, to ſhew that to be impoſſible, we ſhall prove to you, that this Woman, the Wife of *Daniel Hicky*, did offer ſome of theſe Counters for a Cow, before this Diſcovery.

Mortogh Mac-Colloghy *ſworn.*
(*Per Interpreter.*)

Mr. Att. Gen. Does he know one *Daniel Hicky*?---*Interp.* He does.

Mr. Att. Gen. Does he know his Wife?----*Interp.* Yes.

Mr. Att. Gen. Had he any Dealing with any of them?

Interp. He ſays, he had a Cow, and it was ſtray'd, and he found her, and was hurrying her home by *Hicky*'s Houſe;-----he reſted there, being weary, and was taking a Pipe of Tobacco, and they aſk'd him, if he would ſell the Cow? He ſaid, he would: And he went into a Back-room, and brought two yellow Pieces,---he ſays, he has the two Pieces here to ſhew.

[*Produces the Pieces, being two yellow Counters, the ſame with thoſe that* Huonin *produced in the Purſe.*]

Court. Are thoſe the Pieces *Hicky*'s Wife offer'd him for this Cow?

Interp. He ſays they are. When he was receiving the two Pieces the Woman gave him, he ask'd her what they were? She ſaid, Two Guineas: He ſaid, He believ'd they were ſome of *Patrick Hurly*'s Gold.

Court. Why did he ſay ſo?

Interp. Becauſe he imagin'd he had ſome Gold Counters.

Court. Did he ſell his Cow for the Money then?---*Interp.* No.

Court. How came he to keep the Money then?

Interp. He told her, he did not like the Coin, and he would not ſell his Cow for them, becauſe they were ſome of *Patrick Hurly*'s Gold; and he ſaid, What will you take for 'em? I have Threepence Halfpenny, and ſome Tobacco, and if you will take them, I'll give 'em you for the Pieces: Yes, ſaid ſhe, I will; and I wiſh I had ſo much for every one I have.

Court. He ſays, he was after this examin'd by a Juſtice of Peace concerning theſe Things; How came he to be examin'd?

Interp. He went himſelf, and ſhew'd 'em to Mr. *Bindon*.

Court. Did he go of himſelf? or, Was he ſent?

Interp. He ſays, he told Sir *Donogh O-Brien* what had happen'd, and he directed him to go to the Juſtice.

Court. Pray, how long was it after he had theſe Counters?

Interp. He ſays, Nine or Ten Days.

Court. Did he go to Sir *Donogh* of his own accord? or, Did any one bid him go?---*Interp.* He went freely of himſelf.

Court. When was it that he receiv'd thoſe Counters he ſpeaks of?

Interp. About *Chriſtmas* laſt.

Court. When was it he bought the Cow?

Interp. He ſays, he bought her at *Clare* Fair, about *Allholland-tide* before.

Court. What time was it that the Woman would have bought it of him?

Interp. It was a good while after.

Court. Was it before or after *Chriſtmas* he was ſelling the Cow to this Woman?----*Interp.* After *Chriſtmas*, my Lord.

Court. How long after?

Interp. He does not exactly remember the Time.

Court. Now, pray, Gentlemen, we muſt do right to every body.—When he comes to receive the Counters, he ſaid, it was about *Chriſtmas*;—and when he comes to tell you when he bought the Cow, it was all at the ſame Time.

Mr. Sol. Gen. No, no; the Matter of the Counters was at the Time when ſhe cheapen'd the Cow; but he bought the Cow at *All-Saints* before, and he was about ſelling her at *Chriſtmas*.

Mr. *Recorder.* About nine Days after he was in poſſeſſion of the Gold he came to Sir *Donogh O-Brien*, of his own accord, and he bid him go to a Juſtice of Peace.

Mr *Bernard.* Pray, why did he not go to Sir *Donogh O-Brien* ſooner?---And, What made him go then?

Interp. He waited for the Quarter-Seſſions.

Mr. *Bernard.* Who is the neareſt Juſtice of Peace living next his Houſe?

Interp. Mr. *Bindon*.

Court. How came he not to go before Mr. *Bindon* immediately when he got the Counters?

Interp. He ſays, he waited for the Quarter-Seſſions.

Court. Pray, how came he not to go immediately to Mr. *Bindon*, being the next Juſtice of Peace, rather than to Sir *Donogh O-Brien*?

Interp. He expected all the Juſtices would be together at the Quarter-Seſſions.

Mr. *Forſter.* Mr. *Hurly* deſires to ask that Man ſome Queſtions.----How came the Cow to go out of the Barony after he had bought her? How came the Cow there?

Interp. The Man that ſold him the Cow in *Clare* Fair liv'd there, and ſhe ſtray'd back again.

Mr. *Hurly.* How came the Cow to go aſtray?

Mr. Sol. Gen. We cannot tell you; you may examine the Cow, the Cow knows beſt.

Mr Att. Gen. We will now ſhew, that when *Hurly* came from *Dublin* he lodg'd at Capt. *John Lynch*'s Houſe, and he pull'd out of his Portmanteau a large Bag, that look'd as if it were full of Gold; and Capt. *Lynch* handling of it, and finding it light, he open'd it, and found it to be Counters. This Capt. *Lynch* is Landlord of *Moughna*, and they were intimate together.

Capt. Lynch *ſworn.*

Mr. Att. Gen. Pray, do you know Mr. *Patrick Hurly*, now at the Bar?

Capt. *Lynch.* I have known him theſe Thirty Years.

Court. Have you intimate acquaintance with him?

Capt. *Lynch.* He cannot deny but I have.

Mr. *Att. Gen.* Pray, give an Account of his coming to your Houſe.

Capt. *Lynch.* I met Mr. *Hurly* at *Loughrea,* at one *Harry Bargery*'s Houſe, in the Year 1699, either a little before or after *Chriſtmas.*

Court. Where was he going?

Capt. *Lynch.* He was going to the County of *Clare,* from *Dublin*; and as we were drinking a Bottle of Wine,---he went to a Portmanteau that lay on a Table, and taking out Linnen, he pull'd out a Bag that held about a Quart; ſaid I, Mr. *Hurly,* you are well ſtock'd with Money coming from *Dublin.*——And I clapp'd my Hand into the Bag, took out an handful, and they were Counters, my Lord, of ſeveral Sizes, like ſingle and double *Louis d'Ors.*

Mr. *Sol. Gen.* Shew him ſome of the Counters.

[*He looks on them.*]

Capt. *Lynch.* This is like them.

Hurly. When was it?

Capt. *Lynch.* It was a little before *Chriſtmas,* or ſoon after.—I wonder, Mr. *Hurly,* that you ſhould deny it.

Mr. *Sol. Gen.* Upon the Oath you have taken, Had you any Diſcourſe at this Meeting about any Acts of Parliament?

Capt. *Lynch.* I'll tell you, my Lord: He aſk'd how Mr. *Banks*'s Money went? (Mr. *Banks* was one that was robb'd of the Value of Two hundred and fifty Pounds, and the Grand Jury, at the Aſſizes, allow'd him the Money, when he petitioned for it.) A while after, in our Journey, ſays he, Couſin, I have a great deal of Confidence in you, and if you'll aſſiſt me to get Money----I told him, in any juſt Way I would, but not otherwiſe.

Mr. Attor. Gen. Had you any Diſcourſe about the Rapparee Act?

Capt. *Lynch.* He told me plainly, that if I would but aſſiſt him,----and then brought down the Statute, and aſk'd me again, how Mr. *Banks*'s Money went in our County? I told him, he recover'd his Money from the County. Says he, Couſin, I really want Money; and if you'll aſſiſt me in ſuch a Matter, and come to me, I will deliver you your Leaſe. I told him, I would aſſiſt him in any juſt Way; but no further.

Mr. Recorder. You ſaid juſt now, that he ſpoke of the Act.

Capt. *Lynch.* He told me, That the Act was a very good Way for a Man to get Money that wanted it.

Mr. Attor. Gen. Are you a Relation to Mr. *Hurly*?

Capt. *Lynch.* I have a Friendſhip for him; and if I had known I was to be ſummon'd, I would not have been within forty Miles of this Place this Day.

Court. Pray, what Relation are you to him?

Capt. *Lynch.* His Brother was married to my Siſter, and he and his Father was Tenants to me and my Father theſe forty Years.

Court. Had you any Linnen ſent to your Houſe? and by whom?

Capt. *Lynch.* My Lord, I cannot tell was it Linnen or no; but there came a Trunk, and I had a Letter beforehand (it was in *April* or *May* 1700), informing me, that the Trunk would be with me that Night, and deſiring me, that I would not let the Men that brought it ſee it afterwards.

Court. Did the Trunk come?

Capt. *Lynch.* Yes.

Court. Was it weighty?

Capt. *Lynch.* It was as much as any Two could carry.----The Servants told me, they were coming all Night; that they did not ſleep.

Court. How far is your Houſe from Mr. *Hurly*'s?

Capt. *Lynch.* Seventeen Miles.

Court. Had you any Diſcourſe with him in the Gaol of *Ennis*?

Capt. *Lynch.* Yes; I went to ſee him at the Gaol of *Ennis,* and Mr. *Butler* met me: I told him, I was going to ſee *Hurly.* And as we were taking a Bottle of Wine together, I ſaid, Couſin, it is not fit for any Gentlemen to viſit you, for the Pranks you play'd in *France,* and now this Robbery.----He ſaid, Sir *Donogh O-Brien* was the greateſt Enemy he had againſt him,---but he would loſe his Blood, or he ſhould loſe his.

Court. Did the Servants that brought the Trunk tell you what was in the Trunk?

Capt. *Lynch.* They told me, that it was really full of Linnen.——And *Ulick Bourk* came, and expected Mrs. *Hurly* that Night.——My Wife was like to die.——The Servants that brought me the Trunk brought me a private Token, not to let any body have it,——not Capt. *Bourk* himſelf.——But I ſuſpected there was no good in it, and I let them take it away; ſo the Trunk was taken away from my Houſe that Night, and brought to a Neighbour's about a Mile off.

Mr. Sol. Gen. What Relation is *Ulick Bourk* to Mr. *Hurly*?

Capt. *Lynch.* They are married to two Siſters.

Mr. *Bernard.* My Lord, this Gentleman hath ſwore very materially, and I deſire he may fix a Time; and tell us within a Fortnight: Was it before or after *Chriſtmas*?

Capt. *Lynch.* I am not poſitive, but it was in the Year 1699.

Mr. Attor. Gen. What Houſe was it at *Loughrea*?

Capt. *Lynch.* It was at *Harry Bargery*'s Houſe.

Mr. *Hurly.* What Time was it?

Capt. *Lynch.* I cannot be poſitive to Time, but it was before the Robbery.

Court. Pray, recollect, as near as you can, what Time it was you were together at *Loughrea*?

Capt. *Lynch.* I can't be poſitive.

Mr. *Bernard.* Was it in the Time of *Lent,* or not? It is ſtrange!

Capt. *Lynch.* If I did know to a Day, I would tell it.

Mr. Recorder. You ſay it is ſtrange! He ſays, that Mr. *Hurly*'s Denial to him is more ſtrange! He is particular as to the Time of the Trunk, and yet he can't be ſo as to the other Time.

Court. Mr. *Hurly,* you ſhall make the beſt Uſe of it you can; when the Man tells you on his Oath, that he cannot tell; and we can't make a Man ſwear more than he can ſwear: He ſays, it was in 99, and before the Robbery. Was it in Winter, or Summer?

Capt. *Lynch.* In the Winter, as I do really remember it.

Mr. *Hurly.* My Lord, I humbly offer this: This Gentleman ſays, he met me at *Harry Bargery*'s Houſe in *Loughrea*; and that I open'd my Portmanteau for him to take out a Bag.

Court. No, he ſays you open'd the Portmanteau to take out ſome Linnen; and you took out a Bag, and you look'd into it.

Mr. *Hurly.* Was this half a Year before the Robbery?

Capt. *Lynch.* I do not know.

Mr. *Hurly.* My Lord, I will prove I was not there, at *Loughrea,* the laſt Time I went home. And, my Lord, my Father held ſome Land from him: There came ſome Difference, and he told his Brother, that if I did not give up the Land, he would give me a Lift.

Mr. *Bernard.* Was there any one in the Room then with you?

Capt. *Lynch.* Nobody but Mr. *Hurly* and I.

Mr. *Hurly.* Pray, Sir, what ſort of Portmanteau was it?

Capt. *Lynch.* It was a Cloth Wallet, blue and red.

Mr. Attor. Gen. The next Evidence we produce, is one *Charles Caſſidy*; he was thought a fit Man for the Service, and was ſollicited to be Commander in chief of this Robbery.

Charles Caſſidy *ſworn.*

Court. Give an Account what you know of any Robbery of Mr. *Hurly.*

Caſſidy. My Lord, I was a Practitioner in Surgery; and Mr. *Hurly*'s Father fell ſick, and I was ſent for to attend him three Weeks or a Month; and then one Dr. *Brady,* a Relation of Mr. *Hurly*'s, was ſent for: And as we were going up to ſee other Patients, the ſaid Dr. *Brady* and I, ſays the Doctor, If you will take upon you a Buſineſs, you ſhall have Twenty Guineas. What is it to do, ſays I? It is to head a Party, ſays he, to rob *Hurly,* and then he will raiſe Money on the County. And after this, when he came back, the Doctor told him what he had offer'd me. *Hurly* ſaid, I will give him Forty Guineas; and ſaid, he would get People himſelf: And he ſaid, I have four Perſons, that I will truſt with you, *&c.* but I went away, and never came near him ſince.

Court. When was this?

Caſſidy. It was thirteen or fourteen Months before he was robb'd.——I ſerv'd in the Houſe from before *Chriſtmas* to *Eaſter.*

Court. Mr. *Hurly,* he ſwears thus; That he was employ'd to attend your Father, that was ſick at that time; and that after ſome Attendance you took Occaſion to ſend for Dr. *Brady,* a Relation of yours: And going with the Doctor abroad to viſit other Patients, he told him, You get little Fees from Mr. *Hurly*; but, ſays he, if you will head a Party for a pretended Robbery on Mr. *Hurly,* he will get Money of the County, and you ſhall have Twenty Guineas. He ſaid, he did not care to meddle with it; for his Relations would ſuffer by it; but he ſaid, It would be but little that every one would pay: Then, ſaid he, I don't care if I do. And when he came home, the Doctor told before your Face what he had done. You ſaid, What! give him Twenty Guineas! I'll give him Forty Guineas. And after, when he went home, he thought not fit to to do it; for he told you, his Face was very remarkable, and known in the County; and that he ſhould be diſcover'd. Oh! Sir, ſaid you, I'll help you to another Face. You told him, he ſhould have one *Donogh O-Brien, Daniel Hicky,* and *Calaghan Carty* to aſſiſt him.

Mr. Sol. Gen. Has not *Donogh O-Brien* another Name?

Caſſidy. I know, my Lord, it is *Donogh O-Brien Andrews*'s Son.

Court. You have been acquainted ſince *Chriſtmas* was two Years; When was it that this was ſaid to you by Dr. *Brady*?

Caſſidy. It was the *February* after.

Mr. *Robbins.* How long after this Diſcourſe of Dr. *Brady* and Mr. *Hurly* did you ſpeak of it?

Caſſidy. My Lord, I did not ſpeak of it; and the Night it was to be tranſacted I ran away from my own Houſe, for fear of being ſuſpected.

Mr. *Robbins.* Did you go before a Juſtice of Peace voluntarily? or, Were you call'd to give that Examination?

Caſſidy. I kept it to myſelf till laſt *Sunday*; being at Church, and after dining at Mr. *Hickman*'s, they were talking of *Hurly*'s Buſineſs. I ſaid, There is a Man in this Country that can do Mr. *Hurly* more Miſchief, in relation to this Robbery, than any other. Who is that? ſaid he. I, being afraid to bring myſelf into Trouble, ſaid no more. Says the Miniſter, You ought to be puniſh'd, if you don't do your beſt for to ſave your Country from Ruin. And, upon this, after I came home I recollected myſelf, and I went to a Juſtice of Peace, and ſwore it; and after I had given my Teſtimony, he bound me over to proſecute.

Mr. Sol. Gen. He has done like an honeſt Man.

Mr. *Forſter.* How came you to conceal it for Two Years paſt? Did you never tell it to any Man before?

Caſſidy. But to one young Man, that I thought would join with me.

Court. What young Man is that?

Caſſidy. 'Tis one *Conner.* When I was at Mr. *Hurly*'s Houſe, I often play'd a Game at Tables with him: When he had not then Money to ſend for a Bottle of Wine, he got me to ſend my Note for twelve Bottles of Wine at *Ennis.*

Mr. Attor. Gen. The Perſons concern'd in the Robbery had Vizards: We ſhall ſhew you, that when Mr. *Hurly* was in *Dublin* laſt, what Shop he was at, and what Sort of Commodities he bought. There was a Maſque to be acted.

Daniel Kieſe *ſworn.*

Mr. *Attor. Gen.* Pray, where do you live?

Kieſe. In Town, my Lord, with Counſellor *Turner.*

Mr. Att Gen. If your Lordſhip pleaſe to aſk him, Whether he knows Mr. *Hurly?*

Kieſe. I knew Mr. *Hurly* theſe many Years.

Mr. Att. Gen. Pray, give an Account what you obſerved when Mr. *Hurly* was going into the Country; what Shops you met him in, and what Commodities he was buying?

Kieſe. In *February*, 1699, he came into Mr. *Bently*'s Shop, and aſk'd for Maſks to wear at a Maſquerade: He told him he ſold none, but there were ſome in *Chriſt's-Church-Yard*; and he went in at the Gate towards the Yard; and when he was gone, I ſaid, Mr. *Bently*, I wonder what he deſigns to do with them; I fear 'tis for no good Deſign.

Mr. Att. Gen. Pray, where did he go when Mr. *Bently* told him they were to be had in *Chriſt's-Church-Yard?*

Kieſe. He went ſtraight into the Yard.

Mr. Att. Gen. What Time was it?

Kieſe. It was in *February*, 99, the latter End of the Term.

Joſeph Bently *ſworn.*

Mr. Att. Gen. Pray, my Lord, that Mr. *Bently* may give an Account whether he knows *Hurly.*

Bently. Yes, my Lord, I do—And I remember he came into our Shop to aſk for Maſquerading Maſks or Vizards---And I think it was about *January* or *February*---I told him we had none. Pray, ſays he, can you tell me where I can get any?---I ſaid, I cannot tell, unleſs you get them in the Yard: And he went thro' the Shop into the Yard.

Mr. Att. Gen. When was this?

Bently. It was *January* or *February*, 99.

Mr. *Forſter.* Did you ever ſee him before that Time?

Bently. Yes, ſeveral times---He bought ſeveral Things in our Shop.

Mr. *Forſter.* But no Maſks?

Bently. No; but aſk'd for Maſquerading Maſks or Vizards.

Mr. Att. Gen. My Lord, the Reaſon why we have been the more particular in this. is, that it has made a great Rumour and Noiſe, that it would be of great Diſadvantage to Mr. *Hurly*; and therefore we go to theſe Particulars, that no Man may pretend but the Matter is made plain againſt him. We ſhall produce ſome few Evidences more.

Mr. Recorder. Hurly has lately publiſh'd a Libel againſt the Gentlemen of the County.

Mr. Geary *ſworn.*

Mr. *Butler.* Had you any Diſcourſe with Mr. *Hurly?* And what?

Mr. Att. Gen. Pray, give the Court and Jury an Account, Whether you know Mr. *Hurly*, and his Circumſtances, and any great Quantity of Money that he had?

Mr. *Geary.* Mr. *Hurly*, in *February* laſt was Twelvemonth, told me his Protection was out; and he deſired me to get a Lodging for him. I deſired him to come to my own Lodging in *Capel-ſtreet.* When he went out of Town I went with him as far as *Iſland-Bridge:* He ſaid, He had no Money: And a Day or two after he writ me a Letter, and deſired me to raiſe his Wife ſome Money on a Bond of Capt. *Mac-Donnel*'s. I ſent to Mr. *Connor*, and got him to endorſe a Bill to Mr. *Lum*, and the Money was ſupplied: And after he came to Town again, I went to his Lodging, to Mr. *Raſcow*'s in *Capel-ſtreet*; there were two Soldiers that would not let me in: I ſpoke to the Sheriff, Mr. *Cuſack*; ſo I went in to him, and told him, I was ſorry for him. He ſaid, it was for proſecuting Sir *Donat O-Brien.* Says he, You know Sir *Richard Nagle*'s Hand, and Sir *Donat O-Brien*'s; there are Letters to King *James*; and, ſaid he, you and I muſt live, and we may get Money by it.

Mr. Sol. Gen. Now, my Lord, we call this Gentleman to ſhew, that, at the Time of his ſending this Money, Mr. *Hurly* was in an indigent Condition. When was it?

Mr. *Geary.* It was in *Michaelmas* Term, 1699.

Mr. *Hurly.* By Virtue of your Oath, Have you no Gratification for coming here?

Mr. *Geary.* No; by Virtue of my Oath, I have not.

Thomas Connor *ſworn.*

Mr. Sol. Gen. What do you know of Mr. *Hurly* about Money?

Thomas Connor. That Gentleman, Mr. *Geary*, came to me, and told me, it would be an Obligation on him to get twenty Pounds for Mr. *Hurly*'s Lady: Upon that I drew a Bill of Exchange; ſo they had the Money, but what they did with it, I do not know.

Mr. *Hurly.* Was not the Money paid again?

Connor. Yes, it was paid.

Mr. *Hurly.* Then did I want Money, when you drew the Bill, and the Money was paid?

Mr. Att. Gen. My Lord, Mr. *Hurly* was not able to pay this Bill; and we ſhall give you an Account who paid it.

Capt. Mac-Donnel *ſworn.*

Mr. *Butler.* You heard the Evidence of Mr. *Geary?*

Capt. *Mac-Donnel.* Yes.

Mr. *Butler.* What do you know of the Matter?

Capt. *Mac-Donnel.* I did owe ſome Money by Bond to Mr. *Hurly*, and he writ to me to pay thirty Pounds: I don't know what the Sum was that Mr. *Geary* had advanced; but I writ him word, I would not pay him any ſuch Sum; but I bid him ſend my Bond to Capt. *Gardiner*'s in *Limerick*, and the Money ſhould be paid there; and it was ſent accordingly, and the Money was paid: It was ſomething leſs than 50*l.*

Mr. Att. Gen. Pray, when this Robbery was talked of, did any body apply to you to take you off, that you ſhould not oppoſe the Preſentment, but ſuffer it to go on?

Capt. *Mac-Donnel.* Mr. *Hurly* ſpoke to me to be his Friend. I was always his Friend: And Capt. *Bourk* ſpoke to me to ſpeak to a Gentleman of the Grand-Jury that lay with me, (that was much againſt him) to deſire him, that he would not appear againſt him; and that he and his Tenants ſhould be freed from paying any Part of the Money.

Mr. *Bernard.* My Lord, I am Counſel for the Traverſer. The Queſtion is, Whether he be guilty of Perjury in an Information ſworn before Mr. *Blood?*---If your Lordſhips will hear the Proofs, we ſhall turn the Table, and prove Mr. *Hurly* was a Man that came with a good Fund of Money into this Kingdom, and left a good Fund in *France*, and that he drew Bills of Exchange upon his Correſpondent in *France*; that his Correſpondent gave him an Account, that Mr. *Arthur* diſcovered where all his Effects lay, and all was ſeized; and the Bills came back proteſted. Then he comes and adviſes with Sir *William Hardcock*, who adviſed to an Accommodation with Mr. *Arthur:* And ſo we did, and agreed to give him what he demanded; and accordingly we gave him Bonds. And in 1699, we brought a Bill in *Chancery.* We met Mr. *Arthur*'s Brother in *Dublin*; he ſaid, we ſhould not be diſturbed at the Aſſizes at *Ennis.* We went down accordingly, and carried our Money along with us, and we did go another Way, and not by *Loughrea.* And we ſhall ſhew your Lordſhips further, that there was a Quarrel between Mr. *Hurly* and Sir *Donogh O-Brien:* Sir *Donogh* had ſuch great Intereſt in the Country, prevailed with the Jury, for ſome Reaſons, that the Preſentment was not found for us at the Aſſizes; but four Men were taken up for the Robbery, and laid in Irons; and they were told that there was a Commiſſion of *Oyer* and *Terminer* coming down, and that they ſhould be arraigned---Here is Life or Death propoſed: If you confeſs the Matter, and place it upon *Hurly*, you ſhall have your Lives; but, if you do not, as ſoon as the Commiſſion comes down, you ſhall ſtretch for it. The Perſons were ſenſible, that thoſe who threatened them could effect it, and they were kept cloſe from all others but theſe Perſons, and they ſollicited them, until they got them to give in Examinations againſt Mr. *Hurly.* But they came afterwards to Mr. *Hurly*, and told him, it was the Threats and Dangers they were in, made them do what they had done, and that they were troubled for it. And after that, they went before my Lord Chief-Juſtice *Pyne*, and they forſwore all. After this the Contrivance of the Counters, that muſt be managed; and a Bag of Counters is brought down to *Hicky*'s Wife, and ſhe muſt hide it where it may be found by this *Huonin.* My Lord, we ſhall ſhew your Lordſhip all theſe Matters. I apprehend they are Men of Credit that will ſwear the Matters in my Brief, that Mr. *Hurly* was really and truly Robb'd, and that theſe Proſecutions have been carried on by Bribery, and ſuch-like Practices, in the Country.

Mr. *Forſter.* We'll ſhew you, that Mr. *Hurly* had 2000*l.* and that he carried a Part of it into the Country to pay off *Arthur.* We ſhall ſhew where we had the Money, and that he brought it down.

(Charles Fitz-Symmons, *Merchant, called, did not appear.*)

John Hurly ſworn.

Mr. *Forſter.* Pray, give an Account to the Court and the Jury, whether you were employ'd to receive Money for Mr. *Hurly*, and of whom?

John Hurly. I was employ'd in 1696, and I received of Mr. *Jeremiah Donovan* 200*l.* and Col. *Lovet* paid me 400*l.* for 500 *Louis d'Ors.*

Court. In what Year did you receive it from Col. *Lovet?*

John Hurly. It was in 96 or 97.

Mr. *Forſter.* And how much more?

John Hurly. From Mr. *Fitz-Symmons* 306*l.* 10*s.* in 1697.---And I receiv'd a Bill in *Limerick*, of 200*l.*

Mr. *Forſter.* What did he bid you do with the Money?

John Hurly. He ſent me this Money out of *Holland*, and bid me ſecure it for him.

Mr. *Forſter.* Did your Brother lay out any Money for a Mortgage?

John Hurly. Not any at all.

Mr. *Hurly.* I appeal to the Gentlemen of the Country, whether I did purchaſe any Thing.

Mr. Recorder. You are not accuſed for a Purchaſer, Sir.

Court. Did you pay him that Money again?

John Hurly. Yes, my Lord.

Court. Was it before he was Robb'd?

John Hurly. Yes, it was.

Court. Pray, what Diſcourſe had your Brother with you concerning any Money he had by him?

John Hurly. He told me all along, that he could pay *Arthur*, and that he had a Fund to pay it. And I tell you, Sir, before this Robbery, I came to his Houſe, and his Wife told me, My Brother will do very well; for that he has brought Money to pay off *Arthur.*---How do you know that, ſaid I?---Says ſhe, I ſaw a Bag of Gold with him.

Court. Were you there after the Robbery?

John Hurly. I came next Morning, and I found the Trunks broke open, and all the Houſe in Diſorder.

Mr. *Forſter.* Do you know Capt. *Lynch?*

John Hurly. Yes.

Court. Do you take this *Lynch* to be a fair, honeſt Man?

John Hurly. I will tell you what I know. About *Chriſtmas* laſt, I came to the County of *Gallway* to Mr. *Lynch.*---There were ſome Land that my Father held from him; and he ſet the Reverſion of the Land. I told him, that it was ill done, that we ſhould not have the Preference of the Land; and I told him, my Brother would keep him out two Years.---The Servant that was with me, told me, that he proffer'd him Twenty Pounds to ſwear the Robbery upon my Brother.---When he came back, I aſked him about it, and he ſaid, he feared he would prove him not to be within the Articles of *Gallway*; and, ſaid he, if he will give me quiet Poſſeſſion of my Lands, 'tis well; if not, I'll give him a Lift.

Mr *Forſter.* Do you know of any Jewels that belong to Mr. *Hurly*, beſides the Money?

John Hurly. He gave me a Diamond Ring for my Wife, and ſhewed me a Ring he ſaid was worth 100*l.*

Mr. *Forſter.* Do you know of any Rewards proffered to ſwear againſt *Hurly?*

John Hurly. One *Hicky* ſhewed me a Note under Mr. *Hickman*'s Hand, and Mr. *Cuſack*'s Hand, That *Hickman* and *Cuſack* promiſed to intercede with the Government for Pardon for him and others, if they proved the Robbery on *Patrick Hurly*.----And that they ſhould be found with good Meat, Drink, Waſhing and Lodging, and diſcharged without Fees.----He ſhewed me this Note within a Week or ſome ſhort Time after he was diſcharged.

Court. You ſay, That this Note was no more, than that Mr. *Hickman* and Mr. *Cuſack* promiſed they would intercede to the Government, if ſo be he would tell the Truth?

John Hurly. Yes.---In proving a Robbery upon *Patrick Hurly*.

Mr. *Forſter*. Were you at *Ennis*?----*John Hurly*. Yes, I was.

Mr. *Forſter*. Who was there examined on Oath to prove this Robbery?

John Hurly. There was *Dorothy Kemp*, and *Jane Hurly*, and this *Margaret Conneene*, and ſhe was examined at Home.

Mr. *Forſter*. Was Mr. *Ronane* examined?

John Hurly. Yes, and his Man too.

Mr. Sol. Gen. Now, Sir, I'll aſk the Witneſs a Queſtion.------Pray what Credit did the Jury give to it? Was you deſired by your Brother, before the Robbery, or at the Time of the Robbery, to join with one *Caſey*, to be bound with him for the Money?

John Hur. I was deſired to join with *Caſey*. My Brother pretended I owed him Money. I told him it was an unreaſonable Thing, for I had my Rent to pay.

Mr. Sol. Gen. Did you paſs a Bond to *Caſey*, Mr. *Hurly*?

John Hur. I did, Sir; I told you before.

Mr. Sol. Gen. Who was bound in that Bond?

John Hur. None but myſelf.

Mr. Sol. Gen. Who did you give the Bond to?

John Hur. I gave it to *Caſey*.

Mr. Sol. Gen. My Lord, about *Chriſtmas* laſt was Twelve-month, he comes to this Gentleman, his Brother, and deſired he would get him Fifty Pounds, and he told him, he craved yet the Money, if he would paſs his Bond for it to one *Caſey*, which he accordingly did: This Bond comes into *Patrick Hurly*'s Hand, and he enters up the Judgment, and an Execution upon it, againſt his Brother's Goods, for his own Uſe. Sir, had you any Money from *Caſey*?

John Hur. No, I had none.

Mr. Sol. Gen. Who took the Execution out, and who took your Goods upon that Execution?

John Hur. *Charles Mac-Donogh* did it; I paid him the Money.

Mr. Sol. Gen. Who had the Money for *Charles Mac-Donogh*?

John Hur. I had it, Sir.----I will unriddle this Matter.----I was very unwilling to go to Law.----I came to *Caſey*, and deſired him to pretend to lend me 50*l*. and my Brother would give him his Bond for it.----He will pay you, ſaid I, but will not pay it me.

Court. Did you owe your Brother 50*l*?

John Hur. I did owe him near it, only he took ſome Cattle of mine.

Mr. Att. Gen. Pray, Sir, are you in Cuſtody of the *Marſhalſea*, at your Brother's Suit?

John Hur. Yes, I am; and likewiſe at Mr. *O-Brien*'s and Mr. *Fitz-Simon*'s Suit. The Money that I received from Mr. *Fitz-Simons*, and paid my Brother the ſame Day, I am now in Cuſtody for it ſince *April* laſt.

Mr. *Recorder*. You ſay, that you received ſeveral Sums of Money for your Brother, and you ſaid, there was a Balance between you and your Brother: How much was that Balance? And what became of it? How much Money had your Brother in 97, 98, and 99?

John Hur. When my Brother went into the Country, I diſcounted with him.

Mr. Att. Gen. You ſay, you received ſeveral Sums; that you paid 200*l*. to Mr. *Gardner*, and ſome other Sums: How much did you pay back in Specie to your Brother?

John Hur. The Money Mr. *Fitz-Simons* gave me, I came to my Brother's Lodging, and paid it him.

Court. This is a Matter that has been tranſacted within the Compaſs of three or four Years, and this cannot ſlip out of your Memory. You ſay, all the Money you received of *Fitz-Simons* you paid your Brother again------What more did you pay him?

Hurly. I paid him the 200*l*. in *Limerick*.----I paid him 190*l*. or thereabouts, more.

Court. When was that?

Hurly. I paid it him in the Year 1697, in the Beginning of 98.

Mr. Sol. Gen. You ſay, you paid Mr. *Burton* 200*l*.----Did you pay any others?

Hurly. I paid him no more, but what I paid him for the Farm---I gave him Bullocks, 20 old Bullocks, at 46*s*. a-piece, and the reſt came to 30*l*. more.

Mr. Sol. Gen. There was a Sum of 200*l*. paid, and the reſt drawn out in ſmall Sums from Time to Time, as he had Occaſion to call for't: How much was *Brien*'s Money?

Hur. It was about 40*l*. and I gave him a Bond of Capt. *Lynch*'s, of about 6*l*. 10*s*. and I gave him a Bond on a Brother-in-Law of mine, and a Bond on *Lynch*.

Mr. Att. Gen. How much of the Money, that you received for *Patrick Hurly*, did you lend out, and to whom?--Did it amount to 200*l*.?

Hur. Yes, it did.

Mr. Att. Gen. Did it amount to 300*l*.?

Hur. No, it did not.

Mr. Att. Gen. Was this Money paid back again to Mr. *Fitz-Simons*?

Hur. I have a Bill in *Chancery* againſt him.

Mr. Recorder. I deſire to know, whether Mr. *Fitz-Simons* had the 300*l*. back again?

Hur. My Brother told me he paid him every Farthing, and ſaid, he had a Diſcharge from him.

Mr. Recorder. Pray, how much of this Money had Mr. *Arthur*?

Hur. I don't know of any Dealing with Mr. *Arthur*.

Mr. Att. Gen. I did hear, that he aſſigned a Bond of Capt. *Chriſtopher O-Brien*'s to him.

Hur. That 300*l*. my Brother owed me; and the Bond my Brother gave for it, I gave Mr. *Fitz-Simons* the Bond, and he arreſted him on it.

Mr. Att. Gen. Pray, Sir, did you ſend any *Holland* Sheets, after this pretended Robbery, to any Place?

Hur. Yes, I did, to Capt. *O-Brien*'s.

Mr. Att. Gen. Where did you find them?

Hur. I will tell you, my Lord.----We were told, that one *Halloway* was coming to my Father's, at the Suit of one *Neylan*, to take all away.----My Father ſent for me, and deſired me to come to him, for *Halloway* was coming to ranſack the Houſe.

Mr. Att. Gen. How long was this after the Robbery?

Hur. It was a Month afterwards.------I came there, and one of the Maids told me there was a Portmanteau in the Turf-ſtack.——I took it Home that Night, and I was order'd by her to deliver it to Capt. *Chriſtopher O-Brien*. I ſent for him to a Friend's Houſe, and opened it before Capt. *O-Brien*, and took an Inventory of what was in it.----There were five or ſix Pair of *Holland* Sheets.----This was a Month or two after the Robbery.

Mr. Recorder. Another Man ſwore, it was the Beginning of *May*, or the latter End of *April*.

Mr. *Forſter*. We had this Money, and will ſhew you how we loſt this Money, and ſhall prove the Robbery.

Dorothy Kemp ſworn.

Mr. *Forſter*. Pray, Mrs. *Kemp*, where did you dwell in 99?

Mrs. *Kemp*. I dwelt in *Moughna* in the County of *Clare*, within a quarter of a Mile where Mr. *Hurly* lived.

Court. Where did you live at the Time that he was robbed? Were you in the Houſe when the Robbery was committed?

Mrs. *Kemp*. Yes, I was.

Court. Pray, give an Account what you know of that Robbery.

Mrs. *Kemp*. My Lord, There was Counſellor *Ronane* three Days waiting for Mr. *Arthur* to pay him ſome Money. My Miſtreſs went out of Town upon *Saturday* before, and took ſome Gold out of her Cheſt, and ſhew'd ſome of it, and put it in again; and ſhe did not come Home till *Monday* Morning after the Robbery was committed. I went to the Trunk, to get ſome Table-Linnen, and I laid my Hand on the Bag where the Gold was. My Maſter came in the mean time, and ſaid, What do you do there? I ſaid, I wanted ſome Table-Linnen; and my Maſter took away the Bag, and put it into the Cloſet.

Court. And ſo you concluded, that was the Bag of Gold?

Mrs. *Kemp*. Yes, I did.

Court. Did you know any of the People that were at the Robbery?

Mrs. *Kemp*. No, my Lord, I did not.

Court. How many Robbers were there?

Mrs. *Kemp*. As I underſtand, there were ſeven of them.

Court. Did you ſee them all?

Mrs. *Kemp*. Juſt after Supper, Counſellor *Ronane* got up to go to Bed, and went out of the Door, and then the Robbers got in. We went up to lay down the Bed, and my Maſter's Man came running and crying, My Maſter is murdered; ſo we got open the Door, and there was five came up with Swords and Piſtols.

Court. Had they any Maſks or Vizards?

Mrs. *Kemp*. I cannot tell. They commanded us into the Room, where my Maſter's Father lay Bed-ridden theſe three Years paſt.

Court. How many did you ſee there at that Time?

Mrs. *Kemp*. I ſaw five come up, and there was two more in the Parlour.

Court. Pray, Miſtreſs, by Virtue of your Oath, what Arms was there?

Mrs. *Kemp*. My Lord, we kept Arms juſt by the Door, a Carbine and Fuzee, becauſe he was ſomething in Debt.

Court. Were thoſe the ſame Arms your Maſter had before?

Mrs. *Kemp*. I cannot tell; but they took his Piſtols, and put Gravel into them.

Mr. Att. Gen. Who put the Gravel into the Piſtols?

Mrs. *Kemp*. The Tories.

Mr. *Bernard*. Was there any Offers made to her to put Counters into *Hicky*'s Houſe?

Mrs. *Kemp*. My Lord, I was promiſed Ten Pounds, to put Counters into my Maſter's Houſe.

Court. She ſays, ſhe was deſired by one *Murough O-Brien*, to lay Counters in her Maſter's Houſe, or *Hicky*'s Houſe; a Bribe of Ten Pounds was offered her, and ſhe refuſed it. But that he ſent to *Daniel Hicky*'s Wife twenty times; and ſhe has ſome of the Letters he writ.

Court. By whom were theſe Letters written?

Mrs. *Kemp*. By *Murough O-Brien*, for his Man brought them.

Court. Pray, when was this, that you were offered Ten Pounds to hide Counters in your Maſter's Houſe, or *Hicky*'s?

Mrs. *Kemp*. It was before the Aſſizes a pretty while.

Mr. Sol. Gen. My Lord, here is *Donogh O-Brien*.

Court. Where was it he offered you this Money?

Mrs. *Kemp*. It was at *Shenoge*, a quarter of a Mile from where he lives.

Mr. Recorder. And he was to give you Ten Pounds to bury Counters in *Hicky*'s Houſe?

Mr. *Butler*. When the Rogues came in, how did they uſe your Maſter?

Mrs. *Kemp*. They ty'd him, and Counſellor *Ronane*.

Mr. *Forſter*. You know *Murough O-Brien*; Pray, how often did you ſee him with Mrs. *Hicky*?

Mrs. *Kemp*. I ſaw him often with her. Said he, Mrs. *Hicky*, Mr. *Hicky* is caſt down, and he is not worth a Farthing, he is ty'd Neck and Heels.

Court. Did you hear this?

Mrs. *Kemp*. She told me ſo.

Mr. *Forſter*. We only offer it as far as it will go.

Mr. Att. Gen. It will not go at all.

Mr. Sol. Gen. I am told, that *Murough O-Brien* is in Court; ſhe ſpeaks of ſome Words and Letters between her and him, and Mrs. *Hicky*.

Mr. *Forſter*. What Linnen was taken away by the Robbers?

Mrs. *Kemp*. My Lord, I partly can ſwear, that I waſh'd twenty Pair of *Holland* Sheets; there was thirty Pair, I waſh'd twenty Pair myſelf.

Court. How many was left?

Mrs. *Kemp*. There was but five Pair.

Court. How came they to leave them behind?

Mrs. *Kemp*. They did not ſtay to take them away.

Murough O-Brien ſworn.

Court. Pray, had you any Diſcourſe with this Woman concerning Counters?

O-Brien. By Virtue of the Oath I have taken, I never had.

Court. Did you never offer her 10*l.* to lay Counters in Mrs. *Hicky*'s Houſe?

O-Brien. By Virtue of my Oath, I did not.

Mrs. *Kemp*. By Virtue of my Oath, you did.

Court. Did you ſend any Letters to *Hicky* or his Wife?

O-Brien. Yes, I did write to *Hicky*, and to his Wife.

Court. Upon what Occaſion did you write?

O-Brien. *Hicky*'s Wife came to me, and told me, that if I could get a Protection for her Huſband, from Sir *Donogh O-Brien*, he would make it plain, that this was a Sham-Robbery: And *Hicky*'s Wife ſaid, ſhe could produce thoſe very Counters. *Charles Mac-Donogh* was by when ſhe ſaid, If we would procure a Pardon for her Huſband, they would produce the Counters, and make the Matter plain.

Mr. Sol. Gen. This Woman ſays, that *Murough O-Brien* came to *Hicky*'s Wife, and ſaid ſo and ſo, and writ Letters to *Hicky*'s Wife. *Murough O-Brien* comes now and ſays, that *Hicky*'s Wife came to him, and told him, that her Huſband could make out the Sham-Robbery, if he could get a Protection for him. Mr. *O-Brien*, this Woman ſays, that you did ſend to *Hicky*'s Wife, and that you did tamper with her.

O-Brien. It's a very improbable Thing, if I had a mind to tamper with her, that I would tamper with *Hurly*'s Whore---My Lord, if I wou'd have come on ſuch a Buſineſs, would any one believe that I ſhould employ this Woman, that has had a Baſtard or two by Mr. *Hurly*?

Murough O-Brien'*s Letter to* Hicky *read.*

Mrs. *Hicky*,

" I pray do me the Favour to come hither as ſoon as poſſible; for I " have ſome Buſineſs to talk with you, which chiefly concerns yourſelf. " And leaſt you may apprehend any evil Deſign againſt you, I do here " promiſe you, that you ſhall be as ſafe as your Heart can wiſh, whilſt " you are in the Company of"

Murough O-Brien.

A Second Letter read.

Mrs. *Hicky*,

" When I ſent for you on *Saturday* was Sevennight, I thought I ſhould " ſee you at *Maſs*, but I miſſed that Opportunity: I deſire you will ſtep " hither To-morrow, and meet me in ſome convenient Place, where we " may talk without Cenſure or Suſpicion: I have no other Deſign, but " to ſerve you and your Husband. Be ſure you don't fail to come to me, " if you ever expect any Friendſhip from"

Mac-B.

Daniel Mac-Cay ſworn.

Mr. *Forſter*. Where did you live in *March* 99?

Mac-Cay. I lived with *Patrick Hurly*.

Court. Where were you the Time of the Robbery?

Mac-Cay. I was in his Houſe, my Lord; I was there on *Sunday* the 3d of *March*, and there was *John Ronane* and himſelf, and they were juſt going to Bed, and *John Ronane* was going out of the Door, and there came five Perſons with naked Swords, and ruſhed in; they were diſguiſed and disfigured: My Lord, when they came in, they fell'd him down on his Face, and gave him ſome Strokes; and I was there, and they purſued me and *Gillian Hurly*, and we ran up, and they locked the Door after us; they made a Shot below; then I was aſſured it was ſome Bailiffs that came to take my Maſter; ſome of the Family was in Bed, and ſome up.

Mr. Reocrder. Your Maſter was upon his keeping then?

Mac-Cay. And when he heard the Noiſe below, we got ſome Sticks, and broke open the Door, and perceived two Fellows at the Door; they made a couple of Shots at us, but did us no Harm; and then came three or four, and one of them purſued me, and made a Shot after me, but did me no Harm. We did not go out till theſe Fellows went out, and then we broke open the Door, and we found my Maſter tied faſt to his own Bed-ſide, and Counſellor *Ronane*; and all the Trunks were broke. My Maſter bid me go to the next Village, and raiſe the Neighbourhood; ſo I did.

Court. Pray, Friend, How many did you ſee of the Robbers?

Mac-Cay. I ſaw five, my Lord, and two without at the Window.

Court. The Woman ſaid there were five in her Maſter's Parlour, and two at the Door. Sir, did you know any of the Parties that robbed him, upon your Oath? What Diſguiſes had they? Were they black, or had they Vizards?---*Mac-Cay*. I cannot tell, my Lord.

Court. Did you take any Notice of any of the Arms, whether thoſe Arms belonged to your Maſter? Take Care, upon your Oath, you ſpeak nothing but Truth.

Mac-Cay. My Lord, we had Arms of my Maſter, which they ſeized on, and we found them abroad next Morning.

Court. Did the Bullets hit any part of the Houſe?

Mac-Cay. No, my Lord, I did not obſerve that.

Court. Pray, Friend, was there any more than one Shot made?

Mac-Cay. There was, my Lord.

Court. Was there any Mark of any Bullet to be ſeen?

Mac-Cay. I did not ſee any.

Mr. *Forſter*. You ſay, they came in with Fire-Arms and Swords; Had your Maſter any Swords?

Mac-Cay. There was none but one; and they had five naked Swords.

Mr. *Forſter*. They had no Fire-Arms but your Maſter's?

Mac-Cay. We found them abroad next Morning in the Street.

Mr. *Forſter*. What Road did your Maſter *Hurly* travel when he went from this Town, the laſt Time he was in *Dublin* before the Robbery?

Mac-Cay. He went through the County of *Gallway*, through *Mount-Talbot*.

Mr. *Forſter*. Do you know Capt. *Lynch*?

Mac-Cay. Yes, he lives in *Capperquin*.

Mr. *Forſter*. Were you with your Maſter all the Way home?

Mac-Cay. Yes, I was.

Court. Mr. *Lynch* ſaid (I muſt do him right) that he did not remember what Company was with him, but that he drank a Bottle of Wine with him at *Loughrea*, and there ſaw the Counters; and it is much about the Time this Man ſwears.---Mr. *Recorder*. Exactly, my Lord.

Mr. *Forſter*. Were you with your Maſter when he was in *Dublin*? Did you ſee any Quantity of Money with him?---*Mac-Cay*. Yes, I did.

Court. Pray, did you ſee any Counters with him?

Mac-Cay. No, my Lord: I was offer'd to have my Fortune raiſed for ever, if I would ſwear that he bought the Counters, and brought them to the County of *Clare*.

Court. You ſaw Money with your Maſter: Where was it he receiv'd the Money?

Mac-Cay. I do not know; but he ſhew'd it me, and ſaid, It was a ſad Thing to pay away ſo much Money: And he put his Hand in his Pocket, and pull'd out ſome Gold, ſome Broad-Pieces and a Gold Cob; and he ſaid, he would keep the Purſe, and not take any Thing out until he got home to pay Mr. *Arthur* off.

Carty. Was it in the Portmanteau?---*Mac-Cay*. Yes, it was.

Mr. *Recorder*. Was this the Time that your Maſter was in *Loughrea*?

Mac-Cay. No, this was in *February*, and it was before *Chriſtmas* he was at *Loughrea*.

Court. Upon what Occaſion was it that your Maſter ſhew'd you the Gold?

Mac-Cay. He told me, at his own Lodging in *Warbur-ſtreet*, Is it not a ſad Thing to pay ſo much Money to that Rogue *Arthur*, that had ſerv'd him ſuch a Trick?

Court. Did you take notice of it yourſelf?

Mac-Cay. Yes: It was not Counters; no, I know Gold from Counters.

Court. Were they Guineas or Louis d'Ors?

Mac-Cay. They were Louis d'Ors.

Mr. *Butler*. Pray, when you went the laſt time with your Maſter from *Dublin*, what Way did you go to *Mount-Talbot*? At what Place did you croſs the *Shannon*?

Mac-Cay. I do not know the Place; I do not know the Name of the Place at all.

Mr. *Butler*. Did you ſwim over, or go over a Bridge?

Mac-Cay. I think we went over a Bridge.

Mr. *Butler*. What Bridge?

Mac-Cay. I do not know the Name of it.

Court. Did you go thro' *Athlone*?

Mac-Cay. Yes, we went thro' *Athlone*.

Court. If I had ſaid *Laneſborough*, he would have ſaid ſo too.

Mr. *Butler*. You are poſitive that in the laſt Journey before the Robbery, you nor your Maſter were not at *Loughrea*?

Mac-Cay. I am poſitive.

Mr. *Butler*. Where did your Maſter lie the Night before you came to *Tiaquin*?

Mac-Cay. It was at *Balliboy*.

Mr. *Butler*. Pray, Sir, what Way did you go from *Athlone* to *Eyres-Court* or *Balliboy*?

Mac-Cay. I do not know the Names of the Towns.

Mr. *Butler*. Pray, how far is it from *Tiaquin* to *Eyres-Court*?

Mac-Cay. I do not know.

Mr. *Butler*. What Way did you come to *Balliboy* back again, for that is on this ſide the *Shannon*, and many Miles on this ſide of *Athlone*?

Mac-Cay. My Maſter had his Brother-in-Law, Mr. *Terry*, along with him; and when he came to *Balliboy* he would ſee his Siſter, and ſo he went to *Tiaquin*.

Court. How could you go from *Athlone* to *Balliboy*? Did you lie at *Athlone* that Night?

Mac-Cay. No, my Lord, we did lie beyond it, at a Place where there is a Bridge.

Court. Where is that Bridge?

Mac-Cay. It is on the *Shannon*, on this ſide *Aghrim*.

Mr. *Butler*. If you pleaſe, Sir, did you carry the Pormanteau to *Tiaquin*?

Mac-Cay. Yes, I did.

Mr. *Butler*. And was it not left at any other Place behind you?

Mac-Cay. No, it was not.

Mr. *Butler*. You are poſitive you carried it to *Tiaquin*?

Mac-Cay. Yes, I did carry it to *Tiaquin*.

Mr. *Butler*. Was it left at *Gort-Inſhigory* before you went to *Tiaquin*, or after?

Mac-Cay. My Maſter hired a Horſe, and he was lame; and he deſired me to go on *Saturday*, before he came himſelf, or Capt. *Bourk*, and his Father-in-Law kept him.

Mr. *Butler*. Was the Gold in the Portmanteau at that Time?

Mac-Cay. Yes, it was.

Court. And you carried the Portmanteau to *Gort* from *Tiaquin*?

Mac-Cay. Yes; I came from my Maſter from *Tiaquin* to *Gort*; he ſent me on *Saturday*, and he came on *Sunday* Night.

Mr. *Butler*. My Lord, I will make it appear, by three or four Men of undoubted Credit, that Mr. *Hurly* did ſwear, at the Aſſizes of *Ennis*, that he was at *Loughrea* before he went to *Tiaquin*, and that he left the Portmanteau there, and did not carry it to *Tiaquin*.

Mr. *Butler*. Did your Maſter pay for the Horſe he hired? or, Did you hear he gave a Bond for it?---*Mac-Cay*. I do not know.

Court. Do you know of any Bond given by Mr. *Hurly*, to pay the Hire of the Horſe?

Mac-Cay. I do not know indeed, my Lord.

Mr. Recorder. He ſaid, his Maſter ſhew'd him the Money in Town, and ſaid it was a Shame to pay it to *Arthur.* Now, did your Maſter pay the Money?

Mac-Cay. He told me, that *Arthur* promis'd to come to his Houſe in the County of *Clare*; and, that he would make him take it on eaſier Terms than if he ſhould pay it in *Dublin.*

Court. If he had the Money, why did he not pay it him?

Mac-Cay. He ſaid, he hoped to compound with *Arthur* eaſier than to give him all that he demanded.

Mr. *Bernard.* My Client tells me, that this *Mac-Cay* is a material Witneſs, as to *Calaghan Carty*: Do you know *Calaghan Carty?*

Mac-Cay. Yes, very well.

Court. How long have you known him?—*Mac-Cay.* Theſe two Years.

Court. Were you with him before my Lord Chief-Juſtice *Pyne?*

Mac-Cay. Yes, I was; he made an Affidavit, and ſwore before my Lord Chief-Juſtice *Pyne.*

Court. What was the Subſtance of it?

Mac-Cay. That he knew nothing of the Robbery; and, that he was much concern'd he had ſworn againſt Mr. *Hurly.* They lodg'd at the *Black-Bull* in *Church-Street.*

Court. Are you confident, that this *Calaghan Carty* ſwore before my Lord Chief-Juſtice *Pyne?*—*Mac-Cay.* Yes, he did.

Mr. *Butler.* Where did you lie the Night before you went through *Athlone?*—*Mac-Cay.* I am not ſure of the Name of any Place where we did lie ſince we left *Dublin.*

Mr. *Butler.* You are poſitive you did lie in a Place that had a Bridge upon a River?—*Mac-Cay.* Yes, I am.

Court. Pray, one Queſtion more: You ſay, you have gone with Mr. *Hurly* ſeveral times to the Country; How often did he go *Connaught* Way?

Mac-Cay. He went always *Connaught* Way.

Court. How often has he gone, that you can recollect yourſelf?

Mac-Cay. We came from the County of *Clare* the Summer after I came to him, to *Loughrea*, and *Eyres-Court*, and over *Banagher-Bridge*, and ſo to *Munſter-Evin.*

Court. Which is the Way you uſed always to go?

Mac-Cay. That Way; but that Time he went to *Athlone.*

Chriſtopher O-Brien *ſworn.*

Mr. *Butler.* Pray, Sir, by Virtue of your Oath, did you offer any Money to that Man?—*O-Brien.* No, upon my Oath.

Mr. *Butler.* Did you offer him Money, or promiſe to raiſe his Fortune, if he would give Evidence about Counters?

O-Brien. Never, my Lord; he came to me and told me, there was ſome came to his Maſter, and would ſwear, that ——— were come from *France.*

Court. Did you ever make him any Promiſe, or any Offer at all?

O-Brien. Never in my Life, my Lord.

Mac-Cay. Did not you, at the *Swan*-Tavern, when I carried a Letter to Captain *Bourk?*

Court. How long ago was this?

Mac-Cay. Before the Term, I think.

Court. Was it before *Chriſtmas?*

Mac-Cay. No, my Lord, it was after *Chriſtmas.*

Court. Mr. *Hurly*, you know the contrary to this yourſelf: If you'll have me, I'll ſend for the Examination ſworn by yourſelf concerning this Matter.

Pat. Hurly. He ſpeaks to him more than once.

Mr. Recorder. Had you any Diſcourſe with Mr. *O-Brien* about the Counters?—*Mac-Cay.* Yes, once or twice.

Mr. Recorder. Had you any Diſcourſe about them more than once?

Mac-Cay. He never ſpoke to me about the Counters, but once at the *Swan*-Tavern.

Court. That of Mr. *O-Brien*'s tampering with this Man; Mr. *Hurly*, you are complain'd of before *Chriſtmas* laſt. He ſaid, he was once with a Letter at the *Swan*-Tavern; and, that Mr. *O-Brien* did there talk to him about tampering with other Witneſſes; but it was before that, that you ſaid Mr. *O-Brien* tamper'd with himſelf about the Counters.

Court. Where was it?—*Mac-Cay.* At the Tavern.

Court. At what Tavern?—*Mac-Cay.* The *Swan.*

Court. When was this?

Mac-Cay. Before *Chriſtmas*, or a little before the laſt Term.

Court. He ſays, it was the Time of his delivering of a Letter.

Mac-Cay. My Lord, I deliver'd a Letter to Captain *Bourk* at the *Swan*-Tavern, and, I think, it was before *Chriſtmas.*

Court. So that you deliver'd more Letters than one?

Mac-Cay. I deliver'd ſeveral to him.

Court. This Gentleman is accus'd by this *Mac-Cay*; and how far that will weigh with any Man, muſt be left to the Jury.

Mr. *Butler.* This Mr. *Mac-Cay* was very poſitive, that the Portmanteau was carried to *Tiaquin*, and, that it was not left behind. I am ready to prove, by two or three credible Evidences, that Mr. *Hurly* did ſwear at the Aſſizes, that it was left behind at *Loughrea*, and, that it was not carried to *Tiaquin.*

Mr. *Bernard.* My Lord, I deſire we may firſt produce another Witneſs to the Subornation; *John Crips*, a Perſon ſuborn'd to ſwear againſt my Client.

John Crips *ſworn.*

(*Per Interpreter.*)

Court. Where does he live? and, With whom?

Interp. He lives at *Moughna*, in the County of *Clare.*

Court. Aſk him, what he can ſay of any tampering with him to ſwear againſt Mr. *Hurly.*

Interp. He ſays, one *Halloway* and *Walter Neylan* tamper'd with him: That *Halloway* ſent for him three Weeks after Mr. *Hurly* was taken to *Ennis*, and he ran into a Rabbet-hole, for he was afraid of him, and ſent his Wife to know what he would have of him.

Interp. And, my Lord, he is telling a long Story of this *Halloway* being a troubleſome Man; and, that the whole Country would join with him, to give an ill Character of him, if it were not for the Perſons he appears againſt.——And, he ſays, he was always inclin'd to do Evil, and every body was afraid of him.

Court. Aſk him, Was there any Offer made to him?

Interp. He ſays, that *Neylan* and *Halloway* offered him Fifty Pounds to ſwear againſt Mr. *Hurly*, that he contriv'd the Robbery againſt himſelf.

Court. Were they both together? or, Did they ſpeak to him ſeverally?

Interp. They ſpoke to him ſeverally.

Court. Aſk him, Where was it that *Holloway* propos'd this to him?

Interp. About three Weeks after Mr. *Hurly* was put into Gaol, he ſays, *Halloway* firſt ſpoke to him.

Court. Did *Halloway* ſpeak to him any more than once?

Interp. He ſays, He deſir'd him to go with him before Mr. *O-Brien*; and he offer'd him Six Guineas to go and prove the Matter, and, that he would give him the reſt afterwards.

Court. Was any body by?—*Interp.* He ſays, Nobody.

Court. Where was it that *Neylan* offer'd him the Money?

Interp. He ſays, my Lord, that *Halloway* uſed ſeveral threatening Words, if he did not comply with what he deſir'd him to do; and, that he would ſend him to Gaol at *Ennis*, where he ſhould not ſee the Light any more.

Court. Can he remember the Day that this was?

Interp. About Six Weeks after *Hurly* was taken.

Court. Where was it that *Neylan* proffer'd him any Reward, and what it was he offer'd him?

[*At this the Fellow ſplutter'd, and made a terrible Noiſe in* Iriſh.]

Interp. My Lord, he will not anſwer to the direct Queſtion. He ſays, my Lord, that *Halloway* threaten'd him, and broke open his Doors, and came there with Arms, and brought a diſbanded Soldier, and took him by the Hair of the Head, and threaten'd him, becauſe he did not come to him at the Time appointed.

Court. Did he complain to any Juſtice?

Interp. He ſays, He complain'd to Mr. *Fitz-Gerald.*

Court. Pray aſk him, what *Neylan* ſaid to him.

Interp. He ſays, He offer'd him the grazing of Six Collops free, and an Houſe and Garden during his Life, to ſwear againſt *Patrick Hurly.*

Mr. *Butler.* What Time was it that *Neylan* made him this Offer? and, in what Place?

Interp. My Lord, the Anſwer he made to that is, That *Halloway*, after he had taken him out of his Bed, and dragg'd him by the Hair of the Head, that then they and *Neylan* met.

Court. Where was it he met *Neylan?*

Interp. At *Bally-Ryan*, in a Houſe there.

Court. What Time?—*Interp.* About a Month before *Michaelmas* laſt.

Court. Pray aſk him, where it was that Mr. *Neylan* did tell him he would give him the Six Collops grazing, to ſwear againſt *Patrick Hurly?*

Interp. He ſays, he will recollect it: He ſays, laſt Summer.

Mr. Recorder. I am inform'd, my Lord, that while this Man was aſk'd the Queſtion, *Hurly* ſaid, Laſt *Michaelmas.*———Mr. *Hurly.* I never ſaw any Man, ſo far preſum'd to be a Criminal, behave himſelf with ſo much Impudence before.

Court. Mr. *Hurly*, if you don't give over throwing out Words to your Witneſſes, we muſt put you into the Dock. Aſk him, Interpreter, Does he know *Calaghan Carty*, that was Witneſs here to-day?

Interp. He has known him ſince he was a little Boy, and his Father, Mother, and Family.

Court. What does he know of that *Carty*'s Swearing before my Lord Chief-Juſtice *Pyne?*

Interp. He ſays, my Lord, that he did Swear before my Lord Chief-Juſtice *Pyne*, and there was a great Lady and a young Man by.

Mr. *Bernard.* Now, as to Mr. *Lynch*, whether he made any Propoſal or Offer, or had any Diſcourſe with him on *May-Day* laſt?

Interp. He ſays, He ſaw him the Day before *May-Day*; and, that he was very civil to him: There was ſome Controverſy between him and Mr. *Hurly*, about the Land of *Moughna*; and he ſaid to me, Now *Patrick Hurly* is gone to Gaol, and ſo is *John* too; and they are both in Irons, and they will never retrieve it, and you had beſt come and live with me in *Connaught.* He told him, That neither his Wife, nor his Mother-in-Law, would conſent to go to *Connaught.* Says he, I have ſet the Land from the *Hurlys* to the *Bloods*, and *Hurly* ſhall never have any thing to ſay to it more.

Court. Did he ever perſuade him to take a falſe Oath againſt Mr. *Hurly?*

Interp. He ſaid, That in his Agreement with the *Bloods*, he reſerv'd the Grazing of four Collops, which he ſhould have, if he would ſwear that he was one of the Robbers himſelf, and prove the Robbery upon *Hurly*: And he made anſwer to *Lynch*, Why ſhould I do that that will hang me? And then *Lynch* ſeem'd ſorry that he had propos'd it to him.

Mr. Recorder. Aſk him, Who was with him when *Calaghan Carty* ſwore an Examination before my Lord Chief-Juſtice *Pyne?*

Interp. *Daniel Hicky*, *Daniel Mac-Carty*, *Donogh O-Brien Andrews*, and himſelf.

Mr. Recorder. How came he to go along with theſe Perſons?

Interp. He ſays, That he came there to prevent being perſuaded to take a falſe Oath.

Mr. Recorder. Does he know what *Calaghan Carty* ſwore?

Interp. He does not know.

Mr. Recorder. Who writ the Examination of *Calaghan Carty?*

Interp. He does not know.

heMr. *Butler*. Was it written at my Lord Chief-Juſtice *Pyne*'s? or, Had it written before?

Interp. He brought it written to my Lord Chief-Juſtice *Pyne*.

Mr. *Butler*. My Lord, this Man does not ſeem to be a Man of any Credit. *Neylan* and *Lynch* are ſworn, pray, let them attend.

Court. If two Witneſſes ſpeak directly contrary one to the other, muſt not it be left to the Jury which they will believe? What does the Witneſs *Crips* ſay?

Interp. He deſires a Guard, for the Safety of his Perſon.

Mr. Lynch *ſtands up again.*

Court. Mr. *Lynch*, had you ever any Diſcourſe with this Man concerning Mr. *Patrick Hurly* and Mr. *John Hurly*'s being in Gaol?

Lynch. Yes, I had, my Lord: I ſaid to him, that I heard he has been lately in *Dublin*, and that he has been an Evidence for *Hurly*. No, really, ſays he, I was not: I am weary of him; and if I could get theſe People that you ſet the Land to, to let me be here a Year, I would not live any longer with him.

Court. Did you offer him the grazing of four Collops?

Lynch. I never did, my Lord.

Mr. *Butler*. The Credit of this Gentleman, and of that Fellow, is left to the Jury.

Lynch. This Diſcourſe was about this Time Twelvemonth, at the Fair of *Moughna*; and *Richard Hurly*, *Patrick*'s Uncle, declar'd to me, that it was a Sham-Robbery.

Walter Neylan *ſtands up again.*

Court. Mr. *Neylan*, had you any Diſcourſe with this Man about Mr. *Hurly*?

Neylan. I never had any Diſcourſe with him, or ſaw the Man, till this Day, never ſince he was born.

Court. What Time was it, he ſays, that he had this Diſcourſe with *Neylan*?

Mr. *Butler*. In the Place where he ſays he had the Diſcourſe with *Neylan* in a Houſe; there never was a Houſe, nor ſo much as a Hutt there.

Neylan. No, my Lord, there never was a Houſe there in my Memory.

Court. Mr. *Neylan*, how far is this *Moughna* from you?

Neylan. Three Miles.

Mr. *Bernard*. And you not know this Man?

Mr. Wakeham, *my Lord Chief-Juſtice* Pyne's *Clerk, ſworn.*

Court. Mr. *Wakeham*, Sir, pray, do you know any Perſon that came to ſwear Examinations before my Lord Chief-Juſtice *Pyne*, concerning the Robbery of Mr. *Hurly* in the County of *Clare*?

Mr. *Wakeham*. My Lord, there came four Men, but I was buſy; the Gentleman read the Examinations.

Court. Do you know the Perſons?

Mr. *Wakeham*. I do not know 'em; they were ordinarily clad; there was a Gentleman, one Mr. *Terry*, that brought 'em.

Daniel Hicky *ſworn.*

Mr. *Bernard*. Pray, give my Lord an Account of any Offers that were made you, or Threats uſed to you, to make you ſwear againſt Mr. *Hurly*?

Daniel Hicky. I told it twice before, my Lord, in *Auguſt* laſt. My Lord, I was taken by *William Halloway* and *Thomas Bourk*; they took me to Gaol, and they bolted me; and there was Mr. *Neylan* in the Gaol, and he ſpoke to me about the Robbery that was committed on Mr. *Hurly*. I ſaid, I knew nothing of it at all: And he told me, I wou'd be hang'd, for it was ſworn againſt me: And I was brought before Mr. *Hickman* and *Cuſack*; and they told me, That there was one *Carty* had ſworn that I was at the robbing of Mr. *Hurly*, by his own Conſent; and that if I did not declare it, I ſhould be hang'd; and ſaid, That Mr. *Hurly* will hang us if we ſay we robb'd him. Never heed him, ſaid they; it will be no Harm to any Man that ſwears againſt him.

Court. How long did you remain in Gaol?

Hicky. I was kept in Gaol till *Auguſt*, from the 26th of *March*.

Court. Was any body with you?

Hicky. *Calaghan Carty* and *Daniel Carty*.

Court. What had you a-Day?

Hicky. We had Twelve Pence a-Day; and Mr. *Neylan* brought red Coats, and would have us ſwear we had thoſe Coats on when we robb'd Mr. *Hurly*. And they carried us before Mr. *Butler*, and we would not ſwear; and then we got but Nine-Pence a-Day.

Court. Did you ſwear, that Mr. *Hurly* was not robb'd?

Hicky. I did ſwear, that I was not at the robbing of him myſelf.

Court. But were you examined about this Robbery before Mr. *Hickman* and Mr. *Cuſack*?

Hicky. They deſired me to ſwear, that I was at the robbing of Mr. *Hurly* with *Daniel Carty*; and they told me, I ſhould be hang'd if I did not ſwear it.

Court. Did you ſwear it?

Hicky. Yes, I did.

Mr. *Bernard*. After you ſatisfied theſe Gentlemen's Importunity, how long was it before you were diſcharged out of Priſon?

Hicky. I was kept in Priſon till after the Aſſizes.

Court. Who did you ſwear was with you at the Robbery?

Hicky. *Calaghan Carty*, *Donogh O-Brien*, and *Daniel Carty*.

Court. Has he any other Name but *Donogh O-Brien*?

Hicky. Yes, he generally goes by the Name of *Donogh O-Brien Andrews*; ſome call him ſo: His Name is *Donogh O-Brien*.

Court. How came you to get your Diſcharge out of Priſon?

Hicky. My Lord, when my Lord Chief-Juſtice *Pyne* came, we were carried to the Bar. When I was at the Bar, I was told I muſt take the Affidavit againſt Mr. *Hurly*; and if I would not, I ſhould return to Gaol again.———The Gaoler would let nobody come near the Bar; for we ſaid, We will tell the Truth, and would not tell a Lye againſt Mr. *Hurly*. And he went out, and came in again, and took us back to the Gaol.

Mr. *Bernard*. How long after this were you diſcharged?

Hicky. We petition'd my Lord Chief-Juſtice, and ſent after him to *Limerick*, but got no Anſwer; and then they ſent a *Mittimus* to keep us in Gaol. They ſaid, If we got Bail, they would enlarge us: So *Donogh O-Brien*'s Friends were bound for him, and I got a Friend to be bound for me; and I was bound for another of the Priſoners.

Court. Did you ever make an Affidavit before my Lord Chief-Juſtice?

Hicky. Yes; we came to Town, and made an Affidavit before him.

Court. Who was with you?

Hicky. *Calaghan Carty*, *Donogh O-Brien*, *Daniel Carty*, and *Crips*.

Mr. *Forſter*. After you gave in that Affidavit, and went home, what did you do then?

Hicky. We went home then; and we heard that they had a Warrant againſt us.

Court. You ſay, you ſwore before the Lord Chief-Juſtice, and that *Calaghan Carty*, *Crips*, and *Donogh O-Brien* were there: And you are very ſure that *Calaghan Carty* was one?

Hicky. Yes, he knows me, and I know him; he is my Relation.

Court. Mr. *Neylan*, you are upon your Oath: Did you ſee this Perſon in the Gaol at *Ennis*? Pray, give an Account of what paſſed there, and what Fine was put upon him, to make him diſcover.

Neylan. My Lord, when he came to Gaol, he ſought for me, and I told him that one had diſcovered: And he aſk'd me, what I would adviſe him to do? And I ſaid, I'd adviſe him to diſcharge a good Conſcience.

Mr. Juſtice *Coote*. I am not a Judge of the Fact, but the Jury is. *Hicky*, you were brought before me; and when I examin'd you, you went backward and forward, and I committed you that Night to the Gaoler's Care; and when you were brought into the Court, you ſaid, You would ſtand by the Examination you ſwore before my Lord Chief-Juſtice *Pyne*.

Mr. Sol. Gen. What did Mr. *Hickman* perſuade you to do, when he tamper'd with you?

Hicky. When *Walter Neylan* went from me, I was brought to Mr. *Hickman* and *Cuſack*; and they told me, there was an Examination of Mr. *Daniel Carty*. It is in vain for you, ſaid they, to deny the Fact; but you muſt ſay what we will have you to ſay, or elſe you ſhall be hang'd; for *Carty* has ſworn, That you and he were at the robbing of *Hurly*; That you left all the Gold and Linnen in his Barn for him.

Mr. Att. Gen. And did Mr. *Cuſack* ſay ſo too?

Hicky. Yes, he did ſay ſo.

Mr. Sol. Gen. What ſhould be the Seducement of Mr. *Hickman*, or *Cuſack*, to have you forſwear yourſelf?

Hicky. There was a Contrivance between *Halloway*, *Hickman*, and *Carty*, to ſwear.

Mr. Sol. Gen. But why ſhould Mr. *Hickman* do this? What End could he have in it?

Hicky. I cannot tell.

Mr. Att. Gen. You, *Hicky*, is Mr. *Hickman* a Papiſt, or Mr. *Cuſack*?

Hicky. No, Sir.

Mr. Att. Gen. For what Purpoſe ſhou'd they come to you, to have you forſwear yourſelf?———*Hicky*. They did do it.

Mr. *Dean*. What became of that Note Mr. *Hickman* and *Cuſack* gave you?

Hicky. *Calaghan* had it, and brought it to Town.

Mr. *Butler*. *Hicky*, you were examin'd at this Bar before: Did not you ſwear the ſame Thing againſt Mr. *Cuſack*? And after, when he came into Court, and you ſaw him, did not you retract in open Court what you ſwore before? Did you? or, Did you not?

Hicky. I cannot tell what I did: I told him that he gave me the Note.

Mr. J. *Coote*. Then I'll tell you what you did. Mr. *Cuſack*, to the beſt of my Remembrance, came to the Side-Bar there. Mr. *Hurly*, you were there; and after Mr. *Cuſack* came in, this Perſon was aſked the Queſtion, Whether that Mr. *Cuſack* tampered with him? And he ſaid, No; that he only deſired him to ſwear nothing but the Truth.

Mr. Huiſh *ſworn.*

Mr. J. *Coote*. I'll aſk Mr. *Huiſh* a Queſtion or two; for ſuch a Fellow as this is not to be endured. Mr. *Huiſh*, Was not you preſent when this Man was brought before me?

Mr. *Huiſh*. I was, my Lord.

Court. I only aſk, what happened in my Houſe as to the Behaviour of this Man?

Mr. *Huiſh*. When I came firſt, the Book was put into his Hand, and he was ſworn: But, on Examination, he ſeemed to be ſullen, and would not anſwer: But he owned, that the Examination he gave in the Gaol was falſe, and the Examination he gave before my Lord Chief-Juſtice was true. And when you ſat down to reduce what he ſaid into Writing, he began to retract. When it was written, that he ſaid, That before my Lord Chief-Juſtice was true, and the other falſe, he began to fall off and faulter, and ſaid, Did I ſay ſo? You examined him alone that Time, and gave him Encouragement to ſpeak the Truth. And after it was aſked, Had you rather be examined before the Judge alone, or before all the People here? then he was for being examined before the Judge alone. So I went out, and left him and this *Daniel Hicky* together for near three Quarters of an Hour: Then your Lordſhip called us in, and ſaid, This Fellow is ſullen, and will not give any Account.

Mr. J. *Coote*. I did preſs this Man to tell the Truth; Did *Hickman* or any of thoſe People entice him to ſwear any falſe Oath? and one Time he ſaid, They did not; and another Time he ſaid, They did.

Mr. *Forſter.* Did he at any Time deſire that his Examination ſhould be deferr'd until he came to Court the next Day ?

Mr. *Huiſh.* Truly, I don't remember that Particular.

Mr. *Forſter. Hicky,* What was the meaning, that when you were examined before Mr. Juſtice *Coote*, that you ſaid, Did I ſay it ? or did I not ſay it ?

Hicky. I was afraid ſome of them would ſwear againſt me : They were following me all Day——Mr. *O-Brien*'s Man was after me : And Mr. *Huonin* came and told me, I ſhould be hang'd if I did it not.

Donogh O-Brien Andrews *ſworn.*

Mr. *Forſter.* My Lord, if it pleaſe your Lordſhip, I deſire he may give an Account of this Matter.

O-Brien. My Lord, I was then Priſoner by *Thomas Bourk*, and they would ſhew no Warrant, till they had ty'd me with a Cord, carried me to *Ennis*, and bolted me ; and afterwards brought me before Mr. *Hickman* —And they told me, that *Daniel Carty* had given an Examination againſt me, that I was one of the Perſons employed to rob *Hurly* ; and that if I did ſwear as *Carty* did, I ſhould have the ſame Reward *Carty* had ; and that it was not for me to pretend to live in the County of *Clare*, if I did not ſwear as *Carty* did.

Court. And did you ſwear then ?

O-Brien. If your Lordſhip pleaſes, I'll declare the Matter.——*Tom Hickman* and *John Cuſack* told me, that I had Reaſon to curſe the Time that I did not ſwear as *Daniel Carty* did.

Mr. Att. Gen. How long is it ſince Mr. *Hickman* and you were ſo familiar, that you call him *Tom ?*

O-Brien. They ſaid, I ſhould be hang'd for it, if there were no more Men in the Kingdom ; and I was accordingly ſent into the Dungeon, and hand-cuff'd, and they came and ty'd me, and told me, that *Calaghan Carty* and *Daniel Carty* had ſworn ; and they would put a Lump of Gold in my Wife's Lap, if I would ſwear I was employed to rob Mr. *Hurly :* And *Hallaway* came to me, and ſaid, Declare the Truth of the Matter, and ſwear as the reſt did, and I'll go and ſpeak to the Gaoler, and get you eaſed as well as *Carty.* Every Day *Hallaway* came to me, and ſaid, I ſhould want for nothing, if I would ſwear as they did. So on *Sunday* Morning a Yoke was brought to me, and they were going to Yoke me, but they did not do it ; and after Service, that *Sunday*, *Tom Buck* came to me, and told me, they came from *Tom Hickman*, and if I did not ſay as the reſt had ſaid, I ſhould be hanged ; but I was weary of the Bolt and Hand-cuff, and I had not my Friends to come near me, nor my Wife ; ſo I reſolved I would do any thing rather than lie in the Condition I was in, and I ſaid, I would ſwear what they pleaſed.

Court. And did you ſwear ?

O-Brien. My Lord, upon this Anſwer my Bolts were taken off, and the Hand-cuff ; and I was carried abroad to *William Butler*, and he aſked me, when I came before him, Why I was ſo obſtinate againſt the County as I had been ? But if you reſolve to do it now, ſays he, it will do as well ; and if you ſwear as the reſt did, you ſhall have as good a Reward as *Daniel Carty*, and Twelve-Pence a Day during the Time you was confined.

Court. Did you not repeat the Words he had then written down ?——Did not you ſpeak the Words he had written ?

O-Brien. No, I did not.

Court. But you ſwore to them afterwards.———Did he read the Examination to you ?

O-Brien. Yes, he did.

Court. Did you ſwear to it ?

O-Brien. Yes, I did it to eaſe myſelf.

Mr. Recorder. Is the Examination true, at this Day ?

O-Brien. No, it is not.

Mr. Sol. Gen. I deſire that Examination may be read, and he may tell us, what Part of it is true, and what not.

O-Brien. My Lord, I after went to Gaol, and received the Allowance Mr. *Butler* ordered me, Twelve-Pence a Day——And, my Lord, ſome time in Summer before the Aſſizes, *Walter Neylan*, that was now in Court, brought down one of Mr. *Hurly*'s Coats, and aſked us, Whether we knew theſe Coats that we wore in the Robbery ?—He told us, Mr. *Butler* deſired us to ſwear to the Coats ; but we refuſed to do it ; and then we were turned into the Goal, and 6*d.* of the 1*s.* taken from us.

Mr. *Robbins.* Were you ſworn laſt *Auguſt*, and before whom ?

O-Brien. Before the Lord-Chief-Juſtice *Pyne.*

Mr. *Robbins.* Did *Calaghan Carty* make an Affidavit at the ſame time ?

O-Brien. Yes, he did.

Mr. Sol. Gen. Who writ your Examination ?

O-Brien. I writ it myſelf.

Mr. Sol. Gen. Who writ *Calaghan Carty*'s Examination ?

O-Brien. I do not know ; I was by at the ſwearing of it.

Mr. Sol. Gen. Who writ *Hicky*'s Examination ?

O-Brien. He writ it himſelf.

Mr. Sol. Gen. How long were you in Town before you gave in your Examination ?

O-Brien. It was not paſſing three or four Days.

Mr. Sol. Gen. Who came into your Company ?

O-Brien. Nobody, until I came to *Kiltartan* ; and that Night Madam *Hurly* came into the Houſe, and lay in the Houſe that Night, ſhe and her Brother.—— She aſk'd me where I was going ? I told her, I was coming to Town to declare the Truth.

Mr. Sol. Gen. And did you come to Town in their Company ?

O-Brien. Yes, I did.

Mr. Sol. Gen. And what other Company came along with you and Mrs. *Hurly ?*

O-Brien. There was nobody but *Terry* and *Crips.*

Mr. Sol. Gen. And within three or four Days after you came, you ſwore the Examination ?

O-Brien. Yes, I did.

Mr. Sol. Gen. How long after you came to Town, did you ſee *Calaghan Carty ?*

O-Brien. I ſaw him at *Kilcoc'*, before I came to Town.

Mr. Sol. Gen. And where did you meet *Daniel Hicky ?*

O-Brien. Coming towards *Kilcock.*

Mr. Sol. Gen. It was remarkable, that he ſhould accidentally meet Mrs. *Hurly* and her Brother at *Kiltartan*, and *Calaghan Carty* and *Hicky* and ſhe ſhould meet on the Road and Way together, to clear their Conſciences ! -- Did *Hicky*, *Carty* and you lie in one Lodging ?

O-Brien. I lay in *Church-ſtreet.*

Mr. Sol. Gen. And *Calaghan Carty* and *Hicky* lay there too ?

O-Brien. Yes, they did.

Mr. Sol. Gen. Were you examin'd in Irons ?

O-Brien. No, I was not : I had them taken off me, and was carry'd abroad ; and I was told, That if I did not ſwear as the reſt did, I ſhould be hang'd in eight Days time.

Mr. Recorder. Would Mr. *Butler* make you forſwear yourſelf ?

O-Brien. He would make me ſwear as the reſt did.

Mr. Sol. Gen. What Diſtance from the Gaol was you examin'd ?

O-Brien. Near the Gaol.

Mr. Sol. Gen. Had you any Hand-cuffs, or Irons, when examined ?

O-Brien. No, I had not.

Mr. Sol. Gen. My Lord, I muſt aſk this Man, Whether his Father be in Town ? and whether he had any Diſcourſe with his Father ?---Do you know your Father ?

O-Brien. I know my reputed Father.

Mr. Att. Gen. By Virtue of your Oath, Did you ſee your Father ſince you came to Town ?

O-Brien. No, I did not.

Mr. Att. Gen. Had you any Diſcourſe with your Father concerning this pretended Robbery ?—And did you ſay any thing to him about it, and what was't ?

O-Brien. I ſaw him at Home ; I never acknowledg'd to him I was concern'd in this Robbery.

Mr. Recorder. Pray, my Lord, did he declare to his Father, that he was concern'd in this Sham-Robbery ?

O-Brien. No, I did not.

Mr. Recorder. Did you tell your Father any thing of the Contrivance ? or would your Father have prevail'd with you to own you were in the Robbery ?

O-Brien. Yes, he would.

Mr. Recorder. Did you ever tell your Father that you uſed Mr. *Hurly*'s own Arms in the Robbery ?

O-Brien. No, I did not.

Mr. Recorder. Well, now we'll call your Father.

Donogh O-Brien Andrews *ſenior ſworn.*

Mr. Sol. Gen. Pray, upon the Oath you have taken, give an Account of what Diſcourſe paſſed between your Son and you about this Robbery.

Donogh O-Brien Andrews ſenior. My Lord, this will be look'd upon to be very ſtrange, and very unnatural, for a Father to appear againſt his Son ; yet I muſt have Regard to my Oath, and ſhall not be backward to declare the Truth.—When this Robbery happen'd, ſome tim epaſs'd before the Contrivance of it was fully diſcovered ; and when my Son was taken and carry'd to Gaol about it, I did not go near him for three Weeks. When I went to him, I was paſſionately concern'd for him, and I aſk'd him, what ſhould make him ſo wicked, as to be concern'd in ſuch a Fact as he and the other Rogues were accuſed of ? And I aſked him with Vehemence, Did you do it ? He ſaid, Yes, I did do it ; and he never deny'd it, nor no one doubted of it until ſuch Time as he went afterwards to *Dublin.* The Particulars I was not curious in aſking him, becauſe I had an Account of them from others ; and all Men allowed them to be true, becauſe they own'd it themſelves. After the Aſſizes, and that they came out of Gaol, I took Opportunity to diſcourſe my Son ; but found by him, that he had no mind to diſcourſe me.——But then, my Lord, I aſked him one Day, whoſe Arms he had ; were they *Patrick Hurly*'s ? Says he, Where elſe ſhould I get Arms ?

Court. Had you all this Diſcourſe with your Son *Donogh O-Brien*, that young Man there ?

Old *Donogh.* Yes, I had.

Young *Donogh O-Brien.* When he taxed me with this, I was indifferent in the Matter ; and when he aſked me about the Arms, whether they were *Patrick Hurly*'s Arms ? What elſe, ſaid I ?

Mr. Sol. Gen. Is the reſt that your Father ſaid true or not ? You have heard what your Father ſaid, That you confeſſed to him you were concern'd in the Robbery.

Young *Donogh.* I ſaid what I told you of the Arms ; but as to the other part, I do not remember that ever I ſaid it to him.

Mr. Sol. Gen. Old Man, Do you remember ?

Old *Donogh.* Aye, very well ; too well, to my Sorrow.

Mr. Recorder. Young Man, Do you believe that he is relating Truth or not ?

Young *Donogh.* I do not know whether he is or no.

Mr. Sol. Gen. Are you a married Man ?

Young *Donogh.* Yes, I am.

Mr. Att. Gen. Pray, who are you married to ? What Relation is your Wife to Mr. *Hurly ?*

Young *Donogh.* Mr. *Hurly* is her Uncle.

Mr. *Forſter.* Old Man, What Relation are you to Sir *Donogh O-Brien ?*

Old *Donogh.* I know no Conſanguinity between Sir *Donogh O-Brien* and me : But Sir *Donogh* purchaſed the Reverſion of my Farm, and I live in it paying him Rent.

Patrick Hurly. Pray, whoſe Horſe, and whoſe Expence brought him here ?

Old *Donogh.* The Horſe belongs to one Mr. *Everhing.*

Patrick Hurly. At whoſe Charge ?

Old *Donogh.* At the County's Charge, who proſecuted you for Perjury, *Court.* Do you expect any Abatement of your Rent?

O. *Donogh.* I am ſo far from it, that I am raiſed 50*l.* this Year more than ever.

Court. By whom?

O. *Donogh.* By my Landlord, Sir *Donogh O-Brien.*

Court. Are you to have an Abatement from Sir *Donogh O-Brien*, after this Year?

O. *Donogh.* I am not to have any. I have not any Trick or Quillet in any way: I do not expect any thing of that ſort.

Mr. Sol. Gen. There is another Part of this Young *O-Brien Andrews*'s Evidence that relates to the Juſtice of the Peace, Mr. *Butler*, and he is here in Court.

Mr. Att. Gen. Your Lordſhip has heard the Evidence of this young *Donogh O-Brien Andrews*, wherein he has been flinging againſt a whole Court and County.

Court. It was never otherwiſe; tho' a Juſtice of Peace be in the juſt Execution of his Office, yet when Criminals come to be charged, they'll recriminate thoſe that appear againſt them.

William Butler *ſworn.*

William Butler. My Lord, I had an Account, that this Sham-Robbery, that Mr. *Hurly* ſet up, as I do believe, was diſcovered by *Carty*; and I had an Account, that *Donogh O-Brien*, that young Man, was in Gaol, and was willing to make an ample Diſcovery too; and I rid to *Ennis*, and went to my Quarters where I generally lodge, and ſent to the Gaoler for him, who brought him to me; and then I told him, my Buſineſs to Town was to examine him, if he were willing to give a true Account of the Matter. He went then about propoſing to make Bargains with me, but I told him I had no more to ſay; but if he would give a true Account of the Robbery of Mr. *Hurly*, any Kindneſs I could do for him ſhould be done. He ſaid, he was afraid of the Gallows; and, ſitting down, gave me that Examination which he has given me, and I have writ it down faithfully, as diſtinctly and truly as if it was for Life and Death; and I promiſed him nothing, nor threatened him. He ſeemed to be ſo penitent for being concerned in the Action, and was ſo much troubled that it was diſcovered againſt Mr. *Hurly*, that he wept a great deal in my Company, and did declare, That if others had not diſcovered againſt Mr. *Hurly*, he never would. And I parted with him, and bid the Gaoler be civil to him.

Mr. Sol. Gen. Mr. *Butler*, Did you tell him, that he ſhould be hanged, if he did not ſwear?

Butler. By Virtue of my Oath, I did not.

Y. *Donogh.* Did not you tell me, the Quarter-Seſſions was adjourned for a Week longer, on account of this Commiſſion of *Oyer* and *Terminer*?

Butler. No; by Virtue of my Oath, I did not—I ſent for Mr. *Hickman*, and he was with me by the time I went midway thro' this his Examination; and when I had finiſh'd it, it was read to him diſtinctly, and he ſwore to it.

Mr. Att. Gen. Now, my Lord, if your Lordſhip be pleaſed, the Examination that was taken by Mr. *Butler*, I deſire it may be read Paragraph by Paragraph.

Mr. Sol. Gen. Was this Information written by Mr. *Butler* out of his own Head, or did you give him that Account as it is down there, or is it a Story framed by him?

Y. *Donogh.* Mr. *Butler* writ it. I told him ſeveral Things, but he framed them as he pleaſed himſelf.

Mr. Sol. Gen. What Information did you give then to Mr. *Butler*?

Y. *Donogh.* I don't remember.

Mr. Sol. Gen. 'Tis impoſſible for any Man to frame ſuch a Thing out of his own Head.

Mr. *Forſter.* Whether there was not a Report, that there was a Commiſſion to come down of *Oyer* and *Terminer*?

Mr. *Butler.* They did talk ſo, but I had no Diſcourſe of it; I uſed him mildly, and only deſired him to tell the Truth.

The Examination read.

Mr. Recorder. Did you lie at *Daniel O-Keans*'s Houſe that Night after the Robbery?

William Butler. Yes, I did.

Mr. Recorder. Who told Mr. *Butler* that?

Y. *Donogh.* I told him it.

Donogh O-Brien'*s Second Examination, taken before Lord Chief-Juſtice* Pyne, *read; where he anſwers what he ſwore in the former.*

Mr. *Forſter.* I deſire, my Lord, the Examination before Baron *Ecklin* may be read.

[*Clerk reads* Calaghan Carty'*s Examination before Baron* Ecklin.]

Mr. Sol. Gen. My Lord, I deſire the ſame Method may be obſerv'd in this, as in other Caſes; for Hands may be alike, and not the ſame.

Mr. *Robbins.* Here has been two Examinations of *Calaghan Carty*; one he owns, the other he denies. Now, my Lord, we have produc'd three or four Witneſſes, that he was never before my Lord Chief-Juſtice, and there ſwore, that what he had formerly ſwore in the Country was falſe, that *Patrick Hurly* did contrive a Robbery againſt himſelf.

Mr. Recorder. Mr. *Robbins* (with Submiſſion, my Lord) is mightily miſtaken; they ſaid, there was an Examination taken before my Lord-Chief-Juſtice, but not that this was it.

Mr. *Butler.* You cannot here read an Affidavit ſworn before a Baron of the *Exchequer*; there is no Colour for it.

Court. Calaghan Carty, Pray, were you examin'd before any of the Judges as to that Matter?

Carty. No, my Lord, never in my Life.

Mr. Sol. Gen. Never in his Life.---There is no proving it but by my Lord Chief-Juſtice, and to prove that this is the Man; for a Man may come in the Name of another Perſon and ſwear, and the Man he perſonates know nothing of the Matter.---Who drew your Examination, *Donogh O-Brien*?

Carty. I did it myſelf.

Mr. Sol. Gen. And who drew *Hicky*'s?—*Carty.* Himſelf.

Mr. Sol. Gen. And who drew *Calaghan Carty*'s?---*Carty.* I can't tell.

Court. I never knew an Examination, but where the Perſon was examin'd, whether it was true or not; otherwiſe it goes for nothing; and if the Perſon does not own it now, it muſt be prov'd upon him.

Mr. *Forſter.* My Lord, an Examination given in before the Court, and upon Record, we come and deſire it may be read, to confront an Evidence; for this Man is forſworn.

Court. I had the Curioſity myſelf, for the Satisfaction of Juſtice, to ſend for my Lord Chief-Juſtice's Clerk, Mr. *Wakeham*, and examin'd him here in open Court. Being examin'd, I remember, ſaid he, there did come ſuch four Men, and they were ſworn before my Lord Chief-Juſtice; but, that this is one of the Men, I cannot ſwear.

Mr. Sol. Gen. I have no ſuch Examination at all. If you pleaſe, read the Affidavit before Baron *Ecklin.*

Mr. Recorder. [*Comparing the Affidavits.*] Theſe are both the ſame, Word for Word, drawn both by Mr. *Terry*; they are both his Handwriting.

Mr. *Butler.* I deſire Mr. *William Butler* may give an Account (he is ſworn) about the Portmanteau; Whether Mr. *Hurly* did not ſwear, that he left the Portmanteau at *Loughrea*, at *Bargery*'s Houſe, whilſt he went to ſee his Brother at *Tiaquin*?

Chriſtopher O-Brien. My Lord, I aſk'd *Patrick Hurly*, what Care he took of his Money at his coming to the Country? He ſaid, he left it at *Loughrea*, and would not carry it to *Tiaquin*, for that was a looſe Family. -----This he told at his own Houſe, after he had ſworn it in the Court.

Mr. Taylor *ſworn.*

Mr. *Butler.* Mr. *Taylor*, declare what you know of Mr. *Hurly*'s ſwearing at the Aſſizes, about the Portmanteau.

Mr. *Taylor.* I was at the Aſſizes at *Ennis*, and Mr. *Hurly* ſwore, that he left his Portmanteau at *Loughrea* when he went to *Tiaquin*; and, that he told Mr. *Bargery* there was Matters of great Conſequence in the Portmanteau, and deſir'd him to take care of it; and that *Bargery* did ſo, and deliver'd it ſafe to him at his Return.

Mr. *Hurly.* Mr. *Butler* knows the County of *Gallway*: I deſire to know, whether it is likely for me, going to the County of *Clare*, that I ſhould leave my Portmanteau at *Loughrea*, and come back again?

Mr. *Butler.* I don't know that; but you did ſwear it.

Mr. Recorder. And his Man ſwore he carried it with him to *Tiaquin*. So 'tis—*Trim Tram, like Maſter like Man*, both forſworn.

Mr. Sol. Gen. My Lord, the Perſons produc'd by Mr. *Hurly* are Men, by their own Confeſſion, who at ſome Time or other were forſworn; and they are ſuch Men as have nothing between them and the Gallows but this Shifting: They are ſenſible no Jury can believe them.

Mr. *Robbins.* My Lord, we are charg'd but with one Indictment; there is but one *Venire*, I think.

Mr. *Butler.* There are Two.

Mr. Att. Gen. Mr. *Robbins*, if your Client be guilty of the Perjury, clear him of the Cheat if you can.

Court. The conſtant Practice of this Court is, That if there goes a *Venire* between the King and the Party indicted, and that there be ſeveral Indictments againſt the ſame Party, the Court will charge the Jury with 'em all, unleſs he comes in by Counſel, and ſhew ſome good Cauſe why you cannot go on with ſome of 'em.

Mr. Att. Gen. My Lord, I think that the Contrivance is made out ſo fully to the Satisfaction of every Man preſent, that there never was ſtronger Evidence than of both theſe Villainies, the Perjury, and Conſpiracy to Cheat. When a Man has liv'd extravagantly, and then goes about all manner of Ways to retrieve himſelf, if Perjury goes unpuniſh'd, it ſhall lie at the Door of thoſe Gentlemen that have heard this Matter ſo fully prov'd To-day; and this poor Country muſt ſuffer by Perjury, if care be not taken to ſuppreſs it. 'Tis now growing late, and I will not take up more Time in ſumming up this long Evidence to the Jury, but leave it to the Court.

Mr. Juſtice *Coote.* Gentlemen of the Jury, you have heard a very long Evidence; and I will repeat the Heads of it to you as well as I can, that you may diſcharge yourſelves with Honour and Conſcience. You have taken an Oath, and I hope you will not be led to the preventing of Juſtice, one way or the other. Mr. *Hurly* ſtands indicted here of Perjury, for making a falſe corrupt Oath before a Juſtice of Peace, Mr. *Blood*; before whom he ſwore, in an Examination that was read in Evidence, That he was robb'd of ſomany Guineas, Piſtoles, and other Goods, at his Father's Houſe in *Moughna*, in the County of *Clare*; That he was robb'd by four Perſons, whoſe Names he knows not, but by their Tone they ſeem'd to be *Iriſhmen*; and that the ſame was not done by any Contrivance of his. After which he did exhibit a Petition to the Judges of Aſſize, and did endeavour to recover from the County the Value of what he was ſo robbed of.

Gentlemen, Mr. *Dean Blood* prov'd to you, That the Priſoner at the Bar did take his Oath, that the Contents of the ſaid Examination was true, and that he ſign'd it in his Preſence.

Gentlemen, the firſt Witneſs that was produced unto you to prove the Perjury, and that Mr. *Hurly* was not robb'd, but had ſwore falſly in that Information, was one *Calaghan Carty*: And he being ſworn, tells you, That at the Time that this Robbery was committed he was in Mr. *Hurly*'s Service; and that Mr. *Hurly* came to him, and made Moan to him, that he did owe Money; and, that he could pay his Debts if this ſame *Calaghan Carty* would obſerve his Directions, and do what he would have him to do; and, that thereupon this *Calaghan Carty* did tell him, he would; and the Direction was, That he ſhould join other Perſons he nam'd, and put on a Diſguiſe, and take an Opportunity when Mr.

Ronane was at the Houſe, and perſonate themſelves to be Robbers, and take away the Goods and Money out of the Houſe, and when they ſhould have ſo done, to return them again. And this *Calaghan Carty* was to go to one Mr. *Forſter*'s for a Suit of black Clothes, and he was to come back again. Theſe were the Orders he receiv'd, by the Direction of Mr. *Hurly*. He tells you, That he did accordingly join the reſt; that they had Coats, Diſguiſes, and Swords left for 'em in the Barn, which they took and put on; that they did actually bolt into the Houſe at Mr. *Ronane*'s coming out of the Door, and took thoſe Fire-Arms that were laid for 'em; and that they had their Intelligence from Mr. *Hurly*, the better to perſonate their being Robbers. And he tells you, That part of them went up to Mr. *Hurly*'s Chamber, and there took the Bag; and, that they were directed by Mr. *Hurly* to pour it out before Mr. *Ronane* (the better to make the Pretence out againſt the the County), and likewiſe, when they ſhould get in, tie Mr. *Hurly* and Mr. *Ronane*; and that a Bed-cord was laid in the Window for that Purpoſe: And he tells you, that they had fir'd off the Fire-Arms, and, that there was nothing in them but Powder. And, Gentlemen, you will ſee anon how far this Man ſwears the Truth, out of the Mouths of Mr. *Hurly*'s own Evidence.

Mr. *Hurly*, to leſſen this Man's Credit, has produc'd to you ſeveral Witneſſes, who ſwear, That he ſwore an Examination before my Lord Chief-Juſtice *Pyne*, or Baron *Ecklin*; wherein he pretends, that this *Calaghan Carty* ſwears directly contrary to what he ſwore in his Information before a Juſtice of the Peace in the Country, and to what he pleads now. To this *Calaghan Carty* ſays, He never ſwore any Examination before any Judge; and if any was ſworn in his Name, it was done by ſome other, that did perſonate him. That Examination was produc'd here; but there was no Evidence, that this *Calaghan Carty* was the Perſon that ſwore it, and he deny'd that the Name to it was his Hand-writing; and he ſeems to be too ignorant a Perſon to contrive ſuch an Examination. Now, whether you credited him, or thoſe Perſons that ſwore againſt him, is left to you.

The next Witneſs in behalf of the King is *Margaret Conneene*: She tells you, That ſhe was a Servant in the Houſe, and, that theſe Perſons did come into the Houſe; and ſhe hearing Murder cry'd out by Mr. *Hurly*'s Servant, ſhe came out of the Kitchen: She tells you, that they made ſeveral Shots, particularly at her, and, that there was no Hurt done, nor any Marks of the Shot or Bullets in the Wall. She tells you, That at firſt ſhe was of Opinion, that it was a real Robbery; but afterwards, diſcourſing with *Calaghan Carty*, he told her it was: And beſides, that ſhe was of another Opinion upon the account of a Table-cloth taken away at the Time of the Robbery, which ſhe ſaw afterwards come back in a Trunk or Portmanteau that was ſent to Mr. *O-Brien* after the Robbery.

Walter Neylan was likewiſe ſworn; who gives you an Account, that he was in Priſon at *Ennis* for *Hurly*'s Debt, being bound for him to one *Thomas Arthur*, and that he was in the Priſon when *Hurly* was brought thither; that they were Chamber-fellows: That Mr. *Hurly* did go ſo far in the Confeſſion of this Fact to him, that when *Daniel Carty* became a Diſcoverer, and began to accuſe Mr. *Hurly* of this Matter, *Donogh O-Brien Andrews* junior, who was then likewiſe in the ſame Gaol, did deſire to know of him, what Method Mr. *Hurly* would take to get him diſcharg'd; and, that if he could not do it ſoon, that he muſt be forc'd to confeſs the whole Truth: And he ſwears, That he did acquaint *Hurly* therewith; who ſaid, that he ſhould be undone if the ſaid *O-Brien Andrews* ſhould confeſs it; and gave him a Piece of Money to give to the ſaid *O-Brien*, and bid him tell him, that he would ſoon get him diſcharg'd. *Neylan* was ſo cautious of this, that he would not do it himſelf; but one *Daniel Carty* being preſent, he gave him the Money, and he gave it to *O-Brien*: That *O-Brien* ſaid, This will not do, I muſt and will tell the Truth. He ſays, Mr. *Hurly* went ſo far, that he told him he would give any Gratification in the World to prevent *Donogh O-Brien*'s coming in againſt him; for if he did, he ſhould be ruin'd entirely. Againſt this, Mr. *Hurly* ſays, that *Neylan* was exaſperated for being in Priſon thro' his Means, ſo that he tamper'd with Witneſſes, and became his inveterate Enemy; and not only ſwore falſly himſelf, but tamper'd with others to ſwear falſly too; of which he has offer'd ſuch Evidence, as I ſhall obſerve to you hereafter.

The next Evidence, Gentlemen, that was produc'd to you, was one *Charles Mac-Donogh*. He tells you, That he was employ'd as a Sollicitor to Mr. *Hurly*; and, that he was intimately acquainted with Mr. *Hurly*, and knew a great deal of his Concerns; and, that one Night being come back from *Dublin*, the very Time before he was robb'd, he talk'd with him, and ſaid, He was a ſtrange Man to come to the Country without Money; and, that it would be too hot for him; that the preſent Sheriff was Mr. *Arthur*'s Friend; and ſays, that *Hurly* did even then fortify his Houſe, becauſe he look'd upon himſelf to be in no Condition to pay his Debts; that he was ſo extremely poor, that he durſt not appear. He tells you, that Mr. *Hurly* did tell him, that he brought down Money; and tho' he did tell him ſo, that yet he did not believe it; becauſe when he told him of the Sheriff, *Hurly* ſaid, that Sir *Toby Butler* and Colonel *Macnamarra* had a great Influence upon the Sheriff, and would make Intereſt with him, ſo that he will do me no Harm.

He tells you, That much about this Time Mr. *Hurly* employ'd himſelf in reading Acts of Parliament, and one of 'em was the Act relating to the Articles of *Limerick* and *Gallway*; and, that he had ſome Diſcourſe of being comprehended within the Articles of *Gallway*. That Mr. *Mac-Donogh* told him, he thought he was then in *France*, and that he was not there; and he ſaid, He would prove that he was then in *Gallway*: And reading the Rapparee Act, he ſaid, That it was a very pretty Way for Perſons to recover Money from the County. He tells you, Gentlemen, that after this he left Mr. *Hurly*, and Captain *O-Brien* writ him word that he was robb'd, and deſir'd that he would come and ſollicit at the Aſſizes of *Ennis* on his behalf: But he was ſo far from believing that he was robb'd, or yielding to that Deſign, that he writ back a Drolling Letter, as he calls it himſelf, and he did not think it proper to be concern'd for him. He further tells you, That there were ſome Perſons that gave an Account to him of certain Counters, one *Hicky*'s Wife, and, that if her Huſband might be produced, he and ſhe might make great Diſcoveries relating to theſe Counters.

This took Wind, and the Juſtices of the Peace gave a Warrant to the High-Conſtable, *Walter Huonin*, to ſearch for thoſe Counters. They came to the Place where this *Hurly* liv'd; the firſt Time he miſs'd, but the ſecond Time he ſent one before, to take care that nothing might be remov'd: And when he came there, he obſerv'd there was a Dunghill; and, by the Behaviour of *Hicky*'s Wife, he had reaſon to ſuſpect that Place. He tells you, That the Woman held the Candle, and in digging the Place where the Dunghill lay, at length the Spade hit upon a Slate where the Counters lay: That he took up a Bag wrapp'd about with Hay, he call'd it a Suggane: and, that there thoſe Counters, which he has here produced, were taken up. He told you, That the Woman was under ſo much Conſternation, that ſhe dropt the Candle; and when ſhe was told ſhe muſt go along with him, ſhe ſaid, Now that was found, ſhe believ'd ſhe muſt.

The next Perſon examin'd was *Thomas Edwards*. He ſwears, He was employ'd to go along with *Walter Huonin*; That he ſaw a Youth on his Knees by the Dunghill: He aſk'd him what he was doing? He ſaid, He was hiding his Potatoes; but he ſaw no Potatoes, which made him ſuſpect that Dunghill: and, that digging there, they found the Counters, as *Huonin* has given an Account.

The next Man that was ſworn was *Mortagh Mac-Carty*. He tells you, He had bought a Cow, and that ſhe had ſtray'd away from him, and finding of her, and bringing her home, he call'd at this Place, where *Hicky*'s Wife was, and ſhe agreed to buy his Cow, and ſhe brought out two Pieces of Gold, which ſhe call'd Guineas: Says he, Theſe are not Guineas; I believe this is ſome of *Patrick Hurly*'s Gold. He aſk'd her what ſhe would take for them? and he ſaid, I have Three-Pence Half-Penny, and a Quartern of Tobacco, which I will give you for them; and ſhe took it, and wiſh'd that the reſt were ſold ſo too. He ſays, He acquainted Sir *Donogh O-Brien* of this, and he directed him to Mr. *Bindon*, a Juſtice of the Peace, where he gave in the Examination: He produced to you theſe two Pieces, which you have here compar'd with the reſt of the Counters.

Gentlemen, the next Perſon that was ſworn was one *Joſeph Lynch*. He tells you, That he was very well acquainted with Mr. *Patrick Hurly*, and, that *John Hurly* was married to his Siſter; and, that Mr. *Hurly*, before or about *Chriſtmas*, came to *Loughrea*; and, that at one Mr. *Henry Bargery*'s Houſe they were both together a-drinking; and, that Mr. *Hurly* taking out ſome Linnen out of his Portmanteau, he ſaw a Bag that held about a Quart; and taking it to be Money, he look'd into it, and found in it all Counters; and he aſk'd him what he did with them? He ſaid, He intended to make uſe of them for his Diverſion. He tells you after this, That he walk'd with Mr. *Hurly* part of the Way, and, that *Hurly* diſcours'd him about Mr. *Banks*'s Robbery. Mr. *Lynch* told him, that the Country had found for *Banks*, and, that he propos'd ſomething in relation to his own Robbery, if Mr. *Lynch* would aſſiſt him; what a pretty Way it was to get Money! *Lynch* told him, in what was honeſt and juſt he would aſſiſt him, but in nothing elſe. Mr. *Hurly* then fell into Diſcourſe with him about his Farm, and ſaid, he would give up his Farm too, if he would come into the Deſign he had to get Money. Mr. *Lynch* anſwer'd as before, If it be honeſt and juſt, I will; if not, I will not; and for the Farm, ſaid he, I'll force you to do that without it.

He tells you, That Mr. *Hurly* ſent a Trunk of Linnen to his Houſe after the Robbery was committed; and, that Mr. *Hurly* did deſire Nobody ſhould ſee the Trunk with him; that he heard his Brother *Bourk* ſay, That it was Linnen, but he did not mind it, his Wife being then ſick; and ſays, they took away the Trunk that ſame Night after Mr. *Hurly* was in Gaol. He tells you, he had the Curioſity to go and ſee him in the Gaol of *Ennis*, and after diſcourſing with him, he ſaid, He had done ſomething very irregular in *France*, and now to come into the Country and charge it with a Robbery, was very ill.

The next Evidence is *Charles Caſſidy*, Surgeon; and he gives an Account, That this *Hurly*'s Father being ſick, his Siſter ſent for him to come there; and after he came, they ſent for one Dr. *Brodin*, a Relation of Mr. *Hurly*'s; and that this *Brodin* and he, ſome Time after, went to viſit ſome other Patients; and being abroad, *Brodin* propos'd to him, ſays he, Mr. *Hurly* gives you ſmall Fees, I can put you in a Way to get 20 Guineas; and told him of the Deſign, and how he might be a Party concern'd in the pretended Robbery; and he anſwer'd, He was a Man too well known; but he perſuaded him to accept of the Employ. When they came home to *Hurly*, the Doctor told him, he had offer'd him 20 Guineas: and *Hurly* was ſo far from denying it, that he chid Dr. *Brodin*, and ſaid, he would give him 40 Guineas; and then *Caſſidy* ſaid, he was afraid of being known: Hereupon *Hurly* told him he had provided Vizards, to prevent his being known; and after going Home, his Heart fail'd him, and he would not be concern'd. He told you, he heard of this Robbery; but this Thing was not diſcover'd by him till laſt *Sunday*, where being at Church, he went with Mr. *Fitz-Gerald* to Dinner; and *Fitz-Gerald* talking of this Buſineſs of *Hurly*, *Caſſidy* ſaid, He knew a Perſon in the County, that could do him more Harm than any Man living: Says a Clergyman there preſent, You ought to do the County that Right, as to find out that Perſon, that the County may not be ſo oppreſs'd, but Juſtice done to the Criminal. And, that he went home, and conſidering it, he went and gave in his Examination to a Juſtice of the Peace, who bound him over to proſecute; and accordingly he attended here.

The next Witneſs is *Daniel Kiefe*. He tells you, That he was very well acquainted with Mr. *Hurly*, and, that Mr. *Hurly*, ſome Time before this Robbery was committed, came to Mr. *Bently*'s Shop, and enquir'd there for Maſks, or Vizards, ſuch as they uſe for Maſquerades; and *Bently* made anſwer, That they had none, but they might be had in *Chriſt's-Church-Yard*. He tells you, that *Hurly* thereupon went into the

Yard. He tells you, that at that Time, hearing *Hurly* enquire for Maſks, he was apprehenſive that he had ſome evil Deſign in hand, and told *Bently* ſo; and *Bently* agrees in what *Kiefe* ſwears, that he did enquire for Maſks, and went into *Chriſt-Church-Yard* for them.

Mr. *Gray* (the next) tells you of the Poverty of Mr. *Hurly*; and that he could not have any ſuch Sum of Money; that he deſired him to raiſe ſome Money for him, and for better Security he lodged in his Hand a Bond of Captain *Mac-Donnel*'s; and, accordingly, that he got Mr. *Conner* to indorſe a Bill to Mr. *Lumm*; and Mr. *Hurly* afterwards paid the Money.

The next that was produced for the King was Captain *Mac-Donnel*; and he tells you, That he had given ſuch a Bond to Mr. *Hurly*, upon Account of a Farm they had purchaſed jointly, and that he ordered him to pay this Fifty Pound that was borrowed; that he would not be concerned in paying Part, unleſs he paid it all; that the Money was paid.

Mr. Att. Gen. Caſſidy tells you, That he had uſed to play at *Tables* with *Hurly* at his Houſe; and that *Hurly* got him to ſend for a Dozen of Bottles of Wine to *Ennis*, to drink with *Hurly*, becauſe *Hurly* had no Money.

Mr. J. *Coote*. I will give you an Account now as faithfully as I can, of what is ſworn for the Traverſer.

But I ſhould have told you firſt, That Captain *Mac-Donogh* gave you an Account of the greateſt Severity uſed by *Patrick Hurly* towards his Brother *John*, which, he ſaid himſelf, he would not have done, but that he was forced to do it, by reaſon of his own neceſſitous Condition.

Now Mr. *John Hurly*, he tells you of conſiderable Sums of Money he received from *Holland*, *viz.* 490 *l.* from Colonel *Lovet*, and 200 *l.* from *Jeremiah Donaven*; and in 97 from Mr. *Fitz-Symons* 300 *l.* 10 *s* and 200 *l.* more in *Limerick*. He tells you, that of thoſe Sums received, he paid again in Caſh to Mr. *Hurly*, all but a little that is received from Mr. *Fitz-Symons*: He paid him in Caſh but a little; and he had Forty Bullocks, and ſome Sheep, towards the Balance of what remained unpaid. That there was ſome Money paid to Mr. *Arthur*, and ſome to Mr. *Burton*, and more laid out otherways. He tells you, that he ſaw with *Daniel Hicky* a Note that was given him by Mr. *Hickman*, a Juſtice of Peace of the County, and by Mr. *Cuſack*, then Sheriff, whereby they promiſed, that if he would make a true Diſcovery of the Robbery of *Hurly*, that they would intercede to the Government for a Pardon for him. This is the Subſtance of what *John Hurly* has ſworn.

The Witneſs for the Traverſer was *Dorothy Kemp*, who was a Servant, ſhe tells you, to Mr. *Hurly*, when this Robbery was committed. She tells you, That Seven Perſons came into the Houſe; that Five of them went up into her Maſter's Chamber, and Two ſtaid in the Parlour: That there were ſeveral Shots made, and that there was no Harm done, nor no Marks or Prints of Bullets or Shot in the Wall or Cieling: That there were Two Men without at the Window, and being called Rapparees, they thruſt their Swords through the Window: And that Mr. *Ronane* was going out, when they ruſhed in, and that they threw him down, and that they tied *Ronane* and *Hurly*; and to ſhew you there was Money, ſhe tells you, that the Wife of Mr. *Hurly* took out of a Trunk a great Bag of Gold, and ſhewed it to her; and then took part of it, and put it into her Pocket:. And after that, this *Dorothy Kemp* going to the Trunk for Linnen, ſhe was ſtrangely ſurpriſed to find the Bag there; that Mr. *Hurly* came in at the Time, and was inquiſitive to know what ſhe did there; ſhe told him, ſhe was looking for Linnen: That then he took the Bag out himſelf, and convey'd it to his Cloſet.

She tells you likewiſe, That there was one *Murough O-Brien* did endeavour to tamper with her, to perſuade her to ſwear about the Counters, that they were to be lodged with her, or with *Daniel Hicky*'s Wife; and this *Murough* promiſed her a great Reward, if ſhe would let this Trick be put upon her Maſter; but ſhe would not. She tells you, that this *Murough O-Brien* not only tamper'd with her, but alſo with *Hicky*'s Wife; and that he ſent Letters by his Servant to *Hicky*'s Wife, and that they were delivered; and that the Contents of the Letters was, deſiring her, that ſhe would ſuffer thoſe Counters to be lodged in *Hicky*'s Houſe. She tells you, that Mr. *Hurly* had a conſiderable Quantity of Linnen taken away from him; that ſhe had waſhed Twenty Pair of Sheets herſelf, and that there was Ten Pair more, and that all was taken away except Five Pair; which is the Subſtance of what ſhe ſwore.

But *Murough O-Brien* was ſworn, and he depoſed, That he was ſo far from tampering with *Dorothy Kemp*, that he did not think it ſafe to converſe with her, becauſe ſhe was kind and civil to Mr. *Hurly*, and bore a Child or two by him; and to the contrary he ſwore, he had no Communication at all with her: But as for *Hicky*'s Wife, he ſays, ſhe told him ſhe would diſcover all, if he would bring her Huſband home again; and, in purſuance of that, he writ Letters to *Hicky*, and that the Purport of them was only to ſatisfy him, that he might come with Safety, and treat with him. The Letters being read, they import no more.

Gentlemen, the next Witneſs, *Daniel Mac-Cay*, ſays, That he was a Servant to Mr. *Hurly* a conſiderable Time; that he was in the Houſe when the Robbery was committed; and that there was only Five of the Robbers that he ſaw; that ſome of them put the Family in Terror, and others made it their Buſineſs to fall on the Maſter: He at firſt thought they were only Bailiffs come to arreſt his Maſter; but when they came and broke open the Door that they had lock'd upon his Maſter, he found they were Tories: That there were ſeveral Shots made. I aſked him, Was there any Hurt made by the Shots? and he ſaid, No. Was there any Marks of the Bullets? he ſaid, No. He ſaid, there was ſome at the Window, that did thruſt in their Swords. He tells you, there was one *Chriſtopher O-Brien*, who did endeavour to tamper with him to take off the Evidence, to whom he went with a Letter to the *Swan*-Tavern, and that Mr. *O-Brien* diſcourſed with him about the Counters.

He tells you, That his Maſter had a great deal of Money; and that when he was to go down into the Country with his Maſter, they were ſo great together, that his Maſter acquainted him with a great Sum of Money he had, and that he told him he intended to pay Mr. *Arthur* with it; but that *Arthur* did exact a great Sum for Exchange, and therefore he did not pay the Money in Town, but expected to get eaſy Terms from him in the Country; and it was becauſe he feared to be robbed, that he did ſhew his Servant a great Sum of Money he had to carry down into the Country: And then he was examined by Mr. *Butler*, as Counſel for the King, by what Road they went at that Time to the Country, and at what Place they went over the *Shannon*? He ſaid, it was over a Bridge, but he did not know what Bridge. And being aſked, Whether they went through *Athlone*? it being a caſual Queſtion, he ſaid, They did go through *Athlone*. And being aſked, Where he lay that Night? he ſaid, At *Balliboy*, or *Eyres-Court*. And being urged to be exact, he ſaid, He thought it was *Balliboy*; and then he ſaid, they laid at *Killighy*.

Gentlemen, you know the Country, and that *Balliboy* and *Killigy* are near the *King's County* on that ſide the *Shannon*; and *Eyres-Court* on the other ſide, in the County of *Gallway*.

Now, Gentlemen, becauſe Mr. *Patrick Hurly*, in the Courſe of the King's Evidence, denied poſitively that he was at any Time about *Chriſtmas* at *Loughrea*; I aſked this *Mac-Cay*, if his Maſter went down any other Time? he ſaid, He did a little before *Chriſtmas*: And then I aſked, If he was at Mr. *Bargery*'s Houſe in *Loughrea*? he ſaid, He was; but he could not tell whether Mr. *Joſeph Lynch* was there or not. And being aſked, Whether he carried his Maſter's Portmanteau to *Tiaquin*? he ſaid, He did; and that his Maſter hired a Horſe at *Tiaquin*, and ſent him before him to *Gort*. I aſked him, Whether he were ſure the Money his Maſter produced to him in *Dublin* was Gold, or no? He ſaid, he was ſure it was Gold, it was Louis d'Ors; though, by Mr. *Hurly*'s Information, there was more Guineas than Louis d'Ors. He tells you likewiſe, Gentlemen, that this *Calaghan Carty* had diſcovered upon his Oath, before my Lord Chief-Juſtice, what he had formerly ſworn before a Juſtice of the Peace concerning this Robbery: And being aſked, Who were preſent? he ſaid, My Lord Chief-Juſtice's Clerk was there; which gave Occaſion to the *Court* to ſend for the Clerk.

The next Man examined was one *Crips*. He ſays, That one *Halloway* did beat him, and take him by the Hair of the Head, becauſe he would not ſwear againſt *Patrick Hurly*; and that *Neylan* offered him Six Collops grazing, if he would ſwear that *Hurly* contrived this Robbery himſelf, and that he was by when *Calaghan Carty* was ſworn before my Lord Chief-Juſtice *Pyne*; but he cannot tell what it was he ſwore; and he does not ſeem to be capable of knowing it, for he does not ſpeak *Engliſh*. And then he ſays, Mr. *Lynch* offered him conſiderably to come and ſwear againſt *Hurly*; and bid him come to *Connaught* and live with him, for *John* and *Patrick Hurly* were both ruined. Mr. *Lynch* has been examined; and he ſwears, he had no other Diſcourſe with this Man, but about the Farm at *Moughna*, that the *Hurlys* held from him; that they were in ill Circumſtances, and that he would be rid of the whole Family. *Neylan* tells you, That, to his Knowledge, he never ſaw this Man 'till this Day. *Crips* ſaid, upon his Oath, That it was at a Houſe, in ſuch a Place, that *Neylan* tampered with him: And *Neylan* tells you, upon his Oath, That there was not any Houſe at all, within his Memory, in that Place; and that he never had any Communication with this *Crips*, directly or indirectly. So when Perſons ſwear directly one againſt another, you, Gentlemen of the Jury, muſt weigh the Evidence, and the Arguments they offer to induce your Belief.

The next Witneſs is *Daniel Hicky*; who tells you, He was ſent to Gaol and bolted there; and after he was told, that one *Daniel Carty* confeſſed the whole Matter, he was forced before a Juſtice of Peace, and there was forced to ſwear, by the Management of Mr *Hickman* and Mr. *Cuſack*, who told him, That if he did not ſwear, he muſt be hanged: And that, through Fear, he was compelled to give that Information, wherein he proves the Robbery was contrived by Mr. *Hurly*, and that he was one of the Actors in it: And when he was told, that he ſhould be called before my Lord Chief-Juſtice *Pyne*, and he was brought into the Bar, he ſaid, he would ſwear nothing but Truth before my Lord Chief-Juſtice: That hereupon the Gaoler carried him back, and he never after could get Opportunity of giving my Lord Chief-Juſtice an Account of the Matter, though he ſent Petitions after him. He ſays, That before he diſcovered, he was treated barbarouſly; but afterwards he was treated very well, and had Twelve-Pence a Day; but that after they were in the Court, and ſaid they would ſay nothing but the Truth before my Lord Chief-Juſtice, they were allowed but Nine-Pence, and there was a *Mittimus* ſent to confine them cloſer. He ſays, *Daniel Carty* procured Bail, and he was bail'd by ſome Friend of Mr. *Hurly*'s. He tells you, he came to Town, and that he went to the Lord Chief-Juſtice *Pyne*, and there ſwore an Examination contrary to what he ſwore before, and ſays, that he was conſcious of the Injury he had done Mr. *Hurly*; that he writ his ſole Examination himſelf; and ſays, he had been tampered with, and nothing would do. That he was afterwards brought into this Court, and there did own his Examination before my Lord Chief-Juſtice to be Truth; but after he charged Mr. *Cuſack*, the Sheriff, with having tampered with him, when Mr. *Cuſack* appeared here and confronted him, he went back from what he ſaid.

The next is *Donogh O-Brien Andrews* junior; He tells you, he was manacled and fettered in the Gaol, till ſuch time as by the Perſuaſion of Mr. *Neylan*, and the Threats of the Gaoler and of Mr. *Cuſack*, That if he did not ſwear, he ſhould be ſeverely neck-yoked; he went before a Juſtice of the Peace with Mr. *Butler*, who uſed ſeveral Inſinuations to him, as he ſays, to procure him to ſwear the Robbery was contrived by *Hurly*; which, through Fear, he conſented to; and ſays, That Mr. *Butler* put his Information into Writing; Part, ſays he, I told him, and Part, he ſays, Mr. *Butler* put down as he pleaſed: I did ſwear to it, ſays he, but it was againſt my Conſcience, for I was forced to it. He ſays, That Mr. *Neylan* brought Coats to him in the Gaol, and they would have him ſwear they were the Coats they robbed in, but he would not ſwear by any means. He ſays, That after they were diſcharged, he was ſo conſcious to himſelf of the Injury done Mr. *Hurly*, that he came towards *Dublin*, that he lay in the ſame Houſe with Mrs. *Hurly* and her Brother at *Kiltartan*, and, that coming nearer to Town about *Kilcock*, he met with *Crips* and *Carty*, that they lodged together in one Houſe; and being aſked, Whether he ſpoke any thing to his Father about this Robbery? he ſaid, He never did.

The Father is there produced; and he tells you, though it would reflect upon his Son, yet he would perform Truth, being upon his Oath; and ſo ſwears, That hearing how his Son had been concerned in the Contrivance of this Robbery, after he had been three Weeks in Gaol he went to ſee him, and when he came to him, check'd him; and his Son told him, as he underſtood him, that the Robbery was only a Contrivance of Mr. *Hurly*'s. That after he was out of Gaol, he ſpoke to him concerning the Arms, where they had them, and whether they were *Patrick Hurly*'s Arms? to which he anſwered, Where elſe ſhould he get Arms? And this *Donogh O-Brien Andrews* junior, being aſked again, Whether it was ſo as his Father depoſed? he ſaid, It was not ſo. Now the Father and the Son ſwearing one againſt the other in this Matter, you muſt be Judges who has ſworn true.

The next is Mr. *Butler*, who tells you, That in taking the Examination, he was ſo far from uſing any Threats to this *Donogh O-Brien Andrews* junior, that as ſoon as he came to *Ennis*, hearing he was willing to make a Diſcovery of the Matter, he ſent for him to his Lodging; that he cauſed him to ſit down; and that he writ every Word as he ſpoke it; and that there was not a Word but what came from his own Mouth: And the Examination was here read; and if you obſerve it, there are ſeveral Things in the Examination, that the Party owns came from himſelf, and ſeveral Things which could not poſſibly come within the Knowledge of Mr. *Butler*; ſo that it is impoſſible to be contrived by Mr. *Butler*, becauſe they were Things wholly in the Informer's own Cognizance.

There is one Thing offered in the Cloſe of the Evidence in behalf of the King, which does not only relate to *Mac-Cay*, but to all the reſt. Mr. *Butler* and Mr. *Forſter* upon their Oaths tell you, That Mr. *Hurly*, when he preferred his Petition concerning this Robbery before the Judges of the Aſſizes, and he did alſo ſwear, That when he went to *Tiaquin*, he left his Portmanteau with Mr. *Bargery* at *Loughrea*, with a ſtrict Charge to take ſpecial Care of it, for that there was ſomething of great Conſequence in it; and *Chriſtopher O-Brien* ſwears, That Mr. *Hurly* told him likewiſe, that he left the Portmanteau at Mr. *Bargery*'s when he went to *Tiaquin*, and ſaid he would not carry it to *Tiaquin* becauſe that was a looſe Family; ſo that Mr. *Hurly* ſwore fully againſt what *Mac-Cay* ſwears now.

Hurly ſwore he was robbed but by Four Perſons, and that agrees with what *Calaghan Carty* ſwears. One Woman ſwears there was Seven, another ſwears Nine; ſo that out of the Mouth of Mr. *Hurly* himſelf his own Witneſſes are contradicted. But Mr. *Hurly* would take off the Probability of his ſaying thus (for he denies the ſaying of it). Is it likely, ſays he, that I ſhould come back from *Tiaquin* to *Loughrea*, and ſo go on again to *Gortniſhigory*? But *Mac-Cay*, his Boy, tells you, that his Maſter hired a Horſe for him to carry the Pormanteau before him to *Gortniſhigory* on *Saturday*, and that his Maſter followed him on *Sunday*: Now, if the Portmanteau had been at *Tiaquin*, why ſhould he ſend it by *Mac-Cay* beforehand to *Gort* on *Saturday*, that he was following thither on *Sunday*? And when Mr. *Hurly* was going down to the Country, what can be imagined, why he ſhould make a Boy acquainted with his carrying ſo much Money with him? And that Mr. *Hurly* ſhould leave the Key of the Trunk with Mrs. *Kemp* to take out Linnen, and ſo great a Sum of Money there? I do but lay the Facts before you as they ſtand upon the Evidence, as well for as againſt the Priſoner; and I hope you will do Juſtice both to the Priſoner and to the King. Gentlemen, if you are ſatisfied upon the whole Matter, that Mr. *Hurly* is guilty of the Perjury, you will find him Guilty; if not, you will acquit him.

If you think him Guilty of the Contrivance to Cheat the County, you will find him Guilty; if not, you will acquit him.

The Jury went out, and returned in Half an Hour; and brought in their Verdict, Guilty, on both Indictments.

Mr. Att. Gen. May it pleaſe your Lordſhip, *Patrick Hurly* has been indicted for Perjury and a Cheat, and is found Guilty of both Indictments: I humbly pray your Lordſhips Judgments.

Court. How have you laid your Indictment?

Mr. Sol. Gen. At Common Law.

Court. In what Circumſtance is Mr. *Hurly?*

Mr. *Butler.* I hope, my Lord, if it is only a Fine, it can't be leſs than the Sum he deſigned to get from the County by the Perjury.

Court. As to the Perjury, the Judgment of the Court upon that Conviction is, That Mr. *Hurly* be Fined for the Perjury 100*l.* and be Impriſoned till he pay it to the King.

Mr. Att. Gen. We will move the Court next *Monday* for your Judgment upon the other Indictment.

Mr. *Butler.* My Lord, we inſiſt upon it, That the Pillory is the Puniſhment for the Cheat.

Court. We know, if Mr. *Hurly* be not able to pay the Fine, he ought to ſuffer Corporal Puniſhment.

CLXII.

The Trial of Colonel NICHOLAS BAYARD, *in the Province of* New-York, *for* High-Treaſon, February *the* 19*th*, 1701---2, 14 WILL. III.

ON the Sixteenth of *January*, 1701, Captain *John Nanfan*, Lieutenant-Governor, and the Council, made the following Order:

At a Council held at Fort William-Henry *this* 16*th of* January, 1701, *Preſent the Honourable* John Nanfan, *Eſq.* &c.

‘IT is hereby order'd, That Alderman *John Hutchins* do appear before this Board To-morrow Morning, and then and there produce to the Board the Addreſs to his Majeſty, the Addreſs to the Parliament, and the Addreſs to the Lord *Cornbury*, which was ſigned by ſeveral of the Inhabitants of this City, and Soldiers of the Garriſon, in this Houſe, about three Weeks ſince, on the Penalty that ſhall thereon enſue.’

By Order of the Council,

B. COZENS.

Whereupon Mr. *Hutchins* appear'd; and for neglecting or refuſing to deliver up the ſaid Addreſſes, on the Nineteenth of *January* was committed to the Common Gaol of the City of *New-York*, for the ſigning of Libels, ſaid to be againſt the Adminiſtration of the Government.

On the 20th Col. *Bayard*, Mr. *Rip van Dam*, Mr. *Philip French*, and Mr. *Thomas Wenham* addreſs'd the Lieutenant-Governor and Council as followeth; *viz.*

To the Honourable John Nanfan, *Eſq. Lieutenant-Governor, and the Honourable Council of the Province of* New-York.

The Humble Addreſs of Nicholas Bayard, Rip van Dam, Philip French, *and* Thomas Wenham, *on behalf of themſelves, and ſome of the reſt of the Freeholders and Inhabitants of the Province of* New-York,

Humbly ſheweth,

‘THAT whereas by a *Mittimus*, bearing Date the Nineteenth of *January*, 1701, Alderman *Hutchins* ſtands committed for ſigning Libels, ſaid to be againſt the Adminiſtration of the Government; which pretended Libels we underſtand to be an Addreſs to his Majeſty, another to the Parliament, and another to my Lord *Cornbury*, whom we underſtand, by certain Advice we have received from *England*, to be nominated by his Majeſty to ſucceed the late Earl of *Bellamont* as our Governor; Copies of which (by the ſaid *Mittimus*) we find are expected from the ſaid *Hutchins*, and is Part of his Charge in the Commitment, the Copies of which Originals (being in our Hands or Cuſtodies) he cannot deliver. If there be no further Crime to be alledged againſt him, we hope to make the Legality of the ſaid Addreſſes; and pray, That the ſaid *Hutchins* may be releaſed from his Impriſonment, or be admitted to Bail: And your Petitioner ſhall ever pray.’

N. B. R. v. D. P. F. T. W.

Colonel *Bayard*, and the other three Gentlemen, having perſonally deliver'd this Writing, and refuſing to ſurrender the Copies of the ſaid Addreſſes, had Time given them, on their Parole, to appear next Day. And afterwards the ſame Day, the Lieutenant-Governor did deliver the above Addreſs to his Majeſty's Attorney-General of this Province, for his Opinion in Law therein, which the ſaid Attorney-General gave in Writing; and on the Twenty-firſt Day came into the Council-Chamber, and there delivered it to the Lieutenant-Governor; which was read, and order'd to be enter'd in the Council-Book, *in hæc Verba.*

May it pleaſe your Honour,

‘I HAVE well conſidered the humble Addreſs of *Nicholas Bayard*, *Rip van Dam*, *Philip French*, and *Thomas Wenham*, for the Releaſe of Alderman *Hutchins* from his Impriſonment, ſent me by your Honour yeſterday; and have alſo weigh'd the ſeveral Matters ſworn, and otherwiſe taken in Council before your Honour, which do in any reſpect relate thereto; and, upon the whole, in Obedience to your Honour's Commands, I humbly preſent you with my Judgment and Opinion in Law, as follows:

‘*Firſt*, That neither the Addreſs or Petition itſelf, or any Matter therein contained, is Criminal and Illegal.

‘*Secondly*, That the Refuſal of the Petitioners, at the Council-Board, to produce the Copies (of certain Original Addreſſes mentioned in their Petition) own'd by them to be in their Cuſtody, and by their Petition alſo, is not ſuch a Contempt to the Council, or other Offence againſt the Law, for which the Petitioners may legally be committed.’

Jan. 21 1701. *Sa. Sh. Broughton.*

And afterwards the ſaid Perſons appear'd, and continuing their Refuſal to ſurrender the ſaid Copies, notwithſtanding the Opinion of the Attorney-General, the ſaid Lieutenant-Governor and Council iſſued the following Warrant.

By the Honourable John Nanfan, *Eſq. his Majeſty's Governor and Commander in Chief of the Province of* New-York, *and Territories depending thereon in* America, &c. *and his Majeſty's Honourable Council for this Province, to* Iſaac d'Reymer, *Eſq. High-Sheriff of the City and County of* New-York, *Greeting.*

‘WHEREAS by an Act of General-Aſſembly of this Province, made in the Year 1691, entituled, *An Act for the quieting and ſettling the Diſorders that have lately happened within this Province, and for eſtabliſhing and ſecuring their Majeſties preſent Government againſt the like Diſorders for the future:* It is among other Things enacted, *That whatſoever Perſon or Perſons ſhall, by any Manner of Way, or upon any Pretence whatſoever, endeavour by Force of Arms, or other Ways, to diſturb the Peace, Good, and Quiet of this their Majeſties Government, as it is now eſtabliſh'd, ſhall be deemed and eſteemed as Rebels and Traytors unto their Majeſties, and incur the Pains, Penalties and Forfeitures as the Laws of* England *have for ſuch Offences made and provided:* Notwithſtanding which, Colonel *Nicholas Bayard*, as has appeared by the Oaths of ſeveral Perſons examin'd before Us in Council, by Conſpiracy and Combination with *John Hutchins*, Eſq. lately committed by us, together with ſeveral other Perſons diſaffected to this his Majeſty's Government, to the manifeſt Diſturbance of the Peace of the ſame, by divers indirect Practices hath drawn in Soldiers, and others, to ſign ſcandalous Libels, whereby they have endeavour'd to render the paſt and preſent Adminiſtration vile and cheap in the Eyes of the People: And the ſaid Col. *Nicholas Bayard* hath incited the People to diſown the preſent Authority, and caſt off his Majeſty's Government, as it is now eſtabliſh'd: The Council have unanimouſly thought fit, and do reſolve, That the ſaid *Nicholas Bayard* be committed for High-Treaſon. Theſe are therefore, in his Majeſty's Name, to require and command you, immediately on your Receipt hereof, to take into your Cuſtody the Body of the ſaid Col. *Nicholas Bayard*, and him in the common Gaol of this City in cloſe Cuſtody to keep and ſecure, until he ſhall be from thence delivered by due Courſe of Law; and for your ſo doing, this ſhall be your ſufficient Warrant. Given under our Hands and Seals at *Fort William-Henry* in *New-York*, in Council, this Twenty-firſt of *January*, Anno Domini 1701, and in the Thirteenth Year of the Reign of our Sovereign Lord *William* III. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith.’

John Nanfan,
A. D. Peyſter,
S. Staats,
R. Walters,
T. Weaver,
W. Atwood.

True Copy examined by me,
J. D. Reimer, Sheriff.

Which Act of Aſſembly, mention'd in the Warrant of Commitment, followeth in theſe Words, *viz.*

An Act for the quieting and ſettling the Diſorders that have lately happen'd in this Province, and for the eſtabliſhing and ſecuring their Majeſties preſent Government againſt the like Diſorders for the future.

"FOraſmuch as the Good and Quiet, Eaſe, Profit, Benefit, and Advantage of the Inhabitants within this Province doth chiefly conſiſt in, and altogether rely and depend upon their bearing true Faith and Allegiance unto their Majeſties Crown of *England*, which is, and can only be, the Support and Defence of this Province. And whereas the late haſty and inconſiderate Violation of the ſame, by the ſetting up a Power over their Majeſties Subjects, without Authority from the Crown of *England*, hath vitiated and debauch'd the minds of many People, *&c.* and hath alſo brought great Waſte, Trouble, and Deſtruction upon the good People of this Province, their Majeſties Loyal Subjects: For the Prevention whereof in Time to come, Be it therefore Enacted and Ordain'd by the Governor and Council, and Repreſentatives met in General-Aſſembly, and it is hereby Publiſh'd, Declar'd, Enacted, and Ordain'd by the Authority of the ſame, That there can be no Power and Authority held and exercis'd over their Majeſties Subjects in this their Province and Dominion, but what muſt be deriv'd from their Majeſties, their Heirs and Succeſſors. And We do hereby recognize and acknowledge, That their Majeſties *William* and *Mary* are, and as of Right they ought to be, by the Laws of the Realm of *England*, our Liege Lord and Lady, King and Queen of *England*, *France* and *Ireland*, and the Dominions thereunto belonging, *&c.* That hereby their Princely Perſons are only inveſted with the Right to Rule this their Dominion and Province; and that none ought or can have Power, upon any Pretence whatſoever, to uſe or exerciſe any Power over their Subjects in this Province, but by their immediate Authority under their Broad-Seal of their Realm of *England*, as now eſtabliſh'd.

"And be it further Enacted by the Authority aforeſaid, That whatſoever Perſon or Perſons ſhall, by any manner of Way, or upon any Pretence whatſoever, endeavour, by Force of Arms or otherwiſe, to diſturb the Peace, Good and Quiet of this their Majeſties Government, as it is now eſtabliſhed, ſhall be deem'd and eſteem'd as Rebels and Traytors unto their Majeſties, and incur the Pains, Penalties and Forfeitures as the Laws of *England* have, for ſuch Offences, made and provided."

Upon Colonel *Bayard*'s Commitment, the City Militia were, by Beat of Drum, call'd to Arms, and a whole Company daily appointed to guard the Priſon, for about a Week following, and Defaulters ſtrictly puniſh'd; which was burthenſome to the People, and occaſion'd great Clamour; whereupon it was taken off.

The Priſoner being inform'd, That a Special Commiſſion was order'd for their ſpeedy Trial, petition'd the Lieutenant-Governor and Council, on the Sixth of *February*, in theſe Words:

To the Honourable *John Nanfan*, Eſq; Governor, *&c.* and the Honourable Council, *&c.*

The Humble Petition of *Nicholas Bayard* and *John Hutchins*,

'Sheweth,

'THAT your Petitioners are very ſenſible of the Favour intended them by your Honours, in appointing a Special Court for their Trial; that, in conſideration of their Age, they might not be confin'd in a Priſon till the ordinary Time for meeting of the Supreme Court: But the Papers being at preſent out of their Hands, which they ſhall have Occaſion for, in order to make their *Innocency* appear, and not being likely to get them in ſo ſhort a Time as is prefixed for the ſaid Trial; your Petitioners humbly pray, That they may not be oblig'd to come to Trial before the uſual Sitting of the Supreme Court. And your Petitioners ſhall ever pray, &c.'

To which a Verbal Anſwer was given to Colonel *Bayard*'s Son, That out of mere Grace the Court ſhould be deferr'd for Five Days.

On the Nineteenth of *February* the Commiſſioners ſat, and publiſh'd their Commiſſion in theſe Words; *viz.*

"*WILLIAM* the Third, by the Grace of GOD, of *England*, &c. To Our loving Subjects *William Atwood*, Eſq; *Abraham d'Peyſter*, Eſq; and *Robert Walters*, Eſq; ſendeth Greeting. Know Ye, That We have aſſign'd you, or any Two or more of you, whereof you the ſaid *William Atwood* We will to be One, our Juſtices, to enquire by the Oaths of good and lawful Men of the City of *New-York*, and by ſuch other Means, Ways and Methods which to you ſhall be the better known, by whom the Truth of the Matter may be the better known, on the 19th Day of this Inſtant *February*, of whatſoever Treaſons, Miſpriſions of Treaſons, Inſurrections, Rebellions, Murders, Felonies, Manſlaughters, Homicides, Rapes, Burglaries, Miſpriſions, Confederacies, Falſe Reports, Treſpaſſes, Riots, Routs, Unlawful Aſſemblies, Contempts, falſe Negligences, Concealments, Oppreſſions, Champarties, Deceits, Miſdemeanours, and other Miſdeeds, Offences, and Injuries whatſoever, committed by *Nich. Bayard* and *John Hutchins*, and alſo the Acceſſaries of them, in the Province of *New-York* aforeſaid; and by who or by whom, to who or to whom, how, when, and in what Manner, and of other Articles and Circumſtances in the Premiſes, either or any of them concerning; and the ſame Treaſons, Offences, and other the Premiſes for this Time to hear and determine according to the Laws and Cuſtoms of *England*, and of this our Province of *New-York* in *America*. And we command, That on the ſaid Day, at the City-Hall of the ſaid City, you, or any Two or more of you, as is aforeſaid, diligently make Enquiry upon the Premiſes, and all and ſingular the Premiſes hear and determine, and do accompliſh theſe Things in Form aforeſaid, which unto Juſtice appertains to be done thereupon, according to the Laws and Cuſtoms of our Kingdom of *England*, and of our ſaid Province; ſaving unto us our Amerciaments, and other Things thereof unto us belonging. Alſo we command Our Sheriff of Our ſaid City, That on the ſaid Day, on the ſaid Place, he cauſe to come before you, or any ſuch Two of you, as aforeſaid, or more, ſuch and ſo many good and lawful men of his Bailiwick, by whom the Truth of the Matter may be the better enquir'd into. *In Teſtimony whereof*, We have cauſed the Great-Seal of Our Province to be hereunto affix'd. Witneſs *John Nanfan*, Eſq; Lieutenant-Governor and Commander in Chief of the Province of *New-York*, &c. in Council at *Fort William-Henry*, the 12th Day of *February*, in the 13th Year of our Reign, *Anno* 1701.

And Proclamation being made in the uſual Manner, the Pannel of the Grand-Jury was call'd over: Thoſe who appear'd and were ſworn, were,

Johan. d'Peyſter, Foreman,
David Provooſt,
Martin Clock,
Leendert Huygen,
Barent Reynders,
Johannis vander Spiegell,
Johannis Outman,
Hendrick Gilliſen,
Peter van Tillburgh,
Johannis van Gieſen,
Abraham Keteltas,
Aryen Hogelant,
William Jackſon,
John Corbitt,
Johan. van Cortland,
Caleb Cooper,
John van Hoorn,
Burger Myndero,
Gerret van Hoorn,
Jacobus d'Key,
Abraham Kipp,
Johannis van Santa.

(*Jacob Boelen* and *Johannis Hardenbroek* did not then appear.)

Before the Jurors were ſworn, the Counſel for the Priſoner objected againſt ſome of them, for declaring before ſeveral Witneſſes, then ready to be produc'd in Court, *That if* Bayard'*s Neck was made of Gold he ſhould be hang'd*; at the ſame time boaſting, that they were of the Jury; and pray'd, That ſince that Jury was ſummon'd upon that Special Matter, ſuch might not be ſworn. Which the Court over-ruled.

Mr. *Atwood*, the Firſt Commiſſioner, gave a long Charge to the Jury, aggravating the Facts ſuppos'd againſt the Priſoner, and poſitively aſſerting, That thoſe Facts were Treaſon, not only within the Words of this Act of Aſſembly, but alſo by the Common Law before the Statute of the 25th of *Edw.* III.

The Jurors having receiv'd the Charge, the Court adjourn'd till next Day.

The Court being met the 20th, the Indictment againſt Colonel *Bayard* was deliver'd by the Court to the Grand-Jury; and Mr. *Weaver* (appointed Sollicitor-General for this Service) attended them with the Proofs, and inſiſted to be preſent with the Grand-Jury, and that no Perſon ſhould be ſent for, but whom he ſhould name; and, that no Queſtion ſhould be aſk'd them, but ſuch as he ſhould approve of. On the other hand, *John Corbitt*, *Caleb Cooper*, *John Cortland*, and *John d'Key* inſiſted, that the King's Counſel ought not to be preſent with them at their private Debates; and, that they had a Right to ſend for what Perſons, and aſk what Queſtions for their Information, they ſhould think needful. Whereupon Mr. *Weaver* did threaten them, and (to uſe his own Expreſſion) *would cauſe them to be trounc'd*, taking down their Names. And the Grand-Jury broke up without acting.

The Court, in the Afternoon, met according to Adjournment; and the Grand-Jury being ſent for, Mr. *Weaver* made complaint, That he was obſtructed by ſome of the Grand-Jury, who would not acquieſce to his being preſent at the Examination of the King's Evidence, and would have other Evidences ſent for than what were by him produced. And thereupon Mr. *Atwood* did diſcharge the abovesaid Four Perſons from their further Service, and caus'd *Jacob Boelen*, who was abſent when the others were ſworn, to be ſent for from his Houſe, ſworn, and added to the Grand-Jury; and the Court adjourn'd till Seven a-Clock that Evening, but did not meet till about Midnight; when ſending to know if the Jury had found the Bill, and being inform'd they were ſeparated, he adjourn'd the Court till next Morning at Eight a-Clock; and in the Way from the Court, in Paſſion ſaid, *If the Grand-Jury will not find a Bill againſt Col.* Bayard, *I will bring an Information againſt him of High-Treaſon, and try him upon that.*

February 21. The Court met, and the Grand-Jury appearing in Court, the Indictment was brought in by the Foreman, endorſed *Billa Vera*, and ſigned with his Name. Upon which Mr. *Atwood* immediately diſcharged the Jury.

Whereupon the Counſel for the Priſoner informed the Court, That the Bill was not found by Twelve Jurors. And upon Examination it appeared to the Commiſſioners, that of ſuch of the Jurors who remained in Court, Eight of the Nineteen were againſt finding the Bill; as appears by the Minutes of the Court, entered by Order;

Jacob Boelen,
Abraham Kipp,
John van Hoorn,
Gerret van Hoorn,
Johannis van Santa,
William Jackſon,
Burger Myndero,
Johan. vander Spiegell.

Which Eight importuned the Court, That the Foreman might be brought upon his Oath, and the reſt ſent for to witneſs the Truth, that they only Found the Signing the Addreſſes, and not the Treaſon. To which Mr. *Atwood* made Anſwer, They were no longer Jurors; they had preſented the Bill, and the Court was poſſeſs'd of it; it was now a Record, and there is no Averment againſt a Record.

Ordered, The Priſoner come to Trial on *Monday* next come Sevennight; to which Day the Court adjourned accordingly.

On *Monday* the 2d of *March*, the Commiſſioners met according to Adjournment.

Mr. *Nicholl.* (Counſel aſſigned for Col. *Bayard*) moved, that the Indictment might be quaſhed, not being found by Twelve Men: And to prove the Matter of Law, offered to produce Authorities; and to prove the Matter of Fact, offered to produce Evidences in Court, if either were inſiſted on, the Grand-Jury being then by *Subpæna* in Court.

Mr. Sol. Gen. What is moved in behalf of the Priſoner, is moſt improper; foraſmuch as the Indictment is found, and ſigned by the Foreman *Billa Vera*, there can be no Averment allowed againſt a Record brought in by the Body of a Grand-Jury; and therefore I deſire the Priſoner may be ſent for, and arraigned.

Mr. *Nicholl.* This is a Matter of great Weight and Moment; and concerns not only the Life and Fortune of the Priſoner and his Poſterity, but the Right of every *Engliſhman* in the Province: It is not only lawful, but highly reaſonable, that an Indictment for High-Treaſon ſhould be found by Twelve Men at leaſt. By the Statute 13 *E.* 1 *W.* II. c. 13. reciting, That Sheriffs feigning many times certain Perſons to be indicted of Felonies and other Treſpaſſes, take Men not culpable nor lawfully indicted, and impriſon them.

Whereas they were not lawfully indicted by Twelve Jurors, it is ordained, "That Sheriffs, where they have Power to enquire of Treſpaſſes "by the King's Precept, or by Office, ſhall cauſe Inqueſts, *&c.* to be "taken by lawful Men, and by Twelve at leaſt, which ſhall put their "Seals to ſuch Inquiſitions." [Here it is obſervable, that there is twice *legitimo modo* in a few Lines.]

Coke Inſt. 2. *Part* 387. ſays, Two Things are provided, or rather declared, by this Act:

1. *Per legales homines ad minus duodecim faciant Inquiſitiones.*

Coke Inſt. 1. *fol.* 126. The Indictment is defin'd an Accuſation found by an Inqueſt of Twelve or more upon their Oath.

Poulton de Pace, &c. An Indictment of Treaſon, Felony, Treſpaſs, or any other Offence, is an Inquiſition taken and made by Twelve Men at leaſt.

Coke Inſt. 3. *fol.* 30. No Peer of the Realm, or other Subject, ſhall be convicted by Verdict; but the ſaid Offence muſt be found by above Four-and-Twenty, that is, by Twelve or above, at his Indictment, *&c.*

11 *H.* IV. 9. Inqueſts had been taken of Perſons named to the Juſtices, without due Return of the Sheriff; of which ſome outlaw'd before the ſaid Juſtices of Record, ſome fled to Sanctuary, *&c.* for Treaſon, ſome for Felony: Granted, That henceforth no Indictment be made by ſuch Perſons, but by Inqueſts of the King's lawful Liege People, in ſuch Manner as was uſed in the Time of his Noble Progenitors; and if any Indictment be made hereafter in any Point to the contrary, that the ſame Indictment be alſo void, revoked, and for ever holden for none.

Crook Eliz. 654. *Clyncard* was indicted on the 8th of *H.* VI. The Record was *ad Seſſionem Pacis, &c. per Sacramentum* A. B. C. D. *& aliorum legalium hominum in Comitatu prædicto preſentatus exiſtit*, &c. And it appeareth not that it was *per Sacramentum duodecim*; for it was preſented by a leſſer Number; it was clearly ill, therefore it was revers'd.

Mr. *Atwood.* There can be no Averment againſt a Record. If you can produce any Authority, that it was ever allowed to make an Averment againſt a Record, and ſpeak to that Head, you ſhall be heard; but to go upon this Head, Whether or no the Grand-Jurors are or can be brought to reveal the Counſel which they are ſworn to keep ſecret, cannot be allowed.

Mr. *Nicholl.* The Grand-Jury conſiſteth of Nineteen Perſons, whereof Eight have openly in Court proteſted, that they found no Treaſon.

Mr. *Atwood.* I have by me the Oaths of Two Men, That the Bills were found by Fourteen *Billa Vera*; they are ſo endors'd, have been publickly read in Court, and are of Record; for which Reaſon I nor nobody elſe can enquire further of it.

Mr. *Nicholl.* This concerns the Subject's Life, and your Honour ought to be Counſel for the Priſoner; and if a Miſunderſtanding happens by the Ignorance of the Jurors, ſo that the Bill is returned contrary to their Intendment. the Priſoner ought to be aſſiſted.

Mr. Sol. Gen. Pray, ſhew us any Authority, where an Averment has been offered againſt a Record.

Mr. *Emot.* May it pleaſe your Honour, I am joined with Mr. *Nicholl* as Counſel for the Priſoner. The Queſtion that now ſeems to lie before your Honour is, Whether there can be any Averment offered againſt a Record? There is an Act of Parliament of the 11th of *H.* IV. wherein it is enacted, That a Grand-Jury ſhall conſiſt *de bonis & legalibus hominibus:* And ſo likewiſe runs the Tenor of the Writ of *Venire*; for want of ſuch Perſons, the ſame Statute does declare the Indictment void. So that it is an Exception to an Indictment, to aver, that any of the Grand-Jury was an Alien; which is Matter of Fact. How ſhall this Averment be made, if ſo be there be no Averment againſt a Record? And what Benefit has the Priſoner of this Act, unleſs an Averment be allowed againſt the Record of this Indictment, if it ſhould ſo happen, that ſome of the Grand-Jury are not ſo qualified as the Act requires? Which ſeems to me ſufficient Reaſon, that an Averment in the Caſe at the Bar, is good againſt a Record.

Mr. *Atwood.* The Statute gives the Particulars that may be averred, and no others can be allowed.

Mr. *Emot.* 'Tis very hard upon the Subject: The Court appoints the Foreman of the Grand-Jury, and he may chance to be a Perſon prejudiced againſt the Priſoner, who may ſign and return the Bill *Billa Vera*, without the Conſent of his Fellows, or a ſufficient Number: And becauſe it's Matter of Record, ſhall no Averment be allowed againſt the Bill?

Mr. *Atwood.* A Grand-Jury in a certain Caſe, on an Indictment for Words ſpoken, found *Billa Vera*; but as to the *malitioſe*, *Ignoramus*; which made the Bill void. So in this Caſe, if the Jury, as to the Fact in the Indictment, had found *Billa Vera*, and as to Treaſon *Ignoramus*, the Bill had been void, and the Court muſt have taken Notice of it. But to this Bill there is no Endorſement but *Billa Vera*: The Court has received and publiſhed the Verdict, and therefore will proceed.

Mr. *Emot.* But the Matter of Fact only appeared to the Jury; and when they underſtood the Bill to be laid treaſonable, they immediately objected againſt it.

Mr. *Atwood.* The Bill is found, and appears to the Court Matter of Record; ſo that you need not inſiſt any further upon that Head. A Grand-Jury is an Inqueſt of Office; and an Inqueſt of Office may be found by a leſs Number than Twelve. Mr. Sheriff, bring your Priſoner to the Bar.

Mr. *Nicholl.* I have ſomething elſe to offer.

Mr. *Atwood.* Sheriff, ſtay a little.

Mr. *Nicholl.* I have a Second Objection in Behalf of the Priſoner; and it is, That the Juries would have been returned by Precepts under the Hands and Seals of the Commiſſioners; which we underſtand was not.

This appears in *Hale*'s Pleas of the Crown, *Pag.* 134. Sir *Edw. Coke*'s 4th Page of the *Inſtitutes*, Title *Oyer* and *Terminer*, ſays the ſame. There is a ſpecial Clauſe in the Writ of *Oyer* and *Terminer*, which ſays, *We have commanded our Sheriff to ſummons, at ſuch Days and Places as you ſhall appoint, ſuch good and lawful Men, by whom the Truth may be the better known.* How ſhall the Sheriff know thoſe Days and Places, but by the Commiſſioners Precept? And how ſhall the Truth be known, if the Grand-Jury are permitted to have no other Evidence but what are brought *ex parte Regis?*

Mr. Sol. Gen. The Grand-Jury are only to enquire for the King, and to receive or ſend for no other Evidence than what are brought for the King.

Mr. *Nicholl.* You may tell that to ſomebody elſe, not to me; that is contrary to their Oath, which is, That they ſhall diligently enquire, and true Preſentment make.

Mr. *Atwood.* All the Books ſpeak of the King's Evidence only, and agree, that the Grand-Jury may and ought to Find upon probable Evidence, as appears in *Babbington.*

Mr. *Emot.* Sir *Edw. Coke* ſays, Part 4. of the *Inſtitutes*, Title *Oyer* and *Terminer*, That the Juries ought to be returned by Precepts under the Hands and Seals of the Commiſſioners. There is no Diſtinction made between the Grand-Jury and the Petty-Jury; ſo that the *Venires*, as well for one as the other, ought to have been under the Hands and Seals of the Commiſſioners.

Mr. Sol. Gen. When you had the Government, Dr. *Staats* had a Bill found againſt him by eight Men of a Jury of Fifteen.

N. B. *A private Perſon oppoſed the Aſſertion; but he was commanded Silence.*

Mr. *Nicholl.* I never heard of it, nor believe it to be true; but that is not to be taken for a Precedent, were it true.

Mr. *Atwood.* Gentlemen, you ſeem to miſtake the Lord Chief-Juſtice *Coke*, where he ſays, There ſhall be 24 Peers upon the Arraignment of a Peer, *&c.* for if there be but 13 Peers, and the Majority agree to it, it is underſtood to be found by 12 of them.

There is ſomething in that which you offer, of the Precept being under the Hands and Seals of the Commiſſioners in the Return of the Petty-Jury; but this does not at all affect the Grand-Jury: For which Reaſon, if you ſee Cauſe to move it, Time may be granted to mend that Miſtake. Is there nothing elſe you have to offer?

Mr. *Nicholl.* Nothing at preſent.

Mr. *Atwood.* Mr. Sheriff, bring the Priſoner to the Bar.

Which was done accordingly.

Clerk of the Crown. *Nicholas Bayard*, Hold up thy Hand. You ſtand indicted, *&c.*

City and County of New-York, *in the Province of* New-York *in* America, *Anno Regni Regis Gulielmi Tertii, nunc Angliæ*, &c. *Decimo Quarto.*

" THE Jurors ſworn, and charg'd to enquire for our Sovereign
" Lord the King upon our Oaths, do Preſent *Nicholas Bayard*, of
" the City of *New-York* in *America*, Eſq; for that the ſaid *Nicholas Bay-*
" *ard*, the Fear of God in his Heart not having, nor the Duty of his Al-
' legiance weighing, but being moved and ſeduced by the Inſtigation of
" the Devil, as a Rebel and Traytor againſt the moſt Serene, moſt Il-
" luſtrious, moſt Clement, and moſt Excellent Prince, our Sovereign
" Lord *William* the Third, by the Grace of God, of *England*, *Scotland*,
" *France* and *Ireland*, and of this Province of *New-York*, King, Defender
" of the Faith, *&c.* His, the ſaid *Nicholas Bayard*, ſupreme, true, lawful,
" and undoubted Sovereign Lord; the cordial Love, and true and due
" Obedience, Fidelity and Allegiance, which every Subject of our Lord
" the King, that now is, towards him our ſaid Lord the King ſhould bear,
" or of Right ought to bear, withdrawing, and utterly to extinguiſh; in-
" tending and contriving, and with all his Strength purpoſing, deſigning,
" conſpiring and endeavouring, with divers other Rebels and Traytors, to
" the Jurors unknown, the Government of this Province of *New-York*,
" under him our ſaid Sovereign Lord the King, that now is of Right
" happily and duly eſtabliſhed, to defame, ſubvert, change and alter, and
" to diſturb the Peace, Good and Quiet of this his ſaid Majeſty's Govern-
" ment of this his ſaid Province of *New-York*, as it is now, and hath
" been for ſeveral Years laſt paſt eſtabliſhed; on the Tenth of *December*
" laſt paſt, and in the 13th Year of the Reign of our Sovereign Lord
" that now is, in the Dock-Yard of the ſaid City and County of *New-*
" *York*, and divers other Times and Days as well before as after, at the
" ſaid Ward, and elſewhere in the City and County of *New-York*
" aforeſaid, falſly, malicioully, deviliſhly, rebelliouſly and traitorouſly
" did compaſs, imagine, contrive, purpoſe, deſign, intend and en-
" deavour to defame, ſubvert, change and alter, and to diſturb the
" Peace

“Peace, Good and Quiet of this his Majeſty's Government of *New York*, as it now is, and hath for ſeveral Years paſt been eſtabliſhed. And the ſame moſt abominable, wicked and deviliſh, rebellious, treaſonous and traiterous Contrivances, Intentions, Purpoſes and Endeavours aforeſaid, to fulfil, perfect, and bring to effect, he, the ſaid *Nicholas Bayard*, by Conſpiracy as aforeſaid; afterward, To wit, the ſaid Tenth Day of *December* laſt paſt, in the Year aforeſaid, in the ſaid City and County of *New York* aforeſaid, and divers other Days and Times, as well before as after, falſly, maliciouſly, adviſedly, clandeſtinely, rebelliouſly, and traiterouſly, with Force of Arms, *&c.* did uſe divers indirect Practices and Endeavours, to procure Mutiny and Deſertion among the Soldiers in Pay, belonging to his Majeſty's Fort and Garriſon of *Fort William-Henry*, in or near the ſaid City and County of *New York* aforeſaid, and did draw in Numbers of them, the ſaid Soldiers and others, to ſign falſe and ſcandalous Libels againſt his Majeſty's ſaid Government, as it is now, and hath for ſeveral Years laſt paſt been eſtabliſhed in this Province: Which ſaid Libels, by the Procurement of the ſaid *Nicholas Bayard*, as aforeſaid, were ſigned by the ſaid Soldiers and others, and were likewiſe ſigned by him the ſaid *Nicholas Bayard*; in one or more of which ſaid Libels, amongſt other Things highly reflecting on the laſt and preſent Adminiſtration of the Government under his Majeſty in this Province, it is inſinuated and declared, That his Majeſty's Subjects within this Province are, and have been for ſome Years laſt paſt, by Perſons entruſted with the Adminiſtration of the ſaid Government under his Majeſty, *oppreſſed*; and that the ſaid Government hath been, and is rendered *cheap and vile* in the Eyes of the People, as alſo that the preſent *General Aſſembly* of this Province is not a lawful Aſſembly. By which, and divers other malicious Scandals in the ſaid Libels contained, he, the ſaid *Nicholas Bayard*, hath incited his Majeſty's Subjects of this Province to diſown the preſent Authority, and Government thereof, and to caſt off their Obedience to his Majeſty's ſaid Government, as it now is, and hath for ſeveral Years laſt paſt been eſtabliſhed, againſt the Duty of his, the ſaid *Nicholas Bayard*'s, Allegiance, againſt the Peace of our ſaid Sovereign Lord the King, that now is, his Crown and Dignity, as alſo againſt the Form and Effect of one Statute or Act of General Aſſembly of this Province, enacted in the Year of our Lord God, 1691, Entituled, *An Act for quieting and ſettling the Diſorders that have lately happened within this Province, and for eſtabliſhing and ſecuring their Majeſties preſent Government againſt the like Diſorders for the future.*”

Clerk. What ſay you, Are you Guilty, or Not Guilty of the Indictment?

Priſoner. Not Guilty. (And puts himſelf upon God and the Country, *&c.*)

Priſoner. I deſire I may be allowed two Clerks to take the Minutes of the Trial.

Mr. *Atwood.* No: You have a Sollicitor allowed; he may take Notes; any other will not be ſuffered to do it.

Priſoner. I find it was allowed my Lord *Ruſſel*, and others, to employ Clerks to take their Trials: I pray the ſame Liberty.

Mr. *Atwood.* It was allowed my Lord *Ruſſel*; but you would not be willing to meet with the Hardſhips of his Trial.

Mr. *Soll. Gen.* Perhaps the Counſel will not inſiſt upon the Miſtake of the *Venire.*

Mr. *Nicholl.* We ſhall not inſiſt on that.

Mr. *Atwood.* But we will have it mended. (And thereupon ordered a Precept to be directed to the Sheriff, under the Hands and Seals of the Commiſſioners, to return a Petty Jury the Sixth Inſtant; to which Day the Court adjourned.)

March 6th. The Commiſſioners met. The Priſoner was brought to the Bar, and the Petty Jury being called, conſiſting of Eighty, ſome of them did not appear: Whereupon it was ordered, that the Defaulters of the Petty-Jury be amerced Ten Pounds each, if they did not appear in the Afternoon, or ſhew a reaſonable Cauſe; and the Court adjourned till Three in the Afternoon, when they met again.

Mr. *Soll. Gen.* moved, That the Court might be adjourned till To-morrow Morning, the King's Evidence being diſguiſed with Drink; which was granted.

Mr. *Nicholl* moved, That it would be a Favour to the Priſoner, to put off the Trial till *Monday.*

Mr. *Atwood.* No: I will take Care to do my Duty, whatever other People do. We ſhall not give Mr. *Veaſy* the Opportunity of another Sermon againſt us.

Mr. *Veaſy* was then Miniſter at *New-York.*

Mr. *Atwood.* I obſerve Mr. *Jamiſon* to have Pen and Ink: Mr. *Jamiſon*, you are not permitted to write.

Jamiſon. I only take Minutes for my private Satisfaction.

Mr. *Atwood.* 'Tis true, an Attorney or Practitioner of the Court may take Notes for his private Uſe; but you are no longer an Attorney of this Court, nor ſhall you be permitted to practiſe, until you purge yourſelf of having ſigned the Addreſſes. Put up your Pen and Ink.

March 7th. The Commiſſioners met, and the Attorney-General was called, but did not appear.

Mr. *Atwood.* Mr. Secretary, let a Minute be made, That it appears to this Court, That the Attorney-General hath neglected his Majeſty's Service. 'Tis no Wonder the People here contemn his Majeſty's Authority, ſince the Attorney-General, tho' commanded to proſecute by the Government, hath neglected to do the ſame, and hath given a Judgment and Opinion directly contrary to the Lieutenant-Governor and Council.

Mr. *Atwood.* Sheriff, fetch the Priſoner. (Which was done.)

Mr. *Secretary.* Before we proceed, read the Petition, which was given me this Morning by Colonel *Bayard*'s Son. (Which was read *in hæc Verba.*)

To the Honourable *William Atwood*, Eſq; *Abraham d'Peyſter*, Eſq; and
Robert Walters, Eſq; Judges of this Special Court.

The Humble Petition of Nicholas Bayard

Sheweth,

‘THAT your Petitioner's Counſel have informed him, That on Yeſterday they pray'd, in the Petitioner's Behalf, the Favour of this Court, to prove before your Honours, by the Oaths of the major Part of the Grand-Jury, there alſo *ſubpœna'd* in Court, that the Indictment brought in for High-Treaſon againſt your Petitioner by Capt. *Johannes d'Peyſter* (as being Foreman of the ſaid Grand-Jury) was not Found nor Agreed to by any Twelve of that Jury, tho' the moſt Part of them (as is evidently known) are your Petitioner's mortal Enemies, for no other Cauſe, but on account of the unhappy Diviſions within this Province. Which ſaid Prayer of your Petitioner's Counſel (as he is alſo inform'd) your Honours have been pleaſed to over-rule, as not being practicable by the common Form of the Court's Proceedings. But, *may it pleaſe your Honours*, this being a Matter of that moment, whereof hardly a Precedent is to be found, as that a Foreman ſhall ſo far impoſe upon a whole Grand-Jury, as to bring in an Indictment *Billa Vera*, which the ſaid Inqueſt did not Find nor Agree unto, neither in Matter nor Form: Your Petitioner therefore moſt humbly prays, That your Honours will be pleaſed to take the Premiſſes into your Honours ſerious Conſideration, and to grant your Petitioner that Favour as to have all the ſaid Nineteen of that Grand-Inqueſt ſworn before your Honours to diſcover the Truth, and to afford your Petitioner ſuch Relief therein, as to your Honours ſhall ſeem moſt juſt and expedient. But if it ſhould ſo happen (as your Petitioner does not hope) that your Honours do not think fit to grant this your Petitioner's moſt humble Requeſt, your Petitioner further prays Leave to acquaint your Honours with the exceſſive and almoſt unparallel'd Hardſhips your Petitioner, in this very Trial, labours under. In the firſt place, for that the Grand-Jury, altho' your Petitioner had often prayed Mr. Sheriff, that he might have the Favour and Juſtice of being try'd by *Engliſh* Men, and of *Engliſh* Extraction, of the beſt Character for Knowledge, Integrity, Juſtice, Conſcience, and Eſtates; yet, notwithſtanding your Petitioner had not one allowed him of *Engliſh*, but all of 'em of *Dutch* Extraction and Education, and ſeveral of 'em ignorant to that degree, that they can neither write nor read, nor ſo much as underſtand the *Engliſh* Language, tho' ſufficient Numbers of *Engliſh* Men of very good Ability, Underſtanding, Integrity, Conſcience, and Eſtate, were to be had in the Bailiwick.

‘And, for a ſecond Inſtance of your Petitioner's Hardſhips, he finds now alſo a Petty-Jury impannel'd to ſerve upon his Trial, all of 'em, except Five or Six, in like manner of *Dutch* Extraction and Education, moſt of 'em Handicraft and Labouring Men; very few that ever were of any Juries whatſoever, and extreme ignorant in the *Engliſh* Language.’

Your Petitioner therefore moſt humbly prays, that your Honours will be pleaſed to take the Premiſſes into your Honours favourable and ſerious Conſideration, and to afford your Petitioner ſuch Relief therein as to your Honours in Juſtice and Equity ſhall ſeem fit. And, as in Duty bound, &c.

N. BAYARD.

Mr. *Atwood.* Let a Minute be enter'd, That the Petition was read; and, that it does appear to the Court, that the Bill was Found by more than Twelve of the Grand-Jury.

Mr. *Atwood.* Colonel *Bayard*, the Laws do indulge you with Counſel: Did you adviſe with them concerning this Petition?

Bayard. No, I did not.

Mr. *Atwood.* 'Twere better you had; for you have acted very indiſcreetly in this Matter, to arraign the Juſtice of the Grand-Jury.

[The Jury being call'd, appear'd.]

Timon van Burſert. (Priſoner accepts.)

Mr. *Soll. Gen.* I challenge him for the King.

Mr. *Emot.* You are not to challenge, Mr. *Sollicitor*, without Cauſe, by the Statute 23 *Edw.* I.

Mr. *Soll.* By the Common-Law the King could challenge without Cauſe, but, by the Statute, that was taken away; and in the late Trial of *Peter Cook*, it is ſaid by Lord Chief-Juſtice *Treby*, That the King ſhould ſhew Cauſe, if not enough on the Pannel to ſerve, but not elſe.

Mr. *Atwood.* It is a Thing ſo plain, I wonder you will inſiſt on it.

Mr. *Nicholl.* We ſay the King ſhould ſhew Cauſe, but do not ſay when.

Gyſber van Inbrough. (Priſoner accepts.)

Mr. Soll. challenges for the King.

Gerryt Unkle. (Priſoner accepts.)

Mr. *Soll.* challenges, *&c.*

William Janeway. (Priſoner accepts.)

Mr. *Soll.* challenges, *&c.*

Iſaac Stoutenburgh. (Priſoner accepts.)

Mr. *Soll.* I don't challenge him, but deſire he may be ſworn upon a *Voire dire*, whether any Perſon hath been with him on behalf of the Priſoner, to deſire him to be favourable to the Priſoner on this Trial.

[*Who was ſworn upon a* Voire dire, *and afterwards for the Trial.*]

Richard Sactet.—Priſoner. I make no Challenge.

Mr. *Soll.* I deſire to know whether I may not firſt have him ſworn upon a *Voire dire*, and afterwards challenge him.

Mr. *Atwood.* No; you muſt challenge peremptorily firſt.

Priſoner. I pray the Sollicitor may firſt make all his Challenges, and only leave me a Pannel of Forty-eight Jurors.

Mr. *Atwood.* No, that muſt not be.

[Memorandum.] *The reſt of the Eighty Jurors in the Pannel were in like manner challeng'd by the Priſoner or Sollicitor, till the Number of Twelve were ſworn,* viz. *one of them an Alien, two no Freeholders, and all the reſt* Dutchmen, *or of* Dutch *Extraction, born here, very ignorant of the* Engliſh *Language, and of mean Capacities to an extreme Degree.*]

The Names of the Petty Jurors were as follows; viz.

Iſaac Stoutenburgh,
Jacob vander Spiegell,
Andries Marſhalk,
Gerret Viele,
Thomas Saunders,
Jacob Corneliſſe,
Barent Kool,
Goert Olpherto,
Samuel Beckman,
Cornelis Clopper,
Conrael Teneyck,
Jacobus Goelet.

Mr. *Sollicitor* made an Introductory Diſcourſe and Harangue of about an Hour long, and had ſome Sheets of Paper in his Hand, out of which he read ſeveral ſcurrilous and falſe Reflections on the *Engliſh* Inhabitants of this Colony, with the *French*, and principal *Dutch*, having Retroſpection for many Years paſt, only deſigned to incenſe and inflame the Jury, charging the Priſoner to be the *Head of a Faction*, a malignant Party, who had endeavoured to introduce *Popery and Slavery*, Diſturbers of our *Iſrael*, as they had been that of Capt. *Leyſter*'s Government, which (he ſaid) was now juſtified at Home to be Legal: That the ſaid Party was a *Neſt of Pirates, Betrayers of our Prince and his Laws, a Parcel of Banditti's*, who offered the late Earl of *Bellamont* a Reward of Ten Thouſand Pounds to connive at Piracies, and One Thouſand Pounds to himſelf to ſollicit it: That ſome mean and broken Merchants in *London* had made Complaints in their behalf to the Lords of Trade and Plantations, and to the Parliament, againſt the ſaid Earl; but that the ſaid Earl's Proceedings were approved of; and uſed ſcandalous Reflections on Mr. *Veaſy*, Miniſter of *Trinity* Church, and againſt Col. *Smith*, the firſt Member of Council, tho' nothing relating to this Trial, and owned himſelf of the *Leyſterian* Party, and that he would ſtand and fall by it, *&c.*

Then called his Witneſſes; who gave their Evidences in the following Words, as they were taken in open Court, and ſince agreed unto by all of them reſpectively, as followeth.

Samuel Clows *ſworn, ſaith.*

Gentlemen, when I come to ſpeak of the Addreſſes, I muſt pray you to take notice, that I can ſpeak poſitively to but very few Things that is in them: What I ſay is to the beſt of my Remembrance and Underſtanding; for I may be miſtaken in both.

'Twas about a Fortnight or Three Weeks before Colonel *Bayard*'s Commitment, that I happened to come to his Houſe about ſome Buſineſs, not at all relating to this Matter; concerning which as we were talking, Colonel *Bayard* aſked me if I had ſeen the Addreſſes? I anſwered, No. He then ſhewed me three Addreſſes; the firſt was to my Lord *Cornbury*; the Perſons addreſſing in it call'd themſelves Inhabitants of *New-York*, and others diſtant from it: And becauſe ſome of them could not perhaps be preſent at his Lordſhip's Arrival here, did, by way of Addreſs, congratulate his Lordſhip into this Government, wiſhing him all Health and Proſperity here, and that the Name of *Party* might be baniſhed from among us. After I had read it, Colonel *Bayard* aſked me, if I had any thing to ſay againſt it? I anſwered, No, and then ſign'd it. The other two Addreſſes were, one to the King, and the other to the Houſe of Commons, or to the Parliament (I am not poſitive which): As I had read them, I remember I made this Obſervation in my ſelf, That they contained nearly both the ſame Things; and in them, or one of them, to the beſt of my Remembrance, were contained theſe Things, The Perſons addreſſing, call'd themſelves *Engliſhmen and others*, who, tho' Foreigners, were entituled to the Privileges of *Engliſhmen* here. It ſpeaks concerning the late Revolution here, of which I have but a confuſed Idea, and can remember nothing particular: Afterwards it ſpeaks concerning my Lord *Bellamont*'s Adminiſtration; in ſeveral Articles, of which I can remember but one, which is, That the *Hotteſt* and *Ignoranteſt* of the People were put into Places of Truſt. Then it ſpeaks concerning the late Aſſembly here, and tells you, That after this Aſſembly had choſen a Speaker, ſome of the Repreſentatives were inform'd that he was an *Alien*; upon which they made a Motion to the Houſe, that that Matter might be enquir'd into; but that Motion being refuſed, one half of the Repreſentatives, or Ten of 'em, left the Houſe; notwithſtanding which, the remaining Part of the Repreſentatives, with ſome others they took in, did proceed to make Acts: In one of which Acts they gave a Sum of Money to the Lieutenant-Governor, to tempt him to paſs theſe Acts; and likewiſe a Sum to the Chief-Juſtice of this Province, to find Law and Form for their Proceedings; and, that theſe Things tended to the rendering the Government vile and cheap in the Eyes of the People.

Mr. *Soll.* What Names do you remember you ſaw to the Addreſſes?

Clows. I ſaw ſeveral Names there; but whether to all Three, or Two of 'em, or only to that of my Lord *Cornbury*, I cannot ſay; but I did, to the beſt of my Remembrance, ſee the Names of *Rip van Dam, Matthew Ling, Charles Wooley, Robert Livingſtone*, and Mr. *Anderſon*; but I am not certain whether I ſaw Mr. *Jamiſon*'s Name there or no. When I had read them, I told Colonel *Bayard*, they contain'd Things done before my Time, and I did not therefore think it proper for me to ſign 'em; upon which he reply'd, Then don't ſign 'em.

Mr. *Soll.* I ſhall read what you ſaid before the Council.

Clows. Do ſo, if you pleaſe.

Mr. *Soll.* Don't you remember that it was ſaid, that my Lord *Bellamont* had put the moſt ingenious and honeſteſt men of the Province out of all Places of Truſt?

Clows. No, I can't remember that.

Mr. *Soll.* I think you ſaid ſo before the Council.

Clows. Perhaps I might ſay ſomething like it when I was before the Council, tho' I don't believe there is any eſſential difference between what I now ſay, and what I ſaid to the Council; yet if there be, I hope what I then ſaid will not be taken to my Prejudice: I was then ſent for by the Governor's Letters, which ſeemed to import, that he had Buſineſs with me of a far different Nature than to examine me about this Matter; ſo that I was then in a Surprize.

Mr. *Soll.* But you believe what you then ſpoke was true?

Clows. Without doubt; and I hope Mr. *Coſens* took care truly to write down what I then delivered; but, whether he did expreſs my Meaning right or no, I know not; for I did not look over his Notes till the Day I ſaw them at your Chamber.

Mr. *Soll.* Was not the Aſſembly called an Illegal Aſſembly; and, that they had made Acts prejudicial to the Country?

Clows. No, I do not remember that.

Mr. *Soll.* Was it not ſaid that the Scum of the People were put into all Places of Truſt?

Clows. Perhaps I might before the Council uſe the Word *Scum*; but I now think it was, That the *Hotteſt* and *Ignoranteſt* were put into Places of Truſt.

Mr. *Soll.* Mr. *Clows*, pray tell us, What was the reaſon why you did not ſign the other two Addreſſes?

Clows. I think I am not at this time obliged to tell that, being it does not at all affect the Matter.

Mr. *Atwood.* Yes, but it does; you muſt tell us.

Clows. One of the chief Reaſons was, becauſe I then thought, that the ſaying the Aſſembly had given a Gift to the Lieutenant-Governor, to tempt him to paſs their Acts, was a Reflection upon the Lieutenant-Governor; but it is my Judgment now, that it was no Reflection at all upon him.

Mr. *Soll.* How! and don't you think ſo now?

Mr. *Atwood.* He only ſpeaks it as his Judgment.

Mr. *Soll.* Don't you remember, that the Aſſembly was call'd *The Pretended Aſſembly?*

Clows. No.

Mr. *Soll.* Don't you remember 'twas ſaid, *their Illegal Proceedings?* Don't you remember the Word *Illegal?*

Clows. No, I cannot remember that; and I did deſire you, at your Chamber, to put that Word out of the Clerk's Notes.

Col. *Bayard.* Did I ever aſk you to ſign them?

Clows. No, you did not; you was ſo far from doing that, that you rather perſuaded me not to ſign 'em; and ſo did Madam *Bayard*, who was then in the Room.

Mr. *Nicholl.* Do you remember any thing of the Word *Oppreſſion* in the Addreſs?

Clows. No, I do not remember that Word.

Mr. *Soll.* That the King's Subjects were oppreſs'd here?

Mr. *Nicholl.* Was the Aſſembly call'd an *Unlawful Aſſembly?*

Clows. No, Gentlemen; I can ſpeak poſitively to but few of theſe Things; what I ſay is, to the beſt of my Remembrance and Underſtanding.

Peter Odyre, *a* Frenchman, *ſworn; and for that he could ſpeak no* Engliſh, *Mr.* Brieſack, *Chaplain to the Garriſon, was ſworn to be his Interpreter.*

Mr. *Soll.* What do you know of the Papers that were at Col. *Bayard*'s? and, Did you ſign them? or, Who deſir'd you ſo to do?

Odyre. Going by Colonel *Bayard*'s Houſe, one Mr. *Bodinot* told me, I muſt ſtep in to Col. *Bayard*'s, and ſign an Addreſs to the King; and as I was going in, I met Col. *Bayard* coming forth of his Houſe; and going in, I ſaw the Addreſſes lying on the Table.

Mr. *Soll.* Did Colonel *Bayard* then perſuade you to ſign them? or, did he tell you it was for your Good to ſign them?

Odyre. Colonel *Bayard* then told me, I might ſign if I would, or that I might not; and the Colonel alſo told me it was for the Good of the Country; and that, if I was willing, I might ſign them; if not, I might let them alone; and then went away.

Mr. *Soll.* I will now prove the Addreſſes ſigned at the Coffee-houſe, and that Colonel *Bayard* attended there for that Purpoſe.

W. Richardſon, *Inhabitant and Houſekeeper in the City, ſworn.*

Mr. *Soll.* What do you know, Mr. *Richardſon*, concerning the ſigning the Papers at the Coffee-houſe?

Richardſon. One Day drinking at one *Spencer*'s, I was deſir'd to go to the Coffee-houſe, which I did; and, when there, I ſaw a great many People, I believe near an hundred; and coming above Stairs, I ſaw Papers on the Table, which were called *Addreſſes*, which I ſign'd with others; and I ſaw, among others, Colonel *Bayard* there; but he ſeemed to be no more acting or concerned than any other.

Mr. *Atwood.* You are very forgetful of what you ſwore before the Governor and Council; but, to put you in mind of ſomewhat of it, Did no body tell you what Papers were to be ſigned?

Richardſon. No body at all.

Mr. *Soll.* How many Papers did you ſign?

Richardſon. I ſigned three, but did not know what they were, but was told they were Addreſſes to the King, and my Lord *Cornbury*, and the Parliament, but did not read any of them; but, I think, one of them complain'd, that the People lay under ſome Hardſhips here.

Mr. *Soll.* You declar'd much more before the Council.

Richard. I was then called ſuddenly before the Council, and was ſurpriz'd.

John Baſhford *ſworn.*

Mr. *Soll.* Mr. *Baſhford*, tell the Court and Jury what you know concerning the Papers at the Coffee-houſe.

Baſhford. I was at the Coffee-houſe, where I ſaw the Papers or Addreſſes, but don't know what they were or contain'd; and I ſign'd four or five Papers there, but did not ſtay half a Quarter of an Hour. When

I was there, I ſaw Colonel *Bayard* amongſt many others in the Room, but did not ſee his Name, as I remember, to any of the Papers.

N. B. *Theſe five Papers were the three Addreſſes and the two Duplicates.*

Mr. *Atwood.* Theſe Witneſſes are very unwilling, or very forgetful, having given a much different Account of Things upon their Oaths before the Governor and Council.

Baſhford. I have now had Time to recollect myſelf, but was then under a Surprize, not knowing what I was ſent to for.

Mr. Michael Chriſtian *ſworn.*

Mr. *Atwood.* Mr. *Chriſtian*, What do you know concerning the Papers or Addreſſes, ſign'd at the Coffee-houſe?

Chriſtian. I remember, ſome Time ſince, about *Chriſtmas* I believe, I was at the Coffee-houſe, where I ſaw the Addreſſes with many other People, but can't tell how many.

Mr. *Atwood.* Do you believe there were more than Twenty?

Chriſtian. No, I believe there were not. I found three Addreſſes there, and ſign'd 'em all, but the Subſtance thereof I cannot now remember; 'tis a good while ſince, and therefore I cannot ſpeak poſitively to it. I remember, a Queſtion was aſk'd me at the Council, whether there was any Complaints in the Addreſſes that the Soldiers wanted their Pay? I believe I might then anſwer ſomething about it, but I do not know any ſuch thing in the Addreſſes, either of the Soldiers or their Pay. I remember, that Colonel *Bayard* was then at the Coffee-houſe when I ſigned the Addreſſes, but don't remember that any body deſir'd me to ſign.

Mr. *Atwood.* How many Hands, Mr. *Chriſtian*, did you ſee to the Addreſſes?

Chriſtian. I cannot tell how many, but remember Colonel *Bayard* amongſt others was there; but he never aſked me to ſign either of the Addreſſes; nor can I remember that there was any Thing concerning either the Soldiers or their Pay in the Addreſſes.

Mr. *Atwood.* Certainly theſe Gentlemen are very unwilling Evidences: Mr. *Chriſtian* is a Gentleman of good Learning, and it is ſtrange that he ſhould be ſo forgetful, that he cannot remember what was given in on his Oath before the Governor and Council: He has either a weak or a treacherous Memory.

Mr. Hugh Gray *ſworn.*

Mr. *Sol.* Mr. *Gray*, What do you know concerning the ſigning of thoſe Papers at the Coffee-houſe?

Gray. About *December* laſt, being at the Coffee-houſe, I met there one Mr. *Scot*, who aſk'd me to go up into the Upper-Room, which I accordingly did; and when there, I ſaw on a Table ſome Papers, which afterwards I underſtood were Addreſſes to the King, Parliament, and Lord *Cornbury*. Some body aſk'd me to ſign 'em, which I did accordingly, but don't know who it was. I remember Col. *Bayard* was there amongſt others, ſmoaking a Pipe of Tobacco: I believe there might then be about ten Hands to the Papers, and about five in the Room; that I read all the Addreſſes, but cannot now remember the Contents of 'em.

Mr. *Atwood.* Mr. *Gray*, Do you remember there was any Complaints againſt the Government in thoſe Addreſſes?

Gray. No.

Mrs. Hannah Hutchins *ſworn.*

Mr. *Sol.* Now, may it pleaſe your Honours, I will prove the Papers ſign'd at another Place.

Mr. *Atwood.* Mrs. *Hutchins*, What do you know concerning theſe Papers brought to your Houſe?

Mrs. *Hutchins.* About *Chriſtmas* laſt Col. *Bayard* brought ſome Papers to my Houſe, and left 'em with me, but did not ſtay at all, but bid me ſhew them to my Huſband, who was then at Church. Theſe Papers remain'd at my Houſe about three Days, and then I deliver'd 'em to a Negro, who was ſent for them, but do not remember whoſe Negro it was: Col. *Bayard* was not at our Houſe while the Papers lay there.

Mr. *Sol.* Now I ſhall proceed to prove what ſort of People were drawn in to ſign theſe Papers.

John Read *ſworn.*

Mr. *Atwood.* What do you remember concerning any Addreſſes or Papers at the Houſe of Alderman *Hutchins?*

Read. Being on the 26th of *December* at Mr. *Hutchins*'s Houſe, I there ſaw ſome Papers, which one Mr. *Burroughs*, then preſent, aſked me to ſign, telling me they were Addreſſes to the King, Parliament, and Lord *Cornbury*, made for the Good of the Country, and which were lying on the Bed there; and thereupon I ſign'd them, but did not read 'em: I did not ſee Col. *Bayard* there, but believe I ſaw his Name to the Papers. I ſaw a great number of Names ſubſcrib'd to the Papers, as near as I can judge, about Two hundred.

Mr. *Sol.* Of what Age are you?

Read. About Seventeen Years of Age.

Edward Marſhal *ſworn.*

Mr. *Atwood.* Where did you ſee theſe Papers? and, What do you know of them?

Marſhal. Going one Day, about *Chriſtmas*, to the Houſe of Mr. *Hutchins*, to get a Witneſs to a Letter of Attorney, I ſaw there five Addreſſes, which I ſigned; one was to the King, another to the Parliament, and another to the Lord *Cornbury*, congratulating his Arrival: I read ſome of then, but found nothing in any of 'em that reflected upon the Governor: There was ſome Complaint of the Speaker of the Aſſembly being an *Alien*. Looking on the Names of the Subſcribers, I ſaw the Name of *Edward Marſhal* before I had ſign'd, but I don't know but there may be more *Edward Marſhals* than one in the Province. I did not ſee Col. *Bayard* at the Houſe, nor his Name to the Papers.

John Buckley *ſworn.*

Mr. *Atwood.* What do you know concerning any Papers at the Houſe of Mr. *Hutchins?*

Buckley. Coming home from the Fort, and paſſing by Mr. *Hutchins*'s Houſe, I was aſked to walk in by Mr. *Hutchins*, which I did; and being come into the Upper-Room, I ſaw ſome Papers there which were called *Addreſſes*; but I did not read any of 'em, but that to my Lord *Cornbury*, which, as I underſtood, was a Compliment and Congratulation to him at his Arrival here. Mr. *Hutchins* then aſk'd me to ſign it, but I refuſed, becauſe being a Lieutenant in the Garriſon, I was unwilling to do any ſuch thing before any of my elder Officers had done it. But I did not ſee Col. *Bayard*, nor his Name there.

Francis Cherman *ſworn.*

Mr. *Atwood.* Give an Account what you know concerning any Papers or Addreſſes at the Houſe of Alderman *Hutchins.*

Cherman. Coming a while ago to Mr. *Hutchins*'s Houſe, and going up Stairs, I ſaw certain Papers there, and ſome People: Mr. *Hutchins* aſk'd me to ſign thoſe Papers, telling me they were Addreſſes to the King and my Lord *Cornbury*; that they were for the Good of the Country and the *Engliſh*; and I expected by it to be made free of the City, and ſign'd therefore; but did not ſee Col. *Bayard* there, nor don't remember the Contents of the Papers.

One Button *ſworn.*

Mr. *Atwood.* What do you know concerning the Papers, *&c.?*

Button. Hearing by ſome of my Fellow-Soldiers that there were ſome Papers or Addreſſes at Capt. *Hutchins*'s, I was willing to go and ſee what they were; and coming to the Houſe, there I found Five Papers, and ſign'd them all Five, but do not remember to whom they were directed. Capt. *Hutchins* was there, but ſaid nothing at all to me about the Papers, or ſigning them; nor can I remember whether they were in Paper or Parchment. I believe there were then about thirty Names ſubſcrib'd, but ſaw neither Colonel *Bayard* nor his Name there.

i. e. The three Addreſſes, and the Duplicates of two of them.

Robert Crannel *ſworn.*

Mr. *Atwood.* What do you know, *&c.?*

Crannel. Some Time ſince I came to Mr. *Hutchins*'s, and there found Five Addreſſes: I read that to my Lord *Cornbury*, and ſome of the two others to the King and Parliament: In one of 'em, to the beſt of my Remembrance, was contained a Complaint, That the People of this Province lay under more Hardſhips than formerly, and that the Speaker of the Aſſembly of this Province was an Alien. I ſaw Col. *Bayard*'s Name to that to my Lord *Cornbury*, but am not acquainted with his Hand-writing at all. After I had read ſome Part, and been told what the reſt of the Papers were, I ſigned them all Five, but no body deſired or perſuaded me to do it.

Mr. *Atwood.* Your Evidence is not ſo full as when you gave in your Information on Oath before the Council.

Crannel. But it is; and I know nothing more.

One Griggs *ſworn.*

Mr. *Atwood.* What do you know, *&c.?*

Griggs. I was deſired by one *Bovell*, a Soldier in the Garriſon, to go to Mr. *Hutchins*'s Houſe, and ſign ſome Papers: I was told, and believed, it was to make me Free of the City: Thereupon I went to Mr. *Hutchins*'s, and there ſigned them, but did not ſee Col. *Bayard* there.

One Garnet *ſworn.*

Mr. *Atwood.* Tell the Court what you know, *&c.*

Garnet. A great many of the Soldiers of the Garriſon ſigned, and they expected thereby to be made Free of the City, many of them being Tradeſmen.

One Fleming *ſworn.*

Mr. *Atwood.* What do you know, *&c.?*

Fleming. Coming ſome time ſince to the Houſe of Mr. *Hutchins*'s, I there ſaw ſome Rolls opened, with a great many Names thereto, but did not ſee any other Writing: To this I put my Name, and alſo then put down two or three Names for others, at their Requeſt, they having firſt put their Marks. I and the others expected by this to be made Free of the City. I believe out of 160 Men now belonging to the Fort, or thereabouts, there may be about 30 that ſigned.

After the Addreſſes were full, they ſigned on the Backſide.

One Bovell *ſworn.*

Mr. *Atwood.* What do you know, *&c.?*

Bovell. Coming to Capt. *Hutchins*'s, I was ſhewn ſome Papers, which I was told were Addreſſes, to which I put my Mark, without being deſired by any body; I cannot write nor read. When I had ſet my Mark, Mr. *Hutchins* told me, That if any of my Fellow-Soldiers would come and ſign alſo, they might; if not, they might let it alone. By this ſigning I expected to be made Free of the City, but not from being a Soldier; but never heard Capt. *Hutchins* ſay ſo.

Mr. *Sol. Gen.* I have now no more Witneſſes againſt the Priſoner. Here is a Paper ſigned by him; I deſire the Clerk of the Council may be ſworn to prove the ſame.

Mr. Coſens, *the Clerk of the Council*, *ſworn.*

Col. *Bayard.* I own that Paper: It is a Petition to the Lieut. Governor and Council in Behalf of Ald. *Hutchins*, then in Priſon; owning, with Mr. *French*, Mr. *Wenham*, and Mr. *Van Dam*, that the Copies of three Addreſſes to the King, the Parliament, and the Lord *Cornbury*, were in our Hands.

Then the Petition was read, and was the ſame as is entered in Pag. 419.

After this, the Act of Aſſembly, on which the *Mittimus* is grounded, was read; and after that the Commiſſion to the Lord *Bellamont* at large, and the Lieut. Governor's Commiſſion.

Mr. *Sol. Gen.* I deſire Mr. *Emot* may be ſworn, whether he did not give Advice to a certain Perſon about that Clauſe in the Addreſs to the Lieut. Governor in Favour of Ald. *Hutchins*, viz. *That the Lord* Cornbury *ſucceeded the Earl of* Bellamont *as Governor in* New-York?

Mr. *Emot* was commanded by Mr. *Atwood* to be ſworn; and being ſworn, ſaid, I told Mr. *French* theſe Words in the ſaid Addreſs did not run current, and might give ground of Exception to ſome who would be apt to ſtrain every Word to the Priſoner's Diſadvantage. To which Mr. *French* replied, They had drawn the Addreſſes themſelves, and believed it was well enough.

Mr. *Sol. Gen.* I have now proved by the Witneſſes thoſe falſe and ſcandalous Libels ſet forth in the Indictment, whereby the Good, Peace and Quiet of the Government has been diſturbed, which by this Act of Aſſembly is High Treaſon. I have likewiſe proved, that the Soldiers were drawn in to ſign thoſe ſcandalous Libels, and that ſome did ſign blank Rolls, which was liſting of Soldiers, and is Treaſon. By theſe Words in the Petition to Lieut. Governor and Council, *viz.* [*Who we underſtand, by certain Advice we have received from* England, *to be nominated by his Majeſty to ſucceed the late Earl of* Bellamont *as our Governor*] is a diſowning and caſting off the preſent Authority, and his Majeſty's Government.

Mr. *Nicholl.* Your Honour and the Jury will pleaſe to take Notice, that the Indictment conſiſts of divers Heads; as, That the Priſoner did compaſs, imagine, contrive, propoſe and deſign to defame, ſubvert, *&c.* the Peace, Good and Quiet of this his Majeſty's Government.

That he uſed divers indirect Practices and Endeavours to procure Mutiny and Sedition among the Soldiers.

That he drew in Numbers of them, the ſaid Soldiers and others, to ſign falſe and ſcandalous Libels; and that he had ſigned them himſelf.

That in theſe Libels it is declared, That the Subjects in this Province are and have been for many Years laſt paſt, by thoſe entruſted in the Adminiſtration of the Government, oppreſs'd; and that the Government hath been, and is rendered cheap and vile in the Eyes of the People; as alſo, that the General Aſſembly of this Province is not a lawful Aſſembly: By which means, *&c.* he hath incited his Majeſty's Subjects to caſt off their Obedience to his Majeſty's ſaid Government.

The Priſoner is not directly charged here with any Fact, except his own ſigning the ſaid Libels, but for Endeavours; the reſt are forc'd Concluſions and ſtrain'd Inferences drawn from thence. It is not alledg'd, that the Peace of the Government hath been diſturb'd, or that any Mutiny or Sedition hath been amongſt the Soldiers, or that any one of his Majeſty's Subjects hath caſt off his Obedience to his Majeſty's ſaid Government. By the Courſe of the Evidence, it appears there was an Addreſs to the King, an Addreſs to the Houſe of Commons, and an Addreſs to my Lord *Cornbury*, and a Petition or Addreſs to the Lieut. Governor and Council; but all the Evidence is very lame and weak, as to the three firſt, if we ſhould admit the making or ſigning of them to be any Fault or Crime, more eſpecially if the ſame ſhould amount to Treaſon: For by none of the Evidence it does appear, that thoſe Addreſſes ſigned at the Coffee-houſe were the ſame Addreſſes which were at Col. *Bayard*'s; or that the Addreſſes at Ald. *Hutchins*'s were the ſame which were at the Coffee-houſe, or the ſame which were at Col. *Bayard*'s: There is no Proof that the Priſoner ſign'd theſe Addreſſes: Here is not ſo much as the Likeneſs or Compariſon of Hands produced, alledged, or proved; tho' if it were, that would not do. In the great Trial of the Biſhops, Mr. *Pollexfen* there affirms, *p.* 60. *That Compariſon of Hands is not good in a criminal Caſe*; and offers the Lady *Car*'s Caſe in *Siderfin*'s Reports, *p.* 418, 419. where it is ſo adjudged.

But I ſhall not dwell upon the Evidence; it is certainly the Right of the Subject to petition the King, whenever he conceives himſelf aggriev'd. In the Biſhops Trial, p. 160. Mr. *Pollexfen* ſays, *I never thought it*, nor hath it ſince been thought by any body elſe, *to be a Crime to petition the King.* Pag. 121. Serj. *Levinz* affirms, *the Subjects have a Right of petitioning the King in all their Grievances.* So ſay all our Books of Law; ſo ſays the Statute of the 13th of *Charles* II. *They may petition.* P. 126. Sir *Thomas Powys*, then Attorney-General, acknowledges Acceſs to the King by Petition is open to every body; the moſt inferior Perſon is allowed to petition the King. *Pag.* 135. Mr. Juſtice *Holloway* ſays, *It is the Birthright of the Subject to petition the King.* If it is the Birthright of the Subject to petition the King, to procure or draw in Men to do what it is their Birthright to do, can never amount to a Crime.

Mr. *Atwood.* I do not ſay petitioning the King is a Crime, but it may be to petition the Houſe of Commons in the Plantations where the King governs by Prerogative.

Mr. *Nicholl.* I cannot think it is a Crime for the Subjects of the Plantations to petition the Houſe of Commons; 'tis every Day's Practice: Conſult the Votes in every Seſſions, you'll find many Addreſſes, Petitions, and Complaints from the Subjects of the Plantations: It ſeems to be the Right of the Subjects to petition the Houſe of Commons. The Statute of the 13th of *Charles* the IId. *c.* 5. reſtrains the Common-Law; by that it plainly appears to be the Right of the Subject to petition the Houſe of Commons, or the King. The Proviſo in that Act ſays, *That neither that Act, nor any thing therein contained, ſhall be conſtrued to extend or hinder any Perſon or Perſons, not exceeding the Number of Ten, to preſent any public or private Grievance or Complaint to any Member of the Houſe of Commons after his Election, or to the King's Majeſty.* The Act of Recognition of *primo William* and *Mary*, declaring the Rights and Liberties of the Subjects, and ſettling the Succeſſion of the Crown, thereby it is enacted, amongſt other Things, *That it is the Right of the Subject to petition the King*; *and all Commitments and Proſecutions for ſuch Petitioning are illegal.* And they do claim, demand, and inſiſt upon all and ſingular the Premiſſes, as their undoubted Rights and Liberties; and that no Declaration, Judgment, Doings or Proceedings to the Prejudice of the People, in any the ſaid Premiſſes, ought in any wiſe hereafter to be drawn into Conſequence or Example. Here is no Grant of any new Privilege, but a Claim and Acknowledgment of an Ancient Right; and Petitions to the Parliament are as ancient as Parliaments themſelves. If the Subjects of the Plantations may not petition and complain to their Prince, they are in a worſe Condition than Slaves. The Cries of the Oppreſſions in the Plantations have gone up to Heaven, and are again come down upon the Earth, and have inſpired and moved the King and Parliament of *England* to make a Law to check the exorbitant Actions of Governors in the Plantations, and make them accountable in *England* for their Miſcarriages abroad; which can never be diſcovered to the King but by Petition. The Statute is in theſe Words.

An Act to puniſh Governors of Plantations in this Kingdom for Crimes by them committed in the Plantations.

‘WHEREAS a due Puniſhment is not provided for ſeveral Crimes and Offences committed out of this his Majeſty's Realm of *England*, whereof divers Governors, Lieutenant-Governors, Deputy-Governors, or Commanders in Chief of Plantations, and Colonels within his Majeſty's Dominions beyond the Seas, have taken Advantage, and have not been deterred from oppreſſing his Majeſty's Subjects within their reſpective Governments and Commands, nor from committing ſeveral other great Crimes and Offences, not deeming themſelves puniſhable for the ſame here, nor accountable for ſuch their Crimes and Offences to any Perſon within their reſpective Governments and Commands: For Remedy whereof, *Be it enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal and Commons in Parliament aſſembled, and by Authority of the ſame*, That if any Governor or Commander in Chief of any Plantation or Colony within his Majeſty's Dominions beyond the Seas, ſhall, after the Firſt Day of *Auguſt*, 1700, be guilty of oppreſſing any of his Majeſty's Subjects beyond the Seas, within their reſpective Governments or Commands, or ſhall be guilty of any other Crime or Offence, contrary to the Laws of this Realm, or in force within their reſpective Governments and Commands, ſhall be enquired of, heard and determined in his Majeſty's Court of *King's-Bench* here in *England*, or before ſuch Commiſſioners, and in ſuch County of this Realm, as ſhall be aſſigned by his Majeſty's Commiſſion, and by Good and Lawful Men of the ſame County; and that ſuch Puniſhments ſhall be inflicted on ſuch Offenders, as are uſually inflicted for Offences of the like Nature committed here in *England*.’

This Proſecution ſeems to be made to fruſtrate and evade this Act of Parliament. The Subject is oppreſs'd, or conceives himſelf to be ſo, and complains of this Oppreſſion; this Complaining is made TREASON! Here is a ſtrange and fatal Dilemma on the Subjects of the Plantations; They muſt either ſuffer their Oppreſſions, or be hanged for Traitors if they complain!

What relates to the Act of Aſſembly of this Country, it can by no natural or legal Conſtruction be extended to make the Priſoner culpable. It is plain by the whole Purport of the Act, that it has made no new Treaſon; it only recognizes the King and Queen; and enacts, That thoſe who ſhall do any thing deſtructive to that Eſtabliſhment, by Force of Arms or otherwiſe, ſhall be *Rebels* and *Traitors*; which they would be without this Act. If this Addreſs and Petition had been to the *French* King, the Thing had been of another Nature. By the ſame Conſtruction, every petty Battery, or other little Treſpaſs, may be a Treaſon.

The Petition of Col. *Bayard*, and the other three, is ſo far from diſowning the Government, that it is a direct acknowledging of the ſame. The Direction of the Petition is, *To the Lieutenant-Governor, and the Council:* The Expreſſion [*That they have Advice that the Lord* Cornbury *is to ſucceed the Earl of* Bellamont] can with no Juſtice or common Senſe be conſtrued to be a diſowning and caſting off of the Government. I think it will hardly be affirmed, That the Council ſucceeded the Earl of *Bellamont*, and Capt. *Nanfan* the Council; if ſo, after the Earl of *Bellamont*, who was Captain General? We had Seven Captains-General; which is an Abſurdity, I ſuppoſe, none will alledge. A familiar Example will demonſtrate the Weakneſs and Falſity of this Conſtruction. If a Captain of a Company be killed or abſent, the Lieutenant or next Officer has the full Command of the Company, as the Captain had, or could have; but I think no Man will ſay he ſucceeds the Captain, or that when another Captain is appointed, he ſucceeds that Lieutenant or other Officer. So that I cannot think there is any Fact or Crime alledged or proved againſt the Priſoner, to charge him with this high Crime of Treaſon, or indeed with any other Crime whatſoever.

Some time after the Earl of Bellamont's *Death, Capt.* Nanfan, *the Lieut. Governor, was at* Barbadoes.

Mr. *Emot.* By your Honours Permiſſion, I am of Counſel for Col. *Bayard*, the Priſoner at the Bar: But by reaſon I am unwilling to ſpend too much of your Time, this Trial already having been very long; and Mr. *Nicholl*, who is alſo of the Counſel of the ſame Side, having amongſt other things made it very evident, that for the Subjects to petition his Majeſty, is their ancient and indubitable Right; I ſhall therefore make it my Buſineſs only, as near as I can, to demonſtrate to this Court and Jury, that had the King's Counſel made ample Proof of all the Matters of Fact alledged in the Indictment, as the ſigning the Addreſſes, and other Things therein contained, to have been true; yet, in point of Law, they cannot amount to that grand Crime of High-Treaſon.

In order to this, I ſhall, with as much Brevity as I can, examine into, and put your Honours in mind, and withal inform the Gentlemen of the Jury, what the Law of *England* (by which we are or ought to be governed here) hath been, for near the Space of Four hundred Years laſt paſt, relating to this grand Crime of High-Treaſon; whereby it will manifeſtly appear, how cautious the Parliaments of *England* have been in making and increaſing the Laws to take away Mens Lives, and particularly for High Treaſon. And I ſhall begin with the Statute of the 25th of *Edw.* III. a Statute to which the greateſt regard has been paid of any Act of Parliament whatſoever, unleſs *Magna Charta*, as hereafter I ſhall briefly ſhew.

I muſt alſo obſerve to your Honours, That before the making of this Act of Parliament of the 25th of *Edw.* III. which was in *Anno* 1350, and which was the very firſt Act relating to Treaſons, ſo many Things were charged as High-Treaſon by the Common-Law, and there were ſo many Ambiguities and Diverſities of Opinions, that both Hiſtory and our Books of the Law ſufficiently inform us, ſcarce any Man knew how to behave himſelf. But now, by this Statute, the Particulars and Species of this grand Crime are reckon'd up, and all others excluded, till declared by Parliament. For tho' nothing can concern the King, his Crown and Dignity, more immediately than High-Treaſon, which our Law calls *Crimen læſæ Majeſtatis*, a Crime wronging Majeſty; yet this good King *Edward* III. at the Requeſt of the Lords and Commons of *England*, in a Parliamentary Way, and to make all After-ages happy, makes a plain Declaration of ſuch Offences as ſhould for the future be deem'd for High-Treaſon, and none other, unleſs declared by Parliament.

This Act of Parliament is branch'd out by Sir *Edward Coke*, in the Third Part of his *Inſtitutes*, into Six Claſſes or Heads; which I ſhall the rather take notice of, for that Trials of this nature are very rare in the Plantations; and they are theſe:

1. The Compaſſing or Imagining the Death of the *King*, *Queen* or *Prince*, and declaring the ſame by ſome Overt-Act.

The Killing or Murdering of the *Chancellor*, *Treaſurer*, *Juſtices*, &c. in their Place doing their Office, *&c.*

2. To violate, or carnally to know the *King's Conſort* or *Queen*, the *King's Eldeſt Daughter* unmarried, or *Prince's Wife*.
3. Levying of War againſt the King.
4. Adhering to the King's Enemies, and declaring the ſame by ſome Overt-Act; and this muſt not be *Inimicus*, *ſed Hoſtis*.
5. Counterfeiting of the *Great-Seal*, *Privy-Seal*, or *King's Coin*, &c.
6. And *laſtly*, Bringing into the Realm *Counterfeit-Money*, to the Likeneſs of the King's Coin, *&c.*

Now, if there is any other Offence which was not comprehended within one of theſe Claſſes, the ſame was thereby declared to be no Treaſon

In a Clauſe of which Act of Parliament we find theſe Words; which I ſhall rather read, becauſe I apprehend it will very much concern this enſuing Trial.

“ And becauſe that many other like Caſes may happen in Time to
“ come, which a Man cannot think or declare at this preſent Time, it is
“ ordained, That if any other Caſe, ſuppoſed Treaſon, which is not above
“ ſpecify'd, do happen before any Juſtices, the Juſtices ſhall tarry, with-
“ out any going to Judgment of the Treaſon, till the Cauſe be ſhewed
“ and declared, before the King and his Parliament, whether it be
“ judged Treaſon or other Felony.”

By this we may eaſily perceive, and 'tis very obvious, that this Clauſe was made to prevent the Judges from taking upon them to declare any things to be High-Treaſon, but ſuch as are particularly expreſs'd by this Statute of the 25th of *Edw.* III. or by ſome other ſubſequent Act.

Again, in the Reign of *Richard* II. we find ſundry other Things were declared by Parliament to be High-Treaſon, which were not comprehended within the Statute of 25th of *Edw.* III. But yet upon the coming in of *Hen.* IV. it was again enacted and declared, That nothing ſhould for the future be adjudged High-Treaſon, but what was ſo ordained by the aforeſaid Statute 25 *Edw.* III. The Words are theſe:

1 *H.* IV. c. 10. “ That whereas in Parliament, in the 21ſt Year of
“ the late King *Richard*, divers Pains of Treaſon were ordained by Sta-
“ tute, inaſmuch as there was no Man who knew how he ought to be-
“ have himſelf, to do, ſpeak or ſay, for doubt of ſuch Pains; it's ac-
“ corded and aſſented by the King, Lords and Commons, That in no
“ Time to come, any Treaſon be adjudged otherwiſe than it was ordained
“ by the Statute, in the Time of his Noble Grandfather King *Edw.* III.”

Now this Statute, I am humbly of Opinion, is directly in the Negative, which ſays, That for the future nothing ſhall be adjudged Treaſon, otherwiſe than it was ordained by the aforeſaid Statute of the 25th of *Edw.* III.

Yet, nevertheleſs, this Indictment is grounded upon an Act of Aſſembly of this Province; which is, I am humbly of Opinion, not only contrary, but directly repugnant to the aforeſaid Statute (which appeareth to me to limit all new Species of Treaſon to be declared by Parliament, and not elſewhere) which, if it ſhould admit of ſuch a Conſtruction as is now intended, I think I may modeſtly ſay, it will introduce Five Hundred ſeveral new Species of Treaſon: So that his Majeſty's good Subjects of this Province would fall under much greater Hardſhips than whatever the People of *England* were ſenſible of before the making of this Act (which I cannot too often mention) of the 25th of *Edw.* III.

If we look further downward, upon the coming in of *Edw.* VI. which was in the Year 1546, ſundry new Species of Treaſon having been again introduced by Act of Parliament, it was in the very Firſt Year of his Reign enacted, That no Offence, made Treaſon by any Statute, ſhould be ſo deemed and adjudged for the future, but ſuch as were made Treaſon by the aforeſaid Statute of 25 *Edw.* III. other than ſuch as were by that preſent Statute ordained and declared.

But yet in Queen *Mary*'s Time, in the 1ſt Year of her Reign, this grand Crime was brought to its ancient Standard; and it was then declared in Parliament, *That no Act or Offence whatſoever ſhould be deemed Treaſon or Miſpriſion of Treaſon, but ſuch as were declared by the Statute* 25 Edw. III. And the Subſtance of the Preamble is this, *That the State and Safety of the King ſtandeth more aſſuredly by the Love of his Subjects, than Fear of his Laws.*

So that upon Examination, we find how careful and cautious the People and Parliament of *England* have been in introducing and increaſing of Sanguinary Laws, and that through the Revolution of many Ages. And hereby 'tis very remarkable, what a great regard has been in all Ages paid to this venerable Statute of 25 *Edw.* III. which with great Care has been continued down to us to this very Time, and is now in its full Force. Sir *Edward Coke*, treating thereof, tells us, That the Parliament, in which this Act was made, for many Years after was called *Benedictum Parliamentum*, the Bleſſed Parliament.

If we look but into the Bill of Attainder of *Thomas* Earl of *Strafford*, in the Year 1640 and 41, even in thoſe Times, what regard was paid to this Statute, which I have ſo often mentioned, wherein it was provided, That the Judgment againſt the ſaid Earl ſhould never be drawn into Precedent: And the Words are theſe, “ Provided, That no Judge or Judges, Juſ-
“ tice or Juſtices whatſoever, ſhall adjudge or interpret any Act or
“ Thing to be Treaſon, nor hear or determine any Treaſon in any other
“ Manner, than he or they ſhould or ought to have done before the
“ making of this Act.”

Now, if we do but reflect upon the great Concern and Care that has been taken thro' all Ages, by the wiſe People of *England*, in preventing the Judges from interpreting any Act or Thing whatſoever to be Treaſon, but ſuch only as are enumerated in the Statute of *Edw.* III.

And at the ſame time give ourſelves leave to think, how induſtriouſly we labour to introduce an Act of Aſſembly of this Province, to make, as I ſaid before, even Five hundred new and never heard of Species of Treaſon: I ſay, if we do but conſider this, 'tis Matter of great Amazement, and more eſpecially in ſuch an Age as this, and in ſo happy a Reign, where no Man ever queſtioned, or at leaſt doubted of the true Enjoyment of our Laws and Liberties, tho' never ſo remote from the Fountain Head.

I am afraid, I have already treſpaſſed upon your Honours Patience: I ſhall therefore conclude with ſome Obſervations upon the Act of Aſſembly, upon which this Indictment is laid.

Now both the Title, Preamble and Words of this Act of Aſſembly, and the Cauſe of making thereof, is very obvious (however the ſame may be now interpreted), which were theſe Two:

1ſt, For the future, to prevent the ſetting up a Power over his Majeſty's Subjects in this Province, without Authority from the Crown of *England*; which was found to be of fatal Conſequence in the late unhappy Diſorders in this Province.

2dly, To expreſs the Love, Loyalty and hearty Affection of the People to their Majeſties King *William* and Queen *Mary*; and, as far as in them lay, to recognize them their Sovereign Liege Lord and Lady. I doubt not but your Honours will ſee Cauſe to recommend the ſame to the Jury, in delivering the Charge: And that no ſtrain'd Conſtruction of this Act of Aſſembly can ever affect the Priſoner Col. *Bayard*, or in the leaſt blaſt his long-experienc'd Loyalty to the Crown of *England*, and in a ſpecial manner to his preſent Majeſty King *William*.

I had almoſt forgot to beg Leave of the Court to apply myſelf to the Gentlemen of the Jury, to obviate ſome Objections, or rather a vulgar Error, that uſually hath crept in amongſt them upon Trials, and particularly upon Indictments: Which is, they do believe,

That if the Matters of Fact alledged in the Indictment be but proved, they are to have no regard to Matter of Law: Which I take to be a very great and dangerous Error in them.

For tho' it be true, and muſt be granted, that Matters of Fact are the moſt common and proper Objects of a Jury's Determination, and Matters of Law that of the Judges; yet as Law ariſeth out of, and is interwoven and complicated with Fact, it cannot but fall under the Jury's Conſideration: For, ſhould it be otherwiſe, if a Perſon ſhould be indicted for doing any common, innocent or lawful Act, if it be but cloathed and diſguiſed in the Indictment with the Name of Treaſon, or ſome other high Crime, and proved by Witneſſes to be done, then the Jury would lie under a Neceſſity of finding the Priſoner Guilty. No:

Do we not find in moſt general Iſſues, upon *Not Guilty* pleaded, as upon Indictments of Treſpaſſes, Breach of the Peace, Felony, and even in Caſes of High-Treaſon; yet the Jury do not find the Fact of the Caſe by itſelf, leaving the Law to the Court, but find the Party *Guilty*, or *Not Guilty*.

And this will more evidently appear upon Indictments of Murder, that the Jury are Judges as well of Matter of Law as of Fact. For is it not every Day's Practice, where Perſons are indicted of Murder; the Jury doth not only find them *Guilty* or *Not Guilty*, but many times, upon hearing and weighing of Circumſtances, the Jury brings in the Priſoner not only *Guilty* or *Not Guilty* in general, but brings them in either *Guilty of Murder* or *Manſlaughter*, *by Miſadventure* or *Se Defendendo?* &c.

So the Jury being well apprized of the true Matter of Fact, of which they are ſole Judges, can better apply the Matter of Law; for, ſays my Lord *Coke*, *It's by fitly applying Matters of Fact and Law together, that the Jury brings forth their Verdict:* Which, I hope, you Gentlemen of the Jury will carefully do.

Priſoner. I deſire ſome of my Evidences may be called, to give an Account of my Life and Converſation. (Which was granted.)

Mr. *Veaſy*, Miniſter of *Trinity* Church, being ſworn, ſaid, I have been for Six Years perſonally acquainted with Col. *Bayard*; during which Time his Life and Converſation recommended him in the World as an Exemplary *Chriſtian:* And the frequent Expreſſions of his Zeal and Affection to his Majeſty's Perſon and Government convinced me, that he was a good Subject.

Priſ. Call Capt. *John Kipp*. (Who being called, was abſent.)

Call Capt. *Tudor*.

Tudor ſworn, ſaid, I have known Col. *Bayard* 26 Years, a moderate, civil, good Man, has been employed in almoſt all Offices of the greateſt Truſt in the Government, never diſaffected, but ſtood up for the *Proteſtant Religion* and King *William*.

Priſ. To prove that I have upon ſundry Emergencies, during the late War, advanced of my private Fortune upon Loan, without Intereſt, ſeveral conſiderable Sums of Money, for the Preſervation of his Majeſty's Intereſt and Government in *New-York*, of which upwards of 200*l.* Money in Specie lent, is ſtill unpaid; I deſire Mr. *Jamiſon* (who was then Clerk of the Council) may be ſworn.

(*Jamiſon* being called, appeared.)

Mr. *Atwood.* Mr. *Jamiſon* has refuſed to purge himſelf of ſigning thoſe Addreſſes, and is *Particeps Criminis*, for which Reaſon he cannot be allowed to be an Evidence.

The Evidence being ſworn and examined, the Sollicitor-General, without anſwering the Authorities offered by the Priſoner's Counſel, relating to the Treaſon, ſumm'd up the Evidence, as to Matter of Fact.

Mr. *Atwood* gave the Charge to the Jury, in a long Diſcourſe; and among other Things inſiſted, That the Indictment was not laid upon the Act of 25 *E.* III. nor any Act of Parliament, but upon an Act of Aſſembly of this Province, confirmed by his Majeſty, which had Power to make Acts for High-Treaſon, as well as the Parliaments of *England*; and that the ſaid Statute was confined to *England*, becauſe by the ſame Statute it is enacted, That if any Doubt ſhould ariſe, the ſame be adjourned unto Parliament; which muſt be underſtood of the Parliament of *England*.

That it is High-Treaſon, by the Act of Aſſembly, by any Manner of Ways, or upon any Pretence whatſoever, by Force of Arms, or otherwiſe, to diſturb the Peace, Good and Quiet of the Government, as it is now eſtabliſhed; which he ſaid was proved by Overt-Acts laid in the Indictment; which were, by ſigning of Libels againſt the Government, and thereby enticing the People to caſt off and diſown the ſame; and chiefly, by the Soldiers ſigning Complaints againſt their chief Officers; which tended to Mutiny, and was Treaſon by the Common-Law.

That by bringing the Papers to *Hutchins*'s Houſe, the Priſoner had made himſelf guilty of all that was done there, by the Soldiers and others ſigning thoſe Papers.

That the Right of petitioning the King was not in Diſpute, but the Manner of doing it made it criminal.

That it was plain the Addreſs of the Priſoner and his Three Fellows, was a diſowning of the preſent Authority, and caſting off his Majeſty's Government as it was then eſtabliſh'd; for Capt. *Nanfan* ſucceeded the Lord *Bellamont* (as by the Commiſſion appeared), and not my Lord *Cornbury*; which was a plain Overt-Act of Treaſon, by the Meaning and Words of the Act of Aſſembly.

That it appeared undeniable, that the Priſoner and his Son were always by the Papers, and that it was done with a great Number of People to affront the Government.

That the drawing in Soldiers to ſign Petitions, is Mutiny and Sedition by the Law; and drawing of them in, on falſe Pretences, in hopes of Freedom in the City, and ſubſcribing their Names on blank Liſts, is liſting of Soldiers, and may be applied to invite in any Foreign Power: And thereupon ſtrenuouſly inſiſted on the Validity of the Evidence, That the Facts laid in the Indictment were undeniably proved, and that thoſe Facts did amount to High-Treaſon, within the Words and Meaning of this Act of Aſſembly; and that therefore the Jury could not do otherwiſe than bring in the Priſoner Guilty.

The Conſtable being ſworn to keep the Jury, the Court adjourned till Nine a-Clock at Night: And the Jury then not being agreed, the Court did adjourn till *Monday* Nine a-Clock, the 9th of *March*.

On *Monday* the 9th, the Priſoner was brought to the Bar, and the Jury ſent for: They were aſked, If they were agreed in their Verdict? They anſwered, they were not agreed, but deſired ſome Direction of the Court. *Jacob Goelet* appeared as Foreman of the Jury, and read ſome Notes of what he ſaid the Witneſſes had ſworn: Which were denied to have been ſworn by the Counſel for the Priſoner, who prayed Mr. *Atwood* to ſatisfy the Jury of the Truth of the Evidence.

To this he anſwered, That he could not do it after the Charge given; but affirmed, it was no new Thing (as ſome pretended) after Charge given, to ſatisfy the Jury in ſome Matters of Law; and told, that he had received Letters from the Jury, and anſwered them; which Anſwers were only his private Opinion. That if they were under any Difficulty, whether the Matters of Fact alledged in the Indictment, and which were proved to them, were Treaſon or no, they might find the Priſoner Guilty; who had his Advantage in moving in Arreſt of Judgment, and might be relieved as to Matter of Law.

Mr. *Emot*. This is not fair, to give the Jury a Handle to find the Priſoner Guilty in Expectation of Relief in Arreſt of Judgment; for they are Judges both of Law and Fact, as the Caſe is now circumſtanced: If they will enſlave themſelves and their Poſterity, and debar themſelves of all Acceſs to their Prince, they will be worſe than Negroes.

Mr. *Atwood*. This is not to be ſuffered, to offer theſe Things to the Jury after they have received their Charge; therefore be ſilent. Then proceeding, he renewed his Charge to the Jury, aggravating the ſuppoſed Crimes for the Space of about half an Hour.

Mr. *Emot*. I pray your Honour to be heard one Word. *(Which he often repeated, and at laſt was granted him.)* The Facts laid in the Indictment were not proved, as to the diſowning and caſting off the Government, encouraging of Mutiny in the Soldiers, or diſquieting the Peace of the Government. Addreſſing the King is the undoubted Right of the Subject, both by Common-Law and Acts of Parliament. If the Subject for Complaints of Grievances, ſet forth by Petition, ſhall be attainted of High-Treaſon, we are in a worſe Condition than Slaves.

Mr. *Atwood* check'd him, and commanded Silence.

Mr. *Nicholl*. The Act of Parliament to puniſh Governors in the Plantations for oppreſſing the Subject, is rendered uſeleſs and of no Effect, if the Subjects are depriv'd of this Liberty to complain, and ſet forth their Grievances, by Petition to their King.

Priſoner. I crave that *Jacobus Goelet* may read over his Paper concerning the Evidence given, and Liberty to controul the Miſtakes.—*This was denied.*

Priſ. I crave that Col. *De Peyſter* and Capt. *Walters*, who are joined in the Commiſſion, will declare their Opinions ſingly, if they have agreed that to be Treaſon which Mr. *Atwood* has declared to be ſo, either by the Common-Law, or Act of Aſſembly, if the Facts laid in the Indictment ſhould be admitted to be proved, as indeed they are not.

To this he received no Anſwer.

After this the Jury were ſent out, and the Court adjourned till Three a-Clock in the Afternoon.

At which Time the Commiſſioners meeting, the Priſoner was brought to the Bar; the Jury were ſent for: And being come, were aſked, If they were agreed of their Verdict? Which they anſwered in the Affirmative, and that they found the Priſoner Guilty.

Counſel. We pray Time to offer Reaſons in Arreſt of Judgment.

Mr. *Atwood*. Let theſe Reaſons be offered To-morrow Morning.

Court adjourned till Eleven a-Clock next Morning.

March 10*th*. The Commiſſioners met, and the Priſoner being brought to the Bar, he offered the following Reaſons in Arreſt of Judgment, in theſe Words, *viz.*

Bayard. That no Overt-Act, alledged in the Indictment, is prov'd by the Oaths and Teſtimonies of Two lawful Witneſſes, as by the Statute of 7 *W*. III. is directed.

That if the Overt-Act, as alledged in the Indictment, ſhould be admitted to be ſo proved, yet neither by the Law of *England*, or by any legal genuine Conſtruction of the Act of Aſſembly of this Country, on which the Indictment is grounded, any of the ſaid Overt-Acts can amount to High-Treaſon.

Mr. *Atwood*. Though the Reaſons offered by the Priſoner's Counſel are properly and learnedly offered, I could off-hand anſwer and controul them all; yet I will not do it; let them be left with the Sollicitor-General —And adjourn'd the Court until Ten a-Clock the next Morning; which accordingly was done.

March 11. The Commiſſioners met, and the Priſoner brought to the Bar.

Mr. *Nicholl*. It does not appear, that any one Overt-Act, alledged in the Indictment, has been proved by the Oaths of Two lawful Witneſſes, as by the Statute of 7 *W*. III. ought to be done.

Mr. *Atwood*. The Jury are the ſole Judges of the Evidence; and if there has been any Omiſſion in that, it is now help'd by the Verdict.

Mr. *Nicholl*. Though 'tis very plain to me, and I ſuppoſe to the Court, that what I have affirmed in this Matter is Truth, yet I ſhall not much inſiſt upon it, becauſe if the Acts themſelves ſhould be admitted to be true, they do not fall under any of the Heads or Species of Treaſon ſo made by the *Engliſh* Laws, or by any natural and reaſonable Conſtruction of the Act of Aſſembly of this Government; which being wholly Matter of Law, I ſhall leave to your Honours Conſideration.

Mr. *Emot*. I very well remember, that the Court was pleaſed to tell the Jury, after they had been together ſome Days, and not being agreed upon the Verdict, *That if they were under any Difficulty, whether the Overt-Acts laid in the Indictment, if proved, were Treaſon; if they found the Priſoner guilty, he had his Remedy, by moving the Matter of Law in Arreſt of Judgment.*

I therefore humbly offer in Arreſt of Judgment, That if the Overt-Acts laid in the Indictment were admitted to be proved, yet in Point of Law they cannot amount to High-Treaſon, within the Meaning of the Act of Aſſembly upon which the Indictment was laid.

For I take it, that all Acts of Parliament, and conſequently Acts of Aſſembly, are to be underſtood and taken by reaſonable Conſtruction, to be gathered and collected out of the Words of the Act only, and that according to the natural, grammatical, plain and legal Senſe thereof, without any forced Interpretation.

Then if ſo, this Act of Aſſembly, both by the Title, Preamble, and the enacting Part thereof, plainly demonſtrates the Meaning of the Law-makers, and what was thereby deſigned for the future to prevent. The Title of this Act is in theſe Words: *An Act for the quieting and ſettling the Diſorders that have lately happened within this Province, and for eſtabliſhing and ſecuring their Majeſty's preſent Government againſt the like Diſorders for the future.* Now what theſe Diſorders were, we have great cauſe to remember; and they are very well known to this Court to have been occaſioned by ſome Perſons ſetting up an Arbitrary Power over the King's Subjects without Authority from the Crown of *England*, as appears from the Preamble of the ſaid Act, Part whereof is in theſe Words: *And whereas the late and inconſiderate Violation of the Good and Quiet of this Province, by the ſetting up a Power over their Majeſties Subjects, without Authority from the Crown of* England, *hath vitiated and debauched the Minds of many People*, &c. *For the Prevention whereof in Time to come, be it enacted*, &c. *That whatſoever Perſon or Perſons ſhall by any manner of Ways, or upon any Pretence whatſoever, endeavour, by Force of Arms, or otherwiſe, to diſturb the Peace, Good and Quiet of this their Majeſties Government, as it is now eſtabliſhed, ſhall be deemed and eſteemed as Rebels and Traitors*, &c.

From hence it plainly appears, that the Intention of the Law-makers was only to declare ſuch Perſon or Perſons Rebels and Traytors, as ſhould for the future ſet up a Power over his Majeſty's Subjects in this Province, without Authority from the Crown of *England*; which undoubtedly is Treaſon within the Statute of 25 *E*. III.

But it can never be underſtood (without offering the greateſt Violence to the reaſonable Conſtruction of the ſaid Act of Aſſembly, and the plain Intention of the Makers thereof) to be conſtrued to extend to the ſigning the Addreſſes mentioned in the Indictment, which is the only Thing the Priſoner is poſitively charged withal; for all the reſt are only preſumptive, conſtructive, and accumulative Crimes, drawn from thence.

But, ſays Mr. *Sollicitor*, the Words of this Act of Aſſembly are in Generals; *That if any Perſons ſhall endeavour, by Force of Arms, or otherwiſe, to diſturb the Peace, Good and Quiet of the Government, ſhall be deemed and eſteemed Rebels and Traitors.*

Now from the Word [*Otherwiſe*] Mr. *Sollicitor* would fain inſinuate, that the Priſoner is within the Meaning of the Act of Aſſembly: A very fine Explanation! For by ſuch a Conſtruction as this, every Breach of the Peace, ſudden Quarrel, or ſmall Battery, ſhall be deemed Treaſon. I ſhall not further add upon this Head, but only offer my humble Opinion, That here, in the Plantations, we are not capable in our Aſſemblies to make and declare any new Species of Treaſon, but ſuch as are comprehended in the Statute of 25 *E*. III. or ſome other ſubſequent Statute.

Though what already has been offered, I hope will be ſufficient to ſtay and arreſt Judgment, yet I have ſeveral other Things in behalf of the Priſoner (by your Honours Permiſſion) to move in Arreſt of Judgment, and which are not mentioned in the Reaſons which were aſſigned in Writing; and I pray Liberty to offer them *Ore tenus*.

Mr. *Atwood*. Mr. *Emot*, you have Liberty granted you: Go on.

Mr. *Emot*. I thank your Honour. And the Reaſons that I ſhall now further aſſign, why Judgment ought not to paſs againſt the Priſoner, according to the Verdict of the Jury, are theſe Three:

1*ſt*. That *Andries Marſhalk*, one of the Petty-Jury, is an *Alien*, and of foreign Birth, born in *Zealand*, and came over into this Province in the Year 1684; and that *Jacobus Goelet*, the Foreman of the Jury, is alſo an *Alien*, and hath lately ſent to *England* for to procure a Denization.

2*dly*. That the *Viſne*, or *Venire*, in the Precept to ſummon the Petty-Jury, under the Hands of the Commiſſioners, is wrong awarded, or rather not awarded at all.

3*dly*. That the ſaid Precept is not returned by the Sheriff, or any Endorſement thereupon, and ſigned by him, againſt the known Laws of *England*, and more particularly the Statute of 12 *E*. II. *Cap*. V. called, *The Statute of* York.

Mr. *Atwood* in a long Speech ſaid, What the Sollicitor has offer'd is ſufficient to over-rule the Reaſons exhibited in Arreſt of Judgment; for 'tis evidently proved, that the Priſoner has diſturbed the Peace, Good and Quiet of the Government, as it is now eſtabliſhed, *viz.*

1ſt, By enticing the People to ſign ſcandalous Libels againſt the Government, at the Coffee-Houſe, and at his own Houſe, by the Oath of *Peter Odyre*, telling him it was for the Good of the Country; and his bringing them to Alderman *Hutchins*'s, makes him equally guilty to the Soldiers ſigning Complaints againſt their chief Officers, thereby enticing them to Mutiny; which Soldiers are Part of the Seven Thouſand Men raiſed by Act of Parliament for the Defence of the Kingdom; which is High-Treaſon by the Common-Law, as well as by Act of Aſſembly.

2dly, By the Priſoner's diſowning the Aſſembly to be lawful.

3dly, By charging the Lieut. Governor to be brib'd to paſs their Acts of Aſſembly.

4thly, By charging the Government to be in the Hands of hot and ignorant Men.

5thly, By the Addreſs to the Lieut. Governor, diſowning and caſting off the preſent Authority, declaring the Lord *Cornbury* to ſucceed the late Earl of *Bellamont* in the Government.

I hope the Priſoner by this Time is convinc'd of his Crime, as well as that Clergyman who ſpoke ſo much in his Vindication; and that the Priſoner will now be duly penitent, and make a true Confeſſion of it.

Col. *Bayard.* May it pleaſe your Honour, I ever abhorr'd that heinous and abominable Crime of High-Treaſon, as much as Death itſelf. I call God and my own Conſcience to witneſs, That I am as innocent of it as the Child unborn: I never ſpoke to any of the Soldiers to make any Complaint, or ſign any Addreſſes, or other Paper whatſoever. I own I was preſent at the Coffee-Houſe, at the ſigning of an Addreſs to the King, another to the Parliament, and another to the Lord *Cornbury*; and I own the Two firſt contained ſome Complaints of Grievances we ſuppoſed to lie under, and the latter a Congratulation.

I had the beſt Counſel I could get for ſo doing, and that it was the Subjects Right to petition the King, by the Act of the Firſt of *W.* & *M.* and I think the Subjects ſhould be worſe than Slaves, if they ſhall be arraigned for High-Treaſon for complaining to their Prince.

I muſt further beg Leave to ſay, Your Honour was much miſtaken in ſumming up juſt now what the Witneſſes had ſworn; and the Jury (by that Paper the Foreman read in Court) had likewiſe a wrong Notion of it; which I deſired then I might controul; but your Honour over-ruled, as not to be allowed after the Charge was given. It was not proved by any of the Witneſſes, that the Peace of the Government had been diſturbed; none of 'em ſaid I had enticed any Perſon whatſoever to ſign the Addreſſes; nor that I was preſent at the Soldiers ſigning at *Hutchins*'s, much leſs that I enticed them to Mutiny. I knew nothing of their ſigning; I was not at the Houſe all that Time. Mr. *Sollicitor* had Mrs. *Hutchins* ſworn, who ſaid the ſame. None of 'em ſay, that in the ſaid Addreſs the Aſſembly was called *Unlawful*, but only, that the Speaker was an *Alien*; nor that the Lieut. Governor was bribed, but tempted; nor that the Government was in the Hands of *hot* and *ignorant Men*, but that *hot* and *ignorant Men* were *put in Offices*; and that thereby the Government was like to be rendered *Cheap* and *Vile*. And as for the Addreſs to the Lieut. Governor, it was only ſaid, *We had received Advice from* England, *that the Lord* Cornbury *was to ſucceed the Earl of* Bellamont *as our Governor*; which by no Colour can be conſtrued to be a caſting off, or diſowning of, the preſent Authority. And tho' all had been proved, as it is not, what your Honour, as above, has been pleaſed to ſay, I humbly conceive it cannot amount to a Miſdemeanor, and much leſs to that heinous Crime of *High-Treaſon.*

Mr. *Atwood.* The Right of Petitioning the King is not in Diſpute, but the Manner of doing it makes it *Criminal*; neither does that Liberty extend to the Parliament.

Mr. *Emot.* I humbly move, that we may have Liberty to offer other Reaſons *Ore tenus.* (*Which the Court granted.*)

Mr. *Atwood.* Adjourn the Court till *Friday* Morning, the 13th Inſtant. (*Adjourned accordingly.*)

On the 12th in the Morning, the Priſoner wrote a Letter to Col. *De Peyſter*; ſome of the Contents whereof were by Mr. *Atwood* retorted upon the Priſoner in open Court, at the Time he paſſed Sentence againſt him; for which Reaſon the Priſoner has permitted it to be publiſhed, and it is as followeth:

Col. De Peyſter: *Sir*,

'I Take Leave to acquaint you, That tho' it has pleaſed God to ſuffer yourſelf, and ſome of your Relations to be the likely chief Inſtruments of the total Deſtruction both of myſelf and all my Family and Poſterity; that yet, notwithſtanding I have that Peace with myſelf (and I can but only thank God for his all-ſufficient Grace in ſtrengthening me in it) that I am reconciled to all Mankind whatſoever, and that I hope one of my laſt Prayers will be, That God out of his infinite Mercy, will graciouſly pardon all thoſe who have had a Hand to cut me off. *Sir*, Believe me, as you may give Credit to the Words of a dying Man (ſince I find the Jobb is to be done, and that it is now paſt your Power to ſtop the Current), that I ſhall alſo die with a clear and good Conſcience, and as free of that horrid Crime laid to my Charge as the Child yet unborn. And therefore hope God's merciful Hand, who has never left nor forſaken me, will continue to ſupport me to the very laſt, and that I may look Death in the Face, as a good Chriſtian ought to do; humbly ſubmitting my All to his moſt Wiſe, moſt Juſt, and moſt Merciful Diſpenſations: For I am ſenſible there is no more than one Death for me, and that, in all Probability, conſidering my Age, it might have been very ſoon, tho' this Tribulation had not befallen me. I ſhall only add, That I hope in God's Mercy for the Pardon of all my manifold Sins and Tranſgreſſions, thro' the only Merits of my Saviour Jeſus Chriſt; and that when I ſhall be no more, he will continue his Grace to my dear Wife, and my Poſterity. And, laſtly, that my Blood, which is ſtruck at (by your Brother's own Expreſſions to myſelf, and your Brother-in-Law's to others, both not long ſince) may be the laſt to be ſpilt on Account of our diſmal and unhappy Diviſions; tho' I fear out of my Aſhes ſuch further Calamities may ariſe to this poor bleeding Province, that Poſterity will have Cauſe long to lament: For it is not to be expected, that all the Plots, Contrivances and Intrigues uſed in this Matter (many of which, I aſſure you, are already diſcovered) will have their *Exit* with myſelf: It had been more pardonable to have ſtabbed me in my Sleep, or with *Joab*'s Hand, under a Pretence of Friendſhip, than to do it with *Ahab*, under a Colour and Cloak of Juſtice; and of the Two, I leave others to conſider, if this latter exceeds not the former; ſince it's not to be ſuppos'd, that *Ahab*'s was ſo much out of Malice; but the Vineyard being denied him on his offering the Worth of it in Money, occaſioned the Innocent to be arraigned and ſlain for a pretended Crime of *Blaſphemy* and *High Treaſon.*

'*Sir*, Theſe above Lines are the Sincerity of my Thoughts this Morning; aſſuring you, that I never had a Thought before late laſt Night to write to yourſelf one Word about this Subject, ſo altogether unknown to all Mankind whatſoever, nor don't intend them any further; wherefore I deſire you'll make ſuch Uſe of them, for your own Conſideration, as God may direct you. I am, Sir,

'*Your humble Servant*,

'N. BAYARD.'

March 13. The Court being met according to Adjournment, the Priſoner being brought up moved, That foraſmuch as Mr. *Nicholl* was out of Town, by reaſon of the Indiſpoſition of his Family, another Counſel might be aſſigned in his Stead. Which was granted, and the Court adjourned till *Monday* the 16th Inſtant, at Nine o'Clock.

March 16. Before the ſitting of the Court, the Priſoner ſent a Petition to Mr. *Atwood*, and the reſt of the Commiſſioners, *viz.*

To the Honourable William Atwood, *Eſq*; Abraham De Peyſter, *Eſq*; *and* Robert Walters, *Eſq*; *Judges of this Special Court.*

The humble Petition of Nicholas Bayard, *ſheweth*,

'THAT your Petitioner being altogether unacquainted what is practicable and allowable in Law to be offered in Arreſt of Judgment; yet ſince your Petitioner's Life, and all that is near and dear unto him is concerned, he humbly craves Leave (beſides the Reaſons already offer'd by your Petitioner's Counſel in Arreſt of Judgment, to lay before your Honours, and to pray your Honours favourable Conſideration thereupon,

'*Firſt*, That the Verdict of the Grand-Inqueſt was not ſufficiently found by any Twelve of that Inqueſt, as in his former Petition is ſet forth.

'*Secondly*, That the Petty-Jury (in a manner forc'd upon your Petitioner) were all of them Parties concerned againſt your Petitioner in the very Matter he was tried for, on Account of the unhappy Diviſions within this Province; all of 'em extreme ignorant of the *Engliſh* Language, to that Degree, that ſcarcely one of them is able to ſay the *Lord's Prayer* in the *Engliſh Tongue*, and much leſs to comprehend the Matters of Law, and what has been offered in Behalf of your Petitioner at his Trial.

'*Thirdly*, That all what has been ſworn againſt your Petitioner, was, Firſt, That the Petitioner's Name was ſeen to the Addreſs to the Lord *Cornbury*, but that they knew not whether it was his Hand-Writing. Secondly, That the Petitioner had been preſent at the Coffee-Houſe, and at his own Houſe, when the Addreſſes to the King, another to the Parliament, and another to the Lord *Cornbury*, were ſigned by ſeveral of the Freeholders, Freemen, and Inhabitants of this City; but that he had deſired none of them to ſign the ſame. Thirdly, That the Petitioner had brought ſome Papers, ſuppoſed to be the ſaid Addreſſes, to the Houſe of Alderman *Hutchins*. Fourthly, That the Addreſſes to the Lord *Cornbury* contained only a Congratulation at his ſafe Arrival, and a hearty Deſire, that with it all our Diviſions might be healed, and that the very Name of *Party* and *Faction* might vaniſh, and be extinguiſh'd; and that in the two former, or in one of them, either to the King or Parliament, ſome Complaints were made of Grievances, without remembering the Particulars: Only Mr. *Clows* ſwore, That to his beſt Remembrance, in both, or in one, of the Addreſſes to the King or the Parliament, mention was made, That ſome of the *hotteſt* and *ignoranteſt* of the People were put in Offices: That the Speaker of the Aſſembly was challenged to be an Alien: That the ſaid Aſſembly had given a Gift to the Lieutenant-Governor, to tempt him to paſs their Acts, and another to the Judge; and that thereby his Majeſty's Government was like to be render'd *Vile* and *Cheap* in the Eyes of the People: And ſwore further, That in none of them any Reflections were made (as he conceived) to the Prejudice of the Lieut. Governor; and that in none of them, the Words *Unlawful* or *Oppreſſion* were mentioned.

'*Fourthly*, That all the reſt of the Evidences ſwore nothing againſt your Petitioner, but that they had ſigned the Addreſſes at Alderman *Hutchins*'s; that two or three of the Soldiers had a Glaſs of Wine given them, but not for ſigning, it being *Chriſtmas*-Time; and that ſome of them expected to be made free of the City, but not of the Garriſon.

'*May it pleaſe your Honours*, Your Petitioner finds, by the Notes himſelf has taken at his Trial, that nothing more has been ſworn againſt him. Whereupon the Jury, being ignorant People, found him guilty, becauſe ſome Part of the Indictment was proved, as to the ſigning of the ſaid Addreſſes, and what the Contents of them were, only by the Oath of one Witneſs.'

Your Petitioner therefore humbly prays, That your Honours will be pleaſed to take the Premiſſes into your ſerious Conſideration, Whether by the Laws of England, *or this Province, it can amount to the Crime of High-Treaſon, what has been ſworn againſt him, as above expreſſed? And if not, that your Honours will favourably order an Arreſt of Judgment for the Reaſons above-mentioned,* &c. *and what has been already offered to your Honour by the Petitioner's Counſel. And as in Duty bound,* &c.

N. BAYARD.

The Court being met, the Priſoner was brought to the Bar, and the Petition laſt mentioned read.

Mr. *Atwood.* Mr. *Emot*, we are ready to hear the Arguments you have to offer, for the laſt three Reaſons you have aſſigned in Arreſt of Judgment.

Mr. *Emot.* I am ready; 1ſt, *Andries Marſhalk*, one of the Petty-Jury, is an Alien; we have two Evidences to prove the ſame. And——

Mr. *Atwood.* We cannot admit you any ſuch Proof: for tho' this might have been a good Exception for Cauſe before he or they had been ſworn, but now it's too late; therefore go on to the next.

Mr. *Emot.* This ſeems very hard; for we ought to have been tried by the King's lawful Liege People, and we apprehend theſe are not ſuch; but we come not to the Knowledge of this till after the Trial.

Mr. *Atwood.* Pray, Mr. *Emot*, delay the Court no longer; but proceed to the ſecond Reaſon aſſigned.

Mr. *Emot.* The 2d *Reaſon* is, That the *Viſne* or *Venue*, in the Precept to ſummon the Petty-Jury, is wrong awarded, or rather not awarded at all. Our happy Conſtitution of Government is, That all Trials of this Nature muſt be by the Verdict of Twelve Men, and that, as near as may be, of the Neighbourhood where the Fact ariſeth, or is alledg'd to ariſe in the Indictment. Yet, nevertheleſs, the Precept to ſummon the Jury, we find is directed to the Sheriff, to return Eighty Men of his Bailiwick; whereas he is Sheriff as well of the County of *New-York*, as of the City; and at the ſame Time, the Matters of Fact alledged in the Indictment are ſaid to be committed in the *Dock*, and *Eaſtward* of this City. So that this is a Miſ-Trial, upon which no Judgment can be given: And of this we have a Multitude of Authorities in our Books: And firſt, in *Arundel*'s Caſe, *Coke*'s *Reports*, *Part* 6. *fol.* 14. *b.* It was for the Murder of one *Parker*; and the Caſe was thus: The Murder was alledged to be done at the City of *Weſtminſter*, in a certain Street there, called *King-ſtreet*, in the Pariſh of St. *Margaret*'s. For the Trial of the Iſſue, a Jury was return'd, *De Vicinitate Civitatis Weſtm.* *Arundel* being found guilty, moves in Arreſt of Judgment; aſſigning for Cauſe, That the Jury ought to have been out of the Pariſh of St. *Margaret*'s, and not in general out of the Neighbourhood of the City of *Weſtminſter*; and it was adjudged a Miſ-Trial, and the Verdict was ſet aſide: And this I find was done upon a Special Conſult of the Judges at *Serjeants Inn.*

So that we ſee how cautious the Laws of *England* are, and the Judges thereof, that all Trials of this Nature ſhall follow the *Venue*, and that the Jury ſhall be ſummoned from the Neighbourhood where the Fact ariſeth. And the Reaſon thereof is grounded upon this Suppoſition and Preſumption, That the Neighbourhood are the beſt and moſt proper Judges of Matters of Fact; for indeed it's the Rule in the Law, That *Vicinus facta Vicini preſumitur ſcire.*

But let me obſerve to your Honours, that our Caſe at the Bar is much more uncertain, as to the awarding of the *Venire facias*, or Precept to ſummon the Jury; for the Fact is alledged to be done at the *Dock*, and *Eaſtward* of this City, and Iſſue joined thereupon: Yet the Precept is directed to the Sheriff, to ſummon the Jury of his Bailiwick; which, as I ſaid before, contains both the City and County of *New-York*, and without mentioning any Neighbourhood, and therefore may come out of the County, as well as from the City; and therefore of Neceſſity muſt be eſteemed a Miſ-Trial.

To this it may be objected by ſuch as are ignorant of our Laws, *That notwithſtanding the Jury was ſummoned from the Neighbourhood of the City of* New-York, *and not from the County, for that they know the Perſons to be ſuch.* But this not appearing to be ſo upon Record, avails nothing; for the Rule of the Law is, *What appears not is not: Exiſtentibus & non apparentibus eadem eſt ratio.*

Crook's *Rep.* In *London*, the Pariſh and Ward is mentioned; and therefore it was adjudged, That it was not good to alledge any Thing done generally in *London*; but it muſt be laid to be done in ſome Pariſh, from which a *Venue* may be awarded.

In *Crook*'s *Jac.* p. 399, *Tycos* againſt *Weſtcome.* In this Caſe, a *Venire fac'* was awarded from *T.* and not *de Vicineto de T.* Reſolved to be ill, and not amendable: Yet in this Precept the *Viſne* is not ſo much as of a Ward of the City of *New-York*, nor of any other Neighbourhood whatſoever, but in general from his Bailiwick. So that I humbly pray, that for this Reaſon the Jury's Verdict may be ſet aſide, this being a Miſ-Trial, upon which no Judgment can be entered: And ſhall proceed to the *Third Reaſon* aſſigned.

3. That the Precept to ſummon the Jury is not returned by the Sheriff, or any Endorſement thereupon, and ſigned by him, againſt the known Laws of *England*, and more particularly the Stat. of 12 *Edw.* II. *c.* 5. This Statute enjoins, That the Sheriff ſhall put his Name to every Return made by him, ſo that the Court may know of whom they took ſuch Return, if Need be: And I ſhall endeavour to prove, from ſundry adjudged Caſes ſince the making of this Statute, that this Precept to ſummons the Jury not being indorſed by the Sheriff, the Trial is ill, and not amendable.

The Caſe of *Holdſworth* againſt Sir *Stephen Proctor*, in *Crook*'s *Rep. Part* 2. *p.* 188. Sir *Stephen Proctor* moved in Arreſt of Judgment, for that the Name of the Sheriff was not indorſed upon the Writ of *Diſtringas* with *Niſi prius*; and it was ruled, That the Trial was ill, and not amendable by any the Statutes of *Jeofails:* For, ſay the Judges, it's all one with the Caſe of a *Venire facias*, where the Name of the Sheriff is not thereto; which hath been frequently over-ruled, as being no Return, nor helped by any Statute of *Jeofails.* For the Statute of 18 *Eliz.* as I ſhall ſhew hereafter, from adjudged Caſes, and from the beſt Authorities in Law, doth only help imperfect and inſufficient Returns, and that only in Caſes Civil, between Party and Party; but here is no Return at all.

In *Rowland*'s Caſe, in Lord *Coke*'s *Rep. Book* 5. *p.* 41. in Ejectment upon a Verdict for the Plaintiff, the Defendant moved in Arreſt of Judgment; for the *Venire facias* was not returned or endorſed by the Sheriff, tho' the *Poſtea* made mention that the Jury was returned *per Mandatum Juſticiorum:* Yet in this Caſe it was ruled, That that would not help it; for the Judges ſaid, That where there is no Return, it cannot be help'd by the Statute of 18 *Eliz.* or any other of the Statutes of *Jeofails*; for that Statute only helps imperfect and inſufficient Returns, and ſuch as want Form, and not ſuch as are not return'd at all.

Again, in Sir *Arthur Blackmore*'s Caſe, in *Coke*'s 8th *Rep. fol.* 156. in this Caſe it was adjudg'd, That the Statute of 18 *Eliz.* doth not help a Trial, where no Return is made upon the Writ of *Venire fac'*; as was formerly, ſay they, adjudged in *Rowland*'s Caſe before cited. And our Books are full of Authorities of this Nature, but ſhall not give you the Trouble to mention any more.

Mr. *Sollicitor.* Mr. *Emot*, theſe Authorities, which you have here cited, it's true, are grounded upon the Statute which you have mentioned of 12 *Ed.* II. but this Statute has only Relation to Writs; and in this Caſe the Sheriff ſummoned the Jury, not by virtue of a Writ, but a Precept under the Hands of the Commiſſioners; which differs the Caſe.

Mr. *Emot.* Mr. *Sollicitor*, then you ſay, that the Caſe at the Bar is not within the Words of this Statute of 12 *Ed.* II. for that this is a Precept to ſummon the Jury, and not a Writ, and ſo conſequently the Sheriff not obliged to ſign and return the ſame. A very wiſe Diſtinction!

However, I ſhall endeavour to ſhew, that this Precept is within the Reaſon and Equity of the Statute, and that the ſame ought to be returned and ſigned by the Sheriff. In order thereto, I ſhall put this Court in mind, how Statutes have from Time to Time been taken by Equity in divers Manners; that thoſe Things which are alike in Reaſon, are alike in Law; and that where an Act of Parliament hath been made to remedy ſome Miſchiefs, that the ſame hath been extended to other Things, in like Degree, and that even in Penal Laws. As for Example:

Stat. of Glouceſt. c. 5. By this Statute, an Action of Waſte is given againſt one who holds for Years; yet by the Equity of this Statute, a Man ſhall have an Action againſt him who holds but for Half an Year, notwithſtanding the Act be Penal.

Weſtm. 2. c. 3. This Statute gives an Action of *cui in Vita*, after the Coverture diſſolved by Death; Yet if the Coverture be diſſolved by Divorce, the Wife ſhall have, by the Equity of this Statute, a Writ of *cui ante Divortium.*

And laſtly, the *Stat.* 25 *Edw.* III. *de proditionibus.* This Statute expreſly ſays, That no Caſe ſhall be taken by Equity, unleſs it be adjudged in Parliament; and yet by the Equity of the Words of that Statute, which are, *If the Servant kill the Maſter*, it is taken, *If the Maid kill the Miſtreſs*, that this is Petit-Treaſon.

So that from hence I am humbly of Opinion, That we are fairly within the Equity of the *Stat.* 12 *Edw.* III. Beſides, a Writ and Precept in this Caſe are only ſynonimous Terms, and ſignify one and the ſame Thing.

Theſe Reaſons were over-ruled.

And the Court ordered the Sheriff to make a Return upon the Precept to ſummon a Jury conform to the above *Stat.* 12 *Edw.* II. which the Court ſaid they had Power to do, and to help that Defect.

Mr. *Emot.* I find your Honour has over-ruled all the Reaſons that we have offered in Arreſt of Judgment, in Behalf of the Priſoner Col. *Bayard*, why Judgment ought not to paſs againſt him, according to the Verdict of the Jury, but have not as yet obſerved, that either Col. *De Peyſter* or Captain *Walters* have given their Opinion to all, or any of the Reaſons we have offered. I humbly therefore pray, that we may have their Opinion, ſo that we may know by what Hands we fall.

Mr. *Atwood.* Mr. *Emot*, you who have been aſſigned Counſel for the Priſoner, have hitherto, in all the Courſe of the Trial, carried yourſelves like Men of your own *Profeſſion*; you muſt not now therefore begin to menace the Court. You ſhall have the Opinion of the reſt of the Commiſſioners.

Whereupon Mr. *Atwood* turning himſelf to them, and whiſpering them, they ſeverally did declare, That they were of Opinion with Juſtice *Atwood*, in that the Reaſons offered were not ſufficient to arreſt the Judgment.

Mr. *Atwood.* Col. *Bayard*, have you any Thing to ſay, why Sentence ſhould not paſs againſt you?

Priſoner. I have nothing more to offer, than what my Counſel have offered, and what is contained in my laſt Petition.

Mr. *Atwood.* I am ſorry to find you ſo impenitent of your Crime, which is ſo heinous and abominable in the Sight of God and Man. You have lately made Reflections upon the Proceedings of this Court againſt you, as if it had been a Deſign to do the Jobb; comparing your Caſe to that of *Naboth*'s Vineyard: But I hope God will open your Eyes, that you may be convinced, and repent of the Crime.

Then he pronounced Sentence in theſe Words:

It is conſidered by the Court here, that you be carried to the Place from whence you came; that from thence you be drawn upon a Hurdle to the Place of Execution; that there you be hanged by the Neck; and being alive you be cut down upon the Earth, and that your Bowels be taken out of your Belly, and your Privy-Members be cut off, and you being alive they be burnt before your Face; and that your Head be cut off, and that your Body be divided into Four Quarters; and that your Head and Quarters be placed where our Lord the King ſhall aſſign. And the Lord have Mercy upon your Soul.

Priſoner. I deſire to know whether I may have Leave to anſwer to your Honour's Speech made before Sentence.

Mr. *Atwood.* No.

Priſoner. Then God's Will be done.

The Priſoner was remanded.

Alderman *Hutchins* of *New-York* was tried, convicted and condemned of High-Treaſon for the ſame Facts with which Col. *Bayard* was charg'd, and had the ſame Uſage both before, in, and after his Trial.

CLXXIII. *The Trial of* William Fuller, *at the* Guild-Hall *of* London, *for a* Cheat *and* Impoſtor, May 20, 1702. 1 Ann.

Proclamation was made for all Perſons concerned to attend.

THEN the Gentlemen that were of the Jury were Sworn.

Peter White,
Ab. Burnet,
John Cooper,
Edw. Pinfold,
James Dod,
Boden,
Acton,
Proctor,
S. Stone,
Troughton,
Jo. Watſon,
Dan. Carpenter.

The Queen againſt *William Fuller*, upon an Information for Libels.

Mr. *Montague.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Information ſets forth——"That the Defendant being an Impoſtor, and a common Lyar, and a Perſon of an ill Name and Reputation, falſly, maliciouſly, wickedly and ſeditiouſly contriving, practiſing and intending the late King *William* and his Subjects falſly and unlawfully to delude and deceive, and Diſcords between the ſaid late King and the Peers, and the Noblemen of this Kingdom, and the great Officers and Miniſters intruſted by the ſaid late King, in Buſineſs relating to the Government of this Kingdom of *England*, and other Subjects of the ſaid Kingdom, to move, excite, and ſtir up; and alſo to bring the Noblemen and Peers, and the great Officers and Miniſters aforeſaid, and other faithful Subjects, into Hatred and Contempt with the ſaid late King; and to get and obtain ſeveral great Sums of Money fraudulently and deceitfully from the ſaid late King; He, the ſaid *William Fuller*, the firſt Day of *January* laſt at *London*, &c. (to perfect and bring to effect his ſaid wicked Practices and Intentions, and of and concerning a Correſpondency between divers Officers and Subjects of the ſaid late King and the late King *James*, while he reſided at *St. Germains* in *France*, falſly pretended to be had, and of divers Sums of Money by the ſaid late King *James* diſtributed among the Subjects of the late King *William*, falſly pretended to be ſent here into *England*;) did falſly, wickedly, maliciouſly, and ſcandalouſly write and print, and cauſe to be printed, a falſe, ſcandalous, and defamatory Libel, entituled, * *Original Letters of the late King's* (meaning the late King *James*) *and others, to his greateſt Friends in* England, *with the Depoſitions of* Thomas Jones *and* Thomas Widdrington, *Eſqrs*; *proving the Corruption lately practiſed to ruin this Nation.* In which falſe, feigned and ſcandalous Libel, among other Things, are contained as follows:" [1ſt Page.] *Thomas Jones*, Eſq; depoſeth, That he being at *St. Germains*, the Court of the late King *James* in *France*, in *January*, 1692, the ſaid late King being in his Cloſet, ſent for this Deponent, and there commanded the ſaid Deponent to begin his Journey for *England*, in Company with Col. *Tho. Dallaval*, and Mr. *George Hayes*; and the ſaid late King did then and there deliver to this Deponent ſeveral Letters and Papers, to divers Noblemen and others in *England*, to whom this Deponent had ſeveral times before and ſince brought Letters from the late King and his Queen, and pretended Secretaries of State, delivered according to Order. This Deponent further ſaith, by the Oath he hath taken, That the late King *James*, at the time aforeſaid, in his Cloſet at *St. Germains*, did deliver to this Deponent a Paper, being an Order for this Deponent to receive Six Thouſand Pounds; which Sum this Deponent was to pay to ſeveral Perſons in Places in Truſt then in *England*, to engage them more firmly to endeavour the invalidating the Evidence of *William Fuller* (who, as the ſaid late King expreſſed, had been by him, his Queen, and chief Servants, intruſted and employed in their moſt ſecret and weighty Concerns, for a conſiderable time after the late King and Queen's coming to *France*). [*P.* 7.] And this Deponent ſaith, He informed Mr. *Fuller* that *Dallaval* and *Hayes* were come to Town, and lodged at an Apothecary's in *Holborn*, which Houſe *Hayes* formerly lodged at; but that *Dallaval* not being well, they could not come to him; therefore this Deponent ſaid to *Fuller*, that they deſired him to come to them; but he urged his Condition rendered him unfit, begging of the Deponent, to entreat them not to fail to attend the Houſe of Commons at the time appointed. All which this Deponent imparted the ſame Day to Col. *Dallaval* and Mr. *Hayes*, and with them went the ſame Evening to three Gentlemen that were then Members of Parliament; and this Deponent had a Letter from one of thoſe three Gentlemen, (that was a Member of Parliament) directed to one of the Secretaries to the then Secretary of State, which this Deponent was to carry to him the next Morning; which accordingly he did by Seven of the Clock. And this Deponent ſaith, he paid the ſaid Under Secretary 500 Guineas. And this Deponent ſaith, That when he left the Secretary, he went directly to the *Sun-Tavern* in *King-ſtreet*, *Weſtminſter*, where he found the three Members with *Dallaval* and *Hayes*, and an eminent Banker of the City of *London*: Then this Deponent deſired the Banker to give his Bill to pay each of thoſe three Gentlemen that had been Members, 1000 Pounds payable on Sight; which being done, the ſaid Banker delivered alſo to one of them his Bill for 1500 *l.* to be paid on Demand, for the Uſe of a conſiderable Perſon, whoſe Station would not permit him to be preſent. And this Deponent ſaith, by the Oath he hath taken, That the ſeveral Sums of Money beforementioned, with ſeveral leſſer Parcels, were ſo diſpoſed of by him, according to the late King's eſpecial Directions. And this Deponent ſaith, He has now by him the Receipts of each Perſon for the reſpective Bills and Moneys he diſpoſed of, with the true Copies of his Original Bills, delivered to him by the late King's own Hand. This Deponent ſaith, He delivered to the late King a Letter he had for him, from the three Gentlemen that were Members, and alſo ſeveral others he brought from *England*. And foraſmuch as this Deponent ſaith, As he hath formerly been employed to bring Letters, and Bills, and Orders, from the late King *James* and the *French* King and their Miniſters; this Deponent ſaith, That he has kept a Journal of the ſame, and is ready to lay it before either or both Houſes of Parliament when required. And this Deponent ſaith alſo, by the Oath he hath taken, That he can produce his original Orders that he received from the late King's and the *French* King's own Hands, for the diſtributing more than One Hundred Fourſcore Thouſand Pounds *Sterling* for their Uſe, to Perſons that were in Places of Truſt. And this Deponent ſaith, He can produce the Receipt of each Perſon to whom the Money was paid, and alſo the Perſons from whom this Deponent received the ſaid Sum or Sums by the Order aforeſaid.

Tho. Jones.

(*2d Book.*) "The Information further ſets forth, That the Defendant, the Day and Year aforeſaid, (to perfect and bring to Effect his further moſt wicked Practices and Intentions againſt divers Officers, and other Subjects of the late King *William*, upon a feigned and pretended Correſpondence between them and the late King *James*, whilſt he reſided in *France*, and of ſeveral Sums of Money ſent by the ſaid King *James* out of *France* into *England*, to be diſtributed amongſt the Subjects of the late King *William*) another moſt falſe and ſcandalous Libel [*Title Page*] entituled, *Twenty-Six Depoſitions of Perſons of Quality and Worth*) falſly, wickedly, and moſt deceitfully, did write, print, and cauſe to be printed; in which ſaid falſe and ſcandalous Libel, amongſt other Things, are contained, *viz.* [5th Page.]" *Mr.* Jones *has alſo made Oath, That he paid* 5000*l. more, by the late King's Order, to ſeveral Perſons in Places of Truſt, that they might compleat my Ruin, and invalidate me for ever. Nor is this all; for the ſame Mr.* Jones *will prove, by undeniable Witneſs and Demonſtration, that he has diſtributed more than One Hundred Fourſcore Thouſand Pounds in Eight Years laſt paſt, by the* French *King's Order, to Perſons in public Truſt in this Kingdom.*

W. Fuller.

"And the ſaid Defendant *Fuller* afterwards, the ſaid Day, *&c.* falſly, unlawfully, and wickedly did publiſh, utter, and for Truth affirm, the ſaid ſeveral falſe and ſcandalous Libels, without any lawful Authority. Whereas, in Truth, the ſaid *Thomas Jones* did not depoſe upon his Oath, as is contained in the ſaid falſe and ſcandalous Libel; but that the ſaid ſcandalous Libels were and are falſe and feigned, and altogether contrary to Truth, to the great Scandal and Abuſe of the late King *William*, and his great Officers and Miniſters, and other the faithful Subjects of the ſaid late King, to the evil Example of others, and againſt the Peace of the ſaid late King, his Crown and Dignity."

He pleaded Not Guilty, and Iſſue joined thereupon.

The Caſe. "The Defendant *Fuller* is ſo notorious a Cheat, and his Practices ſo publicly known to all Men, that there need not much to be ſaid here to aggravate his Offences; for in the Year 1691, he was cenſured by the Houſe of Commons, proſecuted, convicted and puniſhed for thoſe very Crimes he now ſtands to be tried; and notwithſtanding that Sentence and Puniſhment, he ſtill perſiſts in his villainous Practices and Deſigns.

"About two Years ſince, he applied himſelf to the chief Miniſters at Court, and inſinuated what Diſcoveries he could make relating to the Cheat of the Birth of the pretended Prince of *Wales*, and of great Sums of Money received by ſeveral Perſons of Quality here, from the late King *James* and the *French* King, and of ſeveral Correſpondences had between them and the great Officers of State here in *England*; but not meeting with that Encouragement he expected, he then undertakes to write and publiſh the two ſcandalous Libels mentioned in the Information, and cauſed great Numbers of them to be printed and ſold about the Town; and then petitions the Houſe of Peers to be heard, to make out the Truth of what he wrote and publiſhed. The Houſe of Peers, by his Importunity, appointed a Day for him to produce thoſe Perſons he mentioned, to make good his Accuſations and Charge, which he undertook to do; but failing from time to time, their Lordſhips ordered him to be committed and proſecuted for an Impoſtor; but the Defendant being an hardened Rogue, was no way humbled at this Order, but immediately thereon applies himſelf by Letters to the Speaker of the Houſe of Commons, alledging the ſame Matters, as he had done before to the Houſe of Lords. The Houſe of Commons ordered him to be brought to their Bar, where he only deſired Ten Days Time to produce thoſe Perſons mention'd in his Libels; and that Houſe, (to leave him no Excuſe) granted him a Fortnight; but having trifled with the Houſe of Commons, as he had done before with the Houſe of Lords, they voted him an incorrigible Rogue, and ordered him to be proſecuted. What the Reaſons were for this unparallel'd Impudence, whether for the ſake of Gain, or Malice to thoſe Gentlemen he hints at in his Libels, are yet Secrets.

*Mr. *Att. Gen.* My Lord, the Charge has been very fully opened, and I need not ſay much. His Crime is his publiſhing theſe two Books (mentioned in the Information). He has been ſome time ſetting up for an Evidence, pretending to diſcover a ſecret Correſpondence between the late King *James* and ſeveral Perſons here in *England*. He made an Offer of ſome ſuch Diſcovery about Ten Years ago, and he then applied himſelf to the Houſe of Commons, and they gave him Time to produce his Witneſſes; but after all, he could produce none, and the Houſe ordered him to be proſecuted as a Cheat and Impoſtor; and he was proſecuted accordingly, convicted —, and ſet in the Pillory. Now ſome Time laſt Winter, he did apply himſelf to ſome of the late King's Miniſters, and pretended he would produce *Thomas Jones* and *Tho. Widdrington*, to make conſiderable Diſcoveries. They heard him, but he could never produce theſe Men before them. And afterwards having no Encouragement from them, he took on him to publiſh theſe two Books, mention'd in the Information, whereof he ſtands now accuſed. And after he was before the Parliament, he firſt applied himſelf to the Houſe of Lords, and they heard what he had to ſay, and gave him time to produce his Witneſſes; but he could not do it, and thereupon the Lords were pleaſed to direct this Proſecution. Then he applied himſelf to the Houſe of Commons, and they gave him Time likewiſe

*Sir *Edward Northey.*

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* See *State Trials*, Vol. 8. p. 78.

likewiſe to produce his Witneſſes; but he could produce none; whereupon they voted him a Cheat, a falſe Accuſer, and an incorrigible Rogue. My Lord, theſe Books were publiſhed with a very malicious Deſign, and no doubt he had other People, who do not now appear, to ſupport him in it; and I doubt not but he would have ſet up Witneſſes to have ſworn whatever he would have them, if he had met with any Encouragement. He has the Impudence to put in the Frontiſpiece of his Books, *Publiſhed by Command*; but being aſked in the Houſe of Peers, by whoſe Command? He ſaid, it was by his own Command. And he has publiſhed in the Books, that he would produce Witneſſes to prove the diſtributing of an Hundred and eighty thouſand Pounds to Perſons in Places of Truſt, and to produce Receipts for the ſame, and he had an Opportunity now of doing it. We will prove the Charge upon him.

† Sir *John Hawles.*

† Mr. *Soll. Gen.* My Lord, the Matter of the Information has been fully opened; but we are to conſider the ill Conſequences of it. This is a new Practice for a Man to publiſh Things of this Nature, and not be able to prove any thing: But he pretends to ſet up a ſecond Witneſs to make out what he has ſaid; that is, *Jones*, as if *Jones* were to relieve him. Now if that were true, it would be a great Thing to corroborate what he did ſay; but he has never produced this *Jones*, but only has printed ſomething that he calls *Jones*'s. If it were only what depended on his private Knowledge, the Caſe were otherwiſe; but when he pretends to bring *Jones* to prove it, and does not produce him, he makes himſelf guilty of the Scandal; and it is very neceſſary that this Man ſhould be brought to Puniſhment. I will not trouble your Lordſhip further, but call our Witneſſes.

Mr. *Serj. Darnel.* The Matter has been opened ſo fully, that there is no need for me to ſay any thing; we will now call our Witneſſes.

Mr. *Att. Gen.* My Lord, we will prove that *Fuller* carried this Book to the Preſs, and not Mr. *Jones*, therefore we may well preſume it was his own.

Mr. *Coniers.* He could never produce *Jones*, but he could frame Depoſitions for him.

Then Fuller'*s Book was produced.*

Mr. *Serj. Darnel.* Call Mr. *Buck* [who appeared, and was ſworn]. Mr. *Buck*, Who cauſed that Book to be publiſhed?

Mr. *Buck.* Mr. *Fuller.*

Mr. *Serj. Darnel.* How do you know that?

Mr. *Buck.* He brought it to me in Manuſcript, and he ſaid he took theſe Depoſitions out of the Secretaries-Office.

Mr. *Serj. Darnel.* But what did he deſire you to do?

Mr. *Buck.* He deſired me to print it: And he ſaid, Becauſe it was not done ſooner, it had done the King Ten thouſand Pounds Damage.

Mr. *Coniers.* Did he make any Alteration in them afterwards?

Mr. *Buck.* No, only alter'd the Miſtakes of the Preſs.

Mr. *Att. Gen.* Was that Book printed by his Order? Mr. *Buck.* Yes.

W. Fuller. My Lord, I will not give theſe Gentlemen the Trouble to prove it; I own it was writ by me.

Mr. *Att. Gen.* Do you own the other Book too? Mr. *Buck*, look on that Book [then the other Book was ſhewn him]. By whoſe Order was that printed? Mr. *Buck.* By Mr. *Fuller*'s Order.

Mr. *Fuller.* My Lord, if it be the Book I publiſh'd, I will own it. [Then it was ſhewn to him.] Yes, my Lord, it was printed by my Order.

L. C. J. Holt. Read the Title.

Clerk. *Original Letters from the late King* James, *&c. Publiſhed by Command.*

L. C. J. Holt. By whoſe Command was it publiſh'd?

Mr. *Att. Gen.* By *Fuller*'s.

L. C. J. Holt. His Order is a Command, it ſeems.

Then ſome Paragraphs were read.

Mr. *Att. Gen.* If Mr. *Fuller* will produce this *Jones*, to make good what he ſays, he will do a great Piece of Service; otherwiſe, he deſerves to be ſeverely cenſured.

L. C. J. Holt. Read the other Part.

Then the Clerk read the Title.

William Fuller. Pray read the whole Title.

L. C. J. Holt. He is in Love with it.

Clerk. [Reads the Title] *Twenty-ſix Depoſitions of Perſons of Quality and Worth, with Letters of the Late Queen, Father* Corker, *and Mrs.* Mary Grey, *&c. Publiſh'd by Command.*

Mr. *Att. Gen.* Read the reſt.

Clerk. *Mr.* Fuller'*s Anſwer to the chief Objections made againſt him*, &c. ——*Mr.* Jones *made Oath, that he has paid* 5000 *l. more to ſeveral Perſons by the late King's Order, that he might compleat my Ruin and invalidate my Evidence for ever*, &c.

Mr. *Att. Gen.* My Lord, we have proved his publiſhing of theſe Books. We will now hear what he can ſay for himſelf.

W. Fuller. My Lord, I humbly beg you will hear what I have to ſay.

L. C. J. Holt. Yes, yes. Have you any Counſel?

W. Fuller. No, my Lord, I have none; I have no Money to procure Counſel. I have put my Thoughts in Writing, and I beg leave to read it.

L. C. J. Holt. But you muſt ſpeak to the Purpoſe. What do you ſay concerning the publiſhing theſe Books?

W. Fuller. That is what I have to offer.

L. C. J. Holt. But can you make it appear that they are true?

W. Fuller. My Lord, I hope I ſhall.

L. C. J. Holt. Have you any Witneſſes?

W. Fuller. I have none here at preſent. But if your Lordſhip will pleaſe to hear the Terms upon which the Witneſſes would have come in, I can produce them: If your Lordſhip will grant your Warrant for *Jones*, I will forfeit my Life if he appear not.

L. C. J. Holt. You might have had *Subpœnas* for your Witneſſes againſt this Day.

W. Fuller. My Lord, I did endeavour it; but I had not Money to bear their Charges.

L. C. J. Holt. You made the ſame Excuſe before the Houſe of Lords and Commons.

W. Fuller. If it can be made appear that I had any Aſſiſtance from the Houſe of Lords, or the Houſe of Commons, I own I am in the wrong.

L. C. J. Holt. What Aſſiſtance would you have had from them? Or what would you have from me?

W. Fuller. The Houſe of Lords ſummoned me before them; and I deſired—

L. C. J. Holt. If you take on you to write ſuch Things as you are charged with, it lies upon you to prove it at your Peril.

Mr. *Att. Gen.* My Lord, he did appeal to the Lords: and they gave him from Time to Time to produce his Witneſſes, and he could not do it.

L. C. J. Holt. If you have any Witneſſes, I will hear them; but to hear you make a Speech, it is to no Purpoſe.

W. Fuller. My Lord, I hope you will believe it to be to the Purpoſe, if you pleaſe to hear me.

Mr. *Coniers.* What ſignifies your Belief?

W. Fuller. Why am I not to be believ'd?

L. C. J. Holt. What? Becauſe you have ſtood in the Pillory for an Impoſtor heretofore.

Mr. *Serj. Darnel.* The whole Nation do not believe you; for the Lords and Commons did not, who repreſent the whole Nation.

W. Fuller. The Lords did not think fit to put it to the Trial. Theſe Gentlemen charge me to have abuſed ſeveral Perſons: I would be glad to know who theſe Perſons are.

Mr. *Att. Gen.* I cannot tell who they are; your Book promiſes to make that appear.

W. Fuller. If a Man of an ill Character abuſe the Nation, I hope I ſhall not ſuffer for that.

L. C. J. Holt. How came you to write theſe Books that are not true?

W. Fuller. My Lord, I believe they are all true.

Mr. *Att. Gen.* Produce the Original Affidavits made by *Jones*, which you cauſed to be printed.

Mr. *Serj. Darnel.* Produce the Receipts for the Money which you ſay you have; and then you will do ſomething.

W. Fuller. Do I ſay it?

Mr. *Serj. Darnel.* Yes, if that Print be yours.

W. Fuller. I wonder a Man of your Gravity ſhould aſſert ſuch an Untruth in the Court.

L. C. J. Holt. If you have any Witneſſes, produce them.

W. Fuller. My Lord, I preſume you cannot but remember, that in *Crone*'s Caſe I behaved myſelf honourably, and was owned to have done the Nation good Service.

L. C. J. Holt. That was formerly, and ſignifies nothing to what you do now.

William Fuller. I ventur'd ſeveral times into *France*, and back again: Shew me a Man that ever did ſo beſides.

Mr. *Att. Gen.* If you had made out the Diſcovery you pretended to make, I ſhould have commended you.

W. Fuller. After I had made that Diſcovery, the Court at St. *Germains* did what they could to ruin me. There have been a great many Books lately printed, to prove the Legitimacy of the Prince of *Wales*, and none of them taken notice of.

L. C. J. Holt. You charge a great many perſons with correſponding with *France*, and cannot prove it.—*W. Fuller.* I charge none, my Lord.

L. C. J. Holt. You charge all that are intimated in the Books. The ſame Mr. *Jones* will prove by undeniable demonſtration, that he diſtributed more than 180,000*l.* by the *French* King's Order to ſeveral Perſons employed under the Government. Now theſe Perſons are ſcandalized; for you produce no Proof of what you charge them with: And you ſay, I had the Original of this from Mr. *Jones*, &c. Where are they?

W. Fuller. If your Lordſhip will pleaſe to grant me your Warrant, I will produce them.

L. C. J. Holt. If you take on you to make good theſe Things, you cannot in Juſtice require my Warrant to fetch in others to prove what you ſay; you muſt prove it.

W. Fuller. By his own Confeſſion, he has been guilty of High-Treaſon; and therefore will not appear without a Warrant.

L. C. J. Holt. You cannot pretend to have a Right to any Warrant.

W. Fuller. If your Lordſhip pleaſe to give me Leave to ſay ſomething in my Defence—

L. C. J. Holt. Yes, if it be to any Purpoſe.

W. Fuller. I am unacquainted with the Laws, and have not—

L. C. J. Holt. What is that to the Purpoſe? You are not to make Libels, nor traduce Miniſters of State. What have you to ſay to that?

W. Fuller. When I had printed this Book, I was ſummoned before the Lords; and after that was committed to the *Fleet.* My Friends were all called before the Lords; and by my Lord *Jeffreys* and other Lords, there were ſuch Queſtions aſked, as I believe were never aſked before—

L. C. J. Holt. This is not to be endured; you do but aggravate your Crime.

W. Fuller. This is not what I would offer.

L. C. J. Holt. If you can offer any Matter to prove what you have writ, let us hear it.

W. Fuller. Mr. *Jones* has confeſs'd himſelf guilty of High-Treaſon, and therefore cannot appear.

L. C. J. Holt. Where is he? Where did he make this Confeſſion?

W. Fuller. In the Country.

L. C. J. Holt. Before whom?

W. Fuller. I do not know that; I was not with him when he did it.

L. C. J. Holt. Where is the Man?

W. Fuller. If your Lordſhip will pleaſe to give me your Warrant, I will produce him.

L. C. J. Holt. Shall I make a Bargain with you? Why have you not produced him all this while, before the Houſe of Lords, and the Houſe of Commons?

W. Fuller. Mr. Attorney did ſay I appealed to the Lords. I was called before them; I made no Application to them, but was called by the Order of the Houſe.

Mr. *Att. Gen.* But you was there?

W. Fuller. I was there; and there were three Letters read of mine in the Houſe, and I deſire they may be read here.

L. C. J. Holt. What is that to the Purpoſe? Can you produce your Witneſſes?—*W. Fuller.* Mr. *Jones* is now in *Hampſhire.*

L. C. J. Holt. Have you not had Time enough to procure him?

W. Fuller. My Lord, I cannot force him. I was with the Secretary of State, and told him, *Jones* will not come in voluntarily; if the Lords will grant a Warrant, he may be brought. I offer'd this to the Houſe of Commons too, but it was not granted. I could not force him.

Mr. Serj. *Darnel.* The Secretary of State ſent one or two for him.

W. Fuller. He ſent no body.

L. C. J. Holt. Gentlemen of the Jury, you hear what the Purpoſe of this Information is, and you hear how it is proved; and you hear the Witneſs ſay, He brought theſe two ſcandalous Books to the Preſs, and that he corrected them; and he owns he was the Publiſher of them: And if you believe he did ſo, you are to find him Guilty.

The Jury brought him in Guilty, without going from the Bar.

CLXXIV. *The Trials of Colonel* RICHARD KIRKBY, *Captain* JOHN CONSTABLE, *Captain* COOPER WADE, *Captain* SAMUEL VINCENT, *and Captain* CHRISTOPHER FOGG, *at a Court-Martial in* Jamaica, *for Offences againſt the Articles of War*, Octob. 8, 9, 10, 12. 1702. 1 Ann.

AT a Court-Martial held on board her Majeſty's Ship the *Bredah*, in *Port-Royal* Harbour, in *Jamaica*, in *America*, the 8th, 9th, 10th and 12th Days of *October*, 1702. Preſent,

The Honourable *William Whiſton*, Eſq; Rear-Admiral of her Majeſty's Ships for the *Weſt-India* Squadron, Preſident;

Samuel Vincent,
John Hartnoll,
Chriſtopher Fogg,
John Smith,
John Redman,
George Walton,
William Ruſſell,
Barrow Harris,
Hercules Mitchell,
Philip Boyce,
Charles Smith.

Arnold Browne, Eſq; Judge-Advocate.

Who being all duly ſworn, purſuant to the Act of Parliament, proceeded to the Trial of *John Arthur*, Gunner of the *Defiance*, on a
Oct. 8. Complaint exhibited by *Francis Knighton*, Third Lieutenant of the *Defiance*, and *George Foſter*, Gunner of   for hiding and concealing Forty-three Barrels of Powder in the Wadd-Room, and covering them with Wadds and Coins, &c. when a Survey of Her Majeſty's Stores of Ammunition after an Engagement was ordered; and denying to the Surveyors, that there was any more Powder on board, than was in the Powder-Room and Gun-Room, *viz.* One Hundred; which, upon a ſecond Survey, were diſcovered. It was proved alſo, That he had Two Keys to the Powder-Room; and that having loſt or miſlaid his own, he, without making any Application to the Commanding Officer then on board, who kept the other Key, prevailed with *William Baker*, Carpenter of the ſaid Ship, to break open the Door.

In Mitigation of his Offence, he alledged, That examining into the Powder-Room, he found Three Barrels that had received wet, which cauſed his Removal of the Forty-three Barrels; but had little to ſay for his concealing them from the Surveyors. Whereupon the Court adjudged, That the ſaid Offence falling under the 33d Article of War, the ſaid *John Arthur* ſhould be carried from Ship to Ship in a Boat, with a Halter about his Neck, the Provoſt-Marſhal declaring his Crimes; and all his Pay, as Gunner, to be mulct'd and forfeited to the Cheſt at *Chatham*; and be render'd uncapable of ſerving Her Majeſty in any other Employment.

Oct. 8, 9. COlonel *Richard Kirkby*, Commander of the *Defiance*, was tried before the aforeſaid Court, (except Captain *Samuel Vincent*, and Captain *Chriſtopher Fogg*, who appeared as Witneſſes for the Queen,) on a Complaint exhibited by the Judge-Advocate on the Behalf of Her Majeſty, of Cowardice, Neglect of Duty, Breach of Orders, and other Crimes committed by him at a Fight at Sea, commenced the 19th of *Auguſt*, 1702, off St. *Martha*, in the Latitude of Ten Degrees *North*, near the main Land of *America*, between the Honourable *John Benbow*, Eſq; Vice-Admiral of the Blue Squadron of Her Majeſty's Fleet, and Admiral and Commander in Chief, &c. on board Her Majeſty's Ship *Bredah*, *Chriſtopher Fogg* Commander, and Six other of Her Majeſty's Ships, *viz.* the *Defiance*, *Richard Kirkby* Commander; the *Falmouth*, *Samuel Vincent* Commander; *Windſor*, *John Conſtable* Commander; *Greenwich*, *Cooper Wade* Commander; *Ruby*, *George Walton* Commander; and the *Pendennis*, *Thomas Hudſon* Commander: And Monſieur *Du Caſſe* with Four *French* Ships of War: Which continued until the 24th of *Auguſt* inclusive.

The Witneſſes that were ſworn in Behalf of the Queen; *viz.*

The Honourable John Benbow, *Eſq*; *Admiral.*
2 *Captains.*
8 *Lieutenants.*
5 *Maſters.*
5 *Inferior Officers.*
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Who depoſed, That the ſaid Colonel *Richard Kirkby*, the Van in the Line of Battle, the 19th of *Auguſt*, about Three in the Afternoon, the Signal of Battle being out, the Admiral was forc'd to ſend his Boat on board of *Kirkby*, and command his making more ſail, and get a-breaſt of the Enemy's Van, for that he was reſolved to fight them. About Four the Fight began; but the ſaid *Kirkby* did not fire above Three Broadſides, then luffed up out of the Line, and out of Gunſhot, leaving the Admiral engaged with Two *French* Ships till dark, and the ſaid *Kirkby* receiving no Damage: That his Behaviour cauſed great Fear of his Deſertion. At Night the ſaid *Kirkby* fell a-ſtern, leaving the Admiral to purſue the Enemy.

That the 20th, at Day-light, the Admiral and *Ruby* were within Shot of all the Enemy's Ships; but Colonel *Kirkby* was near Three or Four Miles aſtern. The Admiral then made a new Line of Battle, and took the Van himſelf, and ſent to each Ship, with a Command to the ſaid *Kirkby* to keep his Line and Station; which he promiſed to do, but did not; keeping Two or Three Miles a-ſtern, tho' the Signal for Battle was out all Night. The *French* making a running Fight, the Admiral and *Ruby* plied the Enemy with their Chaſe-Guns till Night. That the 21ſt Day, at Light, the Admiral was on the Quarter of the Second Ship of the Enemy's Rear, and the *Ruby* on the   board-Side, very near, who plied him warmly, and met the ſame Return; by which he was ſo much diſabled, tho' the Admiral came in to his Aſſiſtance, that he was forc'd to be towed off: And this prevented the Admiral's Deſign of cutting off the Enemy's ſternmoſt Ship. This Action laſted Two Hours; during which Time the ſaid *Kirkby* lay a-broadſide of the ſtern-moſt Ship; as did alſo the *Windſor*, *John Conſtable* Commander. The Admiral then commanded the ſaid *Kirkby* to ply his Broadſides on him. But this having no Effect, the ſecond Time he commanded the ſame; but he fir'd not a Gun: Nay, his own Boatſwain and Seamen repeated the Admiral's Command to him; but were ſeverely us'd, and threaten'd that he would run his Sword thro' the Boatſwain. And had the ſaid *Kirkby* done his Duty, and Captain *Conſtable* his, they muſt have taken or deſtroyed the ſaid *French* Ships. The Admiral, tho' he received much Damage in his Sails, Rigging, Yards, &c. yet continued the Chaſe all Night. That the 22d in the Morning at Daylight, the *Greenwich* was Three Leagues a-ſtern; and the *Defiance*, Colonel *Kirkby*, with the reſt of the Ships, Three or Four Miles, the *Falmouth* excepted, whoſe Station was in the Rear: That the ſaid Captain *Samuel Vincent*, ſeeing the Behaviour of the ſaid *Kirkby*, and the reſt, came up with the Admiral, and ſent his Lieutenant on board, deſiring Leave to aſſiſt him, which was accepted: The ſaid *Kirkby* never coming up; and by his Example the reſt did the ſame, as if they had a Deſign to ſacrifice the Admiral and *Falmouth* to the Enemy, or deſert. The Enemy were now about a Mile and an Half a-head, ſtanding in to the Shore, with a ſmall Breeze at *W.* fetched within *Sambey*, the Admiral firing at the ſternmoſt till Night, and continued the Purſuit; and a *Flemiſh* Ship, that was in Monſieur *Du Caſſe*'s Company, on board of which was all the *French* and *Spaniſh* new Governors and other Officers, made her Eſcape. That the 23d, in the Morning, at Day-light, the Enemy bore *North-Weſt*, diſtant about Four or Five Miles, the Admiral and *Falmouth* purſuing; but the ſaid Colonel *Kirkby*, with the reſt of the Ships, being Three or Four Miles a-ſtern; (tho' there was not a Ship but, before and after the Battle, ſailed better than the Admiral.) About Seven in the Evening, it having been ſome Time calm, a Gale of Wind ſprung up, the Admiral and *Falmouth* were about Two Miles from the Enemy; and at Eight, the ſaid *Kirkby* and his ſeparate Squadron was fair up with the Admiral: And this Day the Admiral ſent away the diſabled *Ruby*, *George Walton* Commander, to *Port-Royal*; and under his Convoy the *Anna* Galley, retaken from the *French*.

That the 24th, in the Morning, about Two of the Clock, the Admiral came up with the ſtern-moſt of the Enemy within Call, and the *Falmouth* pretty near; but the ſaid Colonel *Kirkby*, with the reſt of the Ships, according to Cuſtom, were Three or Four Miles a-ſtern. The Admiral and *Falmouth* engaged the ſaid Ship; and at Three the Admiral was wounded, his Right Leg being broke, but commanded the Fight to be vigorouſly maintained; and at Day-light the Enemy's Ship appeared like a Wreck, her Mizen-Maſt ſhot by the Board, her Main-Yard in Three or Four Pieces, her Foretopſail-Yard the ſame, her Stays and Rigging all ſhot to Pieces. Soon after Day, the ſaid *Kirkby*, with the reſt of the Ships, being to Windward of the ſaid diſabled Ship, he the ſaid *Kirkby*, with the reſt of his ſeparate Squadron, fired about Twelve Guns at the ſaid Ship; and fearing a ſmart Return from her, he lower'd his Mizen-Yard, his Topſails on the Caps, ſet his Spritſail, Spritſail-Topſail, and Foretopſail-Stayſail, and having waired his Ship, ſet his Sail, and run away before the Wind from the poor diſabled Ship, the reſt following his ſaid Example; tho' they had but Eight Men kill'd on board them all (except the Admiral). The other Three *French* Men of War were at this Time of Action about Four Miles diſtant from their maimed Ship; whereupon the Enemy ſeeing the Cowardice of the ſaid Colonel *Kirkby* and the reſt of the *Engliſh* Ships, in a Squale, bore down upon the Admiral, who lay cloſe by the diſabled Ship; and having got in their Spritſail-Yard, gave him all their Fire; and running between him and the diſabled Ship, remann'd her and took her in. The Admiral's Rigging being very much ſhatter'd, was oblig'd to lie and refit till Ten a-Clock, and then continued the Purſuit; and the reſt of the Fleet following in the greateſt Diſorder imaginable, the Admiral commanded Captain *Fogg* to ſtand a-breaſt of the Enemy's Van, and then to attack him, and having then a fine ſteady Gale, the like not happening during the whole Engagement; and further ordered, that he ſhould ſend to all the Captains to keep the Line of Battle, and behave themſelves like *Engliſhmen*; and this Meſſage was ſent by Captain *Wade*, then on board the *Bredah*. That the ſaid Colonel *Kirkby* on the Receipt of this Meſſage, and ſeeing the Admiral's Reſolution to engage, came on board him, who then lay wounded in a Cradle; and without common Reſpect of enquiring after his Health, he the ſaid *Kirkby* expreſſed theſe Words following, *That he wonder'd that the Admiral ſhould offer to engage the* French *again, it being not neceſſary, ſafe, nor convenient, having had Six Days Trial of their Strength*; and then magnified that of the *French*, and leſſened that of the *Engliſh*. But the Admiral being ſurprized at his Speech, ſaid it was but one Man's Opinion, and that he would have the reſt of the Captains; and accordingly ordered the Signal to be made for all the Captains to come on board; and at this Time the Admiral and the reſt of the

Ships were to Windward, and within Shot of the Enemy, and had the faireſt Opportunity that in ſix Days preſented, to chaſe, engage, and deſtroy the Enemy.

That the ſaid Colonel *Kirkby* had endeavoured to poiſon the reſt of the Captains; forming a Writing under his own Hand, which was cowardly and erroneous: The Subſtance of which was, Not to engage the Enemy any more. He the ſaid Colonel *Kirkby* brought it to the Admiral, who reproved him for it, ſaying it would be the Ruin of all: Upon which he the ſaid Colonel *Kirkby* went away, but writ another in the following Words.

At a Conſultation held on board her Majeſty's Ship Bredah, *the 24th of* Auguſt, 1702. *off of* Carthagena, *on the main Continent of* America.

It is the Opinion of us whoſe Names are under-written,

1. Of the great Want of Men in Number, Quality, and the Weakneſſes of thoſe they have.

2. The general Want of Ammunition of moſt ſorts.

3. Each Ship's Maſts, Yards, Sails and Rigging, being all in a great Meaſure diſabled.

4. The Winds are ſo ſmall and variable, that the Ships can't be governed by any Strength: Each Ship

5. Having experienced the Enemy in Six Days Battle following, the Squadron conſiſting of Five Men of War and a Fireſhip, under the Command of Monſieur *Du Caſſe*; their Equipage conſiſting in Guns from 60 to 80, and having a great Number of Seamen and Soldiers on Board for the Service of *Spain.*

For which Reaſons above-mentioned, we think it not fit to engage the Enemy at this Time, but to keep them Company this Night, and obſerve their Motion; and if a fair Opportunity ſhall happen of Wind and Weather, once more to try our Strength with them.

Richard Kirkby, *Samuel Vincent*, *John Conſtable*, *Chriſtopher Fogg*, *Cooper Wade*, and *Thomas Hudſon.*

That during the Six Days Engagement, he never encouraged his Men; but by his own Example of dodging behind the Mizen-Maſt, and falling down upon the Deck on the Noiſe of Shot, and denying them the Proviſions of the Ship, the ſaid Men were under great Diſcouragement. That he amended the Maſter of the Ship's Journal of the Tranſactions of the Fight, according to his own Inclination.

All which being proved aforeſaid:

The ſaid Colonel *Richard Kirkby* denied the whole, excepting the pretended written Conſultation: Which being ſhewn to him, he own'd his own Hand and Name too. He brought ſeveral of his Men to give an Account of his Behaviour during the Fight; but their Teſtimonies were inſignificant; and his Behaviour to the Court and Witneſſes moſt unbecoming a Gentleman. And being particularly aſk'd by the Court, why he did not fire at the Enemies Sternmoſt Ship, which lay point-blank with him the 21ſt of *Auguſt?* He replied, Becauſe they did not fire at him, for that they had a Reſpect for him: Which Words upon ſeveral Occaſions, during the Trial, he repeated Three ſeveral Times.

Where, upon due Conſideration of the Premiſes, of great Advantages the *Engliſh* had in Number, being Seven to Four, of Guns 122 more than the other; with his Acts and Behaviour as aforeſaid, and more particularly his ill-timed Paper or Conſultation as afore-recited, which obliged the Admiral, for the Preſervation of her Majeſty's Fleet, to give over the Chaſe and Fight, to the irreparable Diſhonour of the Queen, her Crown and Dignity, and come to *Port Royal*, *Jamaica:* For which Reaſons the Court was of Opinion, That he fell under the 11th, 12th, 14th, and 20th Articles of War; and adjudged accordingly, That he be ſhot to Death: But further decreed, That the Execution of Col. *Kirkby* be deferred till Her Majeſty's Pleaſure be known therein; but be continued a cloſe Priſoner till that Time.

CAptain *John Conſtable*, Commander of the *Windſor*, was Tried before the aforeſaid Court, on a Complaint exhibited by the Judge Advocate on the Behalf of the Queen, for Breach of Orders, Neglect of Duty, and other ill Practices committed during a Fight commenced the 19th of *Auguſt*, 1702, as aforeſaid. *(Refer to Colonel* Kirkby'*s Trial)*

The Witneſſes ſworn on the Behalf of the Queen were,

2 *Captains,*
7 *Lieutenants,*
5 *Maſters,*
2 *Other Officers.*
The Honourable John Benbow, *Eſq*; *Admiral.*

17 *Witneſſes.*

Who depoſed, That Captain *John Conſtable* never kept his firſt nor ſecond Line of Battle, but acted in all Things as Colonel *Kirkby* had done. That the Admiral had fired Two Guns to command him into the ſecond Line of Battle. That he did ſet more ſail in order to come into the Line, and his Station; but upon Colonel *Kirkby*'s calling to him to keep his Line, he accordingly did. That the Admiral ſent his Lieutenant *Landgridge* to command him the ſaid *Conſtable* to keep his Line of Battle within half a Cable's Length of the Ship before him, which was twice verbally delivered. And that he ſigned the Paper, *Conſultation*, as is in Colonel *Kirkby*'s Trial aforeſaid; tending to the Hindrance and Diſſervice of Her Majeſty, *&c.* and was drunk during the Fight, *&c.*

All which being fully proved as aforeſaid; the ſaid Captain *John Conſtable* denied his Breach of Orders, or Neglect of Duty; but owned the ſigning the Paper, or Conſultation prepared by Colonel *Kirkby*, and did it at his Requeſt, and for that he had received Damage in his Maſts and Rigging; and own'd no other Article to be true, but that he had ſign'd to. He called ſeveral Witneſſes to his Behaviour during the Fight; who all declared he kept the Quarter-Deck during the Engagement, and encouraged his Men to fight; and that ſometimes he gave them Drams of Rum; and that Verbal Meſſage delivered by Lieutenant *Landgridge*, was delivered him in ſome Heat and Paſſion, and was underſtood to be, to keep the Line within half a Cable's Length, and to follow *Kirkby*, which he did. That he ſo underſtood it himſelf, and ſeveral of his Men: He prayed the Mercy of the Court, and ſo concluded, *&c.*

Where, upon due Conſideration of the Premiſes, the Court were of Opinion, that the ſaid *John Conſtable*, Captain, fell under the 12th, 14th, and 20th Articles of War; and adjudged the ſaid Captain *John Conſtable* to be immediately caſhier'd, and render'd incapable of ſerving Her Majeſty, and be impriſoned during Her Majeſty's Pleaſure, and ſent home to *England* a Priſoner in the firſt Ship the Admiral ſhall think fit; and be confined a Priſoner till then.

Oct. 10, 12. CAptain *Cooper Wade*, Commander of the *Greenwich*, was Tried before the aforeſaid Court; on a Complaint exhibited by the Judge Advocate, on the Behalf of the Queen, of high Crimes and Miſdemeanors, of Cowardice, Breach of Orders, and Neglect of Duty, and other ill Practices, committed during a Fight, commenc'd the 19th of *Auguſt*, 1702, as aforeſaid. *(Refer to that Part of Colonel* Kirkby'*s Trial.*

The Witneſſes ſworn on Behalf of the Queen,

The Honourable John Benbow, *Eſq*; *Admiral.*
9 *Lieutenants,*
3 *Maſters,*
3 *Inferior Officers.*

16 *Witneſſes.*

Who depoſed, That during the Six Days Engagement, he never kept the Line of Battle, fired all his Shot in vain, not reaching half way to the Enemy; That he was often told the ſame by his Lieutenants and other Officers; but notwithſtanding, he commanded them to fire, ſaying they muſt do ſo, or the Admiral would not believe they fought if they did not continue the Fire. That during the whole Fight the Admiral was engaged in, the ſaid Capt. *Wade* received but one Shot from the Enemy; That he was in Drink the greateſt Part of the Time of Action; And that he ſigned the Paper or Conſultation drawn up by Colonel *Kirkby*, as aforeſaid; and in the Time of Fight arraigned the honourable Courage and Conduct of the Admiral.

All which being fully proved as aforeſaid:

That the ſaid Captain *Cooper Wade* denied the Arraignment of the honourable Courage and Conduct of the Admiral, during the whole ſix Days Engagement; declaring the Bravery and good Management of the Admiral in this Time of Action, and that no Man living could do more or better, for the Honour of the Queen and Nation. He called ſome Perſons to juſtify his Behaviour, who ſaid little in his Favour. He begged the Mercy of the Court, and ſo concluded. Whereupon the Court was of Opinion, That the ſaid *Cooper Wade* fell under the 11th, 12th, 14th and 20th Articles of War; and accordingly adjudged the ſaid *Cooper Wade* to be ſhot to Death: But it was farther declared by the Court, That the Execution of the ſaid *Cooper Wade* be deferred till Her Majeſty's Pleaſure be known therein, but be continued a cloſe Priſoner till that Time.

October 12. CAptain *Samuel Vincent*, Commander of the *Falmouth*, and Capt. *Chriſtopher Fogg*, Commander of the *Bredah*, were tried before the aforeſaid Court, on a Complaint exhibited by the Judge-Advocate, for high Crimes and Miſdemeanors, and ill Practices in time of Admiral *Benbow*'s Fight with Monſieur *Du Caſſe* as aforeſaid, in ſigning a Paper called a *Conſultation* and Opinion held on Board the *Bredah*, the 24th of *Auguſt*, 1702. (*Which is* Verbatim *recited in Colonel* Kirkby'*s Trial, to which refer.*) It tending to the great Hindrance and Diſſervice of Her Majeſty's Fleet then in Fight: And the ſaid Paper ſo written, being ſhewed to each of them, they ſeverally owned their Hands to the ſame. But the ſaid Captain *Vincent* and Captain *Fogg*, for reaſon of ſigning the ſame, alledged, That being deſerted during each Day's Engagement by Colonel *Richard Kirkby* in the *Defiance*, Captain *John Conſtable* in the *Windſor*, Capt. *Cooper Wade* in the *Greenwich*, and Capt. *Thomas Hudſon* in the *Pendennis*, and left as a Prey to Monſieur *Du Caſſe*, they had great reaſon to believe they ſhould be Captives to the Enemy. And the Honourable *John Benbow*, Eſq; Admiral, *&c.* coming into Court, declared, That during the Six Days Fight the ſaid Captain *Fogg* behaved himſelf with great Courage, Bravery, and Conduct, like a true *Engliſhman*, and Lover of his Queen and Country: And that the ſaid Captain *Samuel Vincent* valiantly and courageouſly behaved himſelf during the ſaid Action, and deſired Leave to come into his the ſaid Admiral's Aſſiſtance, then engaged with the Enemy, and deſerted by all the reſt of the aboveſaid Ships; which he did, to the Relief of the ſaid Admiral, who otherwiſe had fallen into the Hands of Monſieur *Du Caſſe.*

Whereupon the Court being of Opinion, That the ſigning of the aforeſaid Paper brought them under the Cenſure of the 20th Article of War, accordingly adjudged Captain *Samuel Vincent*, and Captain *Chriſtopher Fogg*, to be ſuſpended: But the Execution thereof is hereby reſpited, till his Royal Highneſs Prince *George* of *Denmark*, Lord High Admiral of *England*, &c. his further Pleaſure be known therein.

Capt. *Thomas Hudſon*, Commander of the *Pendennis*, died on Board his ſaid Ship, in the Harbour of *Port-Royal*, at *Jamaica*, the

At Five a-Clock the 12th Day of *October*, 1702. the Preſident, *&c.* having finiſhed all the Buſineſs before the Court, diſſolved the ſame.

CLXXV. *The Trial of* Haagen Swendſen, *at the* Queen's-Bench, *for forceably taking away and marrying Mrs.* Pleaſant Rawlins, Nov. 25. 1702. Mich. 1 Ann.

ON *Wedneſday* the 18th of *November*, the Grand Jury of *Weſtminſter* found the Bill of Indictment againſt the Defendants On that Day an *Habeas Corpus* was moved for, and left at *Newgate*, and the Keeper refuſed to bring up the Priſoner on *Thurſday*, but brought him on *Friday* Morning; and then he was arraigned, and pleaded Not guilty; and the Court then appointed the Trial to be on *Wedneſday* the 25th, that being the laſt Day that he could be tried, to have Sentence given againſt Convicted Perſons in that Term.

Mr. *Swendſen* moved for a longer Time, alledging, That a *German*, a material Witneſs for him, was gone into *Yorkſhire*. The Court then told him, that if any Perſon would ſwear, that any of his Witneſſes could not be at the Trial on *Wedneſday*, the Court would put off the Trial; but no Oath thereof being made, the Trial came on upon the Day appointed.

The Court being ſat, at which were preſent the Right Honourable the Lord Chief Juſtice Holt, *Sir* John Powell, *Sir* Littleton Powis, *and Sir* Henry Gould:

Haagen Swendſen being brought to the Bar, Proclamation was made for Silence; and he being a Foreigner, claimed, as his Right, the Benefit of a Party Jury; which was allowed him, and Leave to Challenge whom he would. He Challenged ſome; and the Gentlemen ſworn were, *viz.*

George Ford, Eſq;
Enoch Roofe, Gent.
Timothy Thornbury, Eſq;
Abraham Falcon, Gent.
John Pack, Eſq;
James Boyneth, Gent.

Francis Chapman,
Eraſmus Johnſon,
Robert Bampton,
Matthew Boddin,
Thomas Pitts,
Henry Henderſon,
Gent.

Cler. of Arr. Haagen Swendſen, hold up thy Hand. *(Which he did.)*

Cl. of Arr. Gentlemen of the Jury, look upon the Priſoner at the Bar. *He ſtands indicted by the Name of* Haagen Swendſen, *late of the Pariſh of St.* Giles *in the Fields, in the County of* Middleſex, *Yeoman; for that on the Sixth of* November, 1702, *one* Pleaſant Rawlins, *Gentlewoman, and a Virgin, and Unmarried, Grand-daughter and Heir of* William Rawlins, *Sen. then deceaſed, and Daughter and Heir of* William Rawlins, *Jun. before then alſo deceaſed, was above the Age of Sixteen, and under the Age of Eighteen, and then had Subſtance and Eſtate in Moveables and in Lands and Tenements,* viz. *in Money, Goods, and Chattles to the Value of* 2000 l. *and in Lands and Tenements to the Value of* 20 l. per Annum, *to her and the Heirs of her Body.*

And that the ſeveral Perſons, Swendſen, Baynton, Hartwell, Spurr, *and* Tho. Holt, *the ſaid 6th Day of* November, *with Force and Arms, the ſaid* Pleaſant Rawlins, *as aforeſaid, being Unmarried, and Heir, and having Subſtance and Eſtate at the Pariſh of St.* Giles *in the Fields, in this County, for the Lucre of ſuch Eſtate and Subſtance of the ſaid* Pleaſant Rawlins, *did unlawfully, feloniouſly, violently, and againſt the Will of the ſaid* Pleaſant Rawlins, *take, carry, and lead away, with Intent to cauſe and procure the ſaid* Pleaſant Rawlins, *againſt her Will, in Matrimony to the ſaid* Haagen Swendſen *to be joined, and to him to be Wedded and Married; and that the ſaid* Haagen Swendſen, *being a Man of a diſhoneſt Converſation, and of none, or very little Eſtate or Subſtance, then, and there, by the Help and Procurement of the other Defendants, did feloniouſly marry the ſaid* Pleaſant Rawlins, *and was joined to her in Matrimony; and then and there her did carnally know; to the great Diſpleaſure of God, againſt the Laws of the Queen, to the Diſgrace and Diſparagement of the ſaid* Pleaſant Rawlins, *and to the great Grief and Diſconſolation of all her Friends, to the evil Example of all others, againſt the Form of the Statute, and againſt the Queen's Peace, her Crown and Dignity. And that the ſaid* Tho. Holt, *after the ſaid* Pleaſant Rawlins *had been ſo unlawfully, violently, and feloniouſly taken, carried, and led away, and to the ſaid* Haagen Swendſen *Married and Wedded as aforeſaid; well knowing the ſaid* Pleaſant Rawlins *to have been ſo taken and led away againſt her Will, and to the ſaid* Haagen Swendſen *to be Wedded and Married, afterwards,* viz. *the ſaid Sixth Day of* November, *in the ſaid firſt Year of the Reign of this Queen, at the Pariſh aforeſaid, the ſame* Pleaſant Rawlins, *and alſo the ſaid* Haagen Swendſen, *did wilfully, knowingly and feloniouſly receive, abet, comfort, conceal and aſſiſt the ſaid* Haagen Swendſen, *with the ſaid* Pleaſant Rawlins *to lye, and her carnally to know, then and there did feloniouſly incite, abet, help, cauſe, and procure, againſt the Form of the ſaid Statute, and againſt the Queen's Peace, her Crown and Dignity.*

Cler. of Arr. Upon which Indictment he hath been arraign'd, and pleaded Not guilty, put himſelf upon God and you the Jury at the Bar, being half Foreigners, and half Natives.

Cryer. O yes! If any one will give Evidence on Behalf of our Sovereign Lady the Queen, againſt the Priſoner at the Bar, let them come forth, and they ſhall be heard; the Priſoner ſtands at the Bar for his Deliverance.

Mr. *Swendſ.* Pray, my Lord, let me have Pen and Ink, I am not allowed Counſel. *(Which his Lordſhip granted.)* My Lord, I would beg the Favour of your Lordſhip, that the Evidence may be examined apart.

* Mr. *Soll. Gen.* Is it not your Lordſhip's Pleaſure to call the other Jury, the Facts are ſo twiſted together, and have ſuch a Dependance one upon another, that there will be an Inconvenience to us, if it be otherwiſe?

Mr. Serj. *Darnel.* They may ſtand at the Bar by themſelves.

Mr. *Montague.* Or elſe it will break our Evidence: They may ſtand on the other Side.

L. C. J. Holt. He muſt be tried ſingle.

Mr. *Soll. Gen.* May it pleaſe your Lordſhip, and Gentlemen of the Jury, I am of Counſel for the Queen: It was formerly reckon'd a leſs Crime to ſteal a Fortune of 10000 *l.* than to ſteal 12 *d.* of her Money or Goods; but in the Third Year of the Reign of King *Henry* VII. to cure this Defect in the Law, an Act of Parliament was made, whereby the taking away a Woman, having Goods or Lands, or being an Heir apparent, contrary to her Will, and afterwards Marrying her, is made Felony, and upon this Law the preſent Indictment is grounded.

Pleaſant Rawlins was the Daughter of Mr. *William Rawlins*; he having left her a conſiderable Eſtate, appointed *George Bright* and *William Buſby* to be her Guardians. Mr. *Bright* being dead, the other Guardian Mr. *Buſby*, for the better Education of Mrs. *Rawlins*, placed her under the Care of his Siſter *Sabina Buſby*. Mrs. *Buſby* and Mrs. *Rawlins* have lodged about Three Years laſt at the Houſe of the Widow *Nightingale*. *Haagen Swendſen*, with Mrs. *Baynton*, lodged at Mrs. *Blake*'s in *Holbourn*, and there they firſt projected and contriv'd how they might make a Prey of this young Gentlewoman. The firſt Step they took towards executing this Deſign was to get Lodgings at Mrs. *Nightingale*'s Houſe for Mrs. *Baynton*; for which Purpoſe ſhe was to paſs for a Country Gentlewoman of a plentiful Fortune. One Mrs. *St. John* was ſent to Mrs. *Nightingale* to take Lodgings for Mrs. *Baynton*, commending her to be a very good Woman; and that having the Misfortune of a Law-Suit, and being obliged for that Reaſon to attend it in Town, 'twas her greateſt Care to lodge in ſo reputable a Houſe as Mrs. *Nightingale*'s was. Under this Pretence, Lodgings were there taken for her. At her firſt coming, ſhe was forced to put on a Diſguiſe; ſhe ſeem'd to live a virtuous Life, that ſhe might ingratiate herſelf into the Favour of the Family, as often as ſhe had an Opportunity of converſing with any of them: She pretended ſhe had a Brother of a good Eſtate, one of the beſt Men in the World; and ſhe hop'd he would ſhortly come to Town, that ſhe might ſee him. In a little Time after came this *Swendſen* (being nothing related to her) and appeared as her Brother, and frequently viſited her under Pretence of that Relation. But Mrs. *Baynton* was too well known in Town to continue long undiſcover'd; Notice was ſoon given to Mrs. *Buſby* of the vicious Life Mrs. *Baynton* had led, and that ſhe was not fit to be in the ſame Houſe with her. Mrs. *Baynton* having diſcovered this, and finding ſhe had no Time to bring about her Deſigns by Frauds and Wiles, and that no other Ways were left but open Force, the Priſoner at the Bar and ſhe took Meaſures accordingly; and in order thereto 'twas agreed, that a Writ ſhould be taken out againſt Mrs. *Rawlins*. Mrs. *Baynton* contrives to get Mrs. *Rawlins* and Mrs. *Buſby* into a Coach, and at a Place appointed a Signal was given, and the Writ executed, and Mrs. *Buſby*, Mrs *Rawlins*, and Mrs. *Baynton*, were all carried in the Coach to the *Star* and *Garter* Tavern in *Drury-Lane*, where particular Care was taken to ſeparate Mrs. *Buſby* and Mrs. *Rawlins*, becauſe unleſs they did that, they could not hope to accompliſh their Deſigns. Mrs. *Buſby* was by Force kept at that Tavern, without any Proceſs againſt her, till the Marriage was over; but Mrs. *Rawlins* was forcibly carried to *Hartwell*'s the Bailiff's Houſe. Mrs. *Baynton* pretended to be much concern'd for Mrs. *Rawlins*, and went in all Haſte to call ſome of her Friends to be Bail for her. Some Time after Mrs. *Rawlins* was got to *Hartwell*'s, in comes Mrs. *Baynton*, pretending that by mere Accident ſhe had diſcover'd her being there, hearing her Name as ſhe was paſſing by the Door; that ſhe had been in Search, but could find no Help; and that her laſt Hopes was her dear Brother *Swendſen*, and ſhe doubted not but he would bail her: He by Agreement had been placed near the Bailiff's, and ſo was ſoon found, and brought thither, and was very ready to aſſiſt her. In order to her Diſcharge, the Priſoner, the Bailiff, and Mrs. *Baynton*, carry'd Mrs. *Rawlins* to another Tavern, where they had a Parſon ready for the Purpoſe; and there this young Gentlewoman, thro' divers Artifices, of which you ſhall have a full Account, was conſtrain'd to marry. Theſe are the principal Circumſtances, and they ſhall be plainly proved to you.

Mr. Serj. *Darnel.* My Lord, I think it neceſſary to open a little the Manner of getting this young Lady away, and the Contrivance of getting her into the Coach; for your Lordſhip knows, that if any are taken away without their Conſent, tho' they do afterwards conſent to be Married to ſuch Taker, yet he is guilty within this Statute. They were reſolved to take this Woman by Force, when they found they could not otherwiſe accompliſh their End. And Mrs. *Baynton* knowing Mrs. *Buſby* and Mrs. *Rawlins* were uſed every *Friday* Morning to go to a Chapel, called *Oxendon Chapel*, Mrs. *Baynton* ſaid, *I am going to* Golden-Square, *and if you are going to the Chapel, I'll ſet you down, if you pleaſe:* They, glad of ſuch a Convenience, thought no Harm, but went in the Coach. They had gone no further than *Dartmouth-Street*, but theſe Bailiffs come. *Hartwell* opens the Coach, and goes into it; they cry out to the People for Help; *Hartwell* pluck'd up the Glaſſes, and thoſe Bailiffs about the Coach cryed, *It is an Arreſt of a Cheat, that owes Money to Tradeſmen.* By this Means they carried her to the *Star* and *Garter* in *Drury-Lane*. When they had them there, the next Thing was to get her away from her Friend *Buſby*, for unleſs that was done, they deſpaired of getting her to marry *Swendſen*. Mrs. *Baynton* pretended to go find out Mrs. *Rawlins*'s Friends to bail her; but that was to meet with *Swendſen*: As ſoon as Mrs. *Baynton* was gone, the Bailiffs forced Mrs. *Rawlins* from Mrs. *Buſby*, and Mrs. *Buſby* was kept there by Force till Five a-Clock, till all was over. The Bailiffs, as they carried Mrs. *Rawlins* away, called her Jade and Slut, and bid her pay her Debts; and ſaid, *Put on your Maſk, you Jade, for we will have no Mob to reſcue you*; ſhe put on her Maſk, and the reſt of the Bailiffs followed her, and ſaid, *She was a Cheat, and was arreſted.* Then it was Time to open the Scene. *Hartwell* carried her to his Houſe, and Mrs. *Baynton* pretending to be coming by and hearing of her Name, open'd the Door, and by an extraordinary Manner burſt into the Houſe, and told her, *Madam, I went to all your Friends, but could find none at Home; but I have been with my dear Brother* Swendſen, *who will come with another to bail you, and it will not be long before they come*; for they were placed at the *Five Bells*, very near *Hartwell*'s Houſe: Upon this ſhe went out again, and brought in *Swendſen*, and one *Holt*, who keeps the *Mitre* Tavern in *King-Street*, *Weſtminſter*. And truly when they were there, and talked of being Bail, then they would all go in a Coach to the *Vine* Tavern, the Place where they deſigned the Marriage; and they had got Two proper Inſtruments there for the Buſineſs, the Chaplain and the Clerk of the *Fleet*. When they had her there, my Lord, the Bailiff aſked if ſhe had any Bail? Mrs. *Baynton* ſaid, that Mr. *Swendſen* and Mr. *Holt* would be her Bail; the Bailiff ſaid, *I will not*

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* Sir *Simon Harcourt.*

take Swendſen'*s Bail, he is a Man I know not*; *but Mr.* Holt *I know, I will take his.* The poor Woman begged upon her Knees, For Chriſt's Sake let me ſend for my Friends ; and they pretended to ſend for Abundance of them, but none came. Then ſhe was threatened with *Newgate*, for that often came out ; *If you cannot get Bail, to* Newgate *you muſt go, and there muſt lie.* This was often ſaid by *Hartwell.* Then Mrs. *Baynton* cry'd, (as ſhe could do at Command) *O how I pity you, Mrs.* Rawlins, *Is there no Way in the Law to help you? I believe, if you were married, that would put an End to the Action.* Then ſpeaking to the Bailiff ſaid, *If this Gentlewoman were married, would it not put an End to it?* The Bailiff ſaid, *I can't tell but it might, if ſuch a Thing were.* Well, now her rich Brother *Swendſen* is propoſed, ſhe muſt be married to him ; the Bailiffs threatening her ſeverely, that to *Newgate* ſhe muſt go, if ſhe did not. Immediately they brought in the Chaplain and Clerk of the *Fleet*, and read the Form of Marriage, and after carried her to ſeveral Places, leſt they might be followed and prevented, Beds being provided for the Purpoſe at thoſe Places, as your Lordſhip ſhall hear. And, my Lord, this taking of this Woman thus away againſt her Will, is an Offence againſt the Act of 3 *Henry* VII. and, my Lord, we deſire that the Statute might be read.

L. C. J. Holt. It ſhall be explained.

Mr. *Broderick.* My Lord, there was a whole Night compleated before the Priſoner was ſeized.

Then Mr. W. Buſby *is called for, and ſworn.*

He is aſked, Do you know Mrs. *Pleaſant Rawlins?*

Mr. Serj. *Darnel.* Give an Account of her.

Mr. *Buſby.* She is the Daughter of *William Rawlins* deceaſed, who left his Eſtate to Dr. *Bright* and myſelf, to be ſold for Payment of his Debts and Legacies, and left the Surpluſage to his Daughter, which is about 2000*l.*

Mr. Serj. *Darnel.* What Lands has ſhe?

Mr. *Buſby.* She has 20*l.* a Year.

Mr. Serj. *Darnel.* What Age is ſhe of?

Mr. *Buſby.* She is near Eighteen.

Mr. *Montague.* Was ſhe ever married, or no?

Mr. *Buſby.* She was unmarried.

Then Mrs. Sabina Buſby *was called and ſworn, as alſo Mrs.* Nightingale.

Mr. *Swendſen.* My Lord, I beg the Favour that only one Witneſs be heard at a Time.

Mr. *Soll. Gen.* Mrs. *Nightingale*, do you know Mrs. *Pleaſant Rawlins*, and Mrs. *Buſby?*——Mrs. *Nightingale.* Yes, I do.

Mr. *Soll. Gen.* Have they lodged at your Houſe?

Mrs. *Nightingale.* Yes.

Mr. *Soll. Gen.* How long?

Mrs. *Nightingale.* Above Three Years.

Mr. *Soll. Gen.* Have you any Knowledge of Mrs. *Baynton?*

Mrs. *Nightingale.* Yes.

Mr. *Soll. Gen.* How came you acquainted with her?

Mrs. *Nightingale.* One Mrs. *St. John* came to me to know whether I took Boarders? I ſaid, I had taken ſome, but would take no more, unleſs it were the ſame Ladies again.

L. C. J. Holt. Who was it came to you?

Mrs. *Nightingale.* One Mrs. *St. John.*

Mr. *Soll. Gen.* Mrs. *Nightingale*, ſpeak out, that my Lord may hear you.

L. C. J. Holt. Did Mrs. *Buſby* lodge with you?

Mrs. *Nightingale.* Yes, my Lord, we were very intimate before ; and ſince it pleaſed God to take away her Huſband, I was pleaſed with her, and very willing to take her into my Houſe.

Mr. *Soll. Gen.* Acquaint his Lordſhip how Mrs. *St. John* came to you.

Mrs. *Nightingale.* Yes, my Lord, as near as I can. She came to me, and aſk'd me, if I took Boarders? I told her, No, I would take none, except it were thoſe Ladies I had before: She told me ſhe had an Acquaintence that was a Widow Lady, that came out of *Wiltſhire*, about a Suit of Law, and would be in a very ſober Family near a Church. But however, I denied her Lodgings, and did expect to hear no more of her. But about three Weeks or a Month after, ſhe came to me again, and aſked me whether I had altered my Reſolution.

L. C. J. Holt. Go on.

Mrs. *Nightingale.* My Lord, Mrs. *St. John* ſaid, that the Lady was come to Town on the *Saturday* Night before, very much indiſpos'd in her Journey. I aſked her, whether ſhe knew this *Baynton*, or no? Mrs. *St. John* ſaid, Yes ; ſhe was very intimate in the Family, and ſhe ſaid a great deal more of her, which I cannot remember. She ſaid alſo, that ſhe would have boarded her herſelf, and would have been glad of her Company, if ſhe had had Conveniences for her. Then ſhe aſked me, whether ſhe ſhould come herſelf and give her own Character? We thought no Harm, ſhe being a Woman, and not a Man. She further ſaid, that Mrs. *Baynton* had ſeen a Maid, whom I knew, and ſhe believed ſhe would take her. I enquired of another who lived in the *Mews*, if he knew Mrs. *Baynton*; he ſaid, Yes, and that ſhe came of a good Family. At length ſhe came, and made a very modeſt Appearance in her Behaviour and Garb. She ſaid to me, that I was very curious in taking in Boarders, and for that ſhe liked me the better. I conſented ſhe ſhould come. She aſked me what I would have a Week? I told her Twelve Shillings for herſelf, and Ten Shillings for her Maid. She concluded to come on the *Wedneſday* following; which ſhe did with her Maid, a modeſt Girl, and a Neighbour, which gave me the more Encouragement. She carried herſelf very well till *Michaelmas*-Day at Night, when we heard of her new Brother; ſhe ſeem'd elevated at the News, and fell into Convulſion Fits, which I believ'd were real Fits. She ſaid ſhe had a dear Brother, a good Chriſtian, and he would come on the Morrow. When he came, he brought two Gentlewomen with him, very modeſt, which I never ſaw before, nor ſince. Mrs. *Baynton* made a Pot of Coffee, and ſent for a Bottle of Wine, and ſhe told her Brother before me, what good Lodgings ſhe had, and ſaid ſhe wiſhed he would come and lodge near them, for ſhe knew he had but a puny Stomach, and believed he would like her Victuals. He ſaid it was not convenient for him, becauſe his Buſineſs called him every Day to the *Change.* She ſaid alſo, there was a Bowling-green near them, where he might divert himſelf. But all would not do. She aſked me what I would have a Meal if her Brother ſhould come at any Time: I ſaid, when I had other Ladies, if any of their Friends came, I had Twelve-Pence a Meal of them. On *Friday* he came; I went to Church, and left them together at Cribbage, as I found them at my Return.

L. C. J. Holt. What Day of the Week was this?

Mrs. *Nightingale.* The *Friday* before the Sacrament. Mrs. *Baynton* ſaid to Mr. *Swendſen*, before Mrs. *Buſby*, You have an extraordinary Hand at making Punch ; ſo they agreed to make a Bowl the *Monday* following; but Mrs. *Rawlins* hardly drank any, ſhe not liking any ſtrong Liquors. After this, ſhe told me, her Brother was very ill of his Journey, being lately come out of the Country, tho' I don't underſtand he was in't. The *Monday* before *Michaelmas*-Day, we were at Dinner with Two more than our Family, when Mrs. *Baynton* ſaid, ſhe had an Intereſt in a *Norway* Ship, and invited us all aboard ; But he, *viz.* Mr. *Swendſen*, did not come to our Houſe till Four Days after ; but on *Friday* we concluded to go on *Saturday*; there were Eight of us in Company in all, Mrs. *Rawlins*, Mrs. *Buſby*, I and my Daughter, and Mr. *Ball* another Lodger, belonging to the Exchequer. We went and had much Diſcourſe; after having drank a Glaſs of Wine, the Cloth was laid, and the Maſter offered a Bowl of Punch; ſays Mr. *Swendſen*, *Ladies, I would pleaſe you all, and leave you all to your Liberties to drink what you pleaſe.*

L. C. J. Holt. Is this Perſon Mrs. *Baynton*'s Brother?

Mrs. *Nightingale.* This is he that went for her Brother.

L. C. J. Holt. Whereabouts is your Houſe?

Mrs. *Nightingale.* Near *Tuttle-fields.*

Mr. *Soll. Gen.* This Mrs. *Baynton* came to you under the Character of a Country Lady on a Law-Suit; do you underſtand that ſhe was ſo?

Mrs. *Nightingale.* My Lord, She ſaid ſhe came from the *Bath.*

Mr. *Soll. Gen.* You miſapprehend the Queſtion; Do you underſtand that her Pretence was true or not?

Mrs. *Nightingale.* I enquired of ſeveral Perſons, who acquainted me that the *Bayntons* lived in *Wiltſhire*; but it was not long before we began to ſuſpect her, for there ſeemed to be an extraordinary Love between her and *Swendſen*, more than is uſual between Brother and Siſter. I ſaid, Madam, I wonder you don't marry your Brother. She ſaid, ſhe thought that 'twas not lawful. I ſaid there was ſuch a Thing done in *Weſtminſter*, of a Man's marrying Two Siſters.

Mr. *Soll. Gen.* Pray call to mind what Time it was that you firſt gave Notice to her that ſhe ſhould not continue in your Lodgings.

Mrs. *Nightingale.* When I firſt miſtruſted her, I gave Notice of it in my Family. But we being all Women, and fearful of her, thought not fit to give her Warning till her Month was up. But before that, ſhe came to me, and told me, and ſaid, Mrs. *Nightingale*, I have received a Letter from my Siſter *Baynton* in the Country, which informs me, that the Truſtees will agree, and ſo I deſign to return when my Month is up, for this Town is very chargeable. Very well, ſaid I, for I expect ſome Ladies very ſhortly. I went down to my Family, and expreſs'd my Joy to them, and ſaid I was very glad Mrs. *Baynton* had prevented me; for if ſhe had not given me Warning, I would have given her Warning, for I reſolved ſhe ſhould not ſtay.

Mr. *Soll. Gen.* Mrs. *Nightingale*, it ſeems you had Notice of Mrs. *Baynton*'s ill Carriage; did you take any Notice of it to herſelf?

Mrs. *Nightingale.* No ; I did not, but I gave the Maid Notice as ſoon as I ſuſpected any Thing.

Mr. *Soll. Gen.* Do you know whether the Maid had told any Thing to her or not?

Mrs. *Nightingale.* The Maid ſaid to her, Madam, don't you ſee a Strangeneſs in the Family? Yes, ſaid ſhe, I can ſee and bear a great deal; but when I am rouzed, I'll be like a Lion.

Mr. *Soll. Gen.* How long was this before Mrs. *Rawlins* was taken away?

Mrs. *Nightingale.* I can't prefix the Time, but it was before ſhe gave me Warning.

L. C. J. Holt. Was ſhe gone from your Houſe before this Thing happened?

Mrs. *Nightingale.* No, my Lord ; ſhe told me on *Wedneſday*, that her Time was out ; but ſaid, There is a Fellow in Town that I fear will cheat me, and I am taking out a Statute of Bankruptcy againſt him, which I think will cauſe me to ſtay in Town a Week longer; ſhe alſo told me, ſhe had taken a Place in the Coach to go on *Thurſday*, but muſt loſe her Earneſt, for this Buſineſs would detain her a Week longer.

Mr. *Raymond.* Did you ever obſerve they were together in private?

Mrs. *Nightingale.* No, my Lord ; we never had any Suſpicion of Mr. *Swendſen*, but of the Woman, for ſhe could put on all Manner of Diſguiſes.

Mrs. Buſby *being called, ſhe is ſworn.*

Mr. *Soll. Gen.* Pray, do you know Mrs. *Rawlins?*

Mrs. *Buſby.* Yes, I do.

Mr. *Soll. Gen.* How came you firſt acquainted with her?

Mrs. *Buſby.* My Brother *Buſby* was one of her Guardians, and put her under the Care of my Huſband, while he was living, which was Four Years ago this *Chriſtmas.* She came to us by the Conſent of her Guardian.

Mr. *Soll. Gen.* At what Place did you lodge?

Mrs. *Buſby.* We lived in *Stretton-Grounds*; but ſince my Huſband died, which is Three Years laſt *July*, I left Houſe-keeping, and then we went and lodged at Mrs. *Nightingale*'s.

Mr. *Soll. Gen.* How long have you continued at Mrs. *Nightingale*'s?

Mrs. *Buſby.* We have continued there ever ſince.

Mr. *Soll. Gen.* Do you know Mrs. *Baynton?*

Mrs. *Buſby.* Yes, I do; ſhe lodged at Mrs. *Nightingale*'s.

Mr. *Soll. Gen.* Was there any body who uſed to come to her there?

Mrs. *Buſby.* None except a *Change*-Woman.

Coun. Do you know any Thing of Mr. *Swendſen?*

Mrs. *Buſby.* Sir, the firſt of his coming to Mrs. *Nightingale*'s, was the Day after *Michaelmas-Day.* Mrs. *Baynton* ſaid, that ſhe had a Brother that was to come to Town, which he did the Day after, with Two Gentlewomen, which I never ſaw either before or ſince; but Mr. *Swendſen* after this came ſeveral Times to her as her Brother, her Siſter's Huſband ; and ſhe deſired that he might dine with her ſometimes ; for which ſhe agreed with Mrs. *Nightingale* at 12*d. per* Meal.

Mr. *Soll. Gen.* Was this Mrs. *Rawlins* at any Time in private with *Swendſen?*

Mrs. *Buſby.* Never that I know of in all my Life ; we were always in Company together when he dined there, and the Times that he dined there we computed to be 9 or 10 ; he was there ſometimes when we were not at home.

Mr. *Soll. Gen.* How did Mrs. *Baynton* behave herſelf when ſhe was at Mrs. *Nightingale's ?*

Mrs. *Buſby.* We thought very well of her, till at laſt we diſcerned too much Freedom between Mr. *Swendſen* and herſelf; we ſuſpected her Virtue, and thought ſhe would Drink; and were informed ſhe would Swear: She ſaid ſhe muſt ſtay in Town about a Month or Six Weeks about a Suit of Law. Her Maid told her of the Strangeneſs of the Family; ſhe ſaid they had beſt be Civil, or elſe ſhe would ſtay and plague them. She told Mrs. *Nightingale* at length, the Town was chargeable, and her Buſineſs done, and that ſhe would return into the Country.

Mr. *Soll. Gen.* What do you know concerning Mrs. *Rawlins* being taken away?

Mrs. *Buſby.* Mrs. *Baynton* knowing it was our Cuſtom to go to *Oxendon Chapel* every *Friday* Morning, ſhe came and told us ſhe had occaſion to go to *Golden-Square*; and that being in the Way, ſhe invited us to go with her in the Coach, and ſhe would ſet us down at or near the Chapel. When we came to *Dartmouth-ſtreet*, ſomebody bid the Coachman ſtop: I expected ſhe ſhould ſet us down as ſhe promiſed. On that ſide where I ſat, there were old Buildings, and as I was looking out, I heard Mrs. *Baynton* cry out to the Coachman, Drive on; and all of a ſudden I ſaw a Man in the Coach, which was *Hartwell* the Bailiff. Mrs. *Rawlins* and I were in a very great Fright, knowing nothing. I ſaid, For God's ſake, let's come out, we are not concerned. *Hartwell* ſaid we were the Perſons that he came for. I begg'd of him to let us come out: *Hartwell* had his Arms about Mrs. *Rawlins*'s Side, and ſaid, 'Tis this Lady and you that I am concerned about. I aſk'd him what it was. Said he, Let you and I have two or three Words together, and all will be well enough. I ſaid, You don't think I will ſay any thing to you, unleſs I have my Friends by me; Mrs. *Baynton* in the Coach, ſaid, No, Madam, be ſure you don't. I could not tell what he would do with us; at length he carried us all to the *Star* and *Garter* Tavern in *Drury-Lane*. I preſs'd him to let us go to *Fleet-ſtreet*, for I had Friends there. *Hartwell* was very angry, and would hear nothing of it. When we came to *Drury-Lane*, Mrs. *Baynton* would have had us put on our Maſks; I ſaid I had done nothing amiſs, and I would not. When we were in the Room at the Tavern, Mrs. *Baynton* haſtened out of the Room as faſt as ſhe could, pretending to go for my Friends. Mrs. *Rawlins* and I were in a great Conſternation, wondering what they would do with us: I took hold of her Arm, and told her I would live and die with her. The Bailiffs came in, and ſaid ſhe was their Priſoner, and took her by Violence from me: They told me ſhe muſt go with them, for they ſaid ſhe was arreſted by a Writ out of one Court, and I by one out of another. When ſhe was going, I put my Head out of the Window, and cry'd *Murder*, *Murder*, ſeveral Times: When I pull'd in my Head again, *Spurr* ſaid, What have you got by your Bawling? and ſaid they were better known there than I. They brought a Man to me, who ſaid he had Orders to keep me, and that he had only a Crown for his Pains; but he would not ſuffer me to ſend for any body. The Gentlewoman of the Houſe came up, and ſaid I had done a Diſkindneſs to her Houſe by crying out Murder: She ſaid to me, Look and ſee whether your Name be ſpelt right, for it may be a falſe Arreſt, *&c.* *Wakeman* that went away with Mrs. *Rawlins*, came back again, and ſaid, the young Woman was well, and that he left her eating Fowl and Bacon; I ſaid, I wiſh ſhe was well. The Gentlewoman of the Houſe bid the Bailiff ſhew me the Writ: He ſaid he could not read well; but there was the Name of *Sabina Buſby*, at the Suit of one *Jones:* But when he heard my Complaints a conſiderable while, he ſaid he would go to my Friends, and would go as cheap as a Porter, and as ſoon. I ſent him to Mr. *Thornton* and Mr. *Naſh:* He pretended to go, but return'd no more till Night.

Mr. *Soll. Gen.* You ſay you cry'd out Murder, how did Mrs. *Rawlins* behave herſelf then?

Mrs. *Buſby.* It was her great Fright and Crying that made me endeavour her Reſcue; when we ſaid we wou'd die together, then it was when they forc'd her from me; the Surprize was ſo great that made me cry out after that manner that I did: Upon which ſome Neighbours came in, but they told them it was an Arreſt, and therefore they would not meddle in it.

Mr. *Soll. Gen.* Mrs. *Buſby*, they kept you till Night, you ſay; did they take or require Bail for you before you was diſcharged?

Mrs. *Buſby.* I'll tell you, Sir, if you pleaſe: I did not know what I was arreſted for, it might be Murder or Treaſon, for aught I knew. There was a little Boy by, ſaid, Madam, I know Mr. *Unkle*, your Friend in *Newmarket*, and I'll go for him: He went, but when he return'd again, he ſaid he was not at home; which I thought was a Lye. There was a poor Man, a Labourer, working in the Chimney, he gave me a Wink, and ſaid, Madam, I'll go for him; but I ſaid to him, Pray don't leave me; I began to be afraid, for I did not know how my Life might be concern'd. Said the little Boy, I'll go any where for you. I ſent him for Two Gentlemen, who came: The Bailiffs ſaid they had an Action of 200*l.* againſt me; the Gentlemen told the Bailiffs they were come to bail me: The Bailiffs were very impudent, but ſhuffled about a-while, and left me, and took no further notice.

L. C. J. Holt. Did they take any Bail for you?

Mrs. *Buſby.* No, they left me with theſe Gentlemen.

Mr. *Montague.* When you went out in the Morning, did you deſign to go any where elſe but to Chapel?—— Mrs. *Buſby.* No where elſe.

Mr. *Montague.* Was it your Invitation to Mrs. *Baynton*, or her Invitation to you to go in the Coach?

Mrs. *Buſby.* It was Mrs. *Baynton*'s Invitation to me; I had not a very good Opinion of Mrs. *Baynton*, for we ſuſpected her Virtue in the Family, by reaſon of her too familiar Carriage to her Brother; but being to go ſhortly away, I apprehended no harm.

Mr. *Montague.* Did Mrs. *Rawlins* go with you?——Mrs. *Buſby.* She did.

Mr. *Montague.* Mrs. *Buſby*, do you know the Priſoner? Is this the Man that came to Mrs. *Nightingale*'s Houſe?—— Mrs. *Buſby.* Yes, Sir.

Judge *Powel.* How long was it from the Time that you were parted after Arreſting, that you ſaw Mrs. *Rawlins* again?

Mrs. *Buſby.* The firſt time after was on *Saturday*, when they were before the Recorder.

L. C. J. Holt. When did you find her?

Mrs. *Buſby.* On *Saturday* in the Afternoon.

L. C. J. Holt. Was you at the finding?—— Mrs. *Buſby.* No, my Lord.

L. C. J. Holt. What Time was it?—Mrs. *Buſby.* About Noon, I believe.

Mr. *Montague.* When you ſaw her put into the Coach, did you hear her cry out?

Mrs. *Buſby.* No, Sir; it was I that cry'd out.

Mr. *Montague.* Did Mr. *Swendſen* make any Entertainments, or no?

Mrs. *Buſby.* But one, as I know of.

Priſoner ſpeaks to Mrs. *Buſby*, and ſaid, Have you done?

Mrs. *Buſby.* I think ſo.

Priſoner. If you have, I'll aſk you a Queſtion; Did you know of any Love between Mrs. *Rawlins* and me?

L. C. J. Holt. Did you know any thing of Love between Mrs. *Rawlins* and the Priſoner, or no?

Mrs. *Buſby.* No, my Lord. [*Mrs.* Baynton'*s Maid call'd and ſworn.*

Mr. *Soll. Gen.* Pray, did you know Mrs. *Baynton?*——*Maid.* Yes.

Mr. *Soll. Gen.* Was you her Servant?——*Maid.* Yes, Sir.

Mr. *Soll. Gen.* Who recommended you to her?——*Maid.* Mrs. *St. John.*

Mr. *Soll. Gen.* Do you know one Mr. *Swendſen?*

Maid. Yes, my Lord; there he is. [*pointing to him.*]

Mr. *Soll. Gen.* Did you ever ſee him before you were hired to your Miſtreſs?

Maid. No, my Lord; I never ſaw him before.

Mr. *Soll. Gen.* Did you ſee him when you was with your Miſtreſs?

Maid. Yes, my Lord.

Mr. *Soll. Gen.* Do you know whether there was any Relation between them?

Maid. Yes, my Lord; they went for Brother and Siſter.

Mr. *Soll. Gen.* How long was you with her?——*Maid.* About a Month.

Mr. *Soll. Gen.* How did ſhe behave herſelf?

Maid. Till the laſt of her Time, very well; but the Family had a Miſtruſt of her long before ſhe went away.

Mr. *Soll. Gen.* Do you know the Reaſon why they miſtruſted her?

Maid. I do not know, my Lord.

Mr. *Soll. Gen.* Do you know what was the Cauſe the Family miſtruſted her?

Maid. They thought her a looſe ſort of a Woman, and therefore they miſtruſted her.

L. C. J. Holt. Did they diſcern any Familiarity betwixt them?

Maid. No more than as Brother and Siſter.

Mr. *Soll. Gen.* After this Suſpicion, do you know whether the Family expreſs'd any Reſentment?

Maid. No, my Lord.

Mr. *Soll. Gen.* Did you live with her when Mrs. *Rawlins* was taken away?

Maid. Yes, my Lord; but I went away the next Day.

Mrs. Berkley *Sworn.*

Mr. *Soll. Gen.* Mrs. *Berkley*, pray was you preſent when the Priſoner was taken up; and do you know whether he and Mrs. *Baynton* were Brother and Siſter?

Mrs. *Berkley.* I went to Mr. *Swendſen* himſelf, and ſaid, Is this wicked Woman your Siſter? Says he, I cannot ſay ſhe is; but I have made her my Tool, and ſhe has done my Buſineſs, and I would get rid of her To-morrow, but that being *Sunday* I will not; but on *Monday* I'll give her a Reward for what ſhe has done, and then I'll diſcharge her, and never ſee her more.

Mr. *Montague.* Relate what Diſcourſe you had with him to the Gentlemen of the Jury.

Mrs. *Berkley.* I aſked Mr. *Swendſen*, Whether Mrs. *Baynton* was his Siſter? He ſaid, No, ſhe is not my Siſter; but I have gained my End, in making her a Tool to my dear Wife: I'll gratify her for what ſhe has done, and put her away on *Monday*, and never ſee her more.

Counſel. I think you lodged in the Houſe with her?

Mrs. *Berkley.* No; but I was a Neighbour, and was very frequently there.

Counſel. Did you ſee any thing to cauſe you to miſtruſt that there was any thing more than ordinary betwixt them?

Mrs. *Berkley.* No Cauſe at all, that I know of.

Mr. Blake *and his Wife ſworn.*

Mr. *Soll. Gen.* Mr. *Blake*, pray do you know Mrs. *Baynton?*

Mr. *Blake.* Yes, Sir.

Mr. *Soll. Gen.* How long have you known her?

Mr. *Blake.* About Twelve Years.

Mr. *Soll. Gen.* Pray is ſhe a Country Lady that has got a good Jointure?

Mr. *Blake.* I know nothing but that ſhe works for her Living.

Mr. *Soll. Gen.* Hath ſhe any Eſtate in the Country?

Mr. *Blake.* None, as I know of.

Counſel. Do you know the Priſoner at the Bar?—Mr. *Blake.* Yes, Sir.

Counſel. Where did he lodge at any Time?

Mr. *Blake.* He lodged at my Houſe.

Counſel. How long?——Mr. *Blake.* About 6 or 7 Months.

L. C. J. Holt. Where is your Houſe?——Mr. *Blake.* In *Red-Lyon-ſtreet.*

L. C. J. Holt. What other Lodgers had you at the ſame time?

Mr. *Blake.* I had a Parliament-Man lodged with me at the ſame Time.

L. C. J. Holt. Where did Mrs. *Baynton* lodge?

Mr. *Blake.* In the oppoſite Room againſt the Gentleman.

L. C. J. Holt. How long time?—— Mr. *Blake.* About Seven Months.

Counſel. How long was Mrs. *Baynton* gone from your Houſe before this Matter happened?

Mr. *Blake.* About Five or Six Weeks.

L. C. J. Holt. How long before *Michaelmas?*

Mr. *Blake.* I cannot certainly tell; but I believe much about that Time.

Counſel. When they were in your Houſe, what did you ſee betwixt them?

Mr. *Blake.* Nothing of any harm, as I know of.

L. C. J. Holt. Mr. *Blake*, did you never ſee any harm by Mrs. *Baynton?*

Mr. *Blake.* Not as I know of.

Mr. *Soll. Gen.* Do you know whether ſhe lay-in at your Houſe?

Mr. *Blake.* I know not; for aught I know ſhe might: I know nothing of Women's lying-in.

Mr. Wakeman *call'd and ſworn.*

Mr. *Soll. Gen.* Were you one of the Bailiffs that Arreſted Mrs. *Buſby* and Mrs. *Rawlins?*

Wakeman. I was the Man that executed the *Marſhal's-Court* Writ, and Arreſted them.

L. C. J. Holt. Who employed you?——*Wakeman.* Mr. *Hartwell.*

L. C. J. Holt. Were you at Mr. *Hartwell*'s Houſe?

Wakeman. My Lord, I'll tell you the Truth of the Matter: On *Wedneſday* before they were Arreſted, Mr. *Hartwell* was at my Houſe to ſee for me; but being not at home, but in the Country, I came home about 11 at Night: My Daughter ſaid to me, there was a Writ left by Mr. *Hartwell* for me to be ſerved, and it muſt be done To-morrow Morning. On the Morning he came to me, and ſaid, Mr. *Wakeman*, will you execute a Writ? He carried me to the *Mitre*-Tavern, and called for a Pot of Ale and a Bottle of White-Wine, and we had a Toaſt and ſome Cheeſe. While I was there, one Mr. *Holt* came in, a Man that I never ſaw in all my Life, and ſaid, The Buſineſs cannot be done this Day.

L. C. J. Holt. What Day of the Week was this?

Wakeman. *Thurſday*; he appointed me to call upon him at Nine next Morning. He ſaid, If I came firſt we ſhould get what we had before: He came in before we had done, and the Man of the Houſe was dreſſing himſelf in the Kitchen: We eat a Toaſt, and drank the Wine, and after that, we had another. Mr. *Holt* call'd Mr. *Hartwell* out, and ſaid, It cannot be done; by and by he ſaid it might be done: I don't know what it was, but they took me to *Stretton-Street*; Mr. *Hartwell* and Mr. *Spurr* was with me: I was aſham'd to ſtand in the Street, ſo I went into an Alehouſe, and drank a ſingle Pot of Drink.

Mr. *Soll. Gen.* Had you ſeen Mr. *Swendſen* before that Morning?

Wakeman. No: I never ſaw him before in all my Life. At that, if it pleaſe your Honour, Mr. *Hartwell* and Mr. *Spurr* went before, and bid me follow the Coach. I did ſo as near as I could, but could not keep pace with the Coach, being lame; but at *Dartmouth Ground* Mr. *Spurr* ſtopp'd the Horſes, and then I came up to the Coach; and Mr. *Hartwell*, I ſuppoſe, gave the Word of Arreſt, and into the Coach he went; but I did not go in becauſe there was no room, but rid behind it. The Coach was order'd to go to the *Star* and *Garter*-Tavern in *Drury-Lane*. When we came there, we went into a Back-Room; and the Gentlewoman that had a Band-Box ſaid to Mrs. *Rawlins*, I will go to ſome of your Friends.

L. C J. Holt. What did they do in *Stretton-Grounds?*

Wakeman. They were Arreſted there: The Gentlewoman was carry'd by Mr. *Hartwell* to his Houſe, and I follow'd them; but meeting with a Gentlewoman of my Acquaintance, ſhe ſtopp'd me. When I came to *Hartwell*'s Houſe, Where is ſhe? ſaid I. They told me ſhe was below Stairs. I ſaid I had a little Buſineſs elſewhere, that will detain me about an Hour: He gave me leave to go. When I went out, Mr. *Holt* call'd me over the Way, and aſk'd me, if Mr. *Hartwell* was at home? I ſaid, Yes. And is the young Gentlewoman there too? I likewiſe ſaid, Yes. He led me to the *Five-Bells* in *Wich-ſtreet*, into a Room where there were Three Boxes, and carry'd me to the middlemoſt Box, and there was a Gentleman.

Counſel. Was it the Priſoner at the Bar?

Wakeman. Yes, I think ſo. At that Mr. *Holt* fill'd me a full Glaſs, which I drank off; and I told him, I was going to do ſome Buſineſs in St. *Martin*'s. And when I had done that, I went to *Hartwell*'s Houſe again: I enquir'd for the Gentlewoman. Mrs. *Hartwell* ſaid, her Huſband was gone along with the Gentlewoman to *Holborn* to make an end of the Matter. I aſk'd her, Whereabouts? She ſaid, At the *Vine*-Tavern. I went thither, and aſk'd for Mr. *Hartwell*. There was he, and Mr. *Butler*, and a Tallow-Chandler going to eat Steaks: They invited me to eat ſome with them; which I did. Mr. *Holt* came into the Room two or three times: Then Mr. *Holt* told me, I was diſcharged of my Priſoner; ſo away I went.

L. C. J. Holt. You were eating Steaks, you ſay, at the *Vine*-Tavern; Was ſhe there then?

Wakeman. There is a Court againſt the Tavern, and I ſaw the Gentlewoman looking out of the *Vine*-Tavern, where there were new Saſh-Windows; as I came over the Way thro' the Court, this Gentlewoman look'd out of the Window.

L. C. J. Holt. What, before you went in?

Wakeman. Yes, my Lord; but I went in and ſaw him alone, but knew not whom he was.

L. C. J. Holt. Did you ſee Mrs. *Rawlins* there?

Wakeman. No, not at the Tavern.

Mr. *Soll. Gen.* When *Hartwell* took away this Gentlewoman, did ſhe go away quietly, or did Mrs. *Buſby* and ſhe make an Outcry?

Wakeman. She was a little frighted.

L. C. J. Holt. Where was it you firſt ſaw Mr. *Swendſen?*

Wakeman. At the *Five-Bell* Tavern.

L. C. J. Holt. When was it you ſaw him there?

Wakeman. About Twelve a-Clock.

L. C. J. Holt. Where was it he gave you the Pot of Drink?

Wakeman. At the *Five-Bells*; but it was Mr. *Holt* that gave it me.

L. C. J. Holt. How many were there in Company there?

Wakeman. Only Mr. *Holt*, and Mr. *Swendſen*.

Counſel. What was the Occaſion of your going?

Wakeman. Mr. *Holt* call'd me.

Counſel. When was it you ſaw him out of the Window?

Wakeman. About an Hour and a Quarter after.

Counſel. What Anſwer did you give, when they aſk'd you where the Gentlewoman was?

Wakeman. I ſaid, ſhe was at Mr. *Hartwell*'s.

Counſel. You ſaid you ſerv'd a Writ on Mrs. *Rawlins*, had you no Proceſs againſt Mrs. *Buſby?*

Wakeman. No, none at all.

L. C. J. Holt. On what Account did you keep Mrs. *Buſby?*

Wakeman. I did not keep her; but one *Spurr* was employed to do it.

Counſel. You came back to Mrs. *Buſby*'s; did not you ſay that you had been with a young Gentlewoman, who was eating Fowls and Bacon?

Wakeman. Mr. *Hartwell* aſk'd me to eat ſome.

Counſel. Did not you ſhew Mrs. *Buſby* a Writ, and read it to her?

Wakeman. I cou'd never read a *King's-Bench* Writ.

L. C. J. Holt. Can you read a *Marſhal's-Court* Writ?

Wakeman. Yes, but not the *Latin* of it.

Counſel. When you went to *Hartwell* at the *Vine*-Tavern, did you aſk for Mrs. *Rawlins?*

Wakeman. Yes, yes; I aſk'd where ſhe was? They told me they were making an end of it. My Lord, I had like to have forgot; I aſked where was the Priſoner? And Mr. *Holt* told me, they had juſt made an end of the Buſineſs.

Mrs. Pleaſant Rawlins *ſworn.*

Mr. *Soll. Gen.* Give an Account to his Lordſhip, after what manner you were Arreſted, and carried from Tavern to Tavern.

Mrs. *Rawlins.* My Lord, I was Arreſted with Madam *Buſby*, and carried to the *Star* and *Garter*-Tavern in *Drury-Lane*.

L. C. J. Holt. How were you carried thither?

Mrs. *Rawlins.* I was in a Coach going to *Oxendon Chapel*, when three Bailiffs were about the Coach.

Mr. *Soll. Gen.* Where did they carry you?

Mrs. *Rawlins.* They carried us to the *Star* and *Garter* in *Drury-Lane*.

Mr. *Soll. Gen.* Who did they carry with you?

Mrs. *Rawlins.* There was Mrs. *Buſby*, Mrs. *Baynton*, and I, and *Hartwell* the Bailiff; when we came to the *Star* and *Garter*, they forced me up Stairs into a Back Room, but we got into a forward Room; but we had not been there long till they parted Mrs. *Buſby* and I; Mrs. *Baynton* was gone for our Friends, as ſhe pretended. I was in a very great Fright, but Mrs. *Buſby* ſaying, We will die together, they took me by Force from her; *Hartwell* ſwore a great Oath, and thruſt me down Stairs, and forced me out of a Back-Door into an Alley. When he went to put me into a Coach, I cry'd out, Murder; then he threatened to put me into *Newgate*. He carry'd me to his own Houſe, and nobody came to help me a great while; but Mrs. *Baynton* ſaid, that as ſhe was going by the Door ſhe heard my Name, and came in in a mighty Fright; ſhe ſaid to me, Madam, I pity you, will nobody Bail you? She told me, I will ſend to my Brother, who ſhall be Bail for you. She ſent for him, he came into the Room, and he ſaid, What is the Matter with you? I ſaid, Enough is the Matter when I am arreſted for 200*l.* and owe no Man a Penny. Said he in a Jocoſe way, What makes you affrighted at that? I have a good mind to arreſt you myſelf. Then they took me thence to the *Vine*-Tavern in *Holborn*, where I was an Hour or Two before I heard any Thing of Marrying, or any ſuch Thing.

Coun. What did they do with you all that Time?

Mrs. *Rawlins.* They got a Dinner ready, and after we had dined, ſhe begged of me to have her Brother, and ſaid, that if I did not marry him, I ſhould be ruined. I told her, I would do nothing without the Advice of my Friends. I deſired my Friends to be ſent for, but they would not admit it. She looked on my Ring on my Finger, and ſaid, Let me ſee your Ring from your Finger. I ſaid, No, you ſhall not. She ſaid, I will force it off. I ſaid, I'll try that: But ſhe forced it from me.

Priſoner. Remember you are upon your Oath.

Mrs. *Rawlins.* I know I am. When ſhe took my Ring away, I aſked her what ſhe would do with it; ſhe ſaid, ſhe ſhould go and get a Wedding-Ring made by it. I told her, I would not marry without the Advice of my Friends. Away ſhe went and bought a Ring, and came up again, and ſaid to her Brother, ſhe had a Ring. Well, ſaid I, give me my Ring, and do what you will with the other; ſhe ſaid, If I did not marry her Brother I ſhould be ruined for ever.

There was a Miniſter in the Houſe, whom they ſaid had been there about a Quarter of an Hour, but I ſuppoſed longer; they brought him, with the Clerk, up Stairs; the Parſon ſaying, I hear there is a Couple to be married; he aſked no Queſtions, but told me, if I did not marry this Gentleman, I ſhould be ſent to *Newgate* and ruined for ever.

Coun. Give an Account of what was after the buying the Ring.

Mrs. *Rawlins.* When they brought the Ring, they ſaid to me, Will you be married or no? I anſwered, I will not; there are none of my Friends here, and I will not marry without the Conſent of my Friends. They ſaid, If I did not I ſhould be ruined for ever. So with many Threats and Perſuaſions, they at laſt prevail'd with me to marry. I was forced to marry him out of Fear, not of going to *Newgate*, but of being murdered.

Coun. Where did they carry you?

Mrs. *Rawlins.* To *Blake*'s Houſe in *Red-Lyon-Street*, *Holborn*.

L. C. J. Holt. What Time of Day was it?

Mrs. *Rawlins.* I cannot give an exact Account; but I think it was Candle-light.

Priſoner. It was about Twelve a-Clock at Noon.

L. C. J. Holt. What Time was it that you were marry'd?

Mrs. *Rawlins.* My Lord, it was about Three a-Clock.

L. C. J. Holt. When you went to *Blake*'s Houſe, who was with you there?

Mrs. *Rawlins.* None but Mr. *Swendſen*, Mrs. *Baynton*, and I.

L. C. J. Holt. Was there any Force or Threats us'd when you were at *Blake*'s Houſe?——Mrs. *Rawlins.* Yes, there was, my Lord.

L. C. J. Holt. Give an Account of it.

Mrs. *Rawlins.* They thruſt me up Stairs, and ordered to have a Bed ſheeted. Mrs. *Baynton* ſaid to me, Undreſs and go to Bed. I ſaid, I would not. She ſaid, ſhe would pluck my Cloaths off my Back. I ſaid, ſhe ſhould not. She ſaid, ſhe would pluck off my Cloaths and make me go to Bed.

Coun. What did ſhe do with you?——Mrs. *Rawlins.* She put me to Bed.

Coun. Did ſhe uſe any Violence with you?

Mrs. *Rawlins.* Such Violence that made me go to Bed.

L. C. J. Holt. How came you to be releaſed?

Mrs. *Rawlins.* It was *Saturday* Morning before I was releaſed; there was ſome of my Friends came to the Place where I was.

L. C. J. Holt. Then you were with him all Night?

Mrs. *Rawlins.* Yes, my Lord.

L. C. J. Holt. Mr. *Swendſen*, will you aſk her any Queſtions?

Priſoner. She muſt be my chiefeſt Evidence, my Lord, when the Witneſſes come; ſhe muſt be the chiefeſt of them all.

L. C. J. Holt. You will not aſk her any Queſtions now, but when the Witneſſes are call'd?

Priſoner. My Lord, I preſume ſhe does not go out of Court. [*Orders given for her to ſit down.*

Mr. *Soll. Gen.* We have done with our Evidence at preſent.

L. C. J. Holt. Mr. *Swendſen*, What do you anſwer to the Evidence?

Priſoner. My Lord, I am very much unprepar'd for a Trial at preſent.

L. C. J. Holt. Why ſo?

Priſoner. Becauſe I had but little Time for Preparation, and I am not prepared, I deſire that I may be allow'd Counſel.

L. C. J. Holt. No, no, it cannot be allow'd you; and as for the time of your Trial, you were told, if you would ſhew good Cauſe to have it put off yet, the Court would have done it.

Priſoner. Then I hope if I ſpeak any Thing that may be prejudicial to my Cauſe, that the Court will not take Advantage from it.

The firſt Time I was at Mrs. *Nightingale*'s, I was deſired by Mrs. *Buſby* and Mrs. *Baynton* to make a Bowl of Punch, which I did; and we were very merry over it; then I invited them to go on Board a Ship, which they all did, and we in a ſhort Time became very well acquainted. My Lord, I deſire my Wife may ſtand by herſelf, and none of them near her.

L. C. J. Holt. There is none near her that will hurt her.

Priſoner. My Lord, I beg ſhe may ſtand by herſelf, that I may have a fair Trial; I pray your Lordſhip to grant me this Favour. My Lord, will you pleaſe to grant it?

L. C. J. Holt. Muſt I grant it only for your Humour?

Priſoner. 'Tis not a Humour, my Lord, but of a great Conſequence to me: Will your Lordſhip grant me it? I beg it, my Lord, for it is the moſt material Thing I have to aſk; I beg all thoſe People may be removed from her; 'tis the greateſt and moſt material Thing I have to ſay.

L. C. J. Holt. I'm ſorry for it.

Priſoner. It is ſo; good my Lord, grant me that.

L. C. J. Holt. There's no body near her that concerns you at all.

Priſoner. There are thoſe by her that will do me no Kindneſs. [*Then ſhe was ordered to be removed.*]

Mr. *Soll. Gen.* My Lord, her ſtanding there is enough to diſorder her.

Priſoner. My Lord, ſhe is very well.

L. C. J. Holt. Remove her a little further.

Coun. My Lord, he does it on purpoſe to fright her.

Priſoner. We went (as I was telling your Lordſhip) aboard a Ship, and they invited me to come the Week following, to partake of a Treat; accordingly I went, and there was one Mr. *Pugh*, and he and I made a Bowl of *Punch*. Mr. *Pugh* at that Time courted Mrs. *Rawlins*, and that little Time I was acquainted with her, I diſcerned ſhe had a Kindneſs for me, as I had for her; and I told her I could not be eaſy while ſhe ſuffered Mr. *Pugh* to kiſs her; ſhe deſired me to be eaſy, and it ſhould be remedied.

L. C. J. Holt. Mrs. *Rawlins*, do you remember any ſuch Thing?

Mrs. *Rawlins.* My Lord, I do not remember any ſuch Thing, or that any ſuch Words ever came out of my Mouth.

Priſoner. Did not you ſay this, Mrs. *Rawlins*, Mrs. *Swendſen* I ſhould ſay, did not you ſay, If I would not ſit by you, you would not eat a Bit or a Crumb; when I ſat by you, and proffered my Place to another, can you ſay you were not offended?——Mrs. *Rawlins.* No, I was not.

Priſoner. Are not you upon your Oath? did not you give me ſome Encouragement?

Mrs. *Rawlins.* I do not know how I could ſhew it you, I know not of any ſuch Thing.

L. C. J. Holt. You ought to ſpeak the Truth, becauſe his Life depends upon it. Did you, in the firſt Place, ever admit of his Courtſhip, in order to marry you?

Mrs. *Rawlins.* No, my Lord, I don't remember any ſuch Thing.

L. C. J. Holt. Did you ever ſhew any Kindneſs to him upon any ſuch Account?

Mrs. *Rawlins.* No, I don't know I ſhew'd him any more Kindneſs than all the reſt of the Family ſhew'd him.

L. C. J. Holt. Was you ever in his Company alone?

Mrs. *Rawlins.* No, my Lord.

Priſoner. To give me more Eaſe and Satisfaction, after Dinner we had our Bowl and Walnuts, Mrs. *Swendſen* peeled the Kernels and gave them to me; ſhe gave them faſter than I could eat; ſhe heaped my Plate with them; every one at the Table took notice of it, and ſhe jogged me with her Knee, that I ſhould take them, and gave ſome to Mrs. *Baynton*, and bid her take them and give to me.

L. C. J. Holt. Mrs. *Buſby*, Were you there?—Mrs. *Buſby.* Yes, my Lord.

L. C. J. Holt. Did you ſee any Thing of this Kind?

Mrs. *Buſby.* No, my Lord.

Priſoner. Will your Lordſhip be pleaſed to aſk her yourſelf?

L. C. J. Holt. Mrs. *Rawlins*, did you e'er give peeled Walnuts to him, or ſend them to him in particular?

Mrs. *Rawlins.* No, my Lord, I do not know that I was more kind to him than the reſt of the Company.

Priſoner. Every Body took Notice of it, and Mr. *Pugh* in particular.

L. C. J. Holt. What do you ſay, Mr. *Swendſen?*

Priſoner. My Lord, Mr. *Pugh*, if he were here, would ſay the ſame as I do. He was afraid I ſhould get away his Lady.

L. C. J. Holt. Where is he?——*Court.* He is in the Court.

L. C. J. Holt. You may have him for a Witneſs, if you will.

Priſoner. More than this, before he went away, ſhe told him ſhe did not care for him; this ſhe ſpoke to make me more eaſy ſtill. This I believe Mr. *Pugh* can witneſs, inaſmuch as Madam *Buſby* complain'd to her about it, at Mr. *Scoreman*'s the Picture-Drawer's, who is one of my Evidences; I deſire he may be called.

L. C. J. Holt. Well, let him be called. [*So he was called, and came.*]

L. C. J. Holt. Hear ye, he calls you to be a Witneſs, you are not to be upon your Oath, but are under the higheſt Obligation to tell the Truth.

Mr. *Scoreman.* While I was drawing a Gentlewoman's Picture, Mrs. *Baynton*'s, there was a Fire, it began to be cold, they fell into Diſcourſe about Mr. *Swendſen* and Mrs. *Rawlins*, Mrs. *Buſby* was there at the ſame Time, they fell into Diſcourſe about Mr. *Swendſen* and the young Lady.

L. C. J. Holt. Was ſhe there?——Mr. *Scoreman.* Yes.

L. C. J. Holt. Where was it?

Mr. *Scoreman.* At my Lodgings; there were Mrs. *Buſby*, the young Lady, and Mrs. *Baynton.*

L. C. J. Holt. Whoſe Picture were you drawing?

Mr. *Scoreman.* Mrs. *Baynton*'s. They fell into Diſcourſe relating to a Matter of Love between Mr. *Swendſen* and the young Lady. She ſaid the young Lady had a Love for Mr. *Swendſen* more than the other.

L. C. J. Holt. You heard her ſay ſo?

Mr. *Scoreman.* No; but I can ſay Mrs. *Baynton* ſaid ſo.

L. C. J. Holt. But tell us what you heard.

Mr. *Scoreman.* She ſhould have ſaid ſo, I did not hear her myſelf, but afterwards upon a Diſcourſe ſhe afterwards ſaid, What ſhe had ſaid ſhe would ſtand to.——*L. C. J. Holt.* What did ſhe ſay?

Mr. *Scoreman.* I don't know that ſhe ſaid ſo or not.

Priſoner. My Lord, may I ſpeak it as well as I can? He cannot ſpeak *Engliſh* right, I'll ſpeak it to him, my Lord.

L. C. J. Holt. No, no.—Did you hear Mrs. *Buſby* ſay any Thing? What did ſhe ſay?——Mr. *Scoreman.* In way of Diſcourſe ſhe ſaid ſo.

L. C. J. Holt. What, in way of Diſcourſe, did ſhe ſay nothing?

Mr. *Scoreman.* I heard the Lady ſay only that Word, That all ſhe ſaid ſhe would ſtand to.

L. C. J. Holt. What did you hear them talk about?

Mr. *Scoreman.* They were playing at Cards, and ſhe took up the Tricks of Mr. *Swendſen*, which diſcovered Love.

L. C. J. Holt. The Queſtion is, Whether you did hear them ſpeak any thing of Love, or not?

Priſoner. My Lord, he would ſpeak better with an Interpreter.

L. C. J. Holt. Let an Interpreter be called for.

L. C. J. Holt. What Countryman are you?

Priſoner. My Lord, he is a *Dane.*

[*The Interpreter, a Jury-man, was ſworn; and beginning to talk with Mr.* Scoreman, *and then he ſaid, He is none of my Country, he is a* Dutchman, *I don't underſtand him.*]

L. C. J. Holt. He ſpeaks *Engliſh* well enough.

Priſoner. Very well; but he knows not where he begins: He would ſay what Mrs. *Buſby* and Mrs. *Baynton* were ſpeaking, but knows not how to utter himſelf.

L. C. J. Holt. He cannot ſay any thing for you.

Mr. *Scoreman.* I heard but a few Words, and cannot ſay much of it.

L. C. J. Holt. You muſt have a better Witneſs, or you are in a dangerous Condition.

Priſoner. My Lord, Mr. *Pugh* complained to Madam *Buſby*, that ſhe ſlighted him very much.

L. C. J. Holt. What, for Love of you?

Priſoner. Yes, my Lord, I could tell you of divers Things that paſs between Lovers, that would be impertinent for me to relate to wiſe Men.

L. C. J. Holt. Let us hear ſome of them.

Priſoner. When we were by ourſelves, ſhe kiſſed me; and ſqueezed me by the Hand, when we walked privately in the Garden.

L. C. J. Holt. Did ſhe kiſs you?

Priſoner. Yes, My Lord, and ſqueez'd me often.

L. C. J. Holt. Did you not think her very coming?

Priſoner. Yes, I did; and when we talk'd of Marriage, ſhe ſeem'd to be very well pleaſed.

L. C. J. Holt. Mrs. *Rawlins*, you hear what he ſays: Did you ſqueeze him by the Hand and kiſs him? Is it true?

Mrs. *Rawlins.* No, my Lord, I did no ſuch Trick, not I; and as for walking in the Garden, I did not walk in the Garden alone with him.

Priſoner. I could mention a great many of theſe little Things; but if ſhe denies them I cannot help it. My Lord, the laſt time I was at the Houſe we had a Barrel of Oyſters; I ſtood with my Hands behind me, and as ſhe paſſed by at any time, ſhe gave me ſqueezes by the Hand.

L. C. J. Holt. What ſay you to this, Mrs. *Rawlins?*

Mrs. *Rawlins.* My Lord, I did not do ſo, upon my Oath.

L. C. J. Holt. She ſays ſhe did not do it, upon her Oath.

Priſoner. Now for the Matter of Fact; as for the Arreſt, I never knew any thing of it, directly or indirectly, till I ſaw her at the Bailiff's Houſe.

L. C. J. Holt. If ſhe did know any Thing of, or was conſenting to the Arreſt, why did you force her to the Tavern, and marry her with a Parſon you had provided for that Purpoſe?

Priſoner. She married me with as much Freedom as could be in a Woman.

L. C. J. Holt. What ſay you to that Mrs.?

Priſoner. Will your Lordſhip pleaſe to aſk her, whether I offered any Violence to her either by Word or Deed?

L. C. J. Holt. Mrs. *Rawlins*, give an Account how you were carried from the Bailiff's Houſe.

Mrs. *Rawlins.* My Lord, when I was at *Hartwell*'s the Bailiff's Houſe, Mrs. *Baynton* pretended to come accidentally by, and that ſhe heard my Voice, and came in and ſaid, *How do you do, Mrs.* Rawlins? You know how I do, ſaid I. She pretended to help me, and propoſed to go to her Brother to bail me; and he came, and I was carried from thence in a Coach to the *Vine* Tavern.— [*She was aſked whether he came into the Coach to her?*]

Mrs. *Rawlins.* Yes, he did.

L. C. J. Holt. Did you cry out when they put you into the Coach?

Mrs. *Rawlins.* No, my Lord, I did not cry out then, I made no Noiſe then.

L. C. J. Holt. What did he do then?

Mrs. *Rawlins.* They carry'd me to the *Vine* Tavern a Priſoner.

Mr. *Soll. Gen.* She went willingly enough from *Hartwell*'s Houſe to the *Vine* Tavern, becauſe ſhe thought that there ſhe ſhould be bailed.

L. C. J. Holt. Mrs. What was the Pretence of your being carried from *Hartwell*'s Houſe?

Mrs. *Rawlins.* My Lord, they would not tell me before they carry'd me to the Place.

L. C. J. Holt. Mr. *Swendſen*, Will you aſk any other Queſtions?

Priſoner. Not yet, my Lord. I deſire the Parſon may be called that marry'd us. [*Which was done.*]

L. C. J. Holt. Come, Doctor, you are not upon your Oath; How came you to be concern'd in this Match?

Parſon. My Lord, it was at the *Vine* Tavern where I ſaw them, in *Holbourn.*

L. C. J. Holt. Was it the *Mitre* or the *Vine?*

Parſon. The *Vine*, I believe, my Lord.

L. C. J. Holt. How came you there?

Parſon. There was a Gentleman fetch'd me and the Clerk from the *Fleet.*

L. C. J. Holt. What to do?

Parſon. He ſaid there was a Gentleman there to ſpeak with us. When we came there, the Clerk and I went up one Pair of Stairs and drank a Pint of Wine. Then we were led into another Room; I aſked him what I was to do? He told me, for to marry him to that Young Gentlewoman.

L. C. J. Holt. Was there a Licence?

Parſon. Yes. When I ſaw the Licence I read it, and ſaw it a true Licence; Then I aſked the Gentlewoman her Name, to know whether it was the ſame that was in the Licence; and found it was the ſame.

L. C. J. Holt. Was it written in the Licence, that the Marriage was to be performed at the *Vine* Tavern?

Parſon. No, my Lord. But a Blank was left.

L. C. J. Holt. Did you take the Queen's Duty?

Parſon. No, my Lord, but returned their Names to the Superviſor: My Lord, when I aſked her Name, I alſo aſked her whether ſhe was willing to be married? She ſaid ſhe was willing. And another Gentlewoman was with her, that ſaid ſhe was her Siſter: I ſaid to her; Madam, if you conſent, and your Siſter is willing, here is a Licence, for I believe there is no Danger to marry you.

L. C. J. Holt. Did you aſk her any other Way than in your Form, *Will you have this Man to your wedded Huſband?*

Parſon. I aſk'd her, whether ſhe was willing to marry? She ſaid, Yes, ſhe was willing.

L. C. J. Holt. But did you aſk her, before you did the Office?

Parſon. Yes, my Lord, I did, and ſhe conſented to it.

Counſel. Pray, who was the Perſon that came to the *Fleet* to you, to carry you to the Tavern? Was it the Gentleman at the Bar?

Parſon. No, 'twas not him.

Mr. *Mountague.* How long was it before you went to him, after you went into the Tavern?

Parſon. My Clerk and I went in, and ſat the drinking a Pint of Wine, about a Quarter of an Hour, then we went to the Gentleman.

L. C. J. Holt. Do you think that they ſhould grant Licences to marry in a Tavern, and out of Canonical Hours?

Parſon. I never did it in all my Life before, and never will do it again.

Mr. *Soll. Gen.* What was the Reaſon why you were conducted into another Room, and not where they were?——*Parſon.* I know not the Reaſon.

Mr. *Soll. Gen.* How long were you in the Room, where they were?

Parſon. I cannot well tell.

L. C. J. Holt. Did you marry them as ſoon as you came in?

Parſon. Almoſt as ſoon.

Mr. *Mountague.* Did you ever marry any at a Tavern before?

Parſon. No, my Lord.

Mr. *Soll. Gen.* Will your Lordſhip be pleaſed to hear the Licence read?

L. C. J. Holt. It may be read. You may ſee the Date and the Names. The Licence is dated *Oct.* 14. 1702. The Names *Haagen Swendſen*, in the Pariſh of St. *Paul's Shadwel*; and *Pleaſant Rawlins*, in the Pariſh of St. *Mary*, *Whitechapel*.

Counſel. Is there any Blank left?

Parſon. Yes, there is a Blank left, that the Marriage may be in the Pariſh Church of St. *Mary Whitechapel, vel* a Blank.

Mr. *Mountague.* Were you entertained there?

Parſon. Before the Marriage the Clerk and I drank a Pint of Wine in the firſt Room.

Mr. *Mountague.* Had you any Victuals then?

Parſon. Not before they married; but after.

Mr. *Soll. Gen.* Pray, Sir, did you beſpeak a Dinner before the Marriage?

Parſon. No, Sir, the Gentleman beſpoke a Fowl.

Mr. *Dan. Cotchett* was called.

Priſoner. My Lord, I deſire he may be aſked, whether he heard any Noiſe, or whether any Violence was offered to the young Woman?

L. C. J. Holt. Did you hear any Noiſe, or perceive any Violence offer'd to the young Woman? ——— Mr. *Cotchett.* No, my Lord.

Priſoner. Aſk Mrs. *Cotchett*, whether any Noiſe or Violence was offered to the young Lady?

L. C. J. Holt. I'll aſk her that Queſtion: Was there any Noiſe, or Violence uſed to the young Lady?

Mrs. *Cotchett.* No, my Lord, there was no Noiſe; they came in and aſked for a Room, and I ſhewed them a lower Room, but they would not have that, but went up. Soon after, Mr. *Holt* the Vintner came down and went out, and Mr. *Hartwell* call'd for a Pint of Wine for the Coachman; but the Drawer grumbled at it, and ſaid he did not know who'd pay for't. Then Mr. *Hartwell* the Bailiff told me it was an Arreſt, and that the Parſon was to be Bail for the Lady, and at that I very much wondered; and afterwards they told me there was a Wedding above, which we admired at, that there ſhould be a Wedding and Bailiffs: And after all was over, the Gentleman and the Lady went out at the Back-Door, and took Coach.

Priſoner. Did you ſee Mrs. *Swendſen* diſcontented when ſhe went out?

Mrs. *Cotchett.* No, my Lord, ſhe ſeemed not diſcontented: What I know I'll ſpeak, and no more. [*Sarah Walker* called.]

L. C. J. Holt. Do you live at the *Vine* Tavern?

Walker. Yes, my Lord.

L. C. J. Holt. What Place? ——— *Walker.* Cook, my Lord.

L. C. J. Holt. Was you in the Houſe when that young Gentlewoman was carried Priſoner there? Where were you then?

Walker. In the Bar, my Lord.

L. C. J. Holt. Did you keep the Bar?

Walker. No, my Lord; but I was waſhing the Bar at that Time.

L. C. J. Holt. Did you hear any Noiſe? —— *Walker.* No, my Lord.

L. C. J. Holt. Did you hear of a Wedding?——*Walker.* Yes, my Lord.

Priſoner. My Lord, will you be pleaſed to aſk her, if ſhe was not had before the Recorder, and promis'd a Reward, if ſhe would ſay any Thing for their Service?

L. C. J. Holt. What do you ſay to this?

Walker. My Lord, only this, That if I knew any Thing, and diſcover'd it, I ſhould be ſatisfied for my Trouble.

L. C. J. Holt. Were you ſent up Stairs to the Gentlefolks to receive Directions for the Supper? ——— *Walker.* Yes.

Mr. *Soll. Gen.* When you came up into the Room, what Condition was the young Gentlewoman in?

Walker. She ſat at one End of the Room, and ſeemed to be very melancholy.

Mr. *Soll. Gen.* How did ſhe look, when ſhe went away?

Walker. Not melancholy then. When Orders were given about the Supper, I aſked her what Sauce ſhe would have; ſhe ſaid ſhe would eat nothing at all. [*Mr.* Blake*'s Daughter being called.*]

Priſoner. Aſk what ſhe knew of my Wife?

Blake. My Lord, ſhe carried it very well; the Lady was pleaſed to ſay that I ſhould wait upon her. I offered to pull off her Shoes and Stockings when ſhe went to Bed: ſhe held out her Legs, and I pulled off her Shoes and Stockings.

Mr. *Soll. Gen.* Were you preſent at the Beginning, before ſhe began undreſſing? ——— *Blake.* Yes.

Mr. *Soll. Gen.* When ſhe was come in, were you there all the Time?

Blake. No, I run to and fro.

Mr. *Soll. Gen.* Do you know Mrs. *Baynton?* —— *Blake.* Yes, Sir.

Mr. *Soll Gen.* Pray, did ſhe ever lie in at your Houſe?——*Blake.* Yes, Sir.

Mr. *Soll. Gen.* Hath ſhe a Huſband? ——— *Blake.* I cannot tell.

L. C. J. Holt. Did you make the Bed in Mr. *Swendſen*'s Chamber?

Blake. Yes, my Lord, I made it where he lay, I ſaw nothing.

L. C. J. Holt. How long was it after from the Time they came to the Time they went to Bed?

Blake. I know not, they came into the Houſe juſt about Dinner.

L. C. J. Holt. What Time was it?

Blake. About Three or Four a-Clock in the Afternoon.

L. C. J. Holt. How long was it after they came, before they went to Bed? ——— *Blake.* About two Hours, or thereabout.

L. C. J. Holt. Do you think that 5 or 6 a-Clock was a fit Time to go to Bed? ——— *Blake.* I knew not what was betwixt them.

Mr. *Soll. Gen.* Is it uſual to go to Bed at that Time at your Houſe?

Blake. No; I did not know what was betwixt them.

Mr. *Mountague.* What Time did they riſe again?

Blake. About 7 a-Clock.

Mr. *Mountague.* Did they lie at your Houſe that Night?

Blake. No; they did not.

L. C. J. Holt. When did they go away?

Blake. They went away as ſoon as Supper was done.

Priſoner. My Lord, I deſire ſhe may be aſked, whether my Wife was ſorrowful or diſcontented, or unwilling to go to Bed?

L. C. J. Holt. What Time was it they went to Bed?

Blake. About Four a-Clock.

L. C. J. Holt. Did you know what the Deſign was?

Blake. No, my Lord, I did not know any otherwiſe than as Mr. *Swendſen* told me the young Lady was his Wife.

L. C. J. Holt. What Time did they riſe again?

Blake. About Two Hours, they roſe up, and got to Supper.

Judge Powis. What Time did they go from your Houſe?

Blake. Between Eight and Nine o'Clock.

L. C. J. Holt. Where did they go? Do you know where they went?

Blake. Indeed, my Lord, I cannot tell.

Mr. Blake *ſworn.*

Mr. *Soll. Gen.* Mr. *Blake*, How long have you known Mrs. *Baynton?*

Mr. *Blake.* About 12 Years.

Mr. *Soll. Gen.* Did you ever know that Mrs. *Baynton* had a Huſband?

Mr. *Blake.* I cannot tell; it was reported that ſhe had one.

Mr. *Soll. Gen.* Did you ever ſee Mr. *Baynton?* Did he own her to be his Wife?

Mr. *Blake.* My Lord, they did not live with me, while he was living.

Mr. *Soll. Gen.* How long has he been dead?

Mr. *Blake.* I don't certainly remember; about three or four Years.

Mr. *Soll. Gen.* How long is it ſince Mrs. *Baynton* lay-in at your Houſe?

Mr. *Blake.* About four Months ago.

Mr. *Soll Gen.* When ſhe was ſuch a Woman as this, and brought a Gentlewoman to your Houſe, and ordered a Bed to be made, how could you admit her into your Houſe again?

Mr. *Blake.* I did not know that it was any clandeſtine Thing.

L. C. J. Holt. Have you any more Witneſſes, Mr. *Swendſen?*

Priſoner. Let the Conſtable be call'd for.

L. C. J. Holt. What Queſtions ſhall I aſk him?

Priſoner. Aſk him what it was my Wife ſaid to him?

Conſtable. My Lord, the Man was in one Room, and the Woman in another; when I opened the Door the Gentleman aſked her how ſhe did?

L. C. J. Holt. What Gentleman was it?

Conſtable. It was the Gentleman that gave me the Warrant. He ſaid to her, Are you married? Yes; there is my Huſband. She ſeemed very much ſatisfied: He ſaid to her, Madam, I wiſh you much Joy, and if you pleaſe to go to the Recorder's, there is your Guardian to approve of what you have done: But when ſhe was dreſs'd, ſhe would go to the next Juſtice of the Peace: They could not agree about going; but they drank each of them a Glaſs of Wine and went away. The Gentleman that brought me the Warrant was alſo with me.

L. C. J. Holt. Are they here?

Conſtable. The Warrant was to take up the Bailiffs and all together.

L. C. J. Holt. Where do you live? —— *Conſtable.* In *Lincoln's Inn Fields.*

L. C. J. Holt. In what Houſe did you ſee them?

Conſtable. 'Twas in *Red-Lyon-Street*, over-againſt the *Red-Lyon-Tavern.*

L. C. J. Holt. About what Time of the Night was it?

Conſtable. About Seven o'Clock.

L. C. J. Holt. What Night was it?

Conſtable. Indeed, my Lord, I cannot tell.

Mr. *Mountague.* Whoſe Houſe was it? Was it *Blake*'s Houſe?

Conſtable. Yes, it was ſo.

L. C. J. Holt. Where is your Warrant?

Conſtable. They took it away from me.

L. C. J. Holt. But you ought not to have parted from your Warrant.

Conſtable. The Men were not there that the Warrant run for.

L. C. J. Holt. Was not the Warrant againſt Mr. *Swendſen?*

Conſtable. The Warrant was for ſuch Men as took the young Gentlewoman away. I cannot tell whether his Name was there or no.

L. C. J. Holt. Mrs. *Rawlins*, what were thoſe Men who came along with the Conſtable? Were they your Friends?

Mrs. *Rawlins.* Yes, my Lord, they were my Friends.

L. C. J. Holt. What is this *Geary?*

Mrs. *Rawlins.* He is an Acquaintance of Madam *Buſby*'s.

L. C. J. Holt. Did you ſay you conſented to the Marriage before them?

Mrs. *Rawlins.* If I did, I did not know what I ſaid.

Priſoner. My Lord, I deſire ſhe may be aſked what ſhe ſaid to the Conſtable?

Mrs. *Rawlins.* My Lord, I do not know, whether I ſaid ſuch a Thing; if I did, I was not in my Senſes, I did not know what I ſaid.

Priſoner. My Lord, I hope you will give me Leave to ſpeak. She ſaid to the Conſtable, I am very well content with the Marriage, and this is the Ring that married us.

L. C. J. Holt. What ſay you to that, Mrs. *Rawlins?*

Mrs. *Rawlins.* I don't know but I might; but I did not know what I ſaid.

L. C. J.

L. C. J. Holt. Had you been in Bed then?

Mrs. *Rawlins.* Yes, we were in Bed about an Hour.

Mr. *Soll. Gen.* Was there any Threats uſed by Mrs. *Baynton?*

Mrs. *Rawlins.* Yes, my Lord; ſhe ſaid that I muſt own him for my Huſband, or elſe we were all ruined. [*Juſtice* Baber *called.*]

Priſoner. My Lord, he is one of the chiefeſt Witneſſes that I have, I deſire it may be aſked him, what my Wife declared to him of her own accord?

J. Baber. My Lord, I think it was *Friday* Night, the 6th of this Month, the Priſoner here at the Bar, and I ſuppoſe that may be the Gentlewoman too [*pointing to her*] and another Gentlewoman and a Woman came to me to my Houſe in *York-Buildings*, and deſired me, but the Priſoner in particular, that I would adminiſter a voluntary Oath to the young Lady, which ſhe was willing to take, that ſhe was married to this Gentleman. I told him that I had nothing to do to confirm Marriages, and told them I was loth to meddle with it.

L. C. J. Holt. How came they to you? Had they any Officers?

J. Baber. No, my Lord, they came in a Coach without any Officer.

L. C. J. Holt. Was there any Oath taken?——*J. Baber.* No, my Lord.

Counſel. What was the Reaſon that you did not tender the Oath?

J. Baber. Becauſe I thought I had nothing to do with it.

Counſel. What ſort of Frame was the young Woman in?

J. Baber. In very great Diſorder; not like a Gentlewoman, but in a very confuſed Condition: She ſpoke what ſhe ſaid by her own Conſent; but with much Diſorder.

Priſoner. My Lord, I deſire it may be aſked Juſtice *Baber*, whether I deſired him to tender the Oath to my Wife?

L. C. J. Holt. Did Mr. *Swendſen* deſire you to tender the Oath?

J. Baber. He did put me upon it at firſt.

Priſoner. I ne'er did ſo in all my Life.

Mr. Bulkley *called.*

Priſoner. My Lord, I deſire this Man may be heard.

Mr. *Bulkley.* This Gentleman, on the 7th of *November*, in the Forenoon, ſtopped at the Porch of my Door, and gave me Orders to wait upon him, upon the Buſineſs of my Calling.

L. C. J. Holt. What is your Calling?

Mr. *Bulkley.* A Barber. He told me that he was married. I aſked him, What, are you married? Yes, ſaid he, I am; and here's my Wife; and the Gentlewoman ſhe ſaid ſo too. At that, I wiſhed them much Joy and Happineſs. The young Woman ſaid, She did not queſtion it, ſince what ſhe had done, was with her own voluntary Conſent.

Mr. Hudſon *called.*

Priſoner. What did you hear my Wife ſay?

Mr. *Hudſon.* When Mr. *Swendſen*, with his Wife, came to our Houſe, (my Lord) he bid her take Mr. *Blake* by the Hand, and aſk him how he does. She ſaid, Yes, my Dear. She went into the Houſe and took my Maſter by the Hand, aſk'd him how he did. Mr. *Swendſen* ſaid, This is my dear Wife; and ſhe ſaid, This is my dear Huſband, and took him about the Neck and kiſſed him.

L. C. J. Holt. What Trade are you?

Mr. *Hudſon.* An Upholſterer; Mr. *Blake* is my Maſter.

L. C. J. Holt. You ſay the young Woman took Mr. *Blake* by the Hand, and ſaid, How do you do? Did ſhe ever ſee Mr. *Blake* before?

Mr. *Hudſon.* Not that I know of. But Mr. *Swendſen* ſaid, This is my dear Wife.

Mr. *Soll. Gen.* When was this?——Mr. *Hudſon.* On *Saturday* Morning.

Mr. *Soll. Gen.* If they lay there over-night, what Neceſſity was there for *Swendſen* to tell Mr. *Blake*, That was his dear Wife?

Mr. *Hudſon.* He did not ſay ſo to him, but to his Wife; and ſhe kiſſed him.

Mr. *Mountague.* What need he to tell Mr. *Blake* that was his Wife, when he knew it before?

Mr. *Hudſon.* Why may not I, if I had a Wife, come to her and ſay, *My dear Wife?*

Mr. *Soll. Gen.* Mr. *Blake*, Pray was Mrs. *Rawlins* at your Houſe before then?——Mr. *Blake.* Never, as I know of.

Mr. Green *called.*

Priſoner. I deſire that this Man be aſked what he heard my Wife ſay before the Recorder?

L. C. J. Holt. What did you hear the young Woman ſay before the Recorder?

Mr. *Green.* She owned that ſhe was married to the Gentleman, by her own Conſent, without any Force or Compulſion.

L. C. J. Holt. Did ſhe marry him willingly?

Mr. *Green.* Yes, my Lord, ſhe ſaid ſo.

Priſoner. My Lord, I deſire he may tell how ſhe behaved herſelf there?

L. C. J. Holt. What ſaid ſhe?

Mr. *Green.* She ſaid ſhe was married to that Gentleman without Force or Compulſion.

Counſel. Did ſhe ſay nothing elſe?

Mr. *Green.* This is all that I remember.

Mr. *Soll. Gen.* Did the Gentlewoman continue in that Tone all the Time ſhe was at the Recorder's?—Mr. *Green.* No, I believe ſhe did not.

L. C. J. Holt. Was the Recorder by then?

Mr. *Green.* Yes, the Recorder was by. Then he aſked her, whether ſhe was married by her own Conſent?

L. C. J. Holt. What did the Recorder ſay more?

Mr. *Green.* He ſaid, he was afraid ſhe was drawn in by this Man, who he feared was a Spark and Bully of the Town.

Counſel. Pray, when ſhe ſaid ſhe was married by her own Conſent, had Mr. *Swendſen* her Hand in his?——Mr. *Green.* Yes.

L. C. J. Holt. Then I aſk you whether *Swendſen* was afterwards withdrawn?

Mr. *Green.* He was ſo.

L. C. J. Holt. And did you hear what ſhe ſaid after that?

Mr. *Green.* No, I did not, I was thruſt out.

L. C. J. Holt. Where do you live?

Mr. *Green.* I live in *Carter-Lane.* I belong to the General Poſt-Office.

L. C. J. Holt. How came you to be acquainted with this Matter?

Mr. *Green.* My Lord, I came into *Red-Lyon-Street* accidentally, two Doors off Mr. *Swendſen*'s: I went to Mr. *Swendſen*'s Lodgings, and aſked how he did? I was told he was very well, that he had married a Fortune, and was in Bed with his Lady.

L. C. J. Holt. What was the Man's Name?

Mr. *Green.* His Name was *Blake*, my Lord; it was a pure accidental Thing to me.

L. C. J. Holt. How long have you known Mr. *Swendſen?*

Mr. *Green.* I have known him ſeveral Years.

L. C. J. Holt. Have you dealt with him?

Mr. *Green.* Yes, I have; and I believe here are many preſent, can give a better Account of him than I can.

Priſoner. My Lord, I deſire he may be aſked, what my Wife ſaid to the *Recorder?*

Mr. *Green.* My Lord, upon Examination ſhe ſeemed to be much ſurprized upon that Occaſion, but what ſhe did, ſhe ſaid was voluntarily; and that as he was her Huſband, ſo ſhe would own him; and when ſhe was aſked, whether ſhe was in Drink? She ſaid ſhe was never given to drinking.

Priſoner. And as I have been repreſented by ſome as a Bully of the Town, I deſire I may have my Friends heard, as to my Life and Converſation.

One of his Friends called.

L. C. J. Holt. Where do you live?

Anſw. At *Ratcliff*; my Education has been at Sea. I have been acquainted with Mr. *Swendſen* two Years, and have found him to be a very honeſt and ingenuous Man.

L. C. J. Holt. Had you any Dealings with him?

Anſw. Yes, my Lord, I have dealt with him for 3000*l.* and better?

L. C. J. Holt. In what manner did you deal with him?

Anſw. I conſigned my Effects to him.

L. C. J. Holt. From whence?——*Anſw.* From *England* to *Norway.*

L. C. J. Holt. How could they be conſigned to him when he was here?

Anſw. He was not here then, but at *Norway.* In *May* 1701. he came over, and had a Ship of mine, called the *Swan*, and ſold her for my Account.

Coun. Did you apprehend that he traded for himſelf, or as a Factor?

Anſw. He traded for himſelf; and I can ſhew you the Bills of Lading that will ſhew they were for his Account: And I believe all that knew him, will give him the Character of an honeſt Man.

Mr. Evans *called.*

L. C. J. Holt. What do you know of Mr. *Swendſen.*

Mr. *Evans.* I was in *Norway*, and found then that he lived in very good Repute and Credit there among all People, the beſt of Trading People; and I found he had a familiar Converſe with them: I was with him at the *Generance* and *Admirance*, which are the chief Offices in the Place: I was by his Letter of Recommendation credited by the moſt eminent Merchants of *Norway.* At that Time he had ſeveral Ships conſigned to him for Lading, at a Time when Goods were difficult to be gotten, and he did load them.

Another Witneſs called.

L. C. J. Holt. What do you know of Mr. *Swendſen?*

Anſw. My Lord, I was born in *Norway*, where this Gentleman lived for ſome Years, and was eſteemed worth 10,000 Dollars. I have had no great Dealings with him; but when he wanted Money, when Money was ſhort with him, I lent him ſome, which he paid again very honeſtly.

Priſoner. Call *John Shorey.*

Shorey. The Knowledge I have had of him was cauſed by his buying ſeveral Parcels of Goods of me, and order'd them to be ſhipp'd, and paid me honeſtly for them. [*Another Witneſs called.*]

L. C. J. Holt. What ſay you?

Anſw. I have known this Gentleman about two Years: The firſt of my Knowledge was, I had a Bill of Exchange of 50*l.* drawn upon him, which he paid very honeſtly. I never heard any otherwiſe, but that he was a very honeſt, juſt Man.

Mr. *Soll. Gen.* I would obſerve to your Lordſhip, that the principal Part of our Evidence the Priſoner hath given no Anſwer to; that is, the Force: If the taking and detaining Mrs. *Rawlins* was by Force, as ſeveral of our Witneſſes have teſtified: And if ſhe married while ſhe was under that Force, no ſubſequent Act or Conſent of hers can leſſen the Offence, if the Jury could give Credit to the Priſoner's Evidence, and believe her Conſent was real. The Gentlewoman did herſelf confeſs, that after ſhe had been hurried from Tavern to Tavern, ſhe did declare he was her Huſband, and that ſhe conſented to the Marriage; but what afterwards happen'd, plainly ſhews that it was through Fear and nothing elſe: Had ſhe really conſented to the Marriage, why was ſhe carried to the Juſtice of Peace to take an Oath, that ſhe was married by her own voluntary Conſent? Whilſt the Priſoner held her by the Hand before the Recorder, ſhe confeſſed that ſhe married with her free Conſent: As ſoon as the Priſoner was withdrawn, ſhe burſt out into a Flood of Tears, and confeſſed that ſhe was married by Conſtraint. My Lord, there is but one thing more I would anſwer, and that is the Licence which was given in Evidence to give Colour to this Marriage; but this plainly ſhews, that this whole Management was the Priſoner's contriving. The Licence bears Date three Weeks before the Time of the Marriage, which ſhews how long they had waited for an Opportunity to accompliſh this Deſign. When the Priſoner took out this Licence he ſwore her Age to be 25, and his to be 35.

My Lord, now we will examine ſome Witneſſes to theſe Facts, and ſo we'll have done. She was carried to Juſtice *Baber* to take a voluntary Oath. If your Lordſhip pleaſes, he may again be called: We will examine him upon Oath. [*Juſtice* Baber *called.*]

Mr. *Soll. Gen.* Pray, Sir, give an Account of the whole Matter.

J. Baber. They came to me about 8 or 9 a-Clock on *Friday* Night the 6th of this Month; and the Priſoner here told me the Purport of his coming, that it was a light and ſhort Buſineſs; and pointing to the Gentlewoman, ſaid, that ſhe came to take a voluntary Oath, that ſhe was married to him with her own Conſent; ſhe ſaid ſhe was married, and that with her Conſent. I told her, I had nothing to do with confirming Marriages. He told me, amongſt other Things, that he had a Certificate. You know that beſt, ſaid I; a Marriage is a Marriage, and I have nothing to do with it.

Mr. *Soll. Gen.* But when ſhe told you that ſhe was married, what Condition was ſhe in?——*J. Baker.* She was in a very great Diſorder.

Another Witneſs.

Mr. *Soll. Gen.* Was you before the Recorder?

Witneſs. Yes, on *Saturday* the 7th of this *November.* While Mr. *Swendſen* held her by the Hand ſhe owned the Marriage; but when he was withdrawn ſhe threw herſelf upon me, and deſired me to ſtand by her, or ſhe was undone.

Mr. *Soll. Gen.* What Account did ſhe give when Mr. *Swendſen* was withdrawn?

Anſw. She ſpoke much to the ſame Purpoſe as ſhe has done here; and that what ſhe had done was all by Force, and out of Fear.

Mr. Taylor *call'd and ſworn.*

Mr. *Soll. Gen.* Do you know any Oath the Party took, in the taking of this Licence?

Mr. *Taylor.* Yes, my Lord.

Mr. *Soll. Gen.* How old did he ſay the Gentlewoman was?

Mr. *Taylor.* He ſaid that ſhe was 25, and that he was 35 Years old.

Mr. *Soll. Gen.* Are you ſure he took the Oath?

Mr. *Taylor.* Yes, my Lord, there is the Surrogate's Hand, and the Priſoner's own Hand to it.

Mr. *Soll. Gen.* Were you preſent?

Mr. *Taylor.* No, I was not, but my Clerk was.

Mr. *Serj. Darnel.* My Lord, there's his Hand to it, and we can prove his Hand.

Mr. *Soll. Gen.* My Lord, it is an Act of the Court.

Coun. My Lord, I hope that may be of the ſame Force as a Depoſition in *Chancery*.

L. C. J. Holt. It cannot be read as Evidence.—Mr. *Taylor*, did he ever take a Licence at any other Time?

Mr. *Taylor.* No, my Lord.

L. C. J. Holt. Was the Licence dated that Day he took it?

Mr. *Taylor.* It is always dated the ſame Day it is taken.

Mr. *Mountague.* My Lord, I deſire Mrs. *Buſby* may be aſked, Whether ſhe talked at the Picture-Drawer's about any Thing of Love, or no? Mrs. *Buſby*, the Queſtion is, Whether or no you talked any Thing about Love at the Picture-Drawer's?

Mrs. *Buſby.* My Lord, Mrs. *Baynton* deſired me to go with her to the Picture-Drawer's to ſee her Picture drawn; we were talking by the Fireſide that Mrs. *Rawlins* had ſpoken by way of Diſcouragement to Mr. *Pugh*; Mrs. *Baynton* ſaid that ſhe thought her Brother would make her a very good Huſband, and was able to make her a conſiderable Jointure here in *England*. My Lord, Mr. *Pugh* came, by the Conſent of Friends, on honourable Terms.

L. C. J. Holt. Gentlemen of the Jury, This Priſoner is indicted for Felony, in taking away by Force Mrs. *Pleaſant Rawlins*, and marrying of her; this is Felony by the Statute of the Third of *Henry* VII. which enacts, "That if any Perſon ſhall take any Woman that hath any Sub-"ſtance in Goods or Land, againſt her Conſent, and marry or defile "her, he and his Procurers and Receivers, ſhall be adjudged to be Felons."

Now it hath been proved to you, that this young Woman had a Perſonal Eſtate left her by her Father, to the Value of 2000*l.* and had another Eſtate in Land, to the Value of 20*l.* *per Annum.* If any one ſhall take her away by Force, and marry her, he is guilty of Felony by that Statute. You have heard that ſhe was placed by her Guardian, under the Tuition of Mrs. *Buſby*, who took a Lodging about 3 Years laſt paſt, at one Mrs. *Nightingale*'s, in *Stretton-Grounds*, *Weſtminſter*; and boarded with her, who took Boarders into her Houſe; and if any Friend of her Boarders came to Dinner there, ſhe receiv'd 12*d.* *per* Head: About 3 Weeks or a Month before *Michaelmas* laſt paſt, there came one Mrs. *St. John*, and recommended to her a Lodger of her Acquaintance, and deſired that ſhe might board with her as others did, and ſaid ſhe was a Widow that came out of the Country about a Suit of Law, and repreſented her to be a ſober Perſon. Mrs. *Nightingale* refuſed her at that Time, and heard no more of her till about 3 Weeks after; then ſhe, Mrs. *St. John*, returns, and prevails with Mrs. *Nightingale* to take her Acquaintance into her Houſe. Mrs. *Baynton* that is mentioned in the Indictment, was the Perſon deſigned by Mrs. *St. John*; and ſhe came to Mrs. *Nightingale*, and deſired to be with her as other Boarders were; ſhe pretended to be of very good Quality, ſo ſhe was taken into the Houſe; her Carriage and Demeanor there were very civil, and ſhe pretended ſhe had a Brother, that would come to ſee her: The Priſoner at the Bar was the Perſon that came, and ſhe call'd him Brother, and owned him for ſuch; he dined there ſeveral Times with the reſt of the Boarders; he ſaid, He had an Intereſt in Shipping, and invited all the Family to go on Board a Ship. They accepted of his Invitation, and were very well entertained, but ſuſpected nothing; but at length it was obſerved there was too great a Familiarity between Mrs. *Baynton* and the Priſoner, more than was common betwixt ſo near Relations; *they afterwards perceived that Mrs.* Baynton *was inclinable to drink, which cauſed ſome Jealouſy of her in the Family*, and ſhe perceiving the Strangeneſs of the Family, gave Mrs. *Nightingale* notice that ſhe ſhould go in a ſhort Time, for that ſhe had finiſhed her Buſineſs at Law, and that the Town was chargeable, and ſhe intended to be gone at ſuch a Time. When that Time was expired, ſhe pretended to Mrs. *Nightingale* that there was another Thing had happen'd that would detain her a Week longer: She conſented that ſhe ſhould ſtay. Now you may obſerve by the Evidence, that it was uſual for Mrs. *Buſby* and Mrs. *Rawlins* to go to *Oxendon* Chapel on *Friday*; which Mrs. *Baynton* very well knew, and pretends that ſhe was to go in a Coach that way into *Golden-Square*, and invites them to go in her Coach, and promiſed to ſet them down by the Chapel: They accepting the Invitation, and being come near the Place, the Coach was ſtopped by ſeveral Men. *Hartwell* the Bailiff opened the Door, got into the Coach, ſaid it was an Arreſt. At which Mrs. *Buſby* was very much concerned, and thought this Arreſt was for Mrs. *Baynton*, and that ſhe and Mrs. *Rawlins* might go out, for they were not concerned in the Matter. At laſt they perceived it was of themſelves; and then Mrs. *Baynton* pretended to be concerned for them: And when the People in the Street aſked what was the Cauſe of the Diſorder: the Bailiffs ſaid, that they were Cheats and Trading-Women that owed People Money, and now they are Arreſted for it. Under this pretended Arreſt, they were carried to the *Star* and *Garter*-Tavern in *Drury-Lane*, and put into a Back-Room. They were in a great Conſternation at their being Arreſted, being not conſcious to themſelves that they owed Money to any Perſon. One came to Mrs. *Buſby*, and ſaid, See that your Name be right, that you are rightly Arreſted. Another of the Bailiffs, by Force, carry'd away Mrs. *Rawlins*, ſaying, ſhe was his Priſoner; and it was pretended, that one Bailiff had a Proceſs to carry the one to *Newgate*, and another had another Proceſs to take the other to the *Marſhalſea*. Mrs. *Rawlins* was carried to *Hartwell*'s Houſe. When ſhe was there, Mrs. *Baynton* pretended, that coming by accidentally, ſhe heard her Voice, and came in, and ſeem'd to pity her, and ſaid, Madam, will none of your Friends help you? She propoſes her Brother to be Bail, and *Holt* he was to be the other. Under that Pretence of being bailed, they carry her to the *Vine*-Tavern in *Holbourn*, where *Hartwell* pretended to be very willing to take his Bail, and ſaid, he knew *Holt*, but queſtioned the Priſoner. It will appear to you from this Evidence, and that which follows, of this Force and Contrivance, that their Deſign was to bring about the Marriage; for when the Bail was pretended to be refuſed, Mrs. *Baynton* propoſes a Marriage between the Priſoner and Mrs. *Rawlins*, as the beſt way to make an end of this troubleſome Buſineſs: She would have the Ring from her Finger, to get a Wedding-Ring made by it. Says Mrs. *Rawlins*, I have no mind to be married: Says Mrs. *Baynton*, it's beſt for you to be married; and threatened Mrs. *Rawlins*, that if ſhe did not marry, ſhe ſhould be committed to *Newgate*. There was a Parſon and Clerk ready, who were called to do the Office. The young Woman being under this Terror, the Office of Matrimony was performed; and ſhe was forthwith conveyed to one *Blake*'s, and by Conſtraint there was put to Bed in the Day-time. You muſt go to Bed, ſays Mrs. *Baynton*: I will not go, ſays the young Woman: And ſome Violence was uſed to force her Cloaths off, and ſhe was put to Bed, where ſhe lay about an Hour or Two, and thereby the Marriage was ſuppoſed to be conſummated.

The Priſoner, on the next Day, being diſcourſed with about this Matter, and aſked, whether he was Mrs. *Baynton*'s Brother? No indeed, ſays he; I made uſe of her as my Tool; ſhe hath done my Job for me; I'll make her Satisfaction for it, not To-morrow, being *Sunday*, but on *Monday* I will do it, and never ſee her Face more. After all this Evidence, the Priſoner doth inſiſt upon his Innocence, becauſe he was not preſent at the Arreſt; and hath produced ſeveral Witneſſes to prove, that this young Woman was very well ſatisfy'd with the Marriage; and that Reverend Divine the Parſon aſked her, whether ſhe was willing to be married to the Gentleman? And ſhe ſaid ſhe was willing. And then Mr. *Blake*'s Maid and Daughter ſaid, that ſhe deſired them to pluck off her Shoes and Stockings, undreſs her, and put her to Bed. And that very Night the Priſoner and Mrs. *Rawlins* went to Mr. *Baber*'s, a Juſtice of the Peace, at *York-Buildings*, to take a voluntary Oath before him, that ſhe married this Priſoner by her own free Conſent. Mr. *Baber* would not Adminiſter the Oath. And that afterward they Bedded together that Night, and the next Day they went abroad together in a Coach; and meeting his Barber, the Priſoner bids him come to him to ſhave him, and ſays to him, Here is my Wife; ſhe ſaid likewiſe, that he was her Huſband: He wiſhed her much Joy; ſhe reply'd, that ſhe did not queſtion it, ſeeing that what ſhe had done was by her free and full Conſent; and declared, ſhe was well ſatisfied with what was done. The next Proof is of their Return to *Blake*'s Houſe, where they firſt lodged; the Priſoner *Swendſen* orders his Wife to take Mr. *Blake* by the Hand, and aſk him how he did? Which ſhe did, and expreſſed to him how well ſhe was pleaſed with the Marriage, ſaying, This is my dear Huſband, and kiſſed him. His Witneſs tells you, on *Friday* Night a Conſtable comes with the *Recorder*'s Warrant, to apprehend the Perſons ſuppoſed to have committed this Force; and diſcourſing with her, ſhe expreſſed herſelf very well ſatisfied with her Marriage, ſo that they deſiſted from ſerving the Warrant. Then he relies upon his Reputation, as being a Man of great Credit, and having had Goods conſigned to him, and paid Bills of *Exchange*; and produces Witneſſes to prove, that he was a Trader in *Norway*, where he lived, and in good Credit, remitted Money, drew and paid Bills of *Exchange*, freighted Ships, *&c.* and was in very good Eſteem by the chiefeſt in thoſe Parts. Then he called other Witneſſes, to let you know how the young Woman carried it at the *Recorder*'s; that there ſhe ſaid, that ſhe was married by her own free Conſent, *&c.* Gentlemen, this is the Sum of the Evidence that he hath given. To which it is replied, That as to what was ſaid before the *Recorder*, that is true; ſo long as he had her Hand in his, ſhe declared her Conſent to, and Satisfaction in the Marriage; but when he was withdrawn, and ſhe was examined by herſelf, ſhe declared her Marriage was by Violence and Force, that ſhe did it out of Fear, *&c.* Then they tell you again of a Licence that was taken out by him, and produced by him, but bore Date almoſt Three Weeks before this Marriage was accompliſh'd: It was obſerv'd alſo upon the Licence, that this Licence was to marry Mrs. *Rawlins* of the Pariſh of St. *Mary White Chapel*, when ſhe lived not there.

This is the Sum of the Evidence on both Sides, and theſe Obſervations are to be made from it:

I. You are to know, That if ſhe be taken away by Force, and afterwards married, tho' by her Conſent, yet is he guilty of Felony: For it is the taking away by Force that makes the Crime, if there be a Marriage, tho' by her Conſent.

II. In the next place it is to be obſerved, That ſhe was taken away by Force, and a Stratagem was uſed to give an Opportunity thereunto, and the Arreſt was but a Colour.

III. You may conſider upon the Evidence, how far the Priſoner was concerned in the firſt Force: It is true, he was not at the Arreſt, and did not appear until ſhe was brought to *Hartwell*'s Houſe; and under that Pretence of Bailing her, ſhe was carried to the *Vine*-Tavern, where there was a Parſon ready, and the Marriage was had in ſuch manner as you have heard. Now, conſidering theſe Matters, it is left to you to determine, whether the Marriage was not the End of the Arreſt? And if ſo, how it would be poſſible for ſuch a Force to be committed to effect the Priſoner's Deſign, and he not be privy to it?

IV. If it can be imagined, that he was not privy to the colourable Arreſt, yet ſhe was under a Force when he came to her at *Hartwell*'s Houſe; and from thence ſhe was carried by Force unto the *Vine* Tavern, where ſhe was married. That is a forceable taking by him at *Hartwell*'s Houſe; and tho' when ſhe was at the *Vine* Tavern ſhe did expreſs her Conſent to be married, yet it appears even then ſhe was under a Force, and had no Power to help herſelf. Her Marriage was by Force, when ſhe was carried to *Blake*'s, and put to Bed; all this was Force: Nay, when ſhe was carry'd to the Juſtice of Peace, even then ſhe was under a Force; and all that ſhe ſaid was not freely, but out of Fear: Such a Force would avoid any Bond, for ſhe was under Impriſonment. But however, if the firſt taking was by Force, and ſhe had conſented to the Marriage, the Offence is the ſame; it is Felony.

And as to his Reputation, it is poſſible he might have been an honeſt Man: A Man is not born a Knave, there muſt be Time to make him ſo, nor is he preſently diſcovered after he becomes one. A Man may be reputed an able Man this Year, and yet be a Beggar the next; It is a Misfortune that happens to many Men, and his former Reputation will ſignify nothing to him upon this Occaſion. If you be ſatisfied upon the Evidence, that he is guilty of this Crime, you are to find him ſo; if not, you ought to acquit him.

Mr. *Swendſen.* I deſire, my Lord, that my Wife may be aſked, Whether ſhe did not, upon her Knees, ſwear, ſhe went away from me as good a Maid as ſhe came to me?

L. C. J. Holt. That is a Queſtion need not be aſk'd, ſince the Marriage is ſo plainly proved, which is ſufficient to bring you within the Statute.

[*The Jury deſire the Act may be read.*]

L. C. J. Holt. Let it be read. [*It was ſo.*]

The Jury aſk Mrs. *Rawlins* how old ſhe is?

Mrs. *Rawlins.* Eighteen at *Candlemas.*

L. C. J. Holt. Would you aſk any Queſtions upon this Act?

Jury. No, my Lord.

[*Then the Jury went out, and after three Hours ſtay, brought him in Guilty. He was ſentenced afterwards along with* Sarah Baynton.]

CLXXVI. *The Trials of* SARAH BAYNTON, JOHN HARTWELL, *and* JOHN SPURR, at the Queen's Bench, *for forceably taking away Mrs.* Pleaſant Rawlins, *and procuring her to be married to* Haagen Swendſen, Nov. 25, 1702. Mich. 1 Ann.

A Motion was made by the Queen's Counſel, for putting off this Trial to *Friday, November*, 27th, but his Lordſhip would not grant it, but ordered it to begin preſently.

The Priſoners were called to the Bar, and a Proclamation made for all concern'd to attend.

The Jury were ſworn, whoſe Names are, *viz.*

Robert Lympany, Gent. *Charles Murry*, Gent. *Thomas Elton*, Gent.
John Outing, Gent. *John Cannon*, Gent. *Charles Longland*, Gent.
Francis Parr, Gent. *Giles Ridle*, Gent. *Simon Smith*, Gent.
Richard Bealing, Gent. *Robert Legg*, Gent. *Henry Lobb*, Gent.

Clerk of the Ar. SArah Baynton, *John Hartwell*, and *John Spurr*, hold up your Hands. [*Which they did.*] Gentlemen of the Jury, look upon the Priſoners, and hear their Charge. *Then the Indictment was read as in the firſt Trial: Upon which they were Arraigned, and plead not Guilty.*

* Mr. *Soll. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: The Priſoners at the Bar, together with one *Swendſen* ſtand indicted before you for a very great Offence; *Swendſen* (for whoſe Sake this Felony was committed, for which the Priſoners are now to anſwer) has already had his Trial: The Three Priſoners at the Bar were his Accomplices. The Law, to ſhew how odious ſuch Offences are, and to deter all Perſons whatſoever from committing them, has made no Diſtinction between the Principal and Acceſſaries: The Abettors, Procurers, or Contrivers, are declared and enacted to be, and to be judged as principal Felons. The Gentlewoman mentioned in the Indictment, Mrs. *Pleaſant Rawlins*, was the Daughter of Mr. *William Rawlins*, who left her a good Fortune: Her Grandfather likewiſe left her an Eſtate of Inheritance. Her Father being dead, her Guardian Mr. *Buſby*, placed her under the Care of his Siſter, who boarded with her at one Mrs. *Nightingale*'s. Mrs. *Baynton* (one of the Priſoners at the Bar) and Mr. *Swendſen* lodged at Mr. *Blake*'s, where they projected what was afterwards put in practice. Lodgings were to be taken for Mrs. *Baynton*, at Mrs. *Nightingale*'s. In order thereunto, 'twas pretended, That ſhe was a Country Gentlewoman who came to Town about a Law-Suit, and being very tender of her Reputation, would board in a ſober Family. By theſe inſinuations, Lodgings were taken for her at Mrs. *Nightingale*'s, where in a little Time ſhe got acquainted with the Family; and in Converſation, as often as 'twas poſſible, would take ſome Opportunity to diſcourſe of her own Affairs, particularly of her Relations, of her dear Brother *Swendſen*, who was never mention'd without many Commendations. Mr. *Swendſen*, tho' no ways related to her, often viſited her under that Character: But Mrs. *Baynton* having lived a very ſcandalous lewd Life in Town, could not long continue under the Diſguiſe ſhe came in to Mrs. *Nightingale*'s. Intimation was given to the Family of her true Character, and Notice thereof was ſoon given to her by her Maid. Whereupon ſhe reſolved to quit her Lodging; and being paſt all Hopes of betraying Mrs. *Rawlins*, and wheedling her into her Ruin with her Conſent, ſhe enters upon another Project, which was to bring about the Marriage by Force and Violence.

* *Sir Simon Harcourt.*

In this Contrivance, you will find every one of the Priſoners at the Bar had their ſeveral Parts to act; *Hartwell* was to get a Writ, Mrs. *Baynton*, who could not be concerned in the execution of the Writ, was to contrive when and in what manner it might be executed: *Hartwell* ſues forth the Writ, and Mrs. *Baynton* appoints the Time. She knowing it to be the uſual Cuſtom for Mrs. *Buſby* and Mrs. *Rawlins* to go to Church on *Friday* Mornings, ſhe prepares a Coach, and proffers her Service to ſet them down at the Chapel, and prevail'd with them to come into the Coach. As they were going toward the Chapel, *Hartwell* the Bailiff ſtops the Coach, and gets into it; and *Spurr* conducts the Coach to a Houſe they had prepared for their Purpoſe. When *Hartwell* got into the Coach, Mrs. *Rawlins* and Mrs. *Buſby*, not imagining themſelves to be concerned, deſired him to let them go out; No, ſays *Hartwell* to Mrs. *Buſby*, it is you that I am concerned with; let you and I have a few Words together, and all Things will be ſet to rights. But Mrs. *Buſby* refuſing to have any Diſcourſe with him, away they were all carry'd (Mrs. *Buſby*, Mrs. *Rawlins*, and Mrs. *Baynton*) to the *Star* and *Garter* Tavern in *Drury-Lane.* While Mrs. *Buſby* and Mrs. *Rawlins* were kept together, they had no Hopes of making Mrs. *Rawlins* marry; and therefore *Hartwell* by Force takes away Mrs. *Rawlins*, and carries her to his own Houſe: *Spurr*, who had no Proceſs whatſoever againſt Mrs. *Buſby*, yet keeps her Priſoner at the *Star* and *Garter*. Mrs. *Baynton* ſeeing her Friends uſed in this manner, pretended a very great Concern, and out of Kindneſs went to find their Friends to bail them. Mrs. *Rawlins* had not been long at *Hartwell*'s before Mrs. *Baynton* came into the Houſe to her, in a great Surprize to find her there, telling her ſhe fancied, as ſhe paſſed by *Hartwell*'s Houſe, ſhe heard Mrs. *Rawlins*'s Name mentioned: Immediately ſhe gave her a very melancholy Account, how ſhe had been in Search for her Friends; but none could be found, and to Gaol ſhe muſt go, except Bail could be got. At laſt ſhe thought of her Brother, ſhe was ſure he would be her Bail; and having placed him hard by, ſhe brings him to *Hartwell*'s. When he comes there, all Three of them (*Hartwell*, Mrs. *Baynton*, and Mr. *Swendſen*) under Pretence of ſetting Mrs. *Rawlins* at Liberty, take her to another Tavern, where ſhe was plainly told, ſhe muſt marry Mr. *Swendſen*, or go to *Newgate*, and undergo the Miſeries of a Gaol: If ſhe married, then all ſhould be well. The Circumſtances of the Taking, Detaining, and Marrying this Gentlewoman at that Tavern, and of the ſeveral Facts I have mentioned, our Witneſſes will prove to you. [*Mr.* Buſby *ſworn.*]

Mr. Serj. *Darnel.* I pray give his Lordſhip an Account of this young Gentlewoman, Mrs. *Pleaſant Hawlins.*

Mr. *Buſby.* My Lord, her Father, Mr. *William Rawlins*, was a Man of very good Eſtate: He ordered his Eſtate to be ſold to pay his Debts and Legacies, and the Overplus was given to his Daughter, this young Gentlewoman, which was about 2000*l.* Her Grandfather likewiſe by Will left her an Eſtate of 20*l per Annum.* [*Mrs.* Nightingale *ſworn.*]

Mr. Serj. *Darnel.* Mrs. *Nightingale*, pray give an Account to his Lordſhip, how long this Gentlewoman lived in your Houſe.

Mrs. *Nightingale.* My Lord, ſhe hath lived with me about three Years; and ſince Mrs. *Buſby* and Mrs. *Rawlins* came to live with me, my Huſband died: I am likewiſe a Widow too; we all lived together. Mrs. *St. John*, about nine Weeks before this Fact, came to me, and aſked me whether I took Boarders? I ſaid, No, I would take none without it were thoſe Ladies that boarded with me before. She told me, this was a Country Gentlewoman that was coming to Town about a Suit of Law; ſhe was a very good Woman, and would be near a Church. She told me, that ſhe was a-kin to the Lady *Anne Baynton*, and a great deal more that I cannot remember: But I told her, I did not deſign to take Boarders. She came about three Weeks after, and aſked me, whether I was in the ſame Mind? She told me the Gentlewoman was come to Town: She told me ſhe was an extraordinary good Woman, and that her Huſband was acquainted with the Family, and gave her an extraordinary Character. She ſaid ſhe would not have parted with her herſelf, but that ſhe did not take in Boarders, and therefore thought it not worth her while to take her in.

L. C. J. Holt. Did ſhe ſay, ſhe was her Huſband's Acquaintance?

Mrs. *Nightingale.* She told me, That her Huſband was very well acquainted with the Family. She told me, Mrs. *Baynton* came to Town on *Saturday* Night, and was very weary with her Journey. She ſaid to me, Madam, if you pleaſe ſhe ſhall come to you, and recommend herſelf. At length ſhe came, and repeated the ſame Things, That ſhe was a Country Gentlewoman, and came up about a Suit of Law, *&c.* She ſaid, Madam, I underſtand you are very nice in taking of Boarders, which makes me the willinger to come to board with you. I took her to be a very ſober Woman; and ſeeing it was but for a little while, I agreed with her. She ſaid ſhe would come on *Wedneſday:* The Reaſon ſhe told me, that ſhe came to Town no ſooner, was, becauſe her Maid was ſick of a Fever. Mrs. *St. John* recommended to her a Neighbour's Child, which was a pretty civil Girl; ſhe hired her, which made me ſtill like her the better. On *Wedneſday*, Mrs. *Baynton* and her Servant came: We were all Widows, and became very familiar in a ſhort Time; for ſhe is a Perſon of a great deal of Senſe, if it pleaſed God to give her Grace. She invited us on *Michaelmas-Day*, to go on Board of a *Norway* Ship; ſhe had a Friend there. One of my Friends aſked, Whether ſhe had any Intereſt in it? She ſaid, Yes, ſhe had. She likewiſe ſaid ſhe had a dear Brother come to Town, an extraordinary Chriſtian, that had married her Siſter: They ſtrived, ſhe ſaid, who ſhould outdo one another in Affections; and when her Siſter was upon her Death-bed, ſhe recommended Mrs. *Baynton* to be both his Wife and Siſter. Mrs. *Baynton* ſaid, My dear Brother will come To-morrow to ſee me. Accordingly he came, with two Gentlewomen with him, that we never ſaw before nor ſince: Then ſhe ſent for a Bottle of Claret, and deſired us to drink; which we did, with them. Then ſhe took Occaſion to praiſe the Family ſhe was in: She invited her Brother to live in the ſame Street near to her, ſeeing he had but a pingling Stomach; and ſaid, She believed he would like their Victuals. He declined that, ſaying, it was out of the way for his Buſineſs, being obliged to be every Day at *'Change.* Then ſhe aſked me, what I would have a Meal, if he ſhould come at any Time to ſee her? I told her 12*d.* for a Dinner; for ſo I had of the young Ladies Friends that came to ſee them.

Mr. Serj. *Darnel.* Pray, how did the Country Gentlewoman behave herſelf?

Mrs. *Nightingale.* She ſeem'd to be very modeſt; but ſhew'd abundance of Love to her Brother. —— Mr. Serj. *Darnel.* In her Behaviour?

Mrs. *Nightingale.* Very well, below Stairs; but the Maid ſaid ſhe would ſwear above.——*Counſel.* How oft did he dine there?

Mrs. *Nightingale.* Nine or ten Times.

Counſel. You ſay he dined nine or ten Times at your Houſe, did you diſcern that there was any thing of Love betwixt him and Mrs. *Rawlins?*

Mrs. *Nightingale.* Nobody in the Houſe diſcerned that there was.

Mr. Serj. *Darnel.* Were they obſerved at any Time to be alone?

Mrs. *Nightingale.* No, Sir, they were never alone that I know of.

Mr. Serj. *Darnel.* Had you any miſtruſt of Mrs. *Baynton?*

Mrs. *Nightingale.* Yes, Sir; ſhe came twice Home elevated with Drink, and we began to ſuſpect there was ſomething between her and her Brother that was not uſual. My Lord, her Servant took Notice, that we carried it with Strangeneſs towards her Miſtreſs; inſomuch that ſhe ſaid to her Miſtreſs, Do you not diſcern the Family to be ſtrange? Ay, *Betty*, (ſaid ſhe) but I do not care; if they rouze me, they'll find me like a Lion: or to that Effect.

Mr. *Soll. Gen.* Did Mrs. *Baynton* diſcern that you knew that ſhe ſaid ſo?

Mrs. *Nightingale.* No, Sir.

Mr. *Soll. Gen.* Did you expreſs any Diſlike of her?

Mrs. *Nightingale.* No, Sir, not to her; tho' I diſcovered my Diſlike of her to ſeveral of the Family, telling them I deſigned to give her Warning when her Month was up. But before that, ſhe came to me and paid me, as her Cuſtom was, for a Week. She told me, ſhe had received a Letter from her Friends, That the Truſtees had made up the Buſineſs; and the City being chargeable, ſhe deſigned to return into the Country. I went to my Mother in another Room, and expreſſed to her, with a great deal of Joy, the Warning ſhe had given me. When her Time was expired, ſhe came to me again, and ſaid, There was a Fellow would cheat her in Town, and that ſhe muſt take out a Statute of Bankrupt againſt him, which would detain her a Week longer; and upon her Deſire, becauſe I would part friendly, I conſented to her ſtaying a Week longer.

L. C. J. Holt, ſpeaking to the Priſoner Baynton, *ſaid,* She might aſk Queſtions.

Mrs. *Baynton.* Yes, my Lord. Mrs. *Nightingale,* when I went into your Houſe, there was no ſuch Character of me as you ſpeak of; but you invited me, and I ſaid, That if I ſhould be troubleſome, I would not come.

L. C. J. Holt. She liked you well by the Character that was given of you by Mrs. *St. John*; but afterwards ſhe had no ſuch good Thoughts of you.

Mrs. *Baynton.* If they did not like me, my Lord, they might have given me Warning; but inſtead of that, when I gave her Warning, ſhe ſeemed to be ſorry.

L. C. J. Holt. She was glad of the Opportunity of your giving her Warning.

Mrs. *Baynton.* You were pleaſed, Mrs. *Nightingale,* to ſpeak of going aboard of Ship, it was after Mr. *Swendſen* had been there a ſecond Time: When he came to your Houſe, you ſaid you loved Punch entirely; and I ſaid, If you pleaſe, Madam, Mr. *Swendſen* ſhall make a Bowl; and this was before our going on board.

L. C. J. Holt. Was Mr. *Swendſen* aboard the Ship?

Mrs. *Nightingale.* Yes, he was; but I knew not of his being there.

Mrs. Buſby *ſworn.*

Mr. Serj. *Darnel.* Come, Mrs. *Buſby,* give an Account to my Lord and the Gentlemen of the Jury what you know of this Matter.

Mrs. *Buſby.* My Lord, I know Mrs. *Nightingale* told me, that Mrs. *St. John* came to take Lodgings for Mrs. *Baynton,* according as Mrs. *Nightingale* expreſſed herſelf; and I was a little curious in enquiring what ſhe was, and begged her Pardon for aſking ſo many Queſtions about her.

Mr. Serj. *Darnel.* After ſhe had been there, how did ſhe carry herſelf?

Mrs. *Buſby.* At *Michaelmas-Day,* at Night, ſhe came up very briſk, and ſaid ſhe had heard from her dear Brother, and fell a praiſing him, and ſaid how happy ſhe was in him; and that her Siſter, upon her Death-bed, ſaid, that ſhe ſhould be both Wife and Siſter to him: She ſaid likewiſe, that ſhe had been a Widow four Years, and that ſhe would never marry for the Love ſhe had to her Brother.

Mr. Serj. *Darnel.* Pray give an Account, Mrs. *Buſby,* whether there was any Talk in the Family about this Woman's leaving the Family?

Mrs. *Buſby.* Sir, as to her leaving the Houſe, we were informed ſhe was not what we took her to be; and Mrs. *Nightingale* and I were very uneaſy; at which Mrs. *Nightingale* deſign'd to warn her away.

Counſel. Mrs. *Buſby,* pray give an Account of your going in the Coach with her.

Mrs. *Buſby.* On *Friday* Morning the 6th of this Month, Mrs. *Baynton* ſaid ſhe was going to have her Lac'd-Head waſhed; ſhe ſent her Maid for a Coach, and ſaid ſhe would ſet us down near the Chapel. After ſhe had invited me, and I ſaw the Coach, I did not know how to evade it well, but accepted of her Civility. She bid the Coach ſtop at *Hedge-Lane,* and ſaid we ſhould be as near to the Chapel, as ſhe went to the Place whither ſhe was going. When we came to the old Buildings, I was looking out at them, and on the contrary Side I heard a Buſtle; Mrs. *Baynton* called to the Coach to go on, and preſently *Hartwell* was in the Coach, with his Arm about Mrs. *Rawlins*'s Waiſt. I did think Mrs. *Baynton* was arreſted; I cry'd out, For God's Sake let us alone, we are not concern'd. *Hartwell* pull'd up the Glaſs, and ſaid we were the Perſons concerned. *She (pointing to* Hartwell *at the Bar) ſaid,* This is the Man, and he himſelf own'd it before the Recorder, that he told me, 'twas the young Lady and I were concerned: ſays he, Let me have a few Words with you, and all will be well. I ſaid, To be ſure I will not ſay any Thing to you except my Friends were near. This Lady, Mrs. *Baynton,* ſaid, No Madam, be ſure do not; ſhe adviſed me not to be frightned, for ſuch a Caſe once happened to her with her Niece. I aſked *Hartwell* what he would do with us? He ſaid, he would carry us to a Place where we might ſend for our Friends, and make up the Buſineſs. Mrs. *Baynton* ſeemed to take my Part, and ſaid ſhe would go to my Friends; and ſuch Diſcourſe as this held till we came to the *Star* and *Garter* Tavern.

Counſel. Mrs. She pretended to be your Friend?

Mrs. *Buſby.* Yes, Sir, ſhe argued with the Bailiff, and ſaid, May I not go where I will? and ſeemed to be very angry with him. Mr. *Hartwell* alſo ſeemed to be very angry with her; and call'd her Mrs. *Pert,* ſaying, If ſhe were civil, ſhe ſhould have the more Reſpect.

Counſel. Whom did he call Mrs. *Pert?*

Mrs. *Buſby.* He called Mrs. *Baynton* ſo. Then they carried us to *Drury-Lane,* and ſhe adviſed us to put on our Maſks upon our Faces: I thought to do it; but afterwards recalling myſelf, and thinking I had done nothing amiſs, I would not. They conducted us to the Tavern, and put us into a back Room; and Mrs. *Baynton* haſtened out of the Room as if ſhe would go for ſome of my Friends, as ſhe ſaid ſhe would: I directed her to Mr. *Thornton* and another; which ſhe ſaid ſhe went to. The Room where we were was very dark; ſo we preſſed into a forward one: We were in a very great Fright, inſomuch that I ſaid to Mrs. *Rawlins,* We'll live and die together; and then ſhe took me hold by my Arm. *Hartwell* ſeeing that, took her from me by Force, and ſaid ſhe muſt go with him. I underſtood ſhe was arreſted in one Court, and I in another; She muſt go to the *Marſhalſea,* and I to *Newgate.* Then they hurried her down Stairs out at a back Door into a Coach: I cry'd out *Murder* out of the Window, and ſaid, For God's Sake take Care of the young Woman, for I know not where they are carrying her. After this, Mr. *Spurr* ſaid to me, What have you got by Bawling? We are better known here than you. My Fright was very great, and I was very much ſurprized: There was a Man left with me; I made my Complaint for Friends to be ſent for. Says I to him, Is it Treaſon or Felony? He told me he did not know, he was only hired for a Crown to keep me. I deſired that the Gentlewoman of the Houſe might come up to me; it was about 12 a-Clock, and at laſt ſhe did. And Mr. *Wakeman* came up, and ſaid, Madam, Why do you not eat and drink? He ſaid the young Gentlewoman was well, and did both. Said the Woman of the Houſe to me, Do not you owe Money? I ſaid, No. Nor the young Lady neither? I anſwered, None that we ſhould be arreſted for. When this Mr. *Wakeman* was here, ſaid the Gentlewoman of the Houſe to me, Why do you not enquire into the Cauſe of the Action? *Wakeman* told me, that there was a Writ againſt *Sabina Buſby,* at the Suit of *William Jones,* and that *William Jones* arreſted me. Says the Woman of the Houſe, it may be your Name is not right, and ſo you may be falſly arreſted. I aſked whether I might not ſend for Bail, it being an Action of Debt. It being an Action of Debt, ſays he, you may; and I will go for you as cheap, and as ſoon as a Porter. But I ſaw him no more till Night.

Counſel. How long did they keep you?

Mrs. *Buſby.* It was betwixt 10 and 11 when they carried me there firſt, and it was not till near Night that I ſaw him again.

Mr. Serj. *Darnel.* Did he make you give Bail for your Diſcharge in the Afternoon?

Mrs. *Buſby.* There was a Lad in the Room ſaid, Madam, I will go to ſome of your Friends for you. I directed him to ſome of them; and when he came again, he ſaid, they were not at home. There was a poor Man, a Labourer, at work in the Chimney, he gave me a private Wink, and ſaid he would go for me, for he knew Mr. *Unkles*; he went, and Mr. *Unkles* came. I likewiſe ſent for Mr. *Thornton* and another. They all came, and met together. Mr. *Thornton* demanded on what Account they kept me there? They ſaid they had a Writ againſt me of 200*l.* Then they ſaid they would bail me. They aſked them, Where the young Lady was? They told him, ſhe was with her Friends. Then, my Lord, after this, the Bailiff ſhifted off, and I knew nothing more of it, but went away to get a Warrant to take care of the young Lady.

Counſel. Had you any manner of Dealings with Mr. *Jones?*

Mrs. *Buſby.* No manner of Dealings with him in all my Life.

Mr. *Mountague.* When you came into the Fore-Room, was *Hartwell* then with you in the Room?

Mrs. *Buſby.* She and I was in a great Fright; ſeveral was there, and *Hartwell* was one of them.

L. C. J. Holt. Was Mrs. *Baynton* there?——Mrs. *Buſby.* Yes, my Lord.

L. C. J. Holt. How long did ſhe ſtay?

Mrs. *Buſby.* She went out preſently; ſhe told me ſhe would go to ſome of my Friends; and away ſhe went.

L. C. J. Holt. Did ſhe come again?——Mrs. *Buſby.* No, my Lord.

L. C. J. Holt. Did you ſee *Hartwell* there?

Mrs. *Buſby.* My Lord, he was there, and forced the young Lady from me; and *Spurr,* when I put my Head out of the Window, and cried after her, ſaid to me, What have you got by your Bawling? We are better known here than you.

Mr. Juſtice *Gould.* Pray, when was the firſt Time you took Notice of *Spurr?*

Mrs. *Buſby.* Sir, the firſt Time I took particular Notice of him was, when I put my Head out of the Window; but it ſeems he rid behind the Coach; he was left with me when Mrs. *Rawlins* was taken away, and was in the Room when my Friends came; and Mr. *Wakeman* was there too.

Mr. Juſtice *Powell.* I aſk you, did your Friends offer Bail?

Mrs. *Buſby.* Yes, Sir, they did.

Mr. Juſtice *Powell.* Did any of them require Bail?

Mrs. *Buſby.* My Friend, Mr. *Thornton,* aſked on what Account they kept me? And they ſaid they had an Action of 200*l.* againſt me.

Mr. *Hartwell.* Was I there then? Did I ever come back after you were there?

Mrs. *Buſby.* I believe you were, but I cannot be poſitive; but you were in the Coach, and you were the Man that carried away Mrs. *Rawlins* from me.

Mr. Wakeman *called.*

Mr. *Soll. Gen.* Give an Account to my Lord and the Counſel, of what you are concerned in this Matter.

Mr. *Wakeman.* If it ſhall pleaſe your Honour, my Lord, Mr. *Hartwell* came on *Wedneſday* (before this Thing happen'd) to my Houſe, and left Word there, that there was a Writ to be executed, if I would execute it: I was not then at Home, but when I came Home, which was late at Night, my Daughter told me of it. I went to him on *Thurſday* Morning. He ſaid to me, Mr. *Wakeman,* I have a Writ to be executed, will you do it? I ſaid I would. Then he carried me to *Weſtminſter* to the *Mitre-Tavern,* and made no ſtop nor ſtay; then he called for a Quart of Ale, and a Quart of White-Wine, and a Toaſt and Cheeſe; and when he had eat one Toaſt, we had another. The Man of the Tavern came in, whoſe Name was *Holt.* Mr. *Hartwell* ſaid to me, We muſt not do the Buſineſs this Morning; it cannot be done, ſaid he: But he appointed me to come on *Friday* Morning. He ordered me, if I came firſt, to call for Wine, and the ſame as we had before. I came firſt, and called for Wine, Ale, a Toaſt and Cheeſe; in the mean Time Mr. *Hartwell* came in, and eat ſome with me.

L. C. J. Holt. Who was the Writ againſt?

Mr. *Wakeman.* It was againſt Madam *Rawlins.* Mr. *Holt* went out, and called Mr. *Hartwell,* and ſaid, The Buſineſs would be done that Morning. Then we followed him to *Stretton-Ground.* Mr. *Holt* ſaid to *Spurr* and myſelf, we had beſt ſtand near the Place: He took Mr. *Hartwell* with him to the Top of the Street, the People gazed at us, and I was aſhamed, and went into an Alehouſe; a Man came back, and ſaid, The Coach is at the Door: and Mr. *Hartwell* came and ſaid, the Coach would come by preſently; Mr. *Hartwell* and *Spurr* went before, and bid me follow the Coach; and coming near the Park, in *Weſtminſter,* I was behind; Mr. *Spurr* ſtopped the Coach. Mr. *Spurr* ſtopping the Coach, I made up to it; but before I came to it, Mr. *Hartwell* was in the Coach, and what he ſaid to them I do not know.

L. C. J. Holt. Who ſtopped the Coach?

Mr. *Wakeman.* Mr. *Spurr* ſtopped the Coach, and ſerved the Writ; it was my Writ. Mr. *Hartwell* ordered the Coach to drive to the *Star* and *Garter*-Tavern in *Drury-Lane*; we went all along with it; and when we came there, they led us to a little Room, and the Gentlewoman did not like it, but went into a forward Room; and this Gentlewoman (*pointing to Mrs.* Baynton) with her Band-box, was with them.

Counſel. Who was it?

Mr. *Wakeman.* (*pointing to Mrs.* Baynton *at the Bar*, *ſaid 'twas ſhe*) I did not know but ſhe was this Lady's Friend; I never ſaw any of them before in all my Life. Mr. *Hartwell* went down, and Mrs. *Raynton*; and I thought ſhe went to fetch Madam *Rawlins*'s Friends. Mr. *Hartwell* came to the young Lady, and ſaid, You muſt go to my Houſe. The young Gentlewoman ſaid, O Lord, don't part us! But he did ſo, and put her into a Coach. I ſaw the Gentlewoman going, but did not go with her myſelf, for I was ſtopped by a Gentleman of my Acquaintance; but when I came to Mr. *Hartwell*'s Houſe, I ſaid, Mr. *Hartwell*, Where is the young Gentlewoman? He told me ſhe was below Stairs. I told him that I had ſomething of Buſineſs elſewhere. I aſked him, and he gave me Leave to go. I went, and when I returned back to Mr. *Hartwell*'s Houſe, I aſked for him; but his Wife told me he was not within. I aſked where the young Gentlewoman was? She anſwered, That ſhe was gone with her Huſband to the *Vine*-Tavern in *Holborn*. I went and aſked for Mr. *Hartwell*; they told me he was above Stairs. I went up, and found him with Mr. *Spurr*, and a Tallow-Chandler. I ſhould have told you, that when I went from Mr. *Hartwell*'s Houſe about my Errand, I ſaw Mr. *Holt* ſtanding near the Back-Door of the *Five-Bell*-Tavern in *Wich ſtreet*, and he aſked me where Mr. *Hartwell* was? I told him he was at Home. Then *Holt* aſked for the Woman? I ſaid ſhe was at *Hartwell*'s.—Afterwards I ſaw Mr. *Swendſen* at the *Five-Bells* with *Holt*, and he gave me a full Glaſs of Claret; I drank it off, and away I went. When I went to the *Vine* Tavern, Mr. *Hartwell*, Mr. *Spurr*, and a Tallow-Chandler were in a Room by themſelves. I ſaw that Gentleman (looking out of a Window) that was with *Holt*, he looked at me, and I at him. Mr. *Hartwell* aſked me if I had dined? I told him, No. He ſaid there were ſome Steaks. I dined there; then the Gentlewoman, *viz. Baynton*, at laſt came out of Door and called Mr. *Hartwell* to her. When Mr. *Hartwell* came from her, he told me the Matter was made up, and the Priſoner was diſcharged.

L. C. J. Holt. Who was the Writ againſt?

Mr. *Wakeman.* Mrs. *Rawlins.*

L. C. J. Holt. When the Priſoner was diſcharged, they gave you the Writ again?——Mr. *Wakeman.* Yes.

L. C. J. Holt. Had you a Writ againſt Mrs. *Buſby*?

Mr. *Wakeman.* I had none againſt her.

Counſel. How far is it from *Hartwell*'s Houſe to the *Star* and *Garter*-Tavern?——Mr. *Wakeman.* It is about a Furlong.

Counſel. What was your Writ for?——Mr. *Wakeman.* But 20*l.*

L. C. J. Holt. And you ſaid you had an Action of 200*l.*

Mr. *Wakeman.* My Lord, Mr. *Hartwell* ſaid ſo. I do not know the Woman, but ſhe will be ſhewed us.

L. C. J. Holt. Look at the Priſoner at the Bar. Was ſhe in the Coach when Mrs. *Rawlins* was Arreſted?

Mr. *Wakeman.* Yes, yes. I had no ill Deſign in what I did.

L. C. J. Holt. Did you go behind the Coach?

Mr. *Wakeman.* Yes, my Lord, I did.

(*The Writ produced and read in Court.*)

Mr. Juſt. *Gould.* Were you there at the *Star* and *Garter* when Mrs. *Buſby*'s Friends came to Bail her?

Mr. *Wakeman.* When I came to the *Star* and *Garter*-Tavern, the Gentleman came and aſked me, Whether I knew where Mrs. *Buſby* was? I told him, I left her at the *Vine*-Tavern, and believed that there they might find her.

L. C. J. Holt. Was *Spurr* at the *Vine*-Tavern any Time?

Mr. *Wakeman.* My Lord, I left *Spurr*, *Hartwell*, and the Tallow-Chandler at the *Vine*-Tavern.

Mr. Serj. *Darnel.* Was it Mr. *Hartwell* or *Spurr* that aſked you to eat Steaks?——Mr. *Wakeman.* It was *Spurr.*

Mrs. *Baynton.* Mr. *Wakeman*, Did you ever ſee me before the Arreſt?

Mr. *Wakeman.* No, I never ſaw you before then.

Mrs. Berkley *Sworn.*

Mr. Serj. *Darnel.* Pray look upon this Priſoner, Mrs. *Baynton*, Do you know her?——Mrs. *Berkley.* Yes, Sir, I do know her.

Mr. Serj. *Darnel.* How came you to know her?

Mrs. *Berkley.* By her lodging in Mrs. *Nightingale*'s Houſe, and no otherwiſe.

Mr. Serj. *Darnel.* Did you ever hear her ſpeak of a Brother that ſhe had?

Mrs. *Berkley.* Yes, Sir, ſhe ſaid this Mr. *Swendſen* was her Brother.

Mr. Serj. *Darnel.* Mrs. *Rawlins*, Are you Sworn?

Mrs. *Rawlins.* Yes, Sir.

Mr. Serj. *Darnel.* Stand forward a little. Do you give my Lord an Account of the whole Matter.

Mrs. *Baynton.* Mrs. *Rawlins*, ſpeak the Truth, I deſire nothing but Juſtice.

L. C. J. Holt. You are upon your Oath remember, and therefore ſpeak nothing but the Truth.

Counſel. Give an Account of your Proceedings in the whole Matter.

Mr. Serj. *Darnel.* Do you know any of the Priſoners at the Bar?

Mrs. *Rawlins.* Yes, I know them all, Mrs. *Baynton*, Mr. *Hartwell*, and Mr. *Spurr.*

L. C. J. Holt. Do you know them?—Mrs. *Rawlins.* Yes, my Lord.

L. C. J. Holt. How came you to be acquainted with Mrs. *Baynton*?

Mrs. *Rawlins.* My Lord, I came to be acquainted with her by her taking Lodgings at our Houſe. She came and took Lodgings at Mrs. *Nightingale*'s for a Month or Six Weeks. When her Month was out, ſhe ſaid her Buſineſs was done, and ſhe muſt go into the Country.

Mr. Serj. *Darnel.* Give an Account of what happen'd to you on *Friday* the 6th of *November*.

Mrs. *Rawlins.* We were going to *Oxendon* Chapel, Mrs. *Buſby* and I. Mrs. *Baynton* told us, ſhe was going that Way, and invited us into her Coach; ſhe ſaid ſhe would ſet us down near the Chapel; we accepted of her Invitation, and went with her. When we were at the Broad Way in *Dartmouth Ground*, there was *Hartwell*, and Two more Bailiffs; they ſtopp'd the Coach, and Mr. *Hartwell* got in. Said Mrs. *Buſby*, to him, For Chriſt's Sake let us go out, we owe no Man any thing. He ſaid the Matter concerned Mrs. *Buſby* and me; and he ordered the Coach to be driven to the *Star* and *Garter*-Tavern in *Drury-Lane*.

Mr. Serj. *Darnel.* Did any Body come into the Coach?

Mrs. *Rawlins.* Yes, Sir, Mr. *Hartwell.*

Mr. Serj. *Darnel.* Did he do any Thing to the People in the Coach?

Mrs. *Rawlins.* No, Sir, but ordered the Coach to go to the *Star* and *Garter*-Tavern. When we came there we went up Stairs, and did not ſtay above a Dozen Minutes in one of the Rooms, but removed from thence to a Room forward: Mrs. *Baynton* was gone, and *Hartwell* ſent up *Spurr.*

Mr. Serj. *Darnel.* Miſtreſs, Pray look, Do you ſee the Man that came up to you?

Mrs. *Rawlint.* I ſuppoſe it was the Man that is next to Mrs. *Baynton*; if I be not miſtaken it is him; I cannot be poſitive.

Mr. Serj. *Darnel.* Some of them came up to you and ſaid, They muſt have the young Lady down Stairs?

Mrs. *Rawlins.* Yes, Sir; and Mrs. *Baynton* ſaid, Nay. They after that forced me away.

Mr. Serj. *Darnel.* Who was it that did that?

Mrs. *Rawlins.* It was Mr. *Hartwell* that did it.

Mr. *Hartwell.* Who is Mr. *Hartwell*?

Mrs. *Rawlins.* Yourſelf; Mr. *Hartwell*, took me about the Middle, and drove me down Stairs. I cried out Murder, and deſired ſome good Body to go with me; he ſaid, if I did not hold my Tongue he would ſend me to *Newgate* that Minute.

Mr. Serj. *Darnel.* Where did he carry you?

Mrs. *Rawlins.* He carried me from the *Star* and *Garter*-Tavern to his own Houſe.

Mr. Serj. *Darnel.* Where is his Houſe?—Mrs. *Rawlins.* In *Wich-ſtreet.*

Mr. Serj. *Darnel.* How long did he keep you there?

Mrs. *Rawlins.* I do not know juſtly, but I think it was about an Hour.

Mr. Serj. *Darnel.* What did they do with you there?

Mrs. *Rawlins.* They put me into a Back Room, there was nobody with me: but at laſt Mrs. *Baynton* came in and pretended ſhe was going by and heard my Name, and therefore came in. I was very much frighted. She ſaid ſhe had been at ſeveral of my Friends, but could get nobody to come. She told me ſhe would ſend for her Brother, and he ſhould be Bail for me.

L. C. J. Holt. You ſay ſhe would ſend for her Brother to be your Bail?

Mrs. *Rawlins.* Yes, my Lord.

L. C. J. Holt. What followed then?

Mrs. *Rawlins.* She went for her Brother to come to be my Bail, and it was hardly half a Quarter of an Hour before ſhe came in again with her Brother.

Counſel. What is her Brother's Name?

Mrs. *Rawlins. Swendſen.* Mr. *Hartwell* came into the Room where I was, and ſaid, Is Mrs. *Rawlins*'s Friend come yet? Mrs. *Baynton* anſwered, Yes. They had a Coach prepared at the Door, and in that they carried me to the Tavern in *Holborn*; there was in the Coach, Mrs. *Baynton*, her Brother, Mr. *Hartwell*, and I.

Mr. *Montague.* Where did they carry you?

Mrs. *Rawlins.* To the *Vine*-Tavern in *Holborn.*

Mr. *Montague.* What did they do with you then?

Mrs. *Rawlins.* They carried me up Stairs, put me into a Room; I cannot tell exactly how long I was there.

Mr. *Montague.* What did they do then?

Mrs. *Rawlins.* Then *Holt* was there to be the other Bail; they were very willing to take his Bail, but were very ſcrupulous in taking Mr. *Swendſen*'s Bail. They told me, in ſhort, that I muſt marry Mr. *Swendſen*, and that would put an End to it, or elſe I muſt go to *Newgate.*

L. C. J. Holt. Who ſaid ſo?

Mrs. *Rawlins.* Mrs. *Baynton* ſaid, If I did not marry her Brother, I muſt go to *Newgate.* I replied, That I would not marry without my Friends Advice; but I was not ſo much afraid of going to *Newgate*, as I was of being murdered, or ſent away ſomewhere into the Country, where I might never ſee or hear of my Friends.

Counſel. How did they behave themſelves in the Room?

Mrs. *Rawlins.* They importun'd me to marry Mr. *Swendſen*, and for that End Mrs. *Baynton* would have my Ring from my Finger; I would not let her have it, but ſhe forced it away from me. I aſked her what ſhe would do with it? She told me, ſhe would go and get a Wedding Ring made by it. She went and bought a Wedding Ring, and gave me my own again: Then the Miniſter and Clerk was brought into the Room; the Miniſter and Clerk came in and married Mr. *Swendſen* and me.

Mr. Serj. *Darnel.* How long did you ſtay in the Room after you were married?——Mrs. *Rawlins.* Not a Quarter of an Hour.

L. C. J. Holt. Where was *Hartwell*?

Mrs. *Rawlins.* They were in the Room over-againſt us.

L. C. J. Holt. Who brought the Parſon into the Room?

Mrs. *Rawlins. Holt* brought them in.

L. C. J. Holt. Where did they carry you then?

Mrs. *Rawlins.* To Mr. *Blake*'s Houſe in *Holborn.*

L. C. J. Holt. Who went with you?

Mrs. *Rawlins.* Nobody but Mr. *Swendſen*, Mrs. *Baynton*, and myſelf.

L. C. J. Holt. What did they do then?

Mrs. *Rawlins.* They ordered the ſheeting of a Bed, and put me to Bed.

Counſel. Was there any Compulſion in going to Bed, or did you go voluntarily?

Mrs. *Rawlins.* I did not go freely, but was forced to Bed; Mrs. *Baynton* aſked me to go to Bed; after which ſhe aſked me the Reaſon why I would not go to Bed? Says I, my Reaſon is, becauſe I don't care to go to Bed ſo ſoon.

Mr. Serj. *Darnel.* Who undreſſed you?

Mrs. *Rawlins.* Mrs. *Baynton* and Mr. *Blake*'s Daughter.

Mr. Serj. *Darnel.* How long was you in Bed?

Mrs. *Rawlins.* About an Hour or Two.

Mr. *Montague.* When you went out, had you any Expectation to go any where elſe but to Church?

Mrs. *Rawlins.* No where but to Church, upon my Word.

Mr. *Montague.* Did you go voluntarily to the Tavern in *Drury-Lane*, or againſt your Will?—Mrs. *Rawlins.* To be ſure it was againſt my Will.

Mr. *Hartwell.* Did you ſee me, Madam, at the *Vine*-Tavern the Time that you were confined there?

L. C. J. Holt. Did you ſee *Hartwell* at the *Vine*-Tavern before you were married?

Mrs. *Rawlins.* Yes, Mr. *Hartwell*, you may remember that you were once in the Room where I was; I will give you an Inſtance of it; you were ſmoaking a Pipe of Tobacco; Mrs. *Baynton* ſaid to you, What would you have with her? You ſaid I was the Priſoner.

L. C. J. Holt. Did they take the Bail that was offered?

Mrs. *Rawlins.* Mr. *Hartwell* ſaid he would conſider it with Mrs. *Baynton*; and they all went out, and left me alone by myſelf. Mrs. *Baynton*, after they had conſulted together, came in and told me that they refuſed the Bail.

Mrs. *Baynton.* When you were left by yourſelf, Mrs. *Rawlins*, if you had not a mind to marry Mr. *Swendſen*, why did not you make your Eſcape?

L. C. J. Holt. Did ſhe come there by her Conſent?

Mrs. *Baynton.* No, my Lord; but when ſhe was left to herſelf, ſhe might have eaſily got away.

L. C. J. Holt. Mrs. *Rawlins*, you were left alone in the Room, Was there any Propoſal of your Marriage to Mr. *Swendſen* made before that?

Mrs. *Baynton.* My Lord, if I may have leave to ſpeak, they contracted Friendſhip almoſt a Month before.

L. C. J. Holt. Mrs. ſtay your Time. [*To Mrs.* Rawlins.] Conſider the Queſtion.

Mrs. *Baynton.* My Lord, the Ring was bought before ſhe was left alone, ſhe knows it very well, and was looking upon it when I came into the Room again.

L. C. J. Holt. [*To Mrs.* Rawlins.] Had you the Ring before that?

Mrs. *Rawlins.* Not as I know of, my Lord.

Mrs. *Baynton.* You had the Ring upon your Finger, and ſaid it was a very handſome one; but I had bought it a little too wide for you.

Mrs. *Rawlins.* It is very ridiculous; I ſaid no ſuch Thing.

L. C. J. Holt. She was left in the Room alone, when you both went out; but it ſeems it was upon her Deſire to be bailed, and therefore ſhe would not eſcape.

Mr. Serj. *Darnel.* Yes, yes, it was with the Intent to be bailed that ſhe did this.

L. C. J. Holt. Mrs. *Baynton*, it is now Time for you to make your Defence.

Mrs. *Baynton.* My Lord, I will. Mrs. *Buſby*, when Mr. *Swendſen* came to her Houſe firſt, called him her dearly beloved Likeneſs. Did ſhe not ſay ſo, Mrs. *Rawlins?*

L. C. J. Holt. Did you ever hear Mrs. *Buſby* call Mr. *Swendſen* her dearly beloved Likeneſs?

Mrs. *Rawlins.* My Lord, I deſire ſhe may anſwer for herſelf.

Mrs. *Baynton.* Pray, my Lord, let her ſtand by herſelf a little, that nobody may ſpeak to her.

L. C. J. Holt. Did you ever hear her ſpeak of Mr. *Swendſen*, that he was her dearly beloved Likeneſs?

Mrs. *Rawlins.* Yes, my Lord; I do not know but ſhe might ſay ſo.

L. C. J. Holt. What, when Mr. *Swendſen* was by?

Mrs. *Rawlins.* No, my Lord.

L. C. J. Holt. Do you remember that you ever heard Mrs. *Buſby* call him ſo?——Mrs. *Rawlins.* Once, my Lord, to Mrs. *Baynton.*

L. C. J. Holt. What ſay you Mrs. *Buſby*, Did you call him ſo?

Mrs. *Buſby.* My Lord, I thought him very much like my Huſband in one Part of his Face, and Mrs. *Baynton* herſelf called him my beloved Likeneſs.

Mrs. *Baynton.* My Lord, How could I call him her beloved Likeneſs, and never ſaw her Huſband with my Eyes?

L. C. J. Holt. Well, what Queſtions will you aſk?

Mrs. *Baynton.* My Lord, I will aſk Mrs. *Rawlins* ſeveral Queſtions. The ſecond *Sunday* when I was at their Houſe, Mrs. *Rawlins*, you know you ſtaid at home, and I did ſo too; Did not you ſay then, that you wiſh'd Mr. *Swendſen* was there, when they were all at Church? Did not you ſay ſo? Remember you are upon your Oath.

L. C. J. Holt. Upon your Oath, do you remember any ſuch Thing?

Mrs. *Rawlins.* No, my Lord; and I would not for all the World ſay any Thing but the Truth.

L. C. J. Holt. Did you, or did you not?

Mrs. *Rawlins.* Indeed, my Lord, I do not remember that ever I ſaid any ſuch Word.

Mrs. *Baynton.* Mrs. *Rawlins*, did not you come to my Bed-ſide often, and kiſs and hug me, and would be talking with Pleaſure of Mr. *Swendſen?*

L. C. J. Holt. Do you remember that you ſat at her Bed-ſide, and ſpake of Mr. *Swendſen*, and kiſſed and hugged her?

Mrs. *Rawlins.* My Lord, indeed Mrs. *Baynton* did much talk of her Brother.

L. C. J. Holt. But did you talk of her Brother?

Mrs. *Rawlins.* My Lord, if I did ſay any Thing, I did not ſpeak with a Deſign to have him; it may be I might do ſo.

Mrs. *Baynton.* Mrs. *Rawlins*, did not you bid me to tell him, That there was a good Lady, that had her Fortune in her own Hands, and at her own Diſpoſal, that would make him a very good Wife? Did not you tell me this?

Mrs. *Rawlins.* I did not ſay ſo; but ſaid there was a very good Lady that would make a very good Wife whenever ſhe married; but did not ſay, that ſhe would make him a good Wife.

Mrs. *Baynton.* Mrs. *Rawlins*, have you not been the moſt uneaſy Woman in the World, when he did not come to dine at Mrs. *Nightingale*'s?

L. C. J. Holt. Speak out.

Mrs. *Baynton.* My Lord, Mr. *Swendſen* had a Cold, and ſhe told me ſhe could not be eaſy till he was cured of it.

Mrs. *Rawlins.* I never ſaid ſuch a Thing. Can you ſay ſo, Mrs. *Baynton?*

Mrs. *Baynton.* My Life is upon it, and I will not for my Life ſay any Thing but the Truth.

L. C. J. Holt. Did you expreſs any ſuch Thing to Mrs. *Baynton*, of your Uneaſineſs till Mr. *Swendſen* had got rid of his Cold?

Mrs. *Rawlins.* No, my Lord.

Mrs. *Baynton.* But, Madam, did you not ſeek to tell me theſe Things by yourſelf? You told me, you had a great deal of ill Uſage, and told me, you lived more like a Servant than any Thing elſe: You ſaid, that when there was another Lodger there, becauſe you went to ſee her in her Room, you were chid ſeverely for it, and charged never to go near her.

Mrs. *Rawllns.* I do not know but that I might do it.

L. C. J. Holt. But why did you do it?

Mrs. *Rawlins.* My Lord, I can give you no Account.

L. C. J. Holt. Did you bid her tell him, that you knew a Gentlewoman, at her own Diſpoſal, that would make him a very good Wife?

Mrs. *Rawlins.* My Lord, I do not know but that I ſaid to Mrs. *Baynton*, I wiſhed her Brother a very good Wife.

L. C. J. Holt. But did you ſay that you knew a Gentlewoman at her own Diſpoſal, and a Fortune, that would make him a very good Wife?

Mrs. *Rawlins.* My Lord, I did not ſpeak with a Deſign to marry her Brother, but was reſolved to take the Advice of my Friends.

Mrs. *Baynton.* Did not you ſay, that you wiſh'd yourſelf Mr. *Swendſen*'s Wife ſeveral Times?

L. C. J. Holt. Did you ever tell her, that you wiſhed yourſelf *Swendſen*'s Wife?

Mrs. *Rawlins.* My Lord, I don't know whether I did or no.

L. C. J. Holt. How came you to have ſuch a good Opinion of Mr. *Swendſen?*

Mrs. *Rawlins.* Mrs. *Baynton* told me he was a very good temper'd Gentleman, and never out of Humour.

L. C. J. Holt. Would you marry a Man for his good Humour only?

Mrs. *Rawlins.* I never had married, if there had not been a Force put upon me.

L. C. J. Holt. Did you tell Mrs. *Baynton*, that you never would marry, but by the Conſent of your Friends?——Mrs. *Rawlins.* Yes, I did.

Mrs. *Baynton.* My Lord, I never heard her ſay ſo in all my Life.

L. C. J. Holt. Did you tell her, notwithſtanding what you ſaid of Mr. *Swendſen*, that you would never marry without the Conſent of your Friends?

Mrs. *Rawlins.* My Lord, I did often ſay, that I would never marry without their Conſent.

Mrs. *Baynton.* Mrs. *Rawlins*, did not you, when you were acquainted with Mr. *Swendſen*, ſlight Mr. *Pugh?*

L. C. J. Holt. Did you ſhew any Diſlike of Mr. *Pugh* upon *Swendſen*'s Account?

Mrs. *Rawlins.* My Lord, I cannot tell; if I did ſhew any Ill-will to Mr. *Pugh*, it was not with a Deſign to have Mr. *Swendſen.*

L. C. J. Holt. Hath there been any Courtſhip carried on betwixt Mr. *Swendſen* and you?

Mrs. *Rawlins.* My Lord, no more Courtſhip to me, than to all the Family; my Lord, I did not perceive that Mr. *Swendſen* ſhewed me more Favour than any in the reſt of the Family.

L. C. J. Holt. Have you any more Queſtions, Mrs. *Baynton?*

Mrs. *Baynton.* When Mr. *Swendſen* was walking in the Garden, did you not ſay, that you would go and walk with him, but that they would take notice of it? But pray, ſaid I, do not, you may make them angry by it. Did not you ſay, that you would go up and look out of the Window, with Expectation to have been called down by me? Did not you walk with Mr. *Swendſen*, and diſcourſe with him about the Things of Love, and he ſaid he would have nobody but you; and you likewiſe ſaid, that you would have nobody but him?

L. C. J. Holt. Were you alone with Mr. *Swendſen* at that Time in the Garden?

Mrs. *Rawlins.* I think I was with him in the Garden at that Time, but not alone.

Mrs. *Baynton.* My Lord, ſhe was alone with Mr. *Swendſen* in the Garden ſeveral Times.

Mrs. *Rawlins.* I can ſpeak it upon my Oath, that I was never in the Garden with Mr. *Swendſen* but that Time.

Mrs. *Baynton.* Did not you ſay that you would have nobody but Mr. *Swendſen?* —— Mrs. *Rawlins.* No, I never ſaid any ſuch Thing.

Mrs. *Baynton.* What made you go up Stairs, and cry for an Hour together; and ſaid to my Servant, that you would have your Belly full of crying before you went away: *Betty* can teſtify this, ſhe is in Court, but muſt not be heard.—— *L. C. J. Holt.* She may be called, if you will.

Mrs. *Baynton.* Pray, Mrs. *Rawlins*, Did you not once come up to me, and ſaid you had been twice there, and wiſhed that you could ſee Mr. *Swendſen*, and that you could not be eaſy without his Company?

Mrs. *Rawlins.* As I am upon my Oath, I never ſaid ſuch a Thing.

Mrs. *Baynton.* Mrs. *Rawlins*, did not you ſay a Hundred Times, that you loved Mr. *Swendſen* above any Man in the World?

Mrs. *Rawlins.* I never ſaid any ſuch Thing in my Life.

Mrs. *Baynton.* Did not you peel Walnuts for Mr. *Swendſen*, and deſire me to carry them to him?——Mrs. *Rawlins.* I never did ſo.

Mrs. *Baynton.* My Lord, I would have her aſked, whether ſhe conſented to be taken away, directly, or indirectly?

L. C. J. Holt. What ſay you to that, Mrs. *Rawlins?*

Mrs. *Rawlins.* My Lord, it was all againſt my Knowledge and Will, I never conſented to it.

Mrs. *Baynton.* Mrs. *Rawlins*, is not this true, that you pulled your Ring from your Finger, and gave it me to have a Wedding Ring made by it, which diſcovered your free Conſent to the Marriage?

Mrs. *Rawlins.* No, Mrs. *Baynton*, do you think that I would have given any manner of Conſent to be married to him, without the Advice of my Friends, if I had not been forced to it?

Mrs. *Baynton.* Did not you ſend all Mr. *Pugh*'s Letters back again, and deſired him in your Letter to come no more at you; and that you would have nothing to ſay to him, and that if he came, he would put you to ſuch a Fright that you would not be capable of ſeeing him?

L. C. J. Holt. Did you tell her ſo?

Mrs. *Rawlins.* I do not remember that I told her any ſuch Thing.

L. C. J. Holt. Did you ſend back Mr. *Pugh*'s Letters?

Mrs. *Rawlins.* I do not remember that I ſpake any Thing to Mrs. *Baynton*, tho' I did ſend back the Letters.

L. C. J. Holt. Why did you ſo?

Mrs. *Rawlins.* It was not upon Mr. *Swendſen*'s Account that I did ſo.

L. C. J. Holt. Do you remember, that you repeated to her any of the Contents of a Letter that you had written to Mr. *Pugh* about ſending back his Letters?——Mrs. *Rawlins.* No, my Lord, I did not.

Mrs. *Baynton.* My Lord, I had it from her own Mouth, elſe how could I have known of it? I did not know it till ſhe told me. Mrs. *Rawlins*, how can you ſay you told me not theſe Things?

Mrs. *Rawlins.* No, Mrs. *Baynton*, I did not.

Mrs. *Baynton.* Mrs. *Rawlins*, you do not ſay true. I never knew nothing but what I had from her own Mouth.

L. C. J. Holt. You ſent his Letters back again, pray, on what Account did you do ſo?

Mrs. *Rawlins.* It was upon Things that we heard of Mr. *Pugh*, that was not very handſome. Mrs. *Buſby* can tell the ſame.

L. C. J. Holt. Did the Courtſhip break off?

Mrs. *Rawlins.* My Lord, it was but the Day before this Thing happen'd.

Mr. Serj. *Darnel.* Mrs. *Buſby*, did you know of the ſending back the Letters? And who was it that put Mrs. *Rawlins* upon ſending of them back?

Mrs. *Buſby.* Yes, Sir, it was by our Advice.

Mr. Serj. *Darnel.* Whoſe Hand was it that wrote the Letter?

Mrs. *Buſby.* Mrs. *Berkley.*

Mr. Serj. *Darnel.* Was it by her Inclination and Conſultation of her Friends?

Mrs. *Baynton.* Had not you a miſtruſt, that there was Love betwixt Mr. *Swendſen* and Mrs. *Rawlins?*

Mrs. *Buſby.* I had no miſtruſt of any ſuch Thing.

Mrs. *Baynton.* Why did you tax me with it then?

L. C. J. Holt. When was this?

Mrs. *Baynton.* My Lord, it was at the Limner's; I heard ſomething as if Mrs. *Rawlins* ſhould ſpeak Words of Diſcouragement to Mr. *Pugh.* Mrs. *Buſby*, when I told her of it, ſhe denied it, and ſaid, Mrs. *Baynton*, I do not know this. But here is Mrs. *Rawlins* herſelf, and ſhe ſhall anſwer for herſelf, if ſuch a Thing is: She thought, if there was any Strangeneſs between Mrs. *Rawlins* and Mr. *Pugh*, it was occaſion'd by Mrs. *Rawlins*'s Love to Mr. *Swendſen.* When they aſked my Advice of the Thing, Mrs. *Rawlins* and Mrs. *Buſby* told me, that Mr. *Pugh* had Three or Four Thouſand Pound Stock: I ſaid, if Mr. *Pugh* had ſuch a Love for Mrs. *Rawlins* as he pretended to, that he would do well to have drawn out One Thouſand Pound, and given it to the young Woman.

L. C. J. Holt. Mrs. *Baynton*, have you any thing to aſk?

Mrs. *Baynton.* Perhaps I may have more to ſay, but I am in Confuſion, my Lord: Mrs. *Buſby*, as well as Mrs. *Rawlins*, was never eaſy, but when Mr. *Swendſen* was there.

L. C. J. Holt. Mrs. *Rawlins*, upon the Oath that you have taken, did you conſent to your being taken away after the Manner as you were, or gave any Encouragement to Mr. *Swendſen?*

Mrs. *Rawlins.* No, my Lord, I do not know that I gave him any manner of Encouragement.

Mrs. *Baynton.* My Lord, ſhe gave him all the Encouragement imaginable.

L. C. J. Holt. I pray, Mrs. *Baynton*, do not put yourſelf into a Paſſion: I ſpeak in Favour to you; you will not deliver yourſelf ſo well in Paſſion, as without.

Mrs. *Baynton.* She lay baiting of me Night and Day, and always ſpeaking to me of her Love to Mr. *Swendſen*; and to hear her ſpeak the quite contrary, really it moves me, my Lord.

Betty, *Mrs.* Baynton*'s Maid, called.*

Mrs. *Baynton. Betty*, have not you told me, that Mrs. *Rawlins* ſaid ſhe would fill her Belly with Crying before ſhe went, and that ſhe would enquire for Mr. *Swendſen?*——*Betty.* No, I ſaid no ſuch Thing.

L. C. J. Holt. Speak the Truth, without being biaſs'd by one Side or other. Did you hear that ever Mrs. *Rawlins* went into the Chamber to cry, or enquire for Mr. *Swendſen?*

Betty. No, my Lord, I never heard it.

Mrs. *Baynton.* My Lord, I never was the Woman that aſked this Maid any Queſtion any way, but ſhe frankly told me all this; and ſhe often ſaid, that ſhe was ſure Mrs. *Rawlins* had a very great Kindneſs for Mr. *Swendſen*: And one Day ſhe hearing of ſuch a Noiſe of Laughing, and the Doors flinging, that ſhe went down Stairs to ſee what was the Matter; Mr. *Swendſen* was there then, and Mr. *Pugh.* Mr. *Pugh* was ſo offended at Mrs. *Rawlins*'s Mirth, that he went away in a great Diſtaſte; and ſhe ſaid, that Mrs. *Rawlins* was never eaſy, but when ſhe was talking of Mr. *Swendſen.*

Mrs. *Baynton. Betty*, did not you ſay, that ſhe aſked you ſeveral Times of Mr. *Swendſen*, and wiſhed he would come and dine with them?

Betty. I never heard her but once.

Mr. Swendſen*'s Jury return to give in their Verdict all Twelve.*

Gentlemen, are you agreed in your Verdict?——*Anſ.* Yes.

Who ſhall ſay for you?——*Anſ.* The Foreman.

Eraſmus Johnſon, *a* Dane, *and one of the Jury, ſaid*, He was not ſatisfied.

Johnſon. If it ſhall pleaſe you, my Lord, I am not ſatisfied; I do not find, from any of the Evidence that hath been given, that he was privy to the Arreſt; my Conſcience will not let me comply with the reſt, that he is Guilty.

L. C. J. Holt. What kind of a Conſcience have you? Do you not believe what the Witneſſes have ſaid? Have you any Evidence that Mrs. *Rawlins* went away with her own Conſent?

Johnſon. I do not find, my Lord, that it was done by him.

L. C. J. Holt. Did not he go to *Hartwell*'s Houſe, and from thence, while ſhe was under the Force, went with her to the *Vine*-Tavern, where he married her? which was a forceably taking by him.

Johnſon. But, my Lord, it was with her Conſent; elſe how could he marry her?

L. C. J. Holt. Though ſhe did Conſent to the Marriage; yet if ſhe was taken by Force, it is the ſame Offence.

Foreman. My Lord, he did agree that this was a Point of Law, and would leave it with your Lordſhip; he believes ſhe was forced, but he thinks he was not privy to the Woman's Actions that he employed.

Johnſon. My Lord, I do not ſee there were any Evidence againſt him.

L. C. J. Holt. When the Bailiffs were employed to take her, it appears by the Sequel, that it was with an Intent that he might marry her: What can be plainer? Govern yourſelf by Reaſon.

Johnſon. I believe that there was a Force by the Bailiffs.

L. C. J. Holt. Did not he take the Advantage of the Force? And was that to any other Purpoſe, but for him to marry her? There was no Cauſe of Action either againſt her or Mrs. *Buſby.*

Johnſon. It proved ſo, my Lord.

Foreman. My Lord, he would know whether he were in that Statute, in Point of Law, if this Maid did conſent to it?

Judge *Powel.* He was guilty of the Thing; he was conſenting to it afterward.

Johnſon. They were in Streets and Houſes before they married; and ſo, if ſhe had not conſented, ſhe might have cried out.

Judge *Powel.* Did not he go to *Hartwell*'s Houſe, and to the *Vine* Tavern?

Johnſon. I cannot believe him guilty, as I would anſwer it before God and the World.

L. C. J. Holt. Pray conſider, do not give a Verdict contrary to plain Evidence.

Johnſon. By all the Circumſtances, ſhe was as willing as he: All that I can ſay to it, my Lord, is, that he had ſomething of Connivance with this Woman.

Foreman. He believed that all along.

Johnſon. I ſay, Mr. *Foreman*, at the Beginning there was ſuch a Thing as was done by Mrs. *Baynton*, without his Knowledge.

Foreman. He did conſent before you to take your Lordſhip's Judgment; that if your Lordſhip be of Opinion that he was concern'd in the firſt Force, then that will carry it.

Johnſon. I do not know that ſhe complain'd to any body, my Lord: I do not ſpeak for any Favour or Affection, my Lord; but 'tis merely out of a tender Conſcience.

Foreman. He agreed, that if the firſt Force was within the Statute, then he would comply; and that we came away upon, to have your Lordſhip's Opinion. He believed, Mr. *Swendſen* did employ the Woman.

L. C. J. Holt. Do you agree?

Johnſon. I cannot, but I leave it to your Lordſhip's Pleaſure.

Montague. The Fact he does agree to; he does agree that ſhe was taken away by Force.

L. C. J. Holt. Was ſhe taken away by Force?

Johnſon. She was by the Bailiffs.

L. C. J. Holt. Did not he take the Advantage of this?

Johnſon. She was under the Force before.

L. C. J. Holt. Beſides, Did not you perceive that ſhe conſented for fear ſhe ſhould go to *Newgate?* The Law of *England* ſays, that is a void Conſent, which is obtained out of Fear.

Johnſon. My Lord, I don't know there was any Violence uſed by him either in Word or Deed.

L. C. J. Holt. Was not he preſent when Violence was uſed?

Johnſon. Yes, my Lord.

L. C. J. Holt. Then was Violence uſed by him.

Johnſon. But She was very well ſatisfy'd both before and after ſhe was married.

L. C. J. Holt. She was under Force, before ſhe was married; and indeed, all that Night, and afterwards.

Mr. *Johnſon.* She was not hindered to ſend Letters.

Coun. Who would you have carried them, the Bailiffs, or Mrs. *Baynton?*

Johnſon. No, my Lord; but ſomebody for half a Crown, or a Crown.

L. C. J. Holt. It appears very evident, if you will believe Witneſſes, that ſhe was under a Force, before ſhe was married, when ſhe was married, all Night after, and the next Day when ſhe was at the Recorder's. If you are not ſatisfy'd, I'll ſay no more, not one Word more.

Foreman. We muſt go, my Lord, and have been Faſting all Day. He is prepar'd for Faſting, if it be for a Day, or two or three.

Judge *Powel.* The Queſtion is now, Whether you do not believe, upon all this Evidence you have heard, whether this Lady was not under an Arreſt, and taken by theſe Bailiffs?

Johnſon. Yes, I do believe that; but I do not believe Mr. *Swendſen* employed them; all that I ſpeak upon is this, that ſhe had her free Liberty.

Foreman. My Lord, he was reſolved to ſtand by what your Lordſhip ſhould ſay.

Judge *Powel.* If he did not ſet them to work, yet his Act afterwards made it as bad as if he had actually employ'd the Bailiffs.

Johnſon. I can ſay no more, I muſt agree with the reſt.

Gentlemen, Are you agreed?

Foreman. Yes, my Lord, we are all agreed now.

Then, Is he Guilty, or not Guilty?

Foreman. He is Guilty,—And ſo you ſay all?———Yes.

What Goods or Chattles, *&c.?*——*Foreman.* We know of none.

L. C. J. Holt. Mrs. *Baynton*, Will you go on?

Mrs. *Baynton.* I hope your Lordſhip will take Notice that my Servant own'd it once.

L. C. J. Holt. What was it?

Mr. *Mountague.* Only whether he was to dine there.

Mrs. *Baynton.* That which I ſaid, my Lord, ſhe ſaid to me.

Mrs. *Baynton.* Mrs. *Rawlins*, Will you be pleaſed to anſwer me ſome Queſtions?——Mrs. *Rawlins.* I will.

Mrs. *Baynton.* Did not you ſit down in the great Chair in the Dining-Room, and you ſaid, Now I muſt go to Bed? Did not you pluck off your Things, and gave them to me, and I gave them to Mr. *Blake*'s Daughter?

Mrs. *Rawlins.* I conſider Mrs. *Baynton*, that you undreſſed me.

Mrs. *Baynton.* You ſat in the Chair, and undreſſed yourſelf, How can you deny it?

Mrs. *Rawlins.* Mrs. *Baynton*, I can deny it, for I did not.

Mrs. *Baynton.* Nay, more than that, when you were in Bed, Did not you call to Mr. *Swendſen*, my dear Huſband, Why do not you come to Bed?

Mrs. *Rawlins.* I ſaid no ſuch thing.

L. C. J. Holt. Where was this?

Mrs. *Baynton.* My Lord, it was at Mr. *Blake*'s.

Mrs. *Baynton.* Did not you ſay, Come to Bed, my dear Huſband, you muſt love nobody in the World but me?

Mrs. *Rawlins.* No, Mrs. *Baynton*, I did not; I have taken an Oath this Day, and I ſaid no ſuch thing.

Mrs. *Baynton.* Did not you ſay, that you loved him above all the Men in the World?

Mrs. *Rawlins.* No, Mrs. *Baynton*, I did not tell you any ſuch thing.

Mrs. *Baynton.* Did not you ſay theſe Things?

Mrs. *Rawlins.* No, Mrs. *Baynton.*

Coun. Speaking to Mrs. *Baynton*, ſaid, Do you know that ever Mrs. *Rawlins* writ any Letters to Mr. *Swendſen?*

Mrs. *Baynton.* She would; but I would not let her.

L. C. J. Holt. Why would you not let her?

Mrs. *Baynton.* I told her I would not carry any Letters to him, but if ſhe deſired me to tell him any thing by word of Mouth, I would do it; and, my Lord, when Mrs. *Rawlins* was Arreſted, I going down *Wych-ſtreet*, the Coach that ſhe was in coming along then, and I ſeeing her in it, that was the only Reaſon that I went into the Bailiff's Houſe. When I came there, ſhe hung about me, kiſſed me, and ſaid ſhe deſired me to ſtand by her; when your Lordſhip hears, you will believe me no other than a Friend to her. She begged me not to leave her. I offered Bail to Mr. *Hartwell*, but he would not take it; but ſaid I behav'd myſelf ſawcily. And when Mr. *Swendſen* came in, ſhe ſaid, now ſhe was happy. Beſides, my Lord, when he was there, he did not deſire her to go out of the Houſe.

L. C. J. Holt. If you had no Deſign but for her Good, How came you to Mrs. *Nightingale*'s upon ſuch a Deſign with Pretence that you had a Law-Suit, *&c.*? And why did you carry her out in the Coach, in order to be Arreſted?

Mrs. *Baynton.* My Lord, it was not the firſt Time that they went with me in a Coach; they deſired me ſeveral Times to ſet them down, and I did ſo.

L. C. J. Holt. Why did you this? You pretended that you had a Law-Suit, and that you came to Town about it, and it appears not that you had any. —— Mrs. *Baynton.* No, my Lord, I did not.

Mrs. *Nightingale.* My Lord, It was Mrs. *St. John* that recommended Mrs. *Baynton* to me.

L. C. J. Holt. We know that.

Mrs. *Baynton.* If I were ſuch a Woman as they repreſent me to be, Why did they not warn me out of their Houſe? Mrs. *Rawlins*, ſay the whole Truth, and remember that you are upon your Oath, I deſire not Favour or Affection. Did not you ſay to Mr. *Swendſen*, This is my own dear Huſband, and this is the Ring that married us? Did not he begin to ſpeak, and you ſaid to him, Hold your Tongue, and let me ſpeak?

Mrs. *Rawlins.* Mrs. *Baynton*, you know I was very much intoxicated, I hardly knew I had a Head.

Mrs. *Baynton.* Mrs. *Rawlins*, you can drink your Glaſs of Wine as well as any Body elſe. Mr. *Swendſen* was often there at Cards, and ſhe was the moſt uneaſieſt Creature in the World when he was not her Partner. Did not you deſire me to let you ſit by him in particular?

Mrs. *Rawlins.* No, I did not.

Mrs. *Baynton.* Mrs. *Rawlins* had ſaid this ſeveral Times to Mr. *Swendſen*, to deſire him to ſit by her. We play'd at Cards, and ſav'd the Winnings till it ſhould come to 20*s.* and deſign'd it for a Treat. Did not you ſay you would treat Mr. *Swendſen*, and would ſend for Walnuts and Apples? But I ſaid, No, you ſhall not.

Mrs. *Rawlins.* I did ſend for Walnuts and Apples; but it was not with a deſign to pleaſure Mr. *Swendſen*.

L. C. J. Holt. Mrs. *Baynton*, Why did you ſay Mr. *Swendſen* was your Brother? —— Mrs. *Baynton.* I never ſaid he was my own Brother.

L. C. J. Holt. You ſaid it.

Mrs. *Baynton.* No, my Lord, I ſaid he was my Siſter-in-Law's Huſband.

L. C. J. Holt. How was ſhe your Siſter-in-Law?

Mrs. *Baynton.* By Adoption, my Lord.

L. C. J. Holt. By Adoption, What do you mean by that?

Mrs. *Baynton.* Mrs. *Rawlins*, if you had no mind to him, Why did you give him ſuch Encouragement, as to kiſs him, and go betwixt his Legs and kiſs him?

Mrs. *Rawlins.* I take it upon my Oath, that I never did ſo in all my Life.——— Mrs. *Baynton.* Did you not love him?

Mrs. *Rawlins.* No, not well enough for to make him my Huſband.

Mrs. *Baynton.* My Lord, It is very hard that all theſe Things that I have ſaid to her, are all true, and ſhe hath made a Reſolution to ſay nothing but No.

L. C. J. Holt. Mrs. *Rawlins*, Did you deſign to have Mr. *Swendſen* for your Huſband?

Mrs. *Rawlins.* My Lord, I was threatened to be ſent to *Newgate*, if I did not marry him. You know, Mrs. *Baynton*, that you ſaid, that if I did not marry your Brother, they would carry me to *Newgate*.

Mrs. *Baynton.* I never in my Life ſaid any ſuch thing.

L. C. J. Holt. Pray, Mrs. *Baynton*, give an Account how you have lived?

Mrs. *Baynton.* I never run into any Body's Debt.

L. C. J. Holt. Had you a Huſband? — Mrs. *Baynton.* Yes, my Lord.

L. C. J. Holt. How long hath he been dead?

Mrs. *Baynton.* Eight Years To-morrow.

L. C. J. Holt. But you have had a Child lately, within this four Months: Are you married now?

Mrs. *Baynton.* Yes, my Lord, I am married.

L. C. J. Holt. How do you prove that?

Mrs. *Baynton.* I could give your Lordſhip an Account; but it is not proper now, before the whole Court.

L. C. J. Holt. Is it not proper now?

Mrs. *Baynton.* No, my Lord, for ſome Reaſons.

L. C. J. Holt. I think it is very proper. Pray give an Account how you have lived?

Mrs. *Baynton.* I have a Siſter at *Barbadoes* that hath been very kind to me.

L. C. J. Holt. Was you married to Mr. *Baynton*?

Mrs. *Baynton.* Yes, my Lord.

L. C. J. Holt. Mr. *Hartwell*, Who directed you to take out this Writ againſt Mrs. *Rawlins*, at the Suit of one *Jones*?

Mr. *Hartwell.* My Lord, I was ſent for to the *Star* and *Garter*-Tavern in *Drury-Lane*, by Mr. *Holt*. ——— *L. C. J. Holt.* Where is he?

Mr. *Hartwell.* He is not yet taken. He ſent for me twice before I went. When I came to him, I received Money for a Writ againſt that Lady; on which I ſent my Aſſiſtant for a Writ.

L. C. J. Holt. Who was your Aſſiſtant?

Mr. *Hartwell.* (*Pointing to* Spurr, *ſaid, he was his Aſſiſtant.*) I ſent the Writ to Mr. *Wakeman*, to get him to ſerve it. He was not at Home, and I went to him the next Morning. I aſked him whether he would ſerve the Writ? He told me he would; and I told him the ſame that Mr. *Holt* told me, that it could not be done till *Friday* Morning. On *Friday* Morning Mr. *Holt* went with me, and theſe Officers, *Wakeman* and *Spurr*. He bid us be ready, and ſaid the Coach was coming. So we ſerved the Writ as we were ordered, and went to the *Star* and *Garter*-Tavern in *Drury-Lane*; from thence I carried her to my Houſe. If I had had any miſtruſt of any bad Deſign, I would have carried her back again. But I came forward with her to my Houſe. In a little time after ſhe had been there, came Mrs. *Baynton*, and one that is gone now [*meaning Mr.* Swendſen] was ſent for, by ſome Stratagem that I knew not of. They being together, told me, that every thing was agreed of and made eaſy.

L. C. J. Holt. What was made eaſy?

Mr. *Hartwell.* The Debt, as I thought, my Lord. When I carried the young Gentlewoman firſt to my Houſe, I left her with my Wife and a young Woman. When I came Home again, I found Mr. *Swendſen* and this Gentlewoman there, who told me, that every thing was made eaſy. On which they deſired me to go to any Tavern, I knew not where: But they agreed to go to the *Vine* Tavern in *Holborn*.

L. C. J. Holt. Why did you take her from her Friend Mrs. *Buſby*?

Mr. *Hartwell.* It is uſual with Officers to do with Priſoners as they pleaſe.

L. C. J. Holt. That is a barbarous Thing to ſeparate them one from another, when you could apprehend there was no Danger of being reſcued.

Mr. *Hartwell.* My Lord, I beg your Lordſhip's Pardon, I have no Counſel but myſelf; I may ſpeak Things in Point of Law that may prejudice my Life; but as to the Purpoſe I'll ſpeak the Truth.

L. C. J. Holt. You made her put on her Maſk; you forc'd her to it.

Mr. *Hartwell.* Mrs. *Rawlins*, Did I force you to put on your Maſk?

Mrs. *Rawlins.* Yes, he forced me, but I would not at firſt; but he forced me. When I cry'd out Murder, he ſaid, Put on your Maſk, and hold your Tongue, or you ſhall go to *Newgate*.

L. C. J. Holt. What Writ had you againſt Mrs. *Buſby*?

Mr. *Hartwell.* There was no ſuch thing, my Lord.

L. C. J. Holt. You ſaid you had a Writ againſt Mrs. *Buſby*, and another againſt Mrs. *Rawlins*.

Mr. *Hartwell.* My Lord, as to a Writ againſt the young Lady, there was one; I know no other poſitively.

L. C. J. Holt. Why did you refuſe *Holt*'s and *Swendſen*'s Bail?

Mr. *Hartwell.* It was no ſuch thing, my Lord; I cannot help what the People ſwear: I hope to prove to the contrary, both from the beginning to the end.

L. C. J. Holt. Why did you part with your Priſoner at the *Vine*-Tavern without Bail?

Mr. *Hartwell.* My Lord, I no ſooner came into the *Vine*-Tavern, but the Perſon that employ'd me, gave me the Money; which was this Woman [*pointing to Mrs.* Baynton.]

Mrs. *Baynton.* You ſaid *Holt* employ'd you. I gave him no Money, my Lord; and he declared, that he never ſaw me before in his Life.

Mr. Parker *called.*

L. C. J. Holt. Where do you live?

Mr. *Parker.* I lived at the *Star* and *Garter* then, and Mr. *Holt* was there, who ſent me for Mr. *Hartwell*.

Mr. *Hartwell.* My Lord, when I came there, Mr. *Holt* was drinking, and it was all out but a Glaſs. He aſked me to drink; which I did. Then we went from the *Star* and *Garter* down to the *Mitre* in *Weſtminſter*, which was *Holt*'s Houſe. Being there, and I ſmoaking a Pipe, in came this Lady [*pointing to Mrs.* Baynton] and gave me Money for a Writ. I ſent my Aſſiſtant for the Writ, and the firſt Perſon I lit off, which was Mr. *Wakeman*, I made uſe of to aſſiſt me in it. When I ſerv'd it at the *Star* and *Garter*-Tavern, this Gentlewoman [*pointing to Mrs.* Baynton] aſk'd me where I lived? I ſaid in *Wich-ſtreet*. Said ſhe, Take care of her (Mrs. *Rawlins*) and take her along with you to your Houſe, or you will loſe your Money. So I carried her to my Houſe, and having Buſineſs elſewhere, I left her with my Wife, and a young Woman to keep her Company. When I came again, I found Mr. *Swendſen* and this Gentlewoman there drinking a Pint of Sack. They told me if I would go to any Tavern, the Buſineſs ſhould be made up. We took Coach and went to the *Vine*-Tavern, and there the Matter was made an end of. They told me that they would ſatisfy me for my Trouble on *Monday* Night, if I would meet them at Mr. *Holt*'s. Away I went, and was taken Ill to that Degree that I thought I ſhould have died.

L. C. J. Holt. How can you prove that ſhe employ'd you?

Mr. *Hartwell.* I believe I ſhall have ſomebody to prove that. But, my Lord, the main Witneſs of mine is not come in, and that is Mr. *Holt*.

L. C. J. Holt. He is fled.

Mr. *Hartwell.* But, my Lord, I ſuppoſe his Wife is here. My Lord, I hope you will allow Mr. *Wakeman* to come into the Court, that I may aſk him ſome Queſtions.

Juſtice *Powel.* A Woman cannot be a Witneſs for or againſt her Huſband; Then for what reaſon ſhould ſhe be called?

Mr. *Hartwell.* What can be more material than my going to *Holt*'s? I have no other Perſons to appear for me.

L. C. J. Holt. Did *Holt* firſt employ you?

Mr. *Hartwell.* He firſt ſent for me, my Lord.

L. C. J. Holt. Have you any other Witneſſes?

Mr. *Hartwell.* My Lord, I thought they call'd for *Wakeman*.

Mr. Wakeman *called.*

L. C. J. Holt. Aſk him what Queſtions you will.

Mr. *Hartwell.* Mr. *Wakeman*, Who was it employ'd me?

Mr. *Wakeman.* He never told me who employ'd him till he came to the Recorder's, and then he told me that this Woman [*pointing to Mrs.* Baynton] employ'd him. The Recorder aſk'd me who it was employ'd me? *Hartwell* made Anſwer, and ſaid, I employ'd him; and ſaid likewiſe, that the Woman brought him Money for the Writ.

Mrs. *Baynton.* I never gave *Hartwell* Money, nor employed him, nor confeſſed to the Recorder.

Mr. *Wakeman* call'd a Witneſs, who ſaid for *Hartwell*, that 'twas Mrs. *Baynton* confeſſed before the Recorder upon her Examination, that ſhe gave Money to, and employ'd *Hartwell* to ſue out a Writ againſt Mrs. *Rawlins*, at the Suit of *W. Jones* for 20*l.* and gave for Reaſon, on farther Examination, that the ſaid *Jones* owed Mrs. *Baynton* 20*l.* And he wrote to Mrs. *Baynton* to get Arreſted Mrs. *Rawlins* for 20*l.* due from her to *Jones*; and that on ſuch Arreſt, Mrs. *Rawlins* would pay the Money to Mrs. *Baynton*. —— *L. C. J. Holt.* Have you any thing more to ſay?

Mr. *Hartwell.* My Lord, I never ſaw Mr. *Swendſen* before he came to my Houſe with Mrs. *Baynton*, when the young Gentlewoman was there. When I came in, they were drinking a Pint of Sack together. The young Lady was very free to go to the *Vine*-Tavern. Madam, Were you not free to go?——Mrs. *Rawlins.* I do not deny but I was free to go.

Mr. *Hartwell.* Did we offer any Rudeneſs to you at that Place?

Mrs. *Rawlins.* No, not then.

L. C. J. Holt. That is the Thing you are to anſwer to, your taking her away by Force.

Mr. *Hartwell.* My Lord, I know nothing of it; I cannot help it, my Lord, there is nothing in it.

Mr. *Hartwell.* Mr. *Wakeman*, Did I know any thing of your being with Mr. *Holt* and Mr. *Swendſen* at the *Five-Bell* Tavern?

Mr. *Wakeman.* I don't know that you did.

Mr. *Hartwell.* No, my Lord, I knew nothing of it till laſt *Thurſday* he told me of it.

L. C. J. Holt. Who ſent for Mr. *Swendſen?*

Mrs. *Rawlins.* Mrs. *Baynton.*

Mr. *Hartwell.* Mrs. *Rawlins*, was I in the Houſe at that Time?

Mrs. *Rawlins.* No, I did not ſee you there then.

Mr. *Hartwell.* My Lord, with Submiſſion to your Lordſhip, I underſtand by ſomething I have heard, ſince I have been in Cuſtody, that this Gentlewoman, Mrs. *Baynton*, ſaid to Mrs. *Rawlins*, Shall I ſend for my Brother?

L. C. J. Holt. Do you keep a Publick Houſe?

Mr. *Hartwell.* No, my Lord, only a Priſon-Room, but ſell no Drink: This Gentlewoman was in the Parlour all the while.

L. C. J. Holt. Have you any thing more to ſay?

Mr. *Hartwell.* Nothing at all, my Lord; I was rul'd by the Perſon that employ'd me.

Juſt. *Powel.* What did you apprehend by this?

Mr. *Hartwell.* She told me there was one gone for; and ſhe ſaid ſhe would bring a Gentleman to pay me the Money.

L. C. J. Holt. Mr. *Spurr*, what ſay you?

Mr. *Spurr.* I know nothing more of the Matter, than Mr. *Hartwell*'s giving me Money for taking out the Marſhal's Court Writ, and I was employ'd by him.

L. C. J. Holt. When Mrs. *Buſby* cry'd out, did you not ſay, What have you got by your Bawling? [*No Anſwer made.*]

Mr. *Mountague.* We have a few Words to reply, if the Priſoners have done. The Gentlewoman at the Bar inſiſts upon it, that Mrs. *Rawlins* was conſenting to the Matter, was in Love with Mr. *Swendſen:* We think, not only by the Evidence given, but what they ſay themſelves, that ſhe was carry'd away by Force. Indeed, when ſhe was taken into *Hartwell*'s Houſe, there was no body by at that Time, but thoſe ſhe was not afraid of. To conclude; if there was any Conſent by Mrs. *Rawlins*, it was only to have her bail'd; it was that only that ſhe deſign'd. *Hartwell* ſays, he was only employ'd as a Bailiff, by *Holt:* He carry'd them from his Houſe to the *Vine* Tavern: Now, what Occaſion had he to carry them to the Tavern for Bail? We ſhall prove further, that when they came to the *Vine*, *Hartwell* himſelf was ſaid to be the Bail for the Action.

Anne Cotchett *called and ſworn.*

Mr. *Mountague.* Miſtreſs, pray will you give an Account how *Hartwell* brought the Priſoner there.

Cotchett. Mr. *Hartwell*, when the Coach came, ordered a Pint of Wine for the Coachman. The Drawer ſaid, We draw, and draw, but don't know who'll pay for it. Mr. *Hartwell* came to me, and ſaid, that it was an Arreſt for 120 *l.* that he would ſee us paid.

L. C. J. Holt. Was it the Woman in the white Gown that was arreſted for 120 *l.?* ——*Cotchett.* Yes, my Lord.

Mr. *Hartwell.* Did you ſee me in Company with the Parſon?

Cotchett. You came down Stairs, and ordered a Pint of Wine for the Parſon, and half a Pint beſides; and told me the Parſon was the Bail.

Mr. *Hartwell.* I did not know that the Parſon was in the Houſe, till I had juſt done my Buſineſs, and was going away. Did you ſee me with the Parſon, Madam *Rawlins?*——Mrs. *Rawlins.* I do not tell you ſo.

Mr. *Mountague.* All that is to be prov'd in this Indictment is, that ſhe was taken away againſt her Will, and afterwards compell'd to marry.

Cotchett. I did not ſee Mr. *Hartwell* after that.

L. C. J. Holt. Gentlemen of the Jury, theſe three Priſoners are indicted for Felony, upon the Statute, made in the third Year of King *Henry* the Seventh; That they with *Haagen Swendſen* now convicted, and *Thomas Holt*, that is fled, did violently and feloniouſly aſſault one *Pleaſant Rawlins*, being ſeized of an Eſtate of Inheritance of about 20 *l. per Ann.* and poſſeſſed of a perſonal Eſtate of the Value of 2000 *l.* and took her away by Force againſt her Will; and that he, *Swendſen*, did marry her. Now the Queſtion is, Whether the Priſoners at the Bar are guilty of this Crime? Firſt, as to Mrs. *Baynton*, you have heard what an Account is given of her: She was a Perſon that came to lodge at Mrs. *Nightingale*'s Houſe in *Stretton-Grounds* in *Weſtminſter:* She went for a Widow, by the Name of *Sarah Baynton*. It ſeems, Mrs. *Buſby* and Mrs. *Rawlins* did lodge about three Years in Mrs. *Nightingale*'s Houſe. They being all ſingle, were very well ſatisfied one with another. Mrs. *Rawlins* was placed by her Guardian under the Care of Mrs. *Buſby*; and has a perſonal Eſtate of 2000 *l.* and 20 *l.* a Year. About three Weeks before *Michaelmas* laſt, you hear of one Mrs. *St. John*, that was an Acquaintance of one Mrs. *Nightingale*'s came to her, and told her of Mrs. *Baynton*, a well-diſpoſed Gentlewoman, that was come to Town about a Suit of Law, and thought that ſhe ſhould ſtay about a Month, and thought that her Houſe was a proper Place for her Lodging, and gave her a very good Character, that ſhe was a civil religious Woman of a good Converſation, and deſired to be near the Church. After ſome Time, Mrs. *Baynton* came herſelf. She ſaid, as Mrs. *St. John* had done before, that ſhe came to Town about a Law Buſineſs, was a Widow in the *Weſt*. Mrs. *Nightingale*, by reaſon of the Character that was given her, received her into her Houſe. When ſhe was there, ſhe behaved herſelf very civilly for ſome Time; ſo that Mrs. *Nightingale* and Mrs. *Buſby* were well pleaſed with her, and thought her to be a Gentlewoman of very ingenious Converſation. She tells them, ſhe had a Brother, that had Intereſt in Shipping; and ſo there was an Invitation of Mrs. *Buſby*, Mrs. *Rawlins*, and Mrs. *Baynton*, to go on Shipboard, where they were treated by Mr. *Swendſen*. Mr. *Swendſen* uſed to viſit Mrs. *Baynton*, and ſhe uſed to call him Brother: While ſhe was there, *Swendſen* dined 9 or 10 Times. She had not been there long before they began to have different Apprehenſions of her from what they had at firſt, and were very uneaſy at her Continuance. Mrs. *Baynton* did apprehend there was ſome Appearance of Uneaſineſs; and came to Mrs. *Nightingale*, and told her ſhe had made an End of her Suit of Law, and had no Occaſion to ſtay in Town, but would return into the Country. It ſeems Mrs. *Nightingale* and Mrs. *Buſby* were well pleaſed with Mrs. *Baynton*'s Warning. Before ſhe went away, ſhe underſtood, that Mrs. *Buſby* and Mrs. *Rawlins* uſed to go to *Oxendon* Chapel; ſhe came to them and ſaid, ſhe had Occaſion to go that Way with a Band Box to her Milliner's; told them ſhe went in a Coach, and if they pleaſed, they might go with her, and ſhe would ſet them down at a Place near the Chapel. They accept of her Civility, thinking nothing of any Deſign; and as the Coach was driving along, it was ſtopped by Bailiffs, and all on a ſudden, *Hartwell* opens the Coach, and thruſts himſelf into it. Mrs. *Buſby* and Mrs. *Rawlins* were not conſcious of any Cauſe of an Arreſt, thought the Arreſt was upon Mrs. *Baynton*, they began to be concern'd for her; but it appear'd that 'twas upon them, and then Mrs. *Baynton* ſeem'd to be as much concern'd for them, when they were both to be carry'd away; but aſked *Hartwell* what it was for? He told them it was no great Matter; but if you and I talk together a little, all will be well. Mrs. *Baynton* expreſs'd herſelf to be much concern'd for Mrs. *Buſby*; ſhe adviſed her not to talk any Thing with him, without her Friends were nigh. And when they were in the Coach, it was directed to be drove away; Mrs. *Buſby* deſired to be carry'd to *Fleet-ſtreet* to her Friends; but *Hartwell* would carry her to the *Star* and *Garter* Tavern in *Drury-Lane*. Mrs. *Baynton* continued in the Coach until they came thither, and then pretended to go for Mrs. *Buſby*'s Friends; and when they were at the *Star* and *Garter* Tavern, they were carry'd into a Back-Room. Mrs. *Buſby* forced herſelf with the young Woman into a Fore-Room. Then *Hartwell* laid Hands upon Mrs. *Rawlins*, and ſaid ſhe was his Priſoner, and carries her away by Violence, forces her down Stairs, and ſwears at her to put on her Maſk, otherwiſe he would carry her to *Newgate*. Mrs. *Buſby*, the Priſoner above Stairs, was to go to *Newgate*, as was pretended; but Mrs. *Rawlins* was to go to the *Marſhalſea*. Away ſhe was carried to the Houſe of Mr. *Hartwell*; but Mrs. *Baynton*, who pretended, that as ſhe was going by chance that Way heard Mrs. *Rawlins* named; thereupon ſhe goes in, and very luckily finds her there, and pretends to pity her Condition, and ſaid ſhe had been with ſeveral of her Friends to be her Bail, but could procure none of them to come. Then ſhe ſaid ſhe would go for her Brother *Swendſen*, who ſhe was ſure would be her Bail. Upon that Meſſage he came, and then Mrs. *Rawlins* was to be carry'd to the *Vine* Tavern. Mrs. *Baynton* went with her thither, as they pretended to make up the Buſineſs. Then it was propoſed that *Holt* and *Swendſen* ſhould be Bail. *Hartwell* refuſed them as inſufficient: Upon which ſhe was told ſhe was in danger of going to *Newgate*, and Bail could not be taken; and the only Way was, that ſhe muſt be married to *Swendſen*; and if ſhe did not marry, ſhe ſhould go to *Newgate*. Mrs. *Baynton* took the Ring from off her Finger, in order to get a Wedding-Ring to be made by it; which being procured, there was a Parſon in the Houſe ready provided with a Clerk to do the Office, who came into the Room where the Marriage was made, and ſo ended that Arreſt. From the *Vine* Tavern ſhe is carry'd with Mr. *Swendſen* and Mrs. *Baynton* to Mr. *Blake*'s Houſe, and there ſhe was forc'd to Bed: Within an Hour and an Half, they ariſe again, at Seven a-Clock at Night; and thus the Marriage was conſummated. As for Mrs. *Baynton* there is this further Proof upon her, that ſhe did pay *Hartwell* for this very Arreſt, which is proved upon her by her own Confeſſion before the Recorder. Then, as to *Hartwell*, he is affected by theſe Circumſtances. Firſt, there was no Proceſs againſt Mrs. *Buſby*, but yet ſhe was arreſted and carry'd to the *Garter* Tavern, where ſhe was kept in Cuſtody till the Evening, and could not procure any Friends to be called to her; and during the Time of her being there, Mrs. *Rawlins* was married to Mr. *Swendſen* at the *Vine* Tavern. And it is further prov'd againſt him, that when the Parſon was come, he told the Miſtreſs at the *Vine* Tavern, that the Parſon was to be one of the Bail. It is alſo prov'd, that he inſiſted upon very good Bail; for he told the Woman of the Houſe the Arreſt was for 120 *l.* when as it appear'd it was but for 20 *l.* Now you are to conſider what hath been ſaid in their Defence. Mrs. *Baynton* ſays, that Mrs. *Rawlins* was in Love with Mr. *Swendſen*, and did complain of her Confinement and hard Uſage; and that ſhe told her ſhe could help Mr. *Swendſen* to a young Lady at her own Diſpoſal; and that there was one Mr. *Pugh* that made Application to Mrs. *Rawlins*; but ſhe return'd his Letters that ſhe had receiv'd from him: That Mrs. *Rawlins* did ſay, that ſhe could help Mr. *Swendſen* to a Lady that had a Fortune at her own Diſpoſal, which is own'd by Mrs. *Rawlins*; and that by that Lady ſhe did mean herſelf; but that ſhe had any familiar diſcourſe with him in the Garden, or that ſhe was ſick for him, and went up and cried for him, that ſhe denies upon her Oath. And further ſays, that ſhe never intended to do any Thing againſt the Advice of her Friends, or that ſhe had ſet her Love upon him. Then Mrs. *Baynton* charges Mrs. *Buſby*, that ſhe had a Kindneſs for her Brother *Swendſen*, becauſe ſhe ſaid he was her beloved Likeneſs. Mrs. *Buſby* owns, that he was ſomething like her Huſband, and on that Account might innocently call him ſo. As for *Hartwell*, he relies on his being a Bailiff, and in Execution of his Office, being employ'd by Mr. *Holt* and Mrs. *Baynton*, and that ſhe paid him for the Writ. Mr. *Holt* ſent for him, and he knew nothing but of Arreſt, and was not privy to any other Deſign. It is prov'd indeed, that Mr. *Holt* did ſend for him. This is the Sum and Subſtance of his Defence. I muſt tell you, that if *Hartwell* was employ'd in this Deſign, in order to take her into Cuſtody to carry on this Marriage, and was privy to it, then he is equally Guilty; but if he did only act as a Bailiff, and did not know the Deſign, then he is not Guilty. But his arreſting Mrs. *Buſby* againſt whom he had no Proceſs; and taking Mrs. *Rawlins* from Mrs. *Buſby* to his own Houſe, and from thence carrying her to the *Vine* Tavern; his pretending that the Warrant was for 120 *l.* when as in Truth it was but for 20 *l.* and his pretending that the Parſon was to be the Bail, though he was not preſent in the Room where the Marriage was, but hard by; yet he was in the ſame Houſe, which is all one, if he knew what Deſign was a-foot: Theſe are the Things you are to conſider of. As for Mrs. *Baynton*, ſhe pretended ſhe was a Widow, and you hear how ſhe proves it; and when ſhe is taxed with having a Child, then ſhe ſays ſhe hath a Huſband. And when ſhe is aſked about him, ſhe will give no Account, nor how ſhe ſupports herſelf. She ſaid indeed ſhe paid every Body their own, and that ſhe has no Difference with any Body whatſoever. She pretended ſhe was Mrs. *Rawlins*'s Friend in what ſhe did; but it is plain by what ſhe owns herſelf, that ſhe employ'd *Hartwell*, and paid him for the Writ. And her pretending to ſet them down at *Oxendon* Chapel, there it was her Deſign to bring them under that Force to effect this Marriage. I muſt leave it to you conſider, whether from the Beginning to the End ſhe was not an Actreſs and a Manager of this whole Buſineſs. She hath been aſked how Mr. *Swendſen* came to be her Brother? Firſt ſhe ſays, he was her deceaſed Siſter's Huſband. Then being aſked who was that Siſter? ſhe ſaid, he was an adopted Siſter's Huſband. It was very extraordinary for her to go to Mr. *Hartwell*'s Houſe to the young Gentlewoman, and pretend that ſhe came by chance, and heard her Name, I muſt leave it to you Gentlemen of the Jury to conſider of the whole Matter: And as for *Spurr*, he was an Under-Officer, a Bailiff's Follower, and might be ignorant of the Buſineſs. You have not Evidence enough to make it appear that he was privy to this Deſign, and therefore you are to acquit him; but as to Mrs. *Baynton* and *Hartwell*, if they were privy to the Deſign of a forceably taking away of Mrs. *Rawlins*, with an Intent to marry her to *Swendſen*, as it is plain that he was an Actor, and ſhe Abettor in the Force; then, Gentlemen, you are to find them Guilty: if you are not ſatisfied, you are to Acquit them.

The Jury went out for half an Hour, and brought in the following Verdicts.

Mrs. *Baynton, Guilty.*—Mr. *Hartwell, Not Guilty.*—Mr. *Spurr, Not Guilty.*

L. C. J. Holt *ſaid to* Hartwell, *You have had a very Merciful Jury, let it be a Warning to you for the future.*

Mrs. *Baynton.* My Lord, I am with Child.

L. C. J. Holt. That will be conſidered on *Saturday, November* the 28th.

The Priſoners were called to the Bar to receive Sentence of Death.

Mr. *Soll. Gen.* I pray your Lordſhip's Judgment againſt the Priſoners at the Bar.

Cl. of Arr. Haagen Swendſen, hold up thy Hand. Thou haſt been convicted of Felony done by thee, and committed on Mrs. *Pleaſant Rawlins*, and the Jury hath found thee Guilty; What have you to ſay for yourſelf, why you ſhould not receive Sentence of Death according to Law?

Mr. *Swendſen:* I could ſay a great deal, but I ſhall ſay but very little. I do not doubt but the honourable Court obſerv'd how various ſhe was in her Evidence. What ſhe deny'd in my Trial, ſhe confeſſed in Mrs. *Baynton*'s; and ſo I leave it to the Court, if there may be an Arreſt of Judgment till the next Term.

L. C. J. Holt. Unleſs you can ſhew us ſome Cauſe for it, it will not be granted.

Mr. *Swendſen.* My Lord, ſhe ſaid thoſe Things in her Trial, which ſhe deny'd in mine.

L. C. J. Holt. Some Things ſhe mentioned in your Trial, that ſhe had no Occaſion for in hers.

Mr. *Swendſen.* The ſame Things were in my Trial that were in hers.

L. C. J. Holt. There were ſome Things in her Trial that were not in yours.

Cl. of Arr. Sarah Baynton, hold up thy Hand. Thou haſt been indicted for Felony, and found Guilty. What haſt thou to ſay for thyſelf, why you ſhould not receive Sentence of Death according to Law?

Mrs. *Baynton.* My Lord, I am with Child.

L. C. J. Holt. That is no Plea againſt Judgment.

Mrs. *Baynton.* My Lord, I deſire that it may be taken into Conſideration, how that ſhe contradicted herſelf in her Evidence; that ſhe ſpoke thoſe Things in Mr. *Swendſen*'s Trial that ſhe contradicted in mine. I think I have a great deal of Injuſtice; I am as innocent as any Perſon in the Court.

L. C. J. Holt. That you did this Thing is moſt apparent: That you deluded this young Perſon, and pretended yourſelf to be a Perſon of Quality, a religious Woman, and one that came out of the Country about a Law-Suit; that you pretended that this Mr. *Swendſen*, the Priſoner at the Bar, was your Brother, your Siſter's Huſband; and all this falſe Dealing was to bring him in to delude this Woman. It is plain that you had no Suit of Law as you pretended. It is plain that you took out this Proceſs againſt the young Gentlewoman. It is plain, that you pretended you would ſet them down at a Chapel.

Mrs. *Baynton.* It is not the firſt Time, my Lord, that I ſet them down.

L. C. J. Holt. But you made uſe of this Stratagem to accompliſh the Arreſt. You have deluded the World by theſe Things: and indeed it is very hard againſt you.

Mrs. *Baynton.* My Lord, they deſired me to ſet them down.

L. C. J. Holt. The Licence was taken out before the 6th of *November* a conſiderable Time.

Mrs. *Baynton.* My Lord, ſhe cannot deny but ſhe ſpoke for it to me. She herſelf ordered it to be done. My Lord, when I was upon my Trial, Abundance of People prompted her to ſpeak thoſe Things ſhe knew nothing of; Mrs. *Buſby* in particular; though I do not queſtion but ſhe herſelf would have married Mr. *Swendſen*, for ſhe expreſſed Love for him in calling of him her beloved Likeneſs.

L. C. J. Holt. She ſaid he was like her Huſband, and therefore on that Account ſhe might ſay ſo. Crier, make an O Yes.

Mr. *Swendſen.* My Lord, my Trial has already made a great Noiſe in the World; and I do not know but that by this Time it may be come to the Queen's Ear, therefore I deſire that your Lordſhip would be pleaſed to make a favourable Conſtruction of it to her.

L. C. J. Holt. Well, I do not queſtion but Her Majeſty hath heard of it. Crier, make an O Yes, while Judgment is given.

Juſtice *Powell.* You that are the Priſoners at the Bar, *Haagen Swendſen* and *Sarah Baynton*, you have been both tried and convicted of a very great Offence, for which you are brought to receive the Judgment that the Law requires. You have had a very ſolemn Trial, and have both been convicted upon very plain and full Evidence. Your Offence is of a very high Nature; and I am glad that you have had ſuch a ſolemn Trial, that all People may know how great a Crime this of Fortune-ſtealing is (which is Death by the Law) and may take Warning by you; it may be, a great many People do not know how penal this Offence may be, but I hope your Trial may be a Means to deter others from making Uſe of ſuch wicked Practices. Your Offence hath been in a Nation where Property is better preſerv'd than in any other Government in the World. Here it is Death for a Man to take away any Thing, though never ſo ſmall, by way of Robbery: How much worſe is it for you to take away the Child of a Man, and with her all that he hath gotten by his Induſtry all his Life-Time, at once? This is moſt certainly a very great Offence againſt the Publick, being ſo great a Violation of Property, and the Injury you have done to this Woman is very great too, and cannot be repaired: All the Satisfaction that can be given is by taking away the Lives of thoſe Perſons that were the Contrivers of it. You *Haagen Swendſen* have had the Privilege (the Law allows to Foreigners) of a Party-Jury; and I believe, had there been any Room for a Jury to bring you in Not Guilty, you had not been found Guilty; but the Fact was prov'd ſo plain upon you, that they could not poſſibly avoid it. It is true you inſiſted upon it that you were not preſent at her firſt taking, and that ſhe gave her Conſent to the Marriage. It is true, that you were not preſent when ſhe was firſt taken, but there were ſtrong Preſumptions to conclude that you were privy and conſenting to it, which will render you equally culpable as if you had been preſent. For when ſhe was taken into Cuſtody, ſhe was brought to a Houſe where *Holt* and you were ſeen together; *Holt* being the Man that ſet the Coach, and gave Directions to the Bailiffs when to ſeize her; and beſides, you had a Licence prepar'd for your Marriage to her. Theſe are very great Circumſtances of your being privy to the firſt taking. But admitting you were not privy to the firſt taking, you were privy to her being in Cuſtody under an Arreſt, when you was brought to bail this Woman; and Word was brought in that they were contented to take Bail, but excepted againſt your's: and when ſhe was told by *Sarah Baynton* ſhe muſt go to *Newgate* unleſs ſhe married you, you were preſent at all this; and this being done and acted whilſt the firſt Force was continued upon her, is in Law a forceably taking; ſo that you are plainly guilty of a forceable taking. And then alſo, if that were neceſſary, of marrying her by Conſtraint, ſhe being under Menaces, that if ſhe would not marry you, ſhe muſt go to *Newgate:* You yourſelf were conſcious, this was no ſuch Conſent as Marriage requires, ſince that Evening you made Application to a Juſtice of Peace to take an Affidavit from her that ſhe had given her Conſent. When you brought Witneſſes to give an Account of your former Life and Converſation, that ſome Years ſince you were an able Merchant in your Country, one in great Credit, an ingenious Man, and of good Intereſt and Acquaintance there, I confeſs, I had great Commiſeration for you, and thought this Misfortune befel you upon the Account of your Acquaintance with this ill Woman; the Acquaintance with ſuch a Woman will make a rich Merchant quickly poor, will ſoon reduce a wealthy Man to a Morſel of Bread. I am afraid that ſhe hath been a very great Inſtrument in your Ruin.

And you *Sarah Baynton*, when you were aſked to give an Account of what Kind of Life you liv'd, it appear'd to be but a very ſorry one indeed, ſo that I could not but conclude you to be a very lewd Woman. You had Wit and Parts enough, which might have been of great Service to you, if you had lived honeſtly; but you made uſe of them to another End, and it is not fitting that you ſhould live longer that cannot live better. You contrived and carried on all this wicked Deſign from firſt to laſt; and that you might the better perform it, you went to a civil Houſe under the Character of a Gentlewoman that came out of the Country about a Suit of Law. There you pretend to be a very good Woman, and ſeem to be much pleaſed with the Family, becauſe they were ſober People; but your Deſign was to entice and delude this young Woman. Whether your Deſign at the Beginning was to commit this Fact I cannot tell; but being not uſed to this Courſe of Life, you could not wear your Diſguiſe long without Diſcovery; you began to be ſuſpected and to be ſeen through; the Family was very willing to be rid of your Company; which you perceiving, you reſolved you would atchieve your Deſign before you went. For that End you invite them into a Coach, promiſing to ſet them down where they were going; but inſtead of that, you employ Bailiffs to arreſt them; for you with your own Hand paid the Bailiff that was to do it; and after they were taken you pretended to pity them. And when Mrs. *Rawlins* was at Mr. *Hartwell*'s Houſe, you pretended that you accidentally and providentially overheard her Name mentioned in Mr. *Hartwell*'s Houſe, as you paſſed in the Street. You go into the Houſe, and pity her Condition, and propoſe your Brother for her Bail; but inſtead of that, all your Deſign was to bring about this Marriage; and for that End you forced her Ring from her to get another made by it. It was you that told her ſhe muſt go to *Newgate* unleſs ſhe married your Brother; and after that forced her to Bed. From the Beginning to the End you carried on this wicked Deſign to the Ruin of this young Woman; you have a great deal to anſwer for. I have ſtated this Matter, that you may be ſatisfied that this Fact hath been proved againſt you both very fully, and therefore you can expect no other than an Award of the Puniſhment the Law requires, that is, Death. I hope you will reflect upon thoſe evil Courſes that have brought you to this End. You have but a ſhort Time to live, and therefore it would be well for you to conſider your Future State: You may have better Inſtructions for that than I can give you; therefore I will now proceed to the Sentence, which is,

That you ſhall go hence to the Place from whence you came, and from thence to the Place of Execution, and that there you ſeverally hang by your Necks until you are dead; and ſo the Lord have Mercy upon your Souls.

Mr. *Swendſen.* My Lord, now I am bound to do this Woman Juſtice. She hath not been the Contriver of it. It was all done by my Direction; and for her Sake I deſire the Queen may know of it.

L. C. J. Holt. Well, that will clear up the Doubt to ſome of your Countrymen, who did think that you were not the Contriver of it.

Mr. *Swendſen.* I deſire, my Lord, that the Matter may be repreſented to the Queen as favourably as you can.

Cl. of Arr. Sarah Baynton, hold up thy Hand.

Baynton. My Lord, I am with Child.

L. C. J. Holt. Let a Jury of Matrons be ſent for.

They are ſent for. Upon the hearing of her Sentence, ſhe fell into Fits.

Cl. of Arr. You the Matrons of the Jury, ſhall view and diligently enquire and a true Verdict give, according to your Evidence, whether *Sarah Baynton* be with Child, quick with Child, or not. So help you God.

The Names of the Jury of Matrons are as follow:

Mrs. *Sarah Johnſon*,
Mrs. *Chriſtian Walker*,
Mrs. *Suſannah Goff*,
Mrs. *Mary Herbert*,
Mrs. *Sarah Randall*,
Mrs. *Mary Vere*,
Mrs. *Sarah Webb*,
Mrs. *Dorothy Mordit*,
Mrs. *Eliz. Guernella*,
Mrs. *Mary Rogers*,
Mrs. *Jane Smithſon*,
Mrs. *Margaret Leach.*

L. C. J. Holt. You the Matrons are to conſider well the Oath you have taken, which is diligently to enquire whether this Woman be quick with Child: If ſhe be with Child, but not quick, you are to give your Verdict ſo; and if ſhe be not quick with Child, then ſhe is to undergo the Execution of the Sentence in convenient Time.

About Half an Hour after, the Jury of Matrons came in.

L. C. J. Holt. Are you agreed in your Verdict?——— *Anſw.* Yes.

L. C. J. Holt. Who ſhall ſay for you?——*Anſw.* The Fore-Woman.

L. C. J. Holt. Do you find the Priſoner to be with Child, with quick Child, or not?——Mrs. *Johnſon.* Yes, my Lord, ſhe is quick with Child.

L. C. J. Holt. Is this your Verdict?——Mrs. *Johnſon.* Yes, Sir.

L. C. J. Holt. And ſo you ſay all?——— *Anſw.* Yes, my Lord.

L. C. J. Holt. Hark ye, Mrs. *Baynton!* Theſe Women by their Verdict give you longer Time to prepare you for Death, and therefore I hope you will improve your Time, for the Judgment is paſt, and will be executed ſoon after your Delivery.

Sarah Baynton *was reprieved, but* Haagen Swendſen *was executed.*

He made no Speech at the Place of Execution, but referr'd himſelf to the following Paper, which he left with the two Divines who attended him.

“I Do believe the World will expect I ſhould ſay ſomething for their Satisfaction. That I had a Deſign to have Mrs. *Rawlins* for my Wife is moſt true. I was told of her by a Neighbour and Friend of hers, and then made a further Enquiry, and found her Quality ſuch as I might, without any Exceptions, preſume to, her Father being the Son of a Tradeſman; the next was, how to get into her Acquaintance; and not knowing how to be introduc'd, I prevail'd with, and perſuaded Mrs. *Baynton* to take a Lodging in the ſame Houſe with Mrs. *Rawlins*, by which Means I found eaſy Acceſs to my Wiſhes, and was as welcome to the Family, as if I had been one of themſelves. I had their Company on Board a Ship, where I gave them an Entertainment, and was invited to dine with them, and by degrees I poſſeſs'd myſelf of Mrs. *Rawlins*'s Affection ſo far, that ſhe ſeem'd uneaſy without me, and frequently importun'd for my ſpeedy Return, and obliged me to ſit next to her at Table, ſaying, that if I did not, ſhe would not eat, and treated me with many private Careſſes, by which Lovers, who have not frequent Opportunity of ſpeaking, do by Signs and Tokens expreſs themſelves.

“I do declare that I had as good Reception as a Lover could wiſh for, and all the Encouragement imaginable; inſomuch that nothing ſeem'd diſagreeable to my Intentions, but all things did promiſe to facilitate my Deſign with Succeſs, ſhe herſelf having told me that ſhe was at her own Diſpoſal, and would marry to pleaſe herſelf.

“My Familiarity with Mrs. *Rawlins* before my Marriage was ſo great, that there was no Room left for me to practiſe Violence upon her; though I muſt ſay I was impatient of Delays, and wiſh'd for an Opportunity to accompliſh my Deſire.

“But as for the unhappy Contrivance of the arreſting Mrs. *Rawlins*, I had no ſhare in it, but was perſuaded to conſent to it by Mr. *H*—— and his Wife; and when the Intrigue was brought to Perfection, I comply'd, and laid hold of the Opportunity, in order to marry Mrs. *Rawlins*, which with little Difficulty, and leſs Perſuaſion, I accompliſh'd; ſo having, without any Force or Violence, declar'd to the Miniſter that ſhe was at her own Diſpoſal, and free to marry me, which the Miniſter declar'd in open Court, at my Trial.

“After we had been in Bed, comes in one Mr *Bennet*, a Conſtable, with ſome of Mrs. *Rawlins*'s Relations, who requir'd me to go with them before a Juſtice of Peace; finding they had no Warrant, I refus'd to give Obedience to their Commands, which created ſome Diſpute; and my Wife hearing the Noiſe, came out of the Bed-Chamber, deſiring me to be quiet, and let her ſpeak to them; which accordingly ſhe did, in theſe expreſs Words following, *viz. Couſin, I have married this Gentleman with my own free Conſent, he is my Huſband, and this is my Wedding-Ring*, ſhewing the Ring on her Finger: *As for Mr.* Buſby, *I will give him under my Hand he ſhall come into no Trouble, and what would you have more?*

“Then ſaid they, if it be ſo, then God bleſs you both together, and drank a Flaſk of Wine or two with me, and then departed; they were no ſooner gone, but I aſked her, whether ſhe would be willing to appear and declare what ſhe had ſaid to her Friends to a Juſtice of Peace? And ſhe ſaid ſhe would with all her Heart. Then we went to Mr. Juſtice *Baber*, in *York-Buildings*, and declar'd the ſame to him; he told her he would take Notice of her Face, and bid her ſtick to that.

“The next Day, about eleven of the Clock, there came a Conſtable with a Warrant, and carried us before the Recorder, unto whom ſhe ſaid the ſame thing over and over. Then ſaid the Recorder, *Alas! Child, they made you drunk, and you did not know what you did.* To which ſhe anſwer'd, *That there were a great many there preſent that knew her Life and Converſation, that ſhe did not uſe to be drunk:* And when the Recorder could not prevail with her, he conceiv'd, that my being perſonally with her, oblig'd her to ſtand ſo firm to her Marriage; he then order'd me to be pull'd away by Force from her, at which ſhe fell a weeping; how ſhe afterwards was lectur'd by her Friends, was ſufficiently atteſted by my Proſecution, Trial, and Sentence; and after I was committed to *Newgate*, I was remov'd by a *Habeas Corpus* to the *Queen's-Bench* Bar, there to be arraign'd, and pleaded Not Guilty to the Indictment. I pleaded for longer Time to prepare for my Trial, but was allow'd but four Days; when I was brought to my Trial, I moved for Counſel to plead my Cauſe, as being a Stranger, and not acquainted with the Laws of *England*; my Life being thus at Stake, a powerful Intereſt againſt me, and the Court not for me, render'd my Caſe both deſpicable and deplorable; and as for ſome of my Evidence, I do verily believe they were bribed by the adverſe Party, others taken off by ſiniſter Art, and ſome hinder'd by Force from appearing in Court for me. As for Juſtice *Baber*, he ſhew'd himſelf but coldly in giving his Teſtimony, and ſaid, that my Wife did confeſs before him, that ſhe was marry'd by her own free Conſent; but at the ſame Time he added, that ſhe ſeem'd very much diſorder'd: As for that Gentleman, I forgive him, and ſhall leave God to be Judge between him and me.

“It is to be noted, That my Wife did not deny, in open Court, that ſhe had made the Declaration aforeſaid, of her Marriage, to Mr. *Bennet*, the Conſtable, and others, that Night we were married: But ſaid, ſhe did not know what ſhe did when ſhe ſaid ſo, and many other Things ſhe poſitively, upon Oath, denied at my Trial; which makes me have Pity upon her poor Soul, conſidering ſhe confeſs'd many Things at Mrs. *Baynton*'s Trial, which ſhe denied upon Oath at mine: The World may ſee what it is to be a Stranger, and unacquainted with the Laws; nay, I myſelf heard my Wife openly confeſs in Court, in Mrs. *Baynton*'s Trial, *That there was a young Lady in the World, who was at her own Diſpoſal, that wiſh'd me a good Wife*; and at laſt confeſs'd ſhe herſelf was the Perſon.

“Amongſt my many Misfortunes, I was repreſented by my Wife's Friends to the Court, to be a Sharper and a Bully; but I call'd in, and produc'd ſeveral Gentlemen of Repute, to give Account of my Life and Converſation, who have accordingly atteſted the Honeſty of my Principles by my Practice.

“It is further obſervable how my Jury diſagreed about the Verdict. There was one of them, Mr. *Eraſmus Johnſon*, a Perſon to me altogether a Stranger; for I declare, in the Preſence of Almighty God, that I do not remember to have been in his Company three Times in my Life, except in Church: This Mr. *Johnſon* alledg'd, That none of the Evidence did prove, or ſwear, that I had any Hand in the Arreſt, nor uſed any Force or Violence to the Gentlewoman, but ſhe confeſs'd the Marriage, which was prov'd by ſeveral Witneſſes; which render'd my Caſe ſo hard, that the ſaid Mr. *Johnſon* inſiſted upon it to have me diſcharged, according to the Dictates of his Conſcience; but at laſt he was over-rul'd.

“Since my Conviction I have us'd all the Means I could to procure my Pardon; but finding little or no Probability of it, I am now going to beg for Entrance at the Gate of Mercy in Heaven, which I beſeech God to open for me.

“I expected my Trial ſhould be publiſhed, that the World might ſee my Treatment; what I have done, and what I have left undone in my Caſe; but I am inform'd it may not be printed. I have ſaid this only to do myſelf Juſtice, altho' I could ſay a great deal more of Moment to the Purpoſe; but my Time being ſo very ſhort and precious, I muſt employ that little Time to the ſaving of my moſt precious Part, my Soul.

“I humbly beſeech Mankind to believe me; and that I have ſaid, or ſhall ſay, are the Words of a dying Man; this is not the Time for me to equivocate, nor to go out of the World with a Lie in my Mouth: I do therefore declare, and call the great Omnipotent God of Heaven to my Witneſs, that I have aſſerted nothing, to the beſt of my Knowledge, but the whole Truth, nor utter'd a Syllable out of Malice, or Bitterneſs of Heart, againſt any Perſon whatſoever; but ſo far from it, I do frankly forgive all my Enemies, and beſeech God to put it in their Hearts to repent of their Sins.

“As for my Wife, I am ſo much in Charity with her, that I cannot believe the Severity extended to me, did altogether proceed from herſelf; but her conſenting to ſpill my Blood, makes the Guilt her own. God of his great Mercy give her a true Senſe of her Crimes, that the heavy Judgment hanging over her Head may not deſcend on her.

“As for Mrs. *Baynton*, who is likewiſe under Sentence of Death on the ſame Account with myſelf, as I have in the Court, ſo do I now again poſitively declare ſhe had no Hand in the Intrigue of my Marriage, any more than what ſhe did by my ſpecial Direction and Perſuaſion; for Mrs. *Baynton* was wholly a Stranger to Mrs. *Rawlins*, until the unhappy Contrivance of my Marriage made them acquainted, neither did I know Mrs. *Baynton* till *June* laſt paſt; tho' ſome have been pleas'd to ſay that I kept her Company for three Years, and have had two Children by her; all which I declare is a wrong Notion, and nothing of Truth in it. The only Load I have on my Conſcience is her Death, of which I am the unhappy Inſtrument. I beſeech God in his Mercy to move the Queen's Clemency to ſpare her Life, that her Blood may not riſe in Judgment againſt me.

“As for myſelf, I am now a going to ſuffer an ignominious Death, for a Crime which my own Conſcience doth not accuſe me of, but the Rigour of the Law hath made it my unpardonable Crime. And as I forgive all Mankind, ſo I beg Forgiveneſs of thoſe, whom, thro' Inadvertency, or otherwiſe, I have injur'd or offended, beſeeching God, of his great Mercy, to vouchſafe them Forgiveneſs whenſoever they ſhall aſk it.

“My great Comfort is, that I have reconcil'd myſelf with my God, and that I die in my natural Senſes, and that ſhort Time I have had ſince my Trial, I truſt in my Saviour I have not miſpent.

“*And now, O Lord God! of thy infinite Goodneſs hear my Petition, pardon my Offences, and forgive me my Sins, forgive mine Enemies, and lay not my Blood to their Charge, but grant that a ſincere Repentance may waſh away their Guilt.*

“I am now going out of this Vale of Calamity and Sin to my eternal Repoſe, where, thro' the Merits of my Saviour Jeſus Chriſt, I hope to ſee God in his Glory; and ſo I conclude, *O Lord receive my Soul into thy boundleſs Mercy, for the Merits of my Saviour Jeſus Chriſt!* Amen.

CLXXVII. *The Trial of* RICHARD HATHAWAY, *at* Surry *Aſſizes, for a* Cheat *and* Impoſtor,

March 24, 1702. 2 Ann.

Proclamation was made for all Perſons concerned to attend.

THE Priſoner being brought into Court, and acquainted what Liberty he had to challenge thoſe Gentlemen that were called; he making no Challenges, the Gentlemen that were ſworn on the Jury were,

Charles Bludworth,	Eſqrs;	*Will. Draper,*	Eſqrs;
Henry Tendall,		*Rich. Nicholas,*	
Walter Kent,		*Ceſar Bradſhaw,*	
John Burchet,		*John Cater,*	Gent.
John Pettiward,		*Sam. Pearſon,*	
Thomas Lowfield,		*Rich. Hammond.*	

The King againſt *Richard Hathaway*, for an Impoſtor.

Surry ſſ. *The King's Attorney General has exhibited an Indictment againſt the Defendant, by the Name of* Richard Hathaway, *of* Southwark, *in the County of* Surry, *Labourer; and the Information ſets forth, That the ſaid* Richard Hathaway *being a Perſon of an evil Name and Fame, and an Impoſtor, and contriving, and maliciouſly intending, one* Sarah Morduck, *the Wife of one* Edward Morduck *of* Southwark, *in the ſaid County, Waterman, who for the whole Courſe of her Life was an honeſt and pious Woman, and not a Witch, nor uſing Witchcraft, Inchantment, Charm or Sorcery, to bring into the Danger of loſing her Life, the* 11th *Day of* February, *in the* 12th *Year of the Reign of the King, at* Southwark, *in the ſaid Coun-*

ty, in the Preſence and Hearing of divers Perſons, falſly, maliciouſly, deviliſhly, and knowingly, and as a falſe Impoſtor, did pretend and affirm, himſelf, by the ſaid Sarah *to be bewitched, and by the Occaſion of that pretended Witchcraft he could not eat, and by the Space of Ten Weeks to faſt, and was affected with divers Diſeaſes; and that he, by drawing Blood from the ſaid* Sarah, *by ſcratching, ſhould be freed from the ſaid pretended Witchcraft; that the ſaid* Richard Hathaway *did then and there, with Force and Arms, ſcratch the ſaid* Sarah, *and did draw the Blood of her the ſaid* Sarah, *by ſcratching; and thereupon he, the ſaid* Richard Hathaway, *did then and there falſly, maliciouſly, and knowingly, by affirming himſelf to be freed from the ſaid Diſeaſes, by drawing the ſaid Blood, whereas in Fact and in Truth, the ſaid* Richard Hathaway *was never bewitched, and had not faſted for the Time aforeſaid, nor for any great Time, and that whereas in Truth and in Fact, the ſaid* Richard, *then and there, well knew himſelf not to be bewitched by the ſaid* Sarah, *to the great Contempt of our Lord the King and his Laws, to the evil and wicked Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity,* &c.

Mr. *Raymond.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Information ſets forth, That the Defendant being a Perſon of an evil Fame, and an Impoſtor, and maliciouſly contriving to take away the Life of one *Sarah Morduck*, the Wife of *Edward Morduck*, who always was a good Woman, and not a Witch, nor uſing Witchcraft, the 11th Day of *February*, in the 12th year of the Reign of the late King, at *Southwark*, in the Preſence and Hearing of divers Perſons, did falſly, deviliſhly, and knowingly, and as a falſe Impoſtor, pretend and affirm himſelf to be bewitched by the ſaid *Sarah*, and that by reaſon thereof he could not eat, but had faſted for ten Weeks, and was alſo affected with divers Diſeaſes, and that by his drawing Blood from the ſaid *Sarah*, by ſcratching, he ſhould be freed from his ſaid pretended Bewitching: That the Defendant did thereupon ſcratch the ſaid *Sarah*, and did draw the Blood of the ſaid *Sarah* by ſuch his ſcratching, and thereupon he falſly affirmed, that by drawing the ſaid Blood he was freed from the ſaid Diſeaſes; whereas in Truth and Fact he was never bewitched, nor had he faſted as aforeſaid, and he knew himſelf not to be bewitched by the ſaid *Sarah*, in Contempt of the ſaid late King and his Laws, and againſt the Peace of his Crown and Dignity.

Mr. *Conyers.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: This is an Information againſt *Richard Hathaway*, for a Cheat, for endeavouring to impoſe upon the People a Belief, that he had been bewitched by one *Sarah Morduck*, and that as an Effect of her pretended Witchery, he vomited up Nails and Pins, and that he could not ſpeak nor open his Eyes, and that great Noiſes were heard in the Houſe where he lay, and that there could be no Remedy for him, but by his ſcratching and fetching Blood of this *Sarah Morduck*; and by this Means the poor Woman has been very much abuſed by her Neighbours, reputed a Witch, and brought to a Trial for her Life as ſuch; but that there was nothing but a malicious Deſign in it will appear by the Evidence that will be produced. This *Richard Hathaway* was for ſome Time an Apprentice with one *Welling*, a Blackſmith, in *Southwark.* About *September* laſt was Twelvemonth, he gave out that he was bewitched, and he went to this Woman's Houſe and ſcratched her; and the Pretence was, that ſcratching and fetching Blood of her recovered him. The Miniſter of the Pariſh, Dr. *Martin*, hearing that it was noiſed about, that the Defendant had been relieved by ſcratching *Morduck*, came and viſited him. He could neither ſpeak nor ſee, as he pretended; but underſtood what was ſaid to him, and gave Aſſent to what was propoſed to him, by holding up of his Hands. Dr. *Martin* tells him, he heard this Woman had bewitched him, and that his ſcratching of her was the Means by which he was relieved; and that he deſired to ſee the Experiment himſelf, and therefore had brought *Sarah Morduck* there, and deſired him to hold up his Hand, if he underſtood what he ſaid; which he did. Dr. *Martin* had another Woman there at that Time (tho' that was concealed from *Hathaway*), and *Sarah Morduck*, by the Doctor's Direction ſpoke to him, and came to his Bed-ſide, and the Defendant was by the Doctor bid to ſcratch her. When he came to ſcratch, the Doctor took the Hand of the other Perſon, and put it into the Defendant's Hand, and as ſoon as he had ſcratched the other Perſon, his Eyes began to open and he could ſpeak; and immediately it was made known to himſelf and the Company, that the Perſon he had ſcratched was another Perſon and not *Sarah Morduck.* But notwithſtanding this, he was not ſatisfied, but ſtill there was a Proſecution of *Sarah Morduck* for a Witch, and ſhe was forced for ſome Time to go and reſide in *London:* And there the Rabble got about her, and abuſed her; of which Complaint was made to a Magiſtrate in the City, and *Sarah Morduck* was had before him, and then *Hathaway* was ſent for, and there again ſcratched her; and it was ſo far credited there, notwithſtanding the Account given by Dr. *Martin* of the Experiment he made, that the poor Woman is committed for a Witch, and afterwards brought to a Trial for her Life; and upon the Trial it appeared plainly, that all this was a Contrivance, and there was no Evidence to charge her with the bewitching this Man; and after a long Hearing upon a full Evidence, the Jury acquitted her, and the Man was committed for a Cheat. But notwithſtanding this Acquittal, he ſtill goes on to perſuade People, that he was bewitched; that he had faſted ſeveral Days together, and could not eat; and then for a further Conviction that he was an Impoſtor, and only endeavoured maliciouſly and falſly to impoſe this Belief on People, he is about the Beginning of laſt *November* committed to the Care of a Chirurgeon one Mr. *Kenſey*, where for Two Days he did not eat; but afterwards his Stomach began to come to him, and when he could get any Victuals privately, he had a very good Stomach, and could eat and drink till he was drunk. And it was contrived that Holes were made in the Room where he was, and the Maid that looked after him was directed to give him Notice, that ſhe would help him privately to Victuals; and from the ſecond Day after he was there, till the eleventh Day, he did conſtantly eat every Day, tho' he pretended he faſted all that Time, [and had done ſo for fourteen Weeks, and he was ſeen to eat thro' thoſe Holes. All this, and much more, will be fully proved by the Witneſſes. So that there has been a great Affront to the publick Juſtice of the Nation by this Proceeding, many having abetted it, and they have put up Bills in ſeveral Churches to pray for him againſt the Trial, and gathered Money to ſupport him in this falſe and malicious Pretence.

Mr. *Brodrick.* My Lord, the diſcovering and puniſhing ſuch a Cheat as this is highly neceſſary; and not only for the vindicating the publick Juſtice of the Nation, but for the Sake of Religion itſelf, which ſuffers by nothing more, than by the countenancing of indirect Practices, made uſe of upon a Pretence of maintaining and ſupporting its Credit. Religion has in itſelf ſuch genuine and native Truth, as muſt work Conviction upon the Underſtandings of all Perſons, who allow themſelves Leiſure to conſider it without Prejudice: But when Tricks and little Arts are carried on for a Time, and attain a general Credit, and appear afterwards to be what are called *Pious Frauds*, they do far more Miſchief than all the Good propoſed by ſuch Practices can make amends for. For when Men who are ſceptically inclined, find that the Generality of Mankind run away with Stories of this Nature, and thoſe Facts afterwards prove undeniably falſe, they carry their Doubts on much too far, and are apt to conclude, that they cannot ſecurely rely upon the Relation of others, and general Conſent of Mankind, for the Certainty of any Fact whatſoever. It is therefore the Duty of all Perſons, that are concerned for Religion in general, to endeavour to detect ſuch Practices, which weaken one of its moſt ſolid Foundations.

And, my Lord, we conceive this Proſecution very neceſſary, in order to the vindicating the Juſtice of the Nation. Here was a Woman that underwent a ſolemn Trial, and upon a full Hearing was acquitted, yet afterward, notwithſtanding the thorough Examination of the Fact, and ſuch an Evidence given as convinced every unprejudiced Hearer of the Innocence of the Defendant, and the Malice and Hypocriſy of the Accuſer, ſuch a Spirit did reign, that it was repreſented that the Accuſer had hard Meaſure; and not only the Jury, but the Court too were reflected on: Nay, it went ſo far, that after the Innocence of the Woman appeared by her Acquittal, a Magiſtrate (whoſe Name the Witneſſes will diſcloſe in their Evidence) gave publick Countenance to this Impoſtor (for by that Name I will venture to call him), and ſo far gave Credit to him, that when the poor Woman was abuſed by the Rabble, and her Life being in Danger, ſhe made Application to that Magiſtrate for Protection, who, inſtead of affording it to her, encouraged her Proſecutors, as if ſhe had really been guilty of the Witchcraft laid to her Charge; and conſiderable Collections were made for this Man, to ſupport his Spirits under the Diſappointment he met with in her being acquitted.

This Proſecution was neceſſary too, upon the Account of the poor Woman, who, unleſs ſome Check be put to the unruly Proceedings of unthinking People, is not yet ſafe in her Houſe, but in Danger to be torn in Pieces; And it was thought moſt proper that this Matter ſhould be thoroughly examined in this Place, where the Scene of his counterfeiting for the moſt part did lie; that prepoſſeſſed People might be Ear-Witneſſes of the Fairneſs of the Proceeding, and that all Perſons might have an Opportunity, if they thought fit, of offering any thing fit to be offered in his Defence.

My Lord, we need not trouble the Court with Evidence tending to prove, that the accuſed Perſon is not guilty of Witchcraft: She is acquitted of that, and it ought not to be ſuffered to be made a Diſpute. But our Evidence will go beyond that, not only that there was no Colour or Foundation for the Charge on her of being a Witch; but that the Defendant did maliciouſly, without any Ground, and contrary to his own Knowledge, charge her with the having bewitched him. And I think our Evidence all through will prove this Matter fully upon him, that he was not bewitched, nay, that he did not believe himſelf to be ſo, yet charged and proſecuted her.

The firſt Part of his pretended Witchcraft ſhewed itſelf by his vomiting Pins: How that Buſineſs was managed, and how he was detected in it, the Witneſſes will declare. And though we are not obliged to endeavour the giving an Account of what it was that induced him firſt to undertake this Impoſture, I think it will appear by the Evidence, that he had ſome Aim and Proſpect of Gain to himſelf. For, upon his firſt pretending to vomit Pins, we ſhall prove he had prepared *a Narrative of his own being bewitched*; and *he himſelf carried it to a Printer*, that ſo he might bring a Concourſe of People to him: But the Printer being a Man of ſome Underſtanding look'd on him to be a Cheat, and would not meddle with the Copy. He practiſed this Trick of vomiting Pins ſeveral Times; but pretending to it once before one who did not take every Thing upon Truſt, but was curious enough to obſerve nicely, and ſearch him, *after ſome Reſiſtance, ſeveral Rows of Pins were found in his Pocket.*

The next Diſcovery of his Impoſture was the Affair wherein Dr. *Martin* was concerned, who brought two Women to him; the Particulars of which having been already opened, I'll not repeat them. The Doctor put an innocent Deceit upon him, but it was in order to diſcloſe a vile Impoſture. When the Woman was brought to him to be ſcratched, being conſcious to himſelf how little real Effect the barbarous Experiment would have upon him, the whole Company obſerved, that he felt three or four Times from her Hand to her Elbow, before he ſcratched, that he might be ſure it was a Woman's Hand: And when he had ſcratched, and felt Blood, his Eyes were opened, tho' it was the wrong Woman.

Another Inſtance of his acting a Part, with Deſign to impoſe upon the World, was, when he was carried from the *King's-Bench* to Mr. *Kenſey*'s. It was neceſſarily to be imagined, that if he eat or drank nothing, nothing would come from him, either by Stool or Urine. He conſidered this, and for fear it ſhould be taken notice of, that he diſcharged himſelf after ſo long a Faſt as he pretended; having Occaſion to make Water, he found the Lid of a Box, and making Water in it, put it out of Sight, on the Bed's Teſter; and the firſt Diſcovery of his Counterfeiting at Mr. *Kenſey*'s, was by the dropping of that Water on the Cloaths of the Bed. After he had been two Days there, (during which Time he really did not eat) Mr. *Kenſey* not knowing but that his Complexion might incline him to ſuch a Sullenneſs as to ſtarve himſelf, rather than directly confeſs his Cheat, having firſt examined his Mouth and Throat, and finding nothing there but as it was in all other Men, and that he had not only all other Organs, but that of ſwallowing, without any Obſtruction, as other People had, thereupon he framed this Deſign: He took Occaſion to pretend a Quarrel with the Maid-Servant who lived in his Houſe, within the Hearing of the Defendant, and told her ſhe was as very a Hypocrite as this Fellow; and after warm Words on both Sides, and a ſeeming Reſolution by her, that ſhe would quit her Service, the Maſter went away leaving the Maid and the Defendant together. She, to inſinuate herſelf into the Defendant ſaid, her Maſter was an odd Kind of a Man, a dangerous Man, therefore ſhe would not have the

Defendant take any thing from him; and ſaid, ſhe would take care to ſupply him whilſt he ſtaid in the Houſe. Then his Stomach came to him very readily, and he was ſo far from being unable to drink, that he drank Brandy and other Liquors to Exceſs, and this for ſeveral Days. But ſtill thoſe in the Houſe being wary, thought it might be pretended by People who were very willing to believe him, that this happened by the Charm's being diſſolved, and that he was unable to eat before; and therefore it was thought adviſeable to bring in ſeveral Perſons of Reputation, who ſhould obſerve him through a Hole fit for the Purpoſe: Who, after they had ſeen him eat, examined him how long he had been a Faſter? And he made Signs *that he had faſted twelve Weeks, and clung up his Belly, as a Proof of his Emptineſs, according to his common Practice, though he had in their Sight, juſt before, eaten a plentiful Meal.* So that, Gentlemen, it is evident, that what he did was done maliciouſly, and with a Deſign to deceive and impoſe upon the World. After this, there being ſufficient Proof of the Impoſture, it was thought fit to bring him before a Court of Juſtice; thereupon this Information was exhibited againſt him: And if we prove it, I doubt not but that you, Gentlemen of the Jury, will do that Right to the Government, and to Religion, as to find him guilty of it, that he may be brought to the Puniſhment that ſuch a Crime deſerves.

Mr. *Phipps.* My Lord, I humbly pray your Lordſhip's Indulgence of the ſame Side; and beg Leave to obſerve, this Man was formerly troubled with Fits, and there was a Deſign laid by him and his Friends to create a Belief in People, that thoſe Fits were the Effect of Sorcery and Witchcraft; but whether to get Money, or take away the Life of the Woman, or both, I ſubmit to your Lordſhip's Judgment upon the Evidence. 'Tis certain, they proceeded ſo far as to bring her to a Trial, and did what they could to take away her Life. And the better to carry on their Deſigns, and to prepare the World to believe the Impoſtor, we ſhall ſhew, that when he had theſe Fits, it was induſtriouſly publiſhed, that he was bewitch'd, and that it was by this Woman; and if he could but ſcratch her, he would be well. Dr. *Martin,* the Miniſter of the Pariſh, hearing of it, came to him; and to make an Experiment to diſcover the Impoſture, brought another Woman with the pretended Witch, and ſaid to *Hathaway,* if you think the ſcratching this Woman, meaning *Morduck,* the pretended Witch, will do you any good, hold up your Hand: Which he did. Then the Doctor put the other Woman's Hand into his; and although at that Time he pretended to be Blind and Dumb, and he and his Friends would have had it thought that he lay under the ſtrongeſt of the old Woman's Charms; yet he was apprehenſive of what he did, and ſo jealous leſt he ſhould be impoſed upon, and thereby his Impoſture diſcovered, that he felt ſeveral Times from the Wriſt to the Elbow, to diſcover whether it was the Arm of the pretended Witch or no, before he would begin ſcratching; and then believing it to be hers, (it being much about the ſame Size) fell to ſcratching, and being told he had fetched Blood, his Eyes were immediately opened, and his Speech reſtored.

The Doctor thinking every Body was convinced of this Impoſture, and believing the poor Woman would be quiet for the future, went away.

But notwithſtanding this Detection, the People were diſſatisfied; and *Welling,* the Maſter of *Hathaway,* and others, being angry at the Diſcovery, purſued the Woman with more Malice than before: Wherever they found her, they cried out, *A Witch;* and uſed her ſo barbarouſly, ſhe was forced to leave *Southwark,* where ſhe had lived many Years, and all her Employment which had been profitable to her, and to go live in *London.*

Their Malice purſued her thither; and there *Hathaway,* with Soldiers and others, in a riotous Manner, got into the Houſe where ſhe lodged, and would have broke open the Door where ſhe was; but a Conſtable being called in, the Soldiers went off, and *Hathaway* was carried before an Alderman of the City; and the poor Woman and her Friends acquainted the Alderman of the riotous and illegal Proceedings, and prayed that Juſtice might be done upon them. But inſtead of puniſhing them, he was pleaſed to ſay, there was too great Provocation for what they had done; and giving Credit to the Accuſation of *Hathaway* againſt the Woman, ordered her to be carried up Stairs to be ſearched, to ſee if ſhe had any Teats, or other Signs of a Witch, and permitted her to be ſcratched by *Hathaway,* and then committed her for a Witch; refuſing 500*l.* Bail, and diſmiſſed *Hathaway.*

The Woman afterwards was brought to a Trial at *Guildford* Aſſizes, and was acquitted; and he was committed for a Cheat. And to make more ample Diſcovery of the Impoſture, he was taken to the Houſe of Mr. *Kenſey,* a Chirurgeon, and there he was obſtinate, and would not eat for the firſt two Days; and a Quarrel was feigned between Mr. *Kenſey* and his Maid, he ſaying, ſhe was as bad an Hypocrite as *Richard Hathaway,* and gave her Warning to be gone. The Maid ſeemed very angry with her Maſter, and ſaid to *Hathaway,* Whatever you do, do not eat any Thing that is given you by my Maſter or his Brother, for they are your Enemies; and promiſed ſhe would help him privately to what he wanted. Whereupon he thinking ſhe had been his Friend, and that he was ſafe in her Hands, took Meat and Drink from her from Day to Day, and eat heartily, and drank ſo very plentifully of Strong Beer and Brandy, and was ſo merry, that he played on the Tongs, and Danced, and ſhew'd Tricks before the Maid; but when any Body elſe offered him Meat or Drink, he refuſed it, making Signs that he could not ſwallow, and ſignified to them, that he had faſted all the fourteen Days that he had been at *Kenſey*'s, and that he had faſted many Weeks before. And as to vomiting Pins, it will appear to you, that he carried Papers of Pins in his Pocket, to make uſe of on Occaſion. But when he vomited in a Baſon, and his Hands were kept down, and he not permitted to carry them up to the Baſon, there was not one Pin in the Baſon.

I will not trouble your Lordſhip with a Detail of all the particular Inſtances of this Cheat, but will call our Witneſſes; and when we have proved the ſeveral Matters that have been opened, there will be no Room to doubt but that the Defendant is an Impoſtor, and the greateſt this Age hath produced.

Mr. *Conyers.* We will firſt call Dr. *Martin (who was ſworn)* we will go on with our Evidence in the Courſe of Time. The firſt Time that Notice was taken in the Pariſh of this Buſineſs, was in *September* was Twelve-Month. Dr. *Martin,* pray give my Lord and the Jury an Account, Whether you know *Richard Hathaway,* and when was the firſt Diſcourſe of this Witchery.

Dr. *Martin.* *February* laſt was Twelve-Month, (the ninth Day, to the beſt of my Remembrance) I came to Church in the Afternoon; and after the Curate was gone into the Deſk to read Prayers, I was going into the Pew; but hearing a great Hurly-burly in the Church, I ſent the Sexton to know what was the Occaſion of it. He brought Word, that there was a Witch in the Church; ſo the Curate could not go on in reading Prayers; and the Sexton went and brought in one *Sarah Morduck* to me, and after her came a great many of the People into the Veſtry; ſo that tho' it be pretty large, it was preſently filled. And this *Sarah Morduck* came up to me, and told me what was the Occaſion of her being brought there. I aſk'd her how ſhe had behav'd herſelf amongſt her Neighbours, that ſhould give ſuch Occaſion to deal thus with her. She began to cry, and ſaid, ſhe had given no Occaſion for it. I told her, I had nothing to do to enquire into the Buſineſs, but bid her continue in the Veſtry, the whole Congregation being ſo much diſturbed, that they would go out of the Church if ſhe ſtaid in it. So I turned every Body out of the Veſtry, and locked her in. And Sermon being ended, I came into the Veſtry, but found ſhe was gone; and upon Enquiry, I underſtood the Reaſon was this, The Sexton told me, that ſhe ſaid, if ſhe ſtaid till all the People went out, ſhe ſhould be torn in Pieces, and begg'd of him to let her out while the Pſalm was ſinging after Sermon, that ſhe might go away undiſcerned; and accordingly ſhe went. Afterwards many of my Pariſhioners made Application to me to go to *Richard Hathaway,* who was ſuppoſed to be bewitched; and told me, that it was taken very ill that I had deferr'd it ſo long. Upon this, I went to him the next Day; and meeting his Maſter below Stairs, I aſked him what Condition his Servant was in? He ſaid, he was Blind and Speechleſs, and was a very diſmal Object. I ſaid, I deſired to be excuſed, for I did not love to ſee any diſmal Sights. But he ſaid, he was very ſenſible, and knew every one by their Voice. And with that, I went into the Room, and his Maſter (ſpeaking to *Richard Hathaway)* ſaid, Mr. *Martin* is come to ſee you. Says I, *Richard,* I am come to ſee you, and if you know me, hold up your Hand: He did ſo, and took me by the Hand and kiſs'd it. I aſk'd him whether I ſhould pray with him in the Prayers of the Church, and if he deſired it, I bid him hold up his Hand: He did ſo, and I prayed with him, and he did ſeem to be affected with it, and lifted up his Hands ſeveral Times. Afterwards I took my Leave of him, and went down; and I diſcourſing with his Maſter for ſome Time, I aſked him what he thought was the Reaſon of it? He ſaid, an evil Tongue, and a bad Woman, *Sarah Morduck,* had bewitched him. But how do you know that? His Maſter then told me, he had ſcratch'd her, and found Good by it; and ſaid, he was utterly undone by it, and if he did not ſpeak to the Church-wardens to take him off his Hands, he ſhould be ruin'd. And hearing of this Scratching, it came into my Head to try an Experiment too; ſo I went away, but without diſcovering my Intentions. And about Ten a-Clock at Night, to prevent Jealouſies, I went to the Houſe where *Sarah Morduck* lodged, and found ſhe was gone to Bed. I left Word that I deſired to ſpeak with her the next Day: But inſtead of her coming to me, her Brother, Mr. *Hearne,* came to me, and thanked me for preſerving his Siſter from the Mob. I gave him the Reaſon why we did that, and I told him then what I intended to do. He anſwered me, I am afraid my Siſter will be ſo ſilly, that it will fail in the Execution. I bid him leave that to me, I would give ſuch Directions in the Matter, that it was impoſſible for it to miſcarry: So he left me to my Liberty to do what I thought fit. Then, ſays I, when I ſend for her, do you come with her. I went to the Houſe where *Hathaway* lay, and went into the Room, where he lay with his eyes faſt ſhut, and ſeemingly Speechleſs. I ſpoke to him, *I am informed you have received Benefit by ſcratching* Sarah Morduck *formerly; now if I can get this Woman for you to ſcratch her, Do you believe by ſcratching her you ſhall receive any Benefit? If you do, hold up your Hand:* So he did; and by and bye there came a Meſſage that Mr. *Hearne* and the Witch were come. I then deſired Mr. *Bateman,* whom I brought with me for that Purpoſe, to ſit by the Bed-ſide while I went down, leſt any might inform him what was ſaid, or he might over-hear any Thing ſpoken below. So he ſat there, and I went down, and I bid them let in as many as would come in; and when the Room was full, the Door was lock'd. I had before met with a poor Woman, whom I ordered to follow me, who received Alms of the Pariſh, deſigning ſhe ſhould be the Perſon the Experiment ſhould be try'd on. I told them, I deſign'd to try another Woman, and I will make him believe he ſcratches the Witch. The Anſwer was, This will ſignify nothing. *Wellings*'s Wife ſaid, he had ſcratched another Woman, and it ſignified nothing. Now this was, to the beſt of my Remembrance, one *Willoughby,* who is a very big Woman, and very much unlike *Sarah Morduck:* But I deſired the Satisfaction to ſee it done myſelf; upon which, it was conſented to. Then I aſk'd the Woman I brought about it; I told her I would give her a Shilling if ſhe would let this Man ſcratch her: She flew off, and ſaid ſhe would not ſuffer it for all the World. At laſt ſomebody ſaid, here is a Woman will ſuffer herſelf to be ſcratch'd; and this was one *Johnſon.* I aſk'd her if ſhe would ſuffer herſelf to be ſcratch'd; ſhe ſaid ſhe would, if there would come no Damage by it. Says I, whatever Damage you ſuſtain, I will make it good to you; and you being about the Size of *Sarah Morduck,* are a very fit Perſon. She did decline it for ſome Time, but at laſt ſhe conſented; and after ſome Inſtructions given to her and *Morduck,* we went up together, with many of the Neighbours. *Tho' you cannot ſee,* ſays I, *to* Richard Hathaway, *you can hear that there are many People in the Room; now, before all theſe People, Do you believe that* Sarah Morduck *has done you this Miſchief? If you do, hold up your Hand.* He did ſo. *Do you believe you ſhall be relieved by ſcratching her? If you do, hold up your Hand.* He did hold up his Hand. Sarah Morduck, *Do you ſpeak to him, that he may know you are the Perſon.* Says ſhe, *What is the Matter with you? Do you believe this Woman,* ſaid I, *to be the Perſon that has bewitched you? If you do, hold up your Hand.* He held up his Hand. Then aſk'd *Sarah Morduck,* are you willing this Man ſhould ſcratch you? *Yes, with all my Heart, he ſhall have my Heart's Blood, if it will do him any Good.* Then ſays I, pray, give me your Hand. *Here it is.* And inſtead of taking her Hand, I took *Johnſon*'s, and clapt it into his; and I did obſerve, that two or three Times he felt from her Wriſt to her Elbow; and I ſaid, I have ſomething elſe to do than to wait on you (and I ſpoke to him ſomewhat eagerly), if you will not ſcratch, I will be gone. Then he ſcratch'd her, and ſhe whiſper'd me in the Ear, ſhe believed ſhe would faint. I ſaw he had raz'd her Skin; and I ſaid, You have drawn Blood, and you may be ſatisfy'd. With that he left off, and turned on his Back in his Bed. I turn'd out *Johnſon* immediately, and I and *Morduck* ſtood together, and he lay ſtill for ſome time; but I ſaw nothing would do, if I did not work him up. Now, ſays I, I would fain ſee how his Eyes are now; come ſome of you, look, do not his Eyes twinkle? With that both his Eyes were as open as mine are now, and he caught hold of the Apron of *Sarah Morduck*, and look'd her in the Face. Then I told him his Miſtake; and *Johnſon* came in with her Arm bleeding. Says I, this is the Woman you ſcratcht, you have not touched *Sarah Morduck*'s Arm, not fetched one Drop of Blood from her. The Fellow upon this ſeem'd very much caſt down. Now, ſays I, give way to no Humours, and go about your Buſineſs, and ſerve God and your Maſter. Then I went down, and ſeveral People were ſatisfy'd. Well, ſays I to *Welling*, your Man's Eyes are open now. It's well, ſays he, if his Eyes continue open. He can ſpeak and ſee too now. I do not know, ſays he, it is ſtrange if he ſhould do well after this. Farewel, ſaid I; and I went into *London*. Upon my Return, about Five a-Clock, I enquir'd about him, and found *there was* a greater Mob in the Houſe than before; and I was accoſted at my firſt coming in by the Maſter and Miſtreſs of that Fellow: What have you done? you have ruined both me and my Family——

L. C. J. Holt. Who ſaid ſo?

Dr. *Martin.* The Maſter and Miſtreſs of this Fellow. Why, What Hurt have I done you? You have given it out to be a Cheat. Did you get any Money by it? No, I never did expect it. But pray go and look on him now, he is in a worſe Condition than he was before. Here hath been two Doctors, and they will take their Oath that he is bewitched. So I went away; but as I went out, I was ſtopt by *Johnſon.* She cries out, What have you done? What is the Matter, ſaid I, Does your Arm feſter? No; but this wicked Woman has ſpread abroad that by ſcratching me he was relieved, and ſhe is not the Witch, but I am the Witch; and it had reach'd her Huſband's Ear, and he was become ſo jealous of her, that he would not have any thing to do with her. I went away after this, and going home, met her Huſband, and gave him all the Satisfaction I could, that his Wife was no Witch. And I was informed the next Day, that *Sarah Morduck* had been dragg'd again to the Houſe, ſome time after I went away, and brought to *Hathaway*'s Bedſide, and he ſcratch'd her, and his Eyes were opened, and he eat and drank, and walk'd about. Upon this, I ſent one Evening to him to come to me; and I took him into my Study, and ſaid, What is the Meaning of it, that you make ſuch a Trouble in the Pariſh, to condemn this Woman for Witchery? I ſee no Reaſon for it. Says he, ſhe has done me a great deal of Hurt; ſaid *Hathaway*, ſhe has bewitch'd me. He ſaid, that was the Woman had done him all the Prejudice he laboured under. Then ſays I, You are a poor ſort of Fellow, you muſt get your Living by your Labour; now you had better go into the Country out of her Reach. No, Sir, ſays he, I am bound Apprentice to my Maſter; and if I go, I ſhall be as bad there as I am here: And ſeeing I was bound here, this Pariſh muſt keep me; and if I ſhould go into the Country, they will ſend me back again. Why will you not try? No, I will not. Do you not believe I am bewitch'd? No, I do not. Then, ſays he, I may as well not believe what you ſay in the Pulpit; I may ſay to you, as our Saviour ſaid to the *Jews*, *Tho' you ſee Miracles, you will not believe.* Whereupon, I turn'd him away, and did not think I ſhould have had any thing more to do with him. But about *Eaſter* laſt, Sir *Thomas Lane* ſent to me, to deſire me to come to him; the Witch being then got into *London* for Shelter.

I went accordingly, and when I came, I found *Hathaway*, his Maſter, and ſeveral others there. I found him looking briſkly, and eating heartily, and I aſk'd the meaning of it. It was anſwered, That before Sir *Thomas Lane*, he had drawn Blood of *Sarah Morduck*, and that had brought him to himſelf. I ſent in my Name to Sir *Thomas Lane*, and he ſent for me in. There was Sir *Owen Buckingham*, and I think, Dr. *Hamilton*. There were ſeveral People examined, while I was there, about this Perſon; and after all Sir *Thomas Lane* deſired me to tell what I knew in this Matter. I gave an Account of what I have done here. Says Sir *Thomas Lane*, *Richard Hathaway*, Do you know that Gentleman? Yes. How? I have ſeen him in the Pulpit. What, no where elſe? Did not you ſee him by your Bedſide? No. Was not I with you at your Bedſide? No. All this while he was eating Bread and Cheeſe; till Sir *Thomas Lane* ſpoke to him, Lay by your Bread and Cheeſe, and be not ſo unmannerly. Says I, this is very unaccountable, that he ſhould not know me; and yet he had ſaid, that after Mr. *Martin* was gone, I was a great deal worſe than I was before. This is a very unaccountable Thing, and I deſire to know how this is conſiſtent; therefore I do deſire that his Maſter may be called in. And his Maſter was ſent for, and *Hathaway* was going out to call him. No, ſays I, I deſire he may not go out, I will call his Maſter myſelf. When *Welling* came in, I aſked him whether he did not tell me that *Hathaway* was ſenſible from the Time I came to him? Yes, he was. Now I deſire to know how theſe Things are conſiſtent? And to put this out of doubt, that this Man did ſee me, the Woman ſtood at the ſide of the Bed by me near the Feet, and he took hold of her Apron readily. How can he come off in this Matter? Says Sir *Thomas Lane*, They tell you he had a moſt violent Fit after, and that made him forget what was done before. Another Queſtion was aſk'd Mr. *Welling*, You know you deſired me to get this Servant of yours off your Hands, and that I would ſpeak to the Churchwardens about it. Now I am inform'd, this Servant of yours was going to *Goodman*'s-*fields*, and as he was going, the Preſs-maſters met him, and he being a likely Fellow, they whipt him aboard. Is this true or no? Yes. And then you got a Letter, and went down and fetch'd him up. Yes. Then, ſays I, How come his Maſter to be ſo much concern'd to be rid of him as he pretended; and yet when he might have been rid of his Servant, would not take the Opportunity? To that Sir *Owen Buckingham* anſwer'd, It was only his Charity for him to fetch him from aboard; he could do no leſs conſidering his Condition: So I came away. In a little Time after, I heard that this *Sarah Morduck* was bound over to the Aſſizes, and I was ſubpœna'd to give my Evidence the laſt Aſſizes at *Guilford.*

Then the Indictment was read, upon which Sarah Morduck *was Tried and Acquitted of Bewitching* Richard Hathaway.

Mr. *Coniers.* Dr. *Martin*, pray go on.

Dr. *Martin.* I was ſubpœna'd to go to the Aſſizes; but before the Aſſizes came on, there were Bills put up in ſeveral Churches, and particularly at *Chriſt-Church*, where I happened to preach. I read the Bill, *A poor Man being afflicted by an evil Woman, now coming to her Trial, deſires the Prayers of this Congregation.* I went down to *Guilford* to the Trial; and when I came up, I thought all People would be ſatisfy'd with the Juſtice that was done. But when I came to Town, I was abuſed by many People, both openly and privately: *You have the Blood of that innocent Man to lie at your Door*; *The Woman had been hang'd, if you had not ſaved her*; *The Judgments of God will fall on you.* One Woman followed me to the Waterſide, and ſaid, I was the Occaſion of the Ruin of that innocent Man; for ſhe herſelf——

L. C. J. Holt. Who is this?

Dr. *Martin.* I do not know her, I only give Evidence of the Abuſes I underwent.

Mr. *Conyers.* Do you know any thing after the Aſſizes, how he behaved himſelf?

Dr. *Martin.* No, Sir, I know nothing of that.

Mr. *S. Jenner.* What was done by other People, ought not to be given in Evidence.

Mr. *Broderick.* If this Man does prove an Impoſtor, it will aggravate his Crime, if the Conſequence be miſchievous, and the World be ſtill abuſed with a Perſuaſion that he was bewitched.

Mr. *S. Jenner.* What was done by other People ſignifies nothing to us.

Mr. *Broderick.* This is very material, for it is a Confirmation that there was a Deſign carried on——(*being interrupted.*)

L. C. J. Holt to Serj. *Jenner.* What other People did, muſt not affect this Man. But hear what Anſwer can be given, you that are the Queen's Counſel.

Mr. *Broderick.* The Charge of the Information is, That he, as an Impoſtor, pretended himſelf to be bewitched by *Sarah Morduck*, to deceive the World, and prejudice the Woman. And what can be more proper Evidence of that Charge, than that altho' he really was not bewitched, yet he had ſo prevailed upon the Opinions of the People, that they ſtill believe him bewitched, and affronted Dr. *Martin* for being inſtrumental in her Acquittal: 'Tis all of a Piece, a Continuance of the ſame Impoſture.

L. C. J. Holt. This Evidence is proper. He is indicted for a Cheat, for endeavouring to beget an Opinion in People by his fraudulent Practices that he is bewitched. Now, Dr. *Martin* ſays, the People were ſtill poſſeſſed with ſuch a Belief; and thereupon affronted him, becauſe they thought he was inſtrumental in having the Woman acquitted. Now, Is not this an Evidence that his pretending himſelf to be bewitched, begat that Opinion in the People?

Mr. Serj. *Jenner.* What the Doctor has ſaid all along, has been of what others have done.

L. C. J. Holt. No, it has been what he ſaw himſelf. You ſay this Man's Evidence is moſt of what others have ſaid. Not ſo, He has by himſelf prayed with him, and tried an Experiment with him upon a wrong Woman.

Mr. Serj. *Jenner.* He tells you what *Welling* ſaid, and others; How does this affect my Client, what another Man, or another Woman ſaid?

L. C. J. Holt. He was inſulted upon the Account that *Hathaway* pretended himſelf to be bewitched, blind, ſpeechleſs, and not able to eat.

Mr. Serj. *Jenner.* My Lord, with Submiſſion, other People's cenſuring the Doctor cannot be brought as Evidence againſt my Client, unleſs they make it appear that he had a Hand in it, unleſs he put them upon it.

L. C. J. Holt. What other People have ſaid, abſtractedly conſidered, ought not to affect *Richard Hathaway*; but if there be Evidence that *Hathaway* hath been guilty of Deceit, and a Deſign to deceive People, Will you not allow it be given in Evidence, that the People have been deceiv'd? And how came they to be deceiv'd, but by his feigning himſelf to be bewitched?

Juryman. Mr. Serjeant, If you have any Thing to object, we deſire to hear what you ſay, for you ſpeak ſo low we cannot hear you.

Mr. Serj. *Jenner.* I object to what the Doctor ſays by Hearſay only.

Juryman. I believe that will be little conſidered by the Jury.

L. C. J. Holt. The Information is for an Impoſtor and Cheat: Now what is that? A Cheat is a Deſign to impoſe on the Credulity of others, to induce them to believe a Thing that is not true. Now Dr. *Martin*'s Evidence is what *Hathaway* did, and that People did believe him to be bewitched; and they abuſed Dr. *Martin*, and told him he had done very ill in the Caſe of this Woman; and if it had not been for him ſhe had been condemned.

Dr. *Martin.* I have only one Thing more to ſay; it was reported that I had been bribed; I was told I had received ſeveral Guineas; that the Judge was bribed and the Jury bribed, and the Judge would not ſuffer the Woman to be ſearched, he being bribed.

Mr. *Conyers.* Doctor, have you done?——Dr. *Martin.* I have.

Mr. *Conyers.* We will next call Mrs. *Johnſon*, who was ſcratched.

Mr. *Broderick.* Sir, I think you mentioned a Gentleman that you ſent for up? Where is he?——Dr. *Matrin.* He is here.

Mr. *Broderick.* What is his Name?——Dr. *Martin.* Mr. *Bateman.*

Mr. *Broderick.* We will call him to give an Account of that.

Mr. *Conyers.* We will firſt call this Woman. Mrs. *Johnſon*, Were you at any Time with Dr. *Martin* at ſuch Time as *Hathaway* pretended to be bewitched?——Mrs. *Johnſon.* Yes.

Mr. *Conyers.* Then pray give my Lord and the Jury an Account of what you know about it.

Mrs. *Johnſon.* I went into the Room to ſee *Sarah Morduck.*

Mr. *Conyers.* What Room?

Mrs. *Johnſon.* I was in the Room where Dr. *Martin* fetched her to be ſcratch'd; and Dr. *Martin* told me, he deſigned that he ſhould ſcratch ſome other Woman; and he deſired me to let him ſcratch me; but I denied him, and ſaid, I was a Wife, and was not willing; at laſt I conſented, and he told me I muſt not ſpeak when I came into the Room where *Hathaway* was; and he brought me to the Fellow; and he ſaid to him, If you think the Blood of this *Sarah Morduck* will do you any good, hold up your Hand. Which he did. Then he bid *Sarah Morduck* ſpeak to him; which ſhe did. Says he; Are you willing this Man ſhould ſcratch you? She ſaid, Yes: My Heart's Blood, if it will do him good. So with that he ſcratch'd me, and *Sarah Morduck* cry'd out. He had razed the Skin of my Arm, but no Blood came preſently. Dr. *Martin* deſired me not to ſpeak, and I did not; the Blood came afterwards, but none then.

Mr. *Conyers.* Were you in the Room when the Doctor ſpoke to him?

Mrs. *Johnſon.* I went into the other Room; Dr. *Martin* put me out before him.

Mr. *Conyers.* Was not you brought in again?

Mrs. *Johnſon.* No, I went in of my own Accord.

Mr. *Conyers.* In what Condition was he then?

Mrs. *Johnſon.* He looked in this Manner, his Eyes ſtaring open.

L. C. J. Holt. Were his Eyes ſhut when you firſt came and was ſcratch'd, or open?——Mrs. *Johnſon.* No, they were faſt ſhut.

L. C. J. Holt. Did he ſpeak then?

Mrs. *Johnſon.* No, he ſaid nothing when I came back, till his Eyes were open, and then he ſaid, *O Chriſt Jeſus!* or, *O Lord Jeſus!*

Mr. *Phipps.* But did he feel your Arm before he ſcratch'd you?

Mrs. *Johnſon.* Yes, over and over.

Mr. *Conyers.* Call *William Bateman (Who appeared and was ſworn).* Pray, give an Account what you know of this Defendant's vomiting Pins.

William Bateman. About a Twelvemonth ago I went to ſee *Richard Hathaway.*

Mr. *Conyers.* Were you deſired to go to him by Dr. *Martin?*

William Bateman. I can't remember that.

L. C. J. Holt. Where do you live?——*William Bateman.* In *Pembrokeſhire.*

Mr. *Conyers.* Then you do not remember any thing that paſt then?

William Bateman. I do not not ſay I do not remember any Thing, but I do not remember whether Dr. *Martin* deſired me to go to him.

Mr. *Conyers.* Give an Account of what you know about his vomiting Pins.

William Bateman. About this Time Twelvemonth, on a *Sunday* Night, a Woman came to Dr. *Martin*'s Houſe to enquire for him. I went to the Door; and the Woman ſaid, If Dr. *Martin* would but come now, he might ſee *Hathaway* vomit Pins. Can I ſee him, ſays I? Yes, ſays ſhe. So I went immediately; and in the Houſe there were little Chinks that I could ſee through; and I ſaw him walk about the Houſe, and heard him talk to the People, and I ſtood ſome Time to hear him. At laſt I knock'd, and he came and let me in; and ſeeing me, he ſeemed to be troubled, and feigned himſelf to be in ſome Pain.

Mr. *Raymond.* You ſay you look'd through the Chink; How was he then? Repeat that.

William Bateman. He ſeem'd to be as well as he is now.

Mr. *Raymond.* What did you do then?

William Bateman. I knocked, and he let me in; and when I came where the Light was, he knew me; and I ſaid to him, I hear you ſpew Pins. Yes, ſays he. Says I, Prithee let me ſee thee. So he ſat on a low Seat, and they gave him ſomething in a Cup, and by drinking this I was to ſee him vomit Pins; and he took ſome Drink; but, as far as I could perceive, he did not ſwallow any.—— Mr. *Conyers.* What was the Effect of it?

William Bateman. He pretended then to be in an Agony, and vomited ſeveral Times, and there were Pins on the Ground. I had the Room ſwept very clean, and gave him the ſame again. He vomited again, and there were abundance of Pins on the Ground again. I believe he vomited fourteen or fifteen Times, and I believe there were ſome hundreds of Pins on the Ground; but I thought the Pins were dropt from one or other; and I took up ſome of them, and they were dry; and I took up two or three in a Chain; and I ſaid I believed thoſe were the Pins that were ſhewn at our Houſe. No, no, ſays his Maſter, theſe are not the ſame; and he did endeavour to ſatisfy me that he did vomit theſe Pins; ſo I deſired he might have a Pot to vomit in; and I had a Pot brought and made very clean, and I ſearched his Mouth and found no Pins there; and I held the Pot to his Mouth cloſe, and he often endeavoured to put his Hand to the Pot, and I would not ſuffer him; for I perceived his Hands often moving to his Pocket. He vomited ſeveral Times, and there were ſome Pins ſcattered on the Ground, but none in the Chamber-pot. Says I, theſe Pins do not come out of his Mouth; but the People were very preſſing on me to believe they did.

L. C. J. Holt. Who were they?

William Bateman. They were all Strangers to me. Upon this I told them, I believed he had a Slight of Hand to convey them there, and I took hold of his Pocket. He ſtopt my Hand, and would not let me put my Hand into it. But after ſome Time, ſays one, Let him, let him ſearch your Pocket. So I did, and took out ſeveral Things, and among the reſt, ſeveral Parcels of Pins, and I believe theſe were they that he convey'd on the Ground.

L. C. J. Holt. Did you ſee him take them out of his Pocket?

William Bateman. No, but I took out ſeveral Hundred.

Juryman. What ſort of Shape were they of?

William Bateman. They were of a very odd Kind of Shape.

L. C. J. Holt. Were they ſtrait or crooked?

William Bateman. They were crooked in ſtrange Figures, like them on the Floor.

Mr. *Broderick.* And he made a great Difficulty of letting you meddle with his Pocket?——*William Bateman.* Yes.

Mr. *Phipps.* And when you would not let him put his Hand to the Pot, there were none in the Pot, but only on the Ground?

William Bateman. Yes, Sir.

Juryman. Did you ſee any Pins come out of his mouth?

William Bateman. No, Sir.

Mr. Serj. *Jenner.* What became of the Pins you ſaw on the Ground? you ſay you ſaw abundance; what became of them?

William Bateman. They were ſwept away.

Mr. Serj. *Jenner.* Who ſwept them away?

William Bateman. Some of the Family.

Juryman. I think he ſaid that ſeveral of the Pins were taken up dry: were any of the Pins that were on the Ground dry?

William Bateman. Yes; and I ſaid, theſe Pins did not come from him.

Mr. Serj. *Jenner.* When was this?

William Bateman. About a Twelvemonth ago.

Mr. *Broderick.* Now, my Lord, we will ſhew your Lordſhip that he drew up a Narrative for the Preſs, giving an Account of this Buſineſs. [*Call* Richard Ball, *who was ſworn.*] Mr. *Ball,* Pray, give an Account of what you know of *Richard Hathaway*'s endeavouring to print a Story of his vomiting of Pins.

Ball. About a Twelvemonth ago, in *December, Richard Hathaway* brought a Writing, and withal a Diſhful of crooked Pins, and told us, thoſe Pins he had vomited, and that he had been afflicted by a Woman in *Southwark,* and I think he ſaid he had not eat any Thing from my Lord Mayor's Day.

Mr. *Broderick.* What did he deſire you to do?

Ball. To print this Paper. And after he had told this Story, he ſaid he had been with a Woman in *Goodmans-Fields.* There was a Boy with him. And he deſired us to print this Paper. It related the Story of his vomiting of Pins. He ſaid, he had taken *Quickſilver,* and it would not move him; and Madam *Goodwin* was mentioned ſeveral Times in the Papers, that ſhe had cured him.

Mr. *Conyers.* How came it that you did not print his Paper?

Ball. My Maſter ſtood by; ſays he, You look very well; I will have nothing to do with it; I believe you are a Cheat. I believe no ſuch Thing, ſays he; and upon that went away. But the next Day there was a Paper printed by ſomebody; and *Richard Hathaway* comes to us afterwards, and ſays, You have printed a Paper, tho' you would not have it of me: But it is not true, ſays he; I can give a better Account.

Mr. *Broderick.* Then he talked very freely to you, tho' he had not eat in ſix Weeks before?——*Ball* Yes, Sir.

Mr. *Broderick.* And he looked very well?

Ball. Yes, Sir; and we wonder'd at it.

Mr. *Conyers.* Call Mr. *Hearne (who was ſworn).* Mr. *Hearne,* pray, give my Lord, and the Jury, an Account of what you know of this Matter.

Hearne. About *September* was Twelvemonth, my Siſter was fall'n upon by this *Hathaway,* and ſcratched and abuſed in a barbarous Manner; and about ſix Weeks after, ſhe was ſcratched again. After this, we went before Juſtice *Riches,* and Juſtice *Riches* perſuaded them to be quiet, and not to trouble this Woman; and he perſuaded her to remove to ſome other Place. After this there was a Tumult made about her in *Newgate-ſtreet.*

Mr. *Conyers.* Were not you preſent when Dr *Martin* was with the Defendant?——*Hearne.* Yes, Sir.

Mr. *Conyers.* Then give an Account of that.

Hearne. I went to Dr. *Martin*; and Dr. *Martin* told me that he would try a Stratagem (to ſee whether he was bewitch'd) by making him ſcratch another Woman. I told him, I was afraid we ſhould be betray'd. Says he, Let me alone to manage it: So I ſaid no more. Says he, Do you go and fetch *Sarah Morduck* to me, and I will go before. So I came with my Siſter to *Welling*'s Houſe, where Dr. *Martin* was, and there was a Houſe full of People: And then he ordered the Door to be ſhut; and then Dr. *Martin* left me at the Bed-ſide, and he got a Woman that was willing to be ſcratch'd. She refuſed at firſt, but afterwards conſented. And then Dr. *Martin* brought them into the Room where *Hathaway* was; and he aſk'd him if he did believe that ſcratching *Sarah Morduck* would do him any good; if he did, he ſhould hold up his Hand; and he held up both Hands. Says he then to *Sarah Morduck,* Are you willing to be ſcratch'd? Yes, her Heart's Blood to do him good. Then give me your Hand, ſays he; but inſtead of her's, he took Mrs. *Johnſon*'s Hand, and gave it into *Hathaway*'s Hand. And *Hathaway* took her by the Wriſt, and felt her ſeveral Times. Then ſays Dr. *Martin,* If you will ſcratch her, ſcratch her, I cannot wait on you always. Then he fell to Work, and Dr. *Martin* ſaid, he will open his Eyes preſently, there is Blood enough; and he preſently opens his Eyes and catches *Sarah Morduck* by the Apron, and holds her as faſt as he could, and the Woman that was ſcratch'd was gone into another Room: with all the Strength I had, I could hardly looſen his Hands from *Sarah Morduck.* Now, ſays Dr. *Martin,* You are miſtaken, this is not the Woman you have ſcratch'd; and then his Countenance chang'd, and he looked like a Fool, he was ſo ſurpriz'd. Then ſays Dr. *Martin,* Where is the Woman that he ſcratch'd? And I fetch'd *Johnſon* out of the other Room, and ſhew'd him her Arm, that ſhe was the Woman he had ſcratch'd. Says Dr. *Martin,* I ſee what you are; go and mind your Buſineſs; or to that Effect; and then we went away. This was about Twelve or One o'Clock the 11th of *February.* And when we were gone, the ſame Day, as ſoon as it was dark, they got half a Dozen luſty Fellows to go to *Sarah Morduck*'s Houſe, and there they abuſed her.

L. C. J. Holt. How do you know that? Did you ſee it?

Hearne. My Lord, I will tell you preſently. When ſhe had had this Miſchief, ſhe ſent for me; and when I came, her Shift on her Back was as wet as Muck. She ſent for me, becauſe ſhe had none to aſſiſt her but me, and I found her that Night in that Pickle. They ſaid, as ſoon as we were gone, the Fellow was bad again, and they have put this Trick upon us; but we will have the right Witch to ſcratch her.

L. C. J. Holt. Who was at the Houſe that Night that you ſay ſhe was in an ill Condition?

Hearne. There were ſeveral at the Houſe then; Mrs. *Sarah Hays,* the Landlady, was there, and others.

L. C. J. Holt You ſay they were in a Hubbub, and would have the right Woman ſcratch'd. Who was it that would have it ſo?

Hearne. I heard ſo. But when I came to her, I found her in a lamentable Condition. Then I went to Juſtice *Riches,* and deſired his Warrant to take ſome of them; and he granted it, and I took up one *Oſbourn*; and when I came with him to Juſtice *Riches,* we had nobody to ſwear that ſhe was lame a-Bed, and ſo he was diſcharged; and Juſtice *Riches* ſaid, if there be no other to prove it on the Trial, you will ſpend a great deal of Money to no Purpoſe, and therefore he let him go. So ſhe was moved to *Paul*'s Wharf, but a Company of Fellows followed her thither.

L. C. J. Holt. How do you prove that?

Hearne. I heard of it, and deſired the Landlord to ſend for a Conſtable; he did ſo; and when we came there, all the People made their Eſcape, except *Hathaway* and another Perſon. So then ſhe was carried before Sir *Thomas Lane*; and they telling him that he had vomited Pins, and other Things, Sir *Thomas* was perſuaded to believe it. I told him, theſe Fellows had diſturbed this Woman's Peace, and very much abuſed her. Sir *Thomas,* will you not let me know who this Man is?

L. C. J. Holt. What Man do you mean?

Hearne. Jones. I begg'd, Pray let me know this Fellow's Name. Says he, It is no Matter, there was Provocation enough. And then, when we were talking of the Pins, Dr. *Hamilton* look'd in *Hathaway*'s Mouth, and found his Mouth very well; and he gave him Beer; and he, when he had taken it, ſtruggled with all his Might to keep it out; then he cry'd out. Let her be ſcratch'd, ſaid Sir *Thomas.* Dr. *Hamilton* ſaid, Forbear a little, let us ſee the Effect of this Beer; and ſo they forbore a little longer. Then they talked again of the Pins, and Dr. *Hamilton* would have her ſcratch'd again; ſo he ſpake to the Woman about it, but ſhe would not conſent; for ſhe ſaid ſhe had been abuſed, and would not be ſcratch'd, unleſs they would ſecure her for the future. But Sir *Thomas* would have her ſcratch'd; and ſo ſhe was; and then, when ſhe was ſcratch'd, and he had drawn her Blood, the Fellow bruſtled about like a Cock-Sparrow; and then they call'd for Bread and Cheeſe; and ſo he that before pretended he could not ſwallow any Thing, ſhow'd like an Antick to the People, for he was very greedy. And when he had eaten that, he call'd for more; and *Welling* ſaid, Pray, let him not have it, it will do him hurt, becauſe he has not eat ſo long. Then Sir *Thomas Lane* ordered her to be ſtripped, and ſhe was ſtripped above Stairs, and then he would commit her to Priſon.

L. C. J. Holt. Why? Did any Body ſay ſhe had any Thing extraordinary about her?

Hearne. No. Dr. *Hamilton* ſaid, ſhe had nothing about her; I offer'd a Hundred Pounds Security for her; and Sir *Thomas Lane* would not take it. But when Dr. *Martin* had been with her at Night, I Bail'd her out.

Mr. Bar. *Hatſell.* Was this *Hathaway* dumb when he was at Sir *Thomas Lane*'s?

Hearne. He ſpoke before, and when Sir *Thomas Lane* bound her over to the *Old Bailey*, and all that Time he was as well as could be.

Mr. Ser. *Jenner.* Was you at the Aſſizes at *Guilford?*

Hearne. Yes, and gave Teſtimony for her there.

Mr. *Conyers.* My Lord, we have a great many others that were preſent with Dr. *Martin*; but we have proved that Matter ſufficiently. Now we will ſhew how he behaved himſelf at Mr. *Kenſy*'s. [*Call Mr.* Kenſy, *who appeared and was ſworn.*] Mr. *Kenſy*, Do you know *Richard Hathaway?*

Mr. *Kenſy.* Yes.

Mr. *Conyers.* Was he not committed to your Care?——Mr. *Kenſy.* Yes.

Mr. *Conyers.* When was it?——Mr. *Kenſy.* It was in *November* laſt.

Mr. *Conyers.* Now pray give my Lord and the Jury an Account of what you know of his Faſting.

Mr. *Kenſy.* He was brought to my Houſe the Firſt of *November* laſt, about Noon. I went to ſee him at the *King's Bench*, where, about Nine in the Morning I found him in Bed. The Servants in the Priſon told me his Tongue was ſwell'd. At my Requeſt he put out his Tongue, which I found in a very good State and Colour, free from any Induration or Contraction. I obſerved the Glands under the Tongue, alſo his Throat, ſo far as I could ſee, free from any preternatural Accident or Impediment. He was brought to my Houſe about Twelve the ſame Day. I kept him in the Room where we dined, and offered him Meat and Drink ſeveral Times, which he refuſed. About Eight at Night we put him to Bed, and took his Cloaths out of his Chamber. The next Morning we offered him Meat again, and he refuſed to eat; and we brought him his Cloaths, and he was ſurly, and would not riſe. At Night I offered him a Glaſs of Cordial, which he alſo refuſed. At the ſame Time we found his Rug wet, which we diſcovered to be his Urine dropping through the Teſter of the Bed, he having hid his Urine upon it in the Cover of a large Box, through which it drained. And I threatened to diſcover him, and ſaid, Pray, diſcover who ſet you to work in this Matter; I look on you as a poor innocent Fellow, and that you are ſet on by others that have more Wit; but he would diſcover nothing. The next Morning I forced him to riſe, and I found him reſolute in his Humour of Faſting: I found Perſuaſions and Promiſes of a Pardon could not prevail, nor Threatenings that I would ſtarve him if he would not confeſs; ſo I feigned a Quarrel with my Maid, and railed at her in his Preſence, ſaying, ſhe was as very a Hypocrite as *Richard Hathaway*, and that I would be troubled no more with her. And I order'd her, ſo ſoon as my Back was turn'd, to rail againſt me as bad as ſhe could, and charge him not to take any Thing from me or my Brother, for ſhe alone would take Care to feed him. After this, we took him up every Day, and contrived Places and Holes, whereby we diſcovered him to eat and drink heartily; ſometimes three Times a Day, he thinking nobody was Witneſs to it but the Servant. Particularly one Day I had Fiſh and Oyſters for Dinner, and I ordered the Maid to give him ſome, and to give him ſtrong Beer and Brandy too, and he eat and drank freely. And afterwards he brought up his Dinner, and I coming in, told him I was glad the Witch was found out at my Houſe, and I told him To-morrow I would find out the Pins and Needles. He took the Poker, and raked the Aſhes over it, that it might not be ſeen what he had vomited.

L. C. J. Holt. But did he know that you ſaw him eat?

Mr. *Kenſy.* No, my Lord. The next Day I offer'd him ſomething to eat, to ſee if I could make him ſpeak; but he pretended to be ſo faint, that he could not get off his Chair; this was after he had eat ſeveral Days. And he danced and play'd on the Tongs.

L. C. J. Holt. But did you not ſee him drink?

Mr. *Kenſy.* Yes, my Lord.

L. C. J. Holt. But did he know you ſaw him?

Mr. *Kenſy.* He thought nobody ſaw him but the Maid; but I ſaw him drink.

Mr. *Broderick.* How did you ſee him?

Mr. *Kenſy.* I hid myſelf in a dark Place in my own Buttery, and did ſee him eat and drink ſeveral Times. I did not ſee him eat every Day. But the eighth Day he endeavoured to make his Eſcape. My Brother and my Sons went into his Chamber with his Cloaths, and *Hathaway* having dreſs'd himſelf, watch'd his Opportunity, and jump'd out of the Room, and bolted them in. But they ſtaying ſo long, I ſent the Maid up, and ſhe met him ſtealing down Stairs, and then he went back again and let them out. On *Monday* the 10th, I gave him his Cloaths, and I being alone, he had not Patience to dreſs himſelf, but immediately ſeized me; but ſtruggling with him, he pretended Feebleneſs, and fell on the Bed.

Mr. *Conyers* Can you give an Account of any Thing afterwards?

Mr. *Kenſy.* Yes.

Mr. *Conyers.* What Diſcourſe had you with him then?

Mr. *Kenſy.* I will tell you. He was very ſurly. That was the firſt Day he ſpoke. I came to him, and told him he was a Fool; that his Friends were in Cuſtody, and had not been true to him, but had diſcovered the whole Matter; and adviſed him to make a Diſcovery himſelf; and if he would, I would go with him to my Lord Chief Juſtice. Upon that, he cried paſſionately, and ſaid he would tell the Lord Chief Juſtice the whole Truth: But my Lord not being at his Chamber, he, in about an Hour, recanted, and ſaid he was bewitch'd. When he cried, he aſk'd if his Mother was ſafe.

Mr. *Conyers.* Did he at any Time tell you how long he had faſted?

Mr. *Kenſy.* Yes. He made Signs that he had faſted ſeveral Times, when we had ſeen him eat; and he took his Cloaths and wrapt them over him. And I ſaid unto him, how long haſt thou faſted before you came to my Houſe? He made Signs that he had faſted ten Weeks.

L. C. J. Holt. Did he pretend to be Dumb?

Mr. *Kenſy.* Yes; and I aſked him how long he had faſted at my Houſe? and he pointed, Two more.

Mr. *Conyers.* You ſay he made Signs that he had faſted ten Weeks before he came to your Houſe, and two Weeks while he was there: Now, how often did you ſee him eat at your Houſe after the two firſt Days?

Mr. *Kenſy.* I ſaw him eat ſeveral Times at Noon and Night; and after I had ſeen him eat, I would have perſuaded him to eat, and he made Signs ſtill, as if he could not eat, and ſhook his Head.

Mr. Serj. *Jenner.* How did you know what he meant by ſhaking his Head?

L. C. J. Holt. How did you know what he meant by his counting? How did you know that he meant Weeks?

Mr. *Kenſy.* He counted upon his fingers, my Lord. I aſk'd him how many Weeks he had faſted before he came to my Houſe? and he counted Ten Fingers: And how long he had faſted at my Houſe? and he counted Two more. And I aſk'd him, whether he had faſted Twelve Weeks then? and he made Signs of Twelve.

Mr. Serj. *Jenner.* You ſay he was dumb, and yet could hear!

Mr. *Kenſy.* Yes.

Mr. Serj. *Jenner.* How is that likely, that he ſhould hear, and yet was dumb?

L. C. J. Holt. Cannot a Man hear, tho' he be dumb?

Mr. *Conyers.* Call *Elizabeth Baker.* Where is ſhe? [*She was ſworn.*] Were you a Servant to Mr. *Kenſy* when this Man was at his Houſe?

Eliz. Baker. Yes, I was.

Mr. *Conyers.* Then pray tell my Lord and the Jury what you know of him

E. Baker. *Richard Hathaway* came to my Maſter's Houſe about Twelve a-Clock on *Saturday.* When we went to Dinner at One a-Clock, my Maſter offer'd him Meat and Broth, and he refuſed it; he was aſk'd to eat ſeveral Times, but ſtill refuſed it. They aſk'd him again at Night, and he ſhook his Head, and would not eat. And when he went to Bed, we took his Cloaths, and lock'd him in. And the next Day he refuſed to riſe; and at Noon they went to ſee if he would eat any Thing, and offer'd him a Glaſs of Sack, and he refuſed it. And on *Monday* Morning he was aſk'd to riſe again, and he would not; but my Maſter would have him riſe; and would have him come down and ſit by the Fire; and when he was come down, aſk'd him to eat, but he would not. And at laſt he look'd in his Mouth, and ſaid, he ſaw nothing but that he might eat and drink, if he would. And my Maſter ſaid to me, When I am with him I will call you up, and take an Occaſion to fall out with you, and when I am gone, do you rail at me, and tell him he ſhould take nothing of me or my Brother. And ſo I did; I ſaid, my Maſter call'd me Preſbyterian Jade, but I ſaid I did not know what Religion he was of; and that he was not more willing to have me go, than I was to be gone! And I told him he ſhould take nothing of my Maſter or his Brother, I would look after him while I ſtay'd. So I went out of the Room, and fetch'd a Glaſs of Brandy, and gave it to him. But there was a Child with me, and he refuſed to drink it, with a Sign pointing to the Child; ſo I ſaid I would hide the Child, and I ſtood between him and the Child; and then he drank it. And the ſame Day I gave him ſome Pudding and Small Beer; and at Night I carried him a Pint of Ale and a Toaſt, but found he had not eat the Pudding. I ſaw him eat the Toaſt and drink the Ale; but I did not ſee him eat the Pudding, tho' I ſuppoſe he eat it afterwards; for I ſaw it no more.

Juryman. In what Manner did you convey this Proviſion to him?

E. Baker. My Maſter gave me the Key, and I went in and ſtaid while he eat and drank, and I made him believe I had got the Key by Stealth. And I gave him a Glaſs of Brandy on *Monday* Night, and he drank it. And the next Day he eat and drank; he drank ſome Broth, and eat boil'd Mutton at Noon; and at Night he eat a Chop of Mutton, Bread and Cheeſe, and drank Beer and Brandy. On *Wedneſday* we had a Shoulder of Mutton roaſted, and after they had dined, I gave him a Plate of Meat, and he eat it in the Kitchen with me, and drank freely. And ſo he did every Day after while he was at our Houſe.

Mr. *Conyers.* Did any ever ſee him eat beſides yourſelf?

E. Baker. Yes. That Day that we had fiſh, he was in the Kitchen; and being there, he went and waſh'd his Hands, and I gave him a Plate of Fiſh, and ſet it by him; and he took it, and eat it. And I gave him a Bottle of Stout, and told him, it was my Birth-day, and he muſt drink my Health; and after he had drank it, he pointed to his Forehead, ſignifying it was got into his Head; and about two Hours after, he was very merry, and danced about, and took the Tongs and play'd upon them. But after that, he was mighty ſick, and vomited ſadly. And, ſays my Maſter's Brother, we ſhall ſee the Pins and Needles now. And to hide it, he falls a pulling the Fire over it.

Mr. *Conyers.* Did any of the Neighbours ſee him eat?

E. Baker. The 11th Day of the ſame Month, we had a Shoulder of Veal for Dinner; and after Dinner, my Maſter bid me ſet by ſome for him, and he would have ſome Gentlemen to ſee him eat it. They were accordingly hid in the Buttery and Coal-hole; and *Richard Hathaway* was brought down, and he took his Bread and Meat, and eat heartily, and drank with it.

Mr. *Raymond.* Who were thoſe Gentlemen that ſaw him eat?

E. Baker. Mr. *Collet*, Mr. *Norberry*, Mr. *Page*, and Mr. *Stanton.*

Mr. *Conyers.* Theſe Perſons are here.

Mr. Serj. *Jenner.* My Lord, all this is of what was done after the Trial, this Evidence ought not to be given; the Record bears Date the firſt Day of the Term, and all this is ſaid to be done in *November*; it is all after the Record.

L. C. J. Holt. It is to prove the Impoſture committed before now. What Mr. *Kenſy* ſays of his pretending to faſt twelve Weeks, tho' two or more be not within the Time of the Information, I hope they may give it as Evidence ſubſequent to prove what was done before.

Mr. Serj. *Jenner*. But I oppoſe all this of eating at their Houſe.

L. C. J. Holt. It is an Evidence of his cheating ſince that Time, and that out of the Information; but it is an Evidence alſo to prove that his pretended faſting before was a mere Deceit; for he then pretended to have faſted ten Weeks before he came thither, and after pretends to continue faſting in the ſame Manner; if that be proved to be a Fraud, it is ſtrongly to be inferred, that this pretended faſting before was ſo too.

Mr. Serj. *Jenner*. But then they may not give Evidence in Matter after.

L. C. J. Holt. Matter afterwards that proves a Thing done before; for if a Confeſſion be made ſubſequent to an Indictment for a Crime, ſhall not that Confeſſion after be brought as Evidence of the Thing done before? Sure it may.

Mr. Serj. *Jenner*. And will that prove what was before?

L. C. J. Holt. It is certainly ſo. The Thing is, Whether I can give in Evidence any Thing after to prove what was done before? If he pretends to faſt twelve Weeks, ten Weeks before he came there, and the two Weeks after, he did not faſt but only pretended it: Whether what he did after be not Evidence of what he did before? Sure it is. For he that cannot hold out faſting two Weeks, but was glad to eat, tho' he pretended to faſt, may ſtrongly be preſumed to have eaten during the ten Weeks, though then he pretended to faſt.

Mr. *Conyers*. Call Mr. *Stanton*. (*Who appeared.*) Was you at Mr. *Kenſy*'s Houſe to ſee *Richard Hathaway* eat?

Mr. *Stanton*. Yes. Mr. *Kenſy* came to me the 11th of *November*, and deſired me to come to his Houſe, to ſee whether he eat or drank or not; and I went, and was put into a dark Place, and I ſaw the Victuals before he was brought; there was five Slices of Meat, and Bread, and Beer. And he was brought where it was, and he looked about him earneſtly to ſee if any one ſaw him, and then he fell to, and eat as heartily as any Man could. And hearing a Noiſe whilſt he was eating, he run away with it, and ſet it on the Dreſſer. The Maid ſaid, there is nobody coming; and then he went to it again, and eat it up, and drank the Drink, and ſat down by the Fire. And afterwards we went to him, and carried a Bottle of Drink with us, and drank to him; but he made Signs that he could not drink, and ſhew'd us that his Belly clung to his Back, which we thought was very ſtrange.

Mr. *Conyers*. Call *Matthew Shipps*, and —— *Baxter*. (*They did not appear.*) *Jo. Hunt.* (*He was ſworn.*) My Lord, we call this Man to give you an Account of the ſtrange Noiſes that they pretended were heard in Mr. *Welling*'s Houſe; and we will make it appear how that Noiſe came. Mr. *Hunt*, pray give an Account what you know in this Matter.

Jo. Hunt. My Lord, an Acquaintance of mine, one *Kelpin*, told me that he had watch'd with *Richard Hathaway* one Night; and the next Day he came to me, and told me he fell aſleep, and had not watch'd him as he ought; and deſired me to ſit up with him, and to obſerve him as narrowly as I could, and ſee if I could find any Deceit in him. Accordingly I did ſo; and when I came into the Room, I ſat down on the Bed-ſide. There were two Gentlemen in the Room, Mr. *Pocock*, and Mr. *Butler*, and *Thomas Welling*. He lay as if he were almoſt dead. In a little Time his Maſter, *Tho. Welling*, brought in ſome Pins in a Coffee-diſh, and ſaid he had brought them up that Day, and that he believed he would bring up more. And after this ſeeing of the Pins, I went to Mr. *Pocock*, and ſaid, I did imagine the Pins might lie in his Mouth, rather than in his Stomach; and therefore it was very proper to have his Mouth ſearch'd. And Mr. *Pocock* replied, Who will venture to do it? And I ſaid, If they would waſh the Fire Poker clean, and put it into his Mouth, to prevent his biting my Finger, I would do it. Immediately upon this *Hathaway* raiſed himſelf, and began to make a Reaching, as tho' he would vomit; and then *Welling* and his Wife ſaid, Now he is going to bring up Pins. Thereupon I kneeled down by the Bed-ſide with a Candle in my Hand to obſerve his Motions; and after he had ſtrain'd ſome Time, he made a Motion with his Tongue at each ſide of his Mouth, but I could not perceive any thing come up his Throat, tho' his Mouth was wide open; and by and bye he drew up his Mouth, and turned out two or three bright Pins, and preſently after two more, which I catch'd in my Hands, and ſhew'd them to the Company, ſaying, they are bright and new; and his Maſter ſaid he believed they came out of ſome Chandler's Shop. Afterwards *Hathaway* lay down very quiet, and ſo continued for ſome Time. And *Welling*'s Wife coming into the Room, aſk'd, why the Charms were not put on? I replied, I have been told the Charms have been always taken off from him by the Witch; but was reſolved to watch ſo narrowly that Night, that they ſhould not be taken from him. Then *Welling* and his Wife offering to put on the Charms, *Hathaway* made a ſtruggling, as tho' he was unwilling to have them on; and *Welling* ſaid, you have always found Benefit by it, Why will you not? They are order'd by Mr. *Butler*.

L. C. J. Holt. What are thoſe Charms?

Jo. Hunt. Three little Things in black Bags, I did not know what they were. And they aſk'd him whether he was willing they ſhould be put on? if he was, he ſhould hold up his Hand: But he was unwilling. But I ſaid, I was minded to have them put on; ſo he lay ſtill, and Mrs. *Welling*, or ſome other Woman, ſew'd them to the Boſom of his Shirt. After the Charms were put on, I watch'd to ſee what would become of them; and perceiving *Hathaway* to make ſeveral Motions with his Hands about them, I ſtruck his Hands. I bid him either keep his Arms ſtraight in the Bed, or elſe put them out of the Bed, for that the Charms ſhould not be taken off that Night. Then I and the Company ſitting ſtill about the Bed, *Welling* ſaid, Hearken, you will not believe; hear what a Noiſe there is; the like is heard here almoſt every Night. Whereupon all were ſilent. At laſt I heard a ſmall ſcratching or rubbing at the Bed's Feet; and putting my Head cloſe to the Bed's Feet, liſtening, I heard ſomething ſhriek; and perceiving the Bed-cloaths ſtir, I took hold of the Fellow's Foot, and ſaid, I have caught the Witch that made the Noiſe. I thought it had been Mice at firſt; but ſeeing the Cloaths move, I catch'd his Foot. Thereupon *Hathaway* roſe up, and in a Paſſion made a Motion towards me with both his Hands; but I lifting up his Foot, he fell back upon his Pillow, and lay ſtill, and the Noiſe ceaſed; and about Five a Clock in the Morning I left him, and the Charms upon him.

Mr. *Conyers*. Call *Elizabeth Brand*. (*Who appeared.*) Pray give an Account what you know of any Collection of Money for *Richard Hathaway*.

Eliz. Brand. There was betwixt ſix and ſeven Pounds gathered

L. C. J. Holt, How was it gathered?

Eliz. Brand. We went about to get Money for him to bear his Charges to *Guilford*, and we got betwixt ſix and ſeven Pounds.

Mr. *Broderick*. Do you know of any other Sums that were gathered for him? —— *Eliz. Brand.* Yes; but I know not how much.

Mr. *Conyers*. Who employ'd you to do this?

Eliz. Brand. A great many of the Neighbours.

L. C. J. Holt. Who was the Money paid to?

Eliz. Brand. To Mrs. *Welling*.

Mr. *Conyers*. Do you know any thing of his ſcratching *Sarah Morduck*?

Eliz. Brand. I over-perſuaded her to let the Fellow ſcratch her.

L. C. J. Holt. Did ſhe conſent to it?

Eliz. Brand. Yes, my Lord, I call'd her, and ſaid to her, Let me perſuade you to let this Fellow ſcratch you; and ſhe bid me go and fetch him. And he came, and ſits him down on a low Seat. Says ſhe, Will you engage he ſhall not ſcratch my Eyes out? At laſt he ſcratches, and there came no Blood; and he ſcratches again, and then the Blood came; and he cry'd, O my Eyes! O my Eyes! And I ſaid, now the Blood comes, and he ſtared. Says I to him, Can you ſee me? Yes, ſays he, as well as ever I could.

Mr. *Conyers*. Mr. *Hearne*, you was at *Guilford* Aſſizes; How long did this Fellow pretend he had faſted?

Mr. *Hearne*. I cannot be poſitive what he ſaid at the Trial as to that; but they ſaid he had faſted ſix Weeks, before Dr. *Martin* tried the Experiment with him.

Mr. *Conyers*. Call *Matt. Shipps*. (*He was ſworn.*) Was *Richard Hathaway* under your Cuſtody?

M. Shipps. Yes: He was brought from *Guilford* Aſſizes upon the 31ſt of *July* laſt. He came home at Eleven a-Clock at Night, and they told me he was come a Priſoner from *Guilford* to the *Marſhalſea*, where he continued four Days, and he was ordered to lie with me, and every Night that he lay there, he ſlept very well to my thinking: And ſeveral Times I aſk'd him how he did? He anſwer'd, He was pretty well; and every Day while he was there, he eat and drank with me, as the reſt of the Servants of the Houſe did, and was not in all that Time in any Fit as I could perceive, but went very well out of the Priſon.

L. C. J. Holt. What did he ſay at the Aſſizes about his Faſting?

M. Shipps. I was not at the Aſſizes.

Mr. *Conyers*. Then we muſt leave it here.

Mr. *Broderick*. My Lord, we have the Woman here that they pretended was the Witch; but it may be, they may think it not proper, and therefore we ſhall let her alone.

Mr. Serj. *Jenner*. My Lord, and you Gentlemen of the Jury, I am Counſel for the Defendant, *Richard Hathaway*, who is indicted for a Cheat and Impoſtor; and it is for pretending himſelf to be bewitched, and that he has uſed indirect Arts and Means to make People believe he was ſo bewitch'd; and that this *Sarah Morduck* was the Perſon that had bewitch'd him; and that this was contrived by him, in order to bring Miſchief and Damage on this *Sarah Morduck*, and to the evil Example of the Queen's Subjects. You have heard the Evidence that has been given, and therefore I ſhall not repeat it, but only obſerve ſome good Things to you. The Doctor has taken a great deal of Pains in this Cauſe; but that which he does tell you by Hearſay, what other Perſons have told him, is not ſuch Evidence as you are to take any Notice of, that is, what *Johnſon* told him, and likewiſe what other Perſons told him concerning this Man; for what they have ſaid to him of this Man, tho' it may be true, is not to come under your Conſideration. There are ſeveral others that have given Evidence of what other Perſons have ſaid, and they have given it as their Opinions that what this Man did was the Cauſe of their Doings; of which you are to take no Notice. But, my Lord, that which ſeems to bear moſt hard upon us, is, That becauſe the Doctor, and ſeveral others have been abuſed, both before and after the Trial, for what they endeavour'd to do; therefore they would inſinuate as if my Client had had a Hand in it. But if a Man be doing any thing, and another takes the Advantage of it, to do another a Miſchief, I hope that Miſchief ſhall not be laid to his Charge. My Lord, there is one Man that has given a great deal of Evidence as to his Vomiting of Pins, and ſays that he was by, and he ſwept the Ground, and after he had vomited, there were Pins upon the Ground; and when he had a Chamber-pot to vomit in, he could not find any Pins there, but there was ſome upon the Ground again. So likewiſe for his Faſting, you have had Evidence to prove that a Cheat. And this ſeems to affect him moſt, that all this Pretence to be Bewitch'd, and Vomiting of Pins, and Faſting, was a Cheat. This is the Matter that they accuſe him of. Of which if he be really guilty, I come not here to defend him; but I am to defend him as far as Witneſs will do. And now, my Lord, if my Brief be true, we ſhall ſatisfy you that my Client was in a very lamentable Condition, ſuch as one would think no Man could be in and live; and I will lead you by theſe Steps. When he was thus diſabled, could neither ſpeak, nor take Suſtenance, his Maſter, after he had ſerved him two Years, and he had lived very civilly, and behaved himſelf well in his Maſter's Service, till he fell thus ill: Then he was ſo ill, that after the Maſter had ſpent a great deal of Money with Doctors and Apothecaries, he could get no Cure for him; then he got him into the Hoſpital, and there he continued a long Time, and at laſt they gave it in that he was incurable, and they turn'd him out. But his Maſter made Intereſt, and got him in again, and he continued ſome time there again; and there it was that he was firſt thought to be bewitched: For they had him twice, and could do no good with him, and the Tenders told him, he muſt lie under ſome evil Tongue; and thereupon he was turn'd out as incurable, and with that Inſtruction that it was an incurable Diſeaſe. So he came Home again, and his Maſter and Miſtreſs were acquainted with it; and they conſider what Perſon it ſhould be that ſhould have any evil Deſign againſt him. And at laſt they recollect, that his Maſter had taken a Room over the Head of this *Sarah Morduck*, and ſhe had gone to the Shop often, and had given them very ill Words, and ſhe ſhould be even with him one Time or other; and therefore they concluded this Woman was the Perſon. Upon this there were many Things contrived, what Courſe they ſhould take to do him good, and there was one Thing concluded upon in order to his Eaſe (which I think none ſhould adviſe), that is, the Buſineſs of ſcratching. But this Woman, when ſhe was accuſed by them of bewitching him, offered herſelf to be ſcratch'd, and ſhe was ſcratch'd, and from thence this Man found Eaſe. But afterwards he fell ill again, and he went into *London*, and was examin'd at Sir *Thomas Lane*'s, and upon Examination they thought that this Man did lye under ſuch an Affliction. I cannot ſay it is an irreligious Thing to ſay there are Witches in the World; but this Man lay under ſuch a Diſtemper, that no Doctor could know what to do with it. And they could not imagine who ſhould do it but this Woman, and ſhe was there ſcratch'd by him, and he did find Relief by it. My Lord, this being the Matter of Fact, we ſhall call very ſubſtantial Witneſſes to prove it. As to his Faſting, we ſhall prove that he was put under the Care of very ſubſtantial Perſons, and that he did not eat or drink for three Weeks or a Month; ſo that it will appear we had no Contrivance in the World, but only would get Eaſe if we could. We have twenty Witneſſes to call.

L. C. J. Holt. Let them all be call'd. Call as many as you will.

Mr. Serj. *Jenner.* Call *Anne Eaton. (She appeared.)* Do you know *Richard Hathaway?*——*Anne Eaton.* Yes, Sir.

Mr. Serj. *Jenner.* How long have you known him?

Anne Eaton. Ever ſince he came to his Maſter.

Mr. Serj. *Jenner.* How long is that?—*Anne Eaton.* About five or ſix Years.

Mr. Serj. *Jenner.* Do you know what Condition he was in two Years ago?

Anne Eaton. Yes.

Mr. Serj. *Jenner.* Then pray give my Lord and the Jury an Account of it.

Anne Eaton. I watch'd with him ſeveral Nights.

Mr. Serj. *Jenner.* Where did you watch with him?

Anne Eaton. At his Maſter's Houſe.

Mr. Serj. *Jenner.* In what Condition was he then?

Anne Eaton. He was in a very bad Condition, he was dumb and blind, and his Senſes were gone, and he ſeem'd as if he were dead; and when his Senſes have come to him, he has burn'd like a Flame of Fire.

L. C. J. Holt. How long did you watch with him?

Anne Eaton. About nine Weeks.

L. C. J. Holt. Did he faſt all that Time?——*Anne Eaton.* Yes, my Lord.

L. C. J. Holt. Might he not eat in that Time, and you not ſee him?

Anne Eaton. I was conſtantly with him at Nights, but not in the Day; I have been with him four or five Days and Nights together, and did not ſee him eat or drink.

L. C. J. Holt. What Time was this that you watch'd with him?

Anne Eaton. From the Time that he came from Madam *Davenport*'s, till your Lordſhip confin'd him.

L. C. J. Holt. Who put him to Madam *Davenport*'s?

Anne Eaton. I had nothing to do with that.

Mr. Serj. *Jenner.* Can you not tell what Month that was in?

Anne Eaton. I can't tell that.

Mr. *Raymond.* Did you obſerve him all that Time?

Anne Eaton. When I went out, I left one always in my Room.

L. C. J. Holt. You ſay you were with him four or five Days and Nights together.—— *Anne Eaton.* Yes, my Lord.

L. C. J. Holt. Were you with him all Night and all Day?

Anne Eaton. My Lord, ſome Days I had Occaſion to go out, but then I left ſome Neighbours with him.

Mr. Serj. *Jenner.* Call *Gibſon. (Who appeared.)* Do you know this Man, *Richard Hathaway?*——*Gibſon.* I have ſeen him in a deplorable Condition.

Mr. Serj. *Jenner.* When was this that you ſaw him?

Gibſon. About two Years ago. His Maſter aſked me to go and ſee him; and when I came up, I ſaw him foaming at Mouth; I thought he would not live till Morning. The next Day his maſter deſired me to watch with him at Night; and I did; and he was ſo bad, that I thought he would not live till Morhing. Afterwards I ſaw him again, and he was blind and dumb, as it appear'd to me. And he had a ſtrange Motion, he threw himſelf forward, and afterwards threw himſelf backward, as if his Head lay in the Reins of his Back; and I ſaid to this Woman then, I believe he has broke his Back. I believe this was after he came from Madam *Davenport*'s, about the Time that he appeared at the Bar at *Weſtminſter*.

L. C. J. Holt. The firſt Time that you ſpeak of, when you ſay he was blind and dumb, you ſay that was two Years ago; Was he blind and dumb, when you ſaw him the ſecond Time?

Gibſon. Yes, the ſecond Time I ſaw him he was blind and dumb. I ſaw him in a deplorable Condition three Times.

Juryman. We deſire to know the Circumſtances of his Condition.

L. C. J. Holt. The Jury deſire to be ſatisfied of the Circumſtances of his Condition. You ſay you ſaw him two Years ago, and he was then in a deplorable Condition, and you ſaw him twice after; the Jury would have you deſcribe the Circumſtances of it as plain as you can.

Gibſon. His Maſter deſired me to go to him, and I was willing to oblige him; and when I came to him, he was both blind and dumb.

L. C. J. Holt. How long was this after you ſaw him the firſt Time?

Gibſon. About Half a Year after.

L. C. J. Holt. Are you a Neighbour?——*Gibſon.* Yes, my Lord.

L. C. J. Holt. You ſay you ſaw him two Years ago, and you ſay he then foamed at Mouth and Noſtrils; Was he blind and dumb then?

Gibſon. No, my Lord; but he was when I ſaw him the ſecond Time.

L. C. J. Holt. When did you ſee him after?

Gibſon. It was about a Twelve-month after that I ſaw him.

L. C. J. Holt. And not before?

Gibſon. He was ſeven Weeks in the Hoſpital.

Mr. *Broderick.* Then you did not ſee him in the Hoſpital?

Gibſon. I did; but he went almoſt double.

Mr. *Broderick.* Did you hear any thing of Mrs. *Morduck* then?

Gibſon. No, Sir.

L. C. J. Holt. What Trade are you?——*Gibſon.* I am a Glazier.

Mr. *Conyers.* Have you no other Trade?

Gibſon. Sometimes I work at the *Cuſtom-Houſe.* One *Sunday* we went to hear Dr. *Pead*, and *Richard Hathaway* went with us. And when we were gone out a-Door, he could not ſpeak; and when we came upon the Bridge, his Face was drawn awry ſo ſtrangely that it aſtoniſhed me; he ſtagger'd the Length of this Table, and his Face was drawn back again, and he fetch'd a Reel; but in a Quarter of an Hour he ſpake, and his Speech continu'd till he came to *Grace-church-ſtreet*, and there we met Mr. *Fox*; and ſo he continued till we came to *Biſhopſgate:* But coming to *Houndſditch*, he made Motions that his Speech was gone again.

L. C. J. Holt. Did you hear him ſpeak at *Weſtminſter?*

Gibſon. No, my Lord.

Mr. Serj. *Jenner.* Call *Flummery. (Who appeared.)* Do you know this Man?——*Flummery.* Yes, I am a Neighbour.

L. C. J. Holt. What is thy Name?

Flummery. Flummery. After *Guilford* Aſſizes I went to ſee him, and he was in a lamentable Condition; he was like a Stock, or Stone, blind and dumb. I went to ſee him——

L. C. J. Holt. Did you ever ſee him before?

Flummery. I ſaw him ſeveral Times, but took no Notice of it; but then his Eyes ſtood wide open.

L. C. J. Holt. And yet you ſay he was blind; How could that be?

Flummery. My Lord, I will tell you how; I tried him, I wagged the Hair of his Eye-lids, and put the Candle to his Eyes, and he took no Notice of it.

L. C. J. Holt. How could you know that he did not ſee?

Flummery. I tried him.

L. C. J. Holt. How did you try him?

Flummery. I tried him with my Fingers, and his Eyes would not wag.

L. C. J. Holt. Did he not look then as he looks now?——*Flummery.* No.

Mr. *Broderick.* Did you ſpeak to him then?

Flummery. Yes; but I could not make him hear nor anſwer me.

L. C. J. Holt. Could he ſpeak then?

Flummery. No, may it pleaſe your Lordſhip.

Anne Pearſe ſworn.

Mr. Serj. *Jenner.* *Anne Pearſe*, pray tell my Lord what you know of this *Richard Hathaway.*

Anne Pearſe. I belong to the Hoſpital. When he came into the Hoſpital, he was very bad.

L. C. J. Holt. Was he blind and dumb when he came in?

Anne Pearſe. After he was brought in, he was put to Bed, and he was taken with a Fit, and I was call'd to him, and I came to him, and he did not ſtir much, and turn'd up his Eyes. And afterwards one of his Maſter's Journeymen came to him, and he raiſed him out of his Bed; and one came to me, and ſaid, Siſter, he is come to the Fire, but he is very bad ſtill. Says I, What did you raiſe him out of his Bed for? He went upon his Ankles almoſt, he went very weakly, and continued ſo for ſome Time.

Mr. Serj. *Jenner.* How long was he in the Hoſpital?

Anne Pearſe. About five Months.

Mr. Serj. *Jenner.* Was he out, and came in again?

Anne Pearſe. Yes, he was. He complain'd he could not go to ſtool; and the Doctor gave him Quickſilver; and when it came from him, I heard the Apothecary made him take it again, and ſwallow it again.

Mr. Serj. *Jenner.* When he came in the ſecond Time, was you there then?——*Anne Pearſe.* Yes.

Mr. Serj. *Jenner.* How long was he there the ſecond Time?

Anne Pearſe. How long he was there the ſecond Time I cannot tell.

Mr. Serj. *Jenner.* Can you tell when he was put in the ſecond Time?

Anne Pearſe. No.

Mr. Serj. *Jenner.* What was your Opinion of him?

Anne Pearſe. I apprehended him to be in a very ſtrange Condition; he lay ſeven or eight Days, and did not eat or drink; he had taken Quickſilver, and it did not come from him, and the Doctor wonder'd it ſhould lie ſo long in his Body.

Mr. *Broderick.* Did the Doctor or you apprehend any thing of Witchcraft in the Caſe?

Anne Pearſe. No, Sir. But at this Time his Eyes were ſet in his Head.

Mr. *Broderick.* When he was recovered out of thoſe Fits, did he pretend that he was bewitch'd?

Anne Pearſe. No.

L. C. J. Holt. Did you never hear him complain that he was bewitched?

Anne Pearſe. No, my Lord, I did not hear of that.

Mr. Serj. *Jenner.* Call *Jo. Smith. (Who appeared.)* Mr. *Smith*, Do you know this Perſon, *Richard Hathaway?*

Smith. Yes, Sir.

Mr. Serj. *Jenner.* How long have you known him?

Smith. About five or ſix Years.

Mr. Serj. *Jenner.* How far do you live from him?

Smith. I believe about two Stones-throw.

Mr. Serj. *Jenner.* Were you well acquainted with his Condition two Years ago?

Smith. Yes; I have done Buſineſs for the Family ſeveral Years. About five years ago I found him much afflicted with Convulſion Fits at his coming to his Maſter.

Mr. Serj. *Jenner.* How was he about two Years ago?

Smith. He was in a very ſtrange Condition; and I adviſed his Maſter to get rid of him, and to get him into the Hoſpital.

Mr. Serj. *Jenner.* What did he ail?

Smith. He lay in a very ſtrange Condition.

Mr. Serj. *Jenner.* How did he lie?

Smith. He lay ſtruggling and ſtriving often, and ſometimes like a Man that was dead; and once, when he lay in that Condition, I laid Cupping Glaſſes to him, and that enliven'd him?

L. C. J. Holt. What did you imagine ail'd him? Did you think he counterfeited or not?

Smith. Indeed, my Lord, I can't tell that.

Mr. Serj. *Jenner.* Why did you adviſe his Maſter to put him into the Hoſpital?——*Smith.* I can't tell.

Mr. *Phipps.* You ſay, you have known him five Years, and that he has been troubled with Fits. Did he ever talk of being bewitched till within this two Years?

Smith. No, not till within this two Years.

Mr. Bar. *Hatſell.* When he lay ſeemingly dead, you do not know whether he counterfeited or no?

Smith. No, my Lord.

Mr. Bar. *Hatſell.* Do you think a Man can be in ſuch a Condition as he ſeem'd to be, and yet only counterfeit?

Smith. Indeed, my Lord, I know not. I examined him, whether he was ſubject to thoſe Fits formerly; and he told me, he was very much troubled with them in the Country.

L. C. J. Holt. You do not anſwer the Queſtion. Cannot a Man counterfeit in ſuch a Caſe? What do you think of that?

Smith. Without doubt, it may be counterfeited.

L. C. J. Holt. You ſay, when he was in thoſe Fits, you put Cupping-Glaſſes to him, and it enliven'd him; now, if he were in a real Convulſion, do you think it would have enliven'd him?

Smith. Sometimes it may be ſo.

Mr. Serj. *Jenner.* Call *Elizabeth Willoughby* (*ſhe appear'd*). Mrs. *Willoughby*, pray, give my Lord an Account whether you know *Richard Hathaway*, and what you know of him.

E. Willoughby. Sir, I have ſeen him ſince the Aſſizes at *Guilford.*

Mr. Serj. *Jenner.* Did you never ſee him before?——*E. Willoughby.* Yes.

Mr. Serj. *Jenner.* Then give an Account of what Condition you have ſeen him in.

E. Willoughby. I have ſeen him when the Breath came out of his Mouth like the Barking of a Dog. I had a Child that was troubled with Fits, and I was above Stairs, and I heard a great Noiſe; and I went out of the Door to ſee what was the Matter, and over the Hatch lay *Richard.* Lord bleſs me, ſays I, is it you makes this Noiſe? And I could not fancy any Thing, but that it was like the Barking of a Dog.

L. C. J. Holt. How thick was it? Was it not like other Folks?

E. Willoughby. No.

Mr. Serj. *Jenner.* What ailed him?

E. Willoughby. I cannot tell what ailed him.

L. C. J. Holt: Do you think he was bewitched?

E. Willoughby. I believe he was, my Lord.

L. C. J. Holt. I ſuppoſe, you have ſome Skill in Witchcraft. Did you ever ſee any Body that was bewitched before?

E. Willoughby. My Lord, I have been under the ſame Circumſtances myſelf, when I was a Girl, in Sir *Edward Bromfield's* Time.

L. C. J. Holt. How do you know you was bewitch'd?

E. Willoughby. There was a Woman taken up upon Suſpicion for it.

L. C. J. Holt. For bewitching thee?

E. Willoughby. Yes, my Lord.

L. C. J. Holt. Did you ſcratch her?

E. Willoughby. My Lord, I had no Power to do any Thing. I flew over them all.

L. C. J. Holt. You ſay, you were in the ſame Condition with this Man, and you ſay you flew; did you faſt too?

E. Willoughby. One held me by one Arm, another by the other, and another behind, and I flew ſheer over their Heads.

L. C. J. Holt. Woman, can you produce any of theſe Women that ſaw you fly?

E. Willoughby. It was when I was a Child; they are dead; it was in old Sir *Edward Bromfield's* Time.

L. C. J. Holt. What became of that Woman that made thee to fly?

E. Willoughby. I cannot tell, I have been well ever ſince I was married.

Mr. Serj. *Jenner.* How was you cured of that Witchery?

E. Willoughby. How do I know?

Mr. *Conyers.* Did you ſcratch her?

E. Willoughby. How ſhould I ſcratch her, when I had not Power to ſee her?

Mr. *Conyers.* And yet you believe this Man was bewitched as well as you. What Condition was this Man in? How long did he lie in this Condition?

E. Willoughby. Night and Day he has lain over the Hatch, and over the Bed, and made a great Noiſe with his Breath.

Mr. Serj. *Jenner.* Who did you ſuſpect had done him this Harm?

E. Willoughby. I know not that.

Mr. *Broderick.* Are you a Widow?——*E. Willoughby.* No, Sir.

Mr. Serj. *Jenner.* Call *Keeling* (*who appeared*). Do you know any Thing concerning this *Richard Hathaway?*

Keeling. I watch'd with him 9 Nights.

Mr. Serj. *Jenner.* What did he eat or drink all that Time?

Keeling. He did neither eat nor drink, nor had he any Stool all that Time.

L. C. J. Holt. Did you watch with him 9 Nights and Days?

Keeling. There was another Man that watch'd with him in the Day; as I came out, he was let in; and as he came out, I was let in.

Mr. Serj. *Jenner.* How long was this before the Trial?

Keeling. Two or three Days before he came before Sir *Thomas Lane.*

Bridges *ſworn.*

Mr. Serj. *Jenner.* Did you watch with *Richard Hathaway?*

Bridges. Yes.

Mr. Serj. *Jenner.* How long?——*Bridges.* Nine Days.

Mr. Serj. *Jenner.* Did you watch with him the ſame Days that he watch'd with him in the Nights?——*Bridges.* Yes.

Mr. Serj. *Jenner.* Did you not ſtir from him till he came?

Bridges. No.

Mr. Serj. *Jenner.* Did you ſee him eat or drink all that Time?

Bridges. No.

Mr. Serj. *Jenner.* Where was it that you watch'd with him?

Bridges. In an old empty Houſe.

L. C. J. Holt. Where was this Houſe?

Bridges. By a Dock on the *Bank-ſide* in St. *Mary Overy's* Pariſh.

L. C. J. Holt. How came you to put him into that Houſe?

Bridges. The Maſters of the Pariſh put him in it.

Mr. Webb *ſworn.*

Mr. Serj. *Jenner.* Mr. *Webb*, did you get a Houſe to put *Hathaway* in?

Webb. Yes.

L. C. J. Holt. How came you to do ſo?

Webb. His Maſter uſed to work for me, and he came to me, and ſaid, I cannot tell what to do with my Man, unleſs the Maſters of the Pariſh take ſome Care of him; and I did ſpeak with ſome of them about it; and they ſaid, we will not trouble the Pariſh about it, we will ſpend a Crown a-piece, and put theſe Men into the Houſe with him.

L. C. J. Holt. You took the Houſe then?

Webb. We borrowed the Houſe, it being empty, and put in theſe two Men. There were four or five Neighbours more, and I ſaid to him, They ſay you vomit Pins; I will be ſatisfied whether it be true or no; and we ſtript him, and could find none about him; we ſearch'd his Shirt, his Stockings, his Breeches, and his Hat, but could find no Pins about him.

Mr. Serj. *Jenner.* Did he eat or drink all the Time you were there?

Webb. No, my Lord.

Mr. Serj. *Jenner.* Did he vomit?

Webb. Yes; I went to him on *Thurſday* Morning, and he had a huſky Cough, and I thought he would have been choak'd; and at laſt he made a Crumb of Spittle out of his Mouth, and there were three Pins came from him in the Spittle, as ruſty as if they had lain in a Ditch ſeven Years. About *Saturday* following, he had, I believe, four Pins more came from him; I took them, and I think the Hands of Man could not join them as thoſe Pins were. On *Sabbath*-day in the Morning, a Gentleman came and deſired him to go to Church with him, and deſired him to drink a Pint of Ale, but he did not drink Half; and about five a-Clock in the Afternoon came Mr. *Sutton* the Apothecary, and I ſtay'd with him till ſix on *Monday*, and heard not a Word from him.

Juryman. What People came in to ſee this Fellow while you watch'd him?

Keeling. No Man, Woman, or Child came to him the Time I was there, but only that *Sunday* Night that my Maſters were there, and I ſaid, You do not put him here to ſtarve him; and they bid me aſk him if he would eat any Thing: if he would eat any Thing, he might have it.

Mr. *Conyers.* Did not you uſe to carry him out ſometimes?

Keeling. We never carried him out.

Mr. *Conyers.* Juſt now you ſaid he was out on *Sabbath*-day.

Keeling. Yes, but never otherwiſe.

Mr *Broderick.* Was he in a Ground-room, or up Stairs?

Keeling. He was in a Ground-room.

L. C. J. Holt. Were there any Windows in it?——*Keeling.* Yes.

L. C. J. Holt. Was there any Caſement?——*Keeling.* Yes, there was.

Juryman. We deſire to know of this Witneſs, whether he never was aſleep in that Time while he watch'd with him?

Keeling. No, I ſat juſt at his Head. I ſlept in the Day-time.

L. C. J. Holt. You that watch'd with him in the Day, did you not ſleep all Day?——*Bridges.* No.

L. C. J. Holt. How came you to concern yourſelf in this Buſineſs? Are you one of the Maſters of the Pariſh?

Webb. No, I am not; but it was my Turn to be Overſeer, and his Maſter ſpoke to me to ſpeak to the Church-wardens; and I did, and they ſaid, they would not put the Pariſh to the Charge, but do it themſelves.

L. C. J. Holt. What Trade are you?

Webb. A Lighter-man, my Lord.

Dell *ſworn.*

Mr. Serj. *Jenner.* Do you know this *Richard Hathaway?*——*Dell.* Yes.

Mr. Serj. *Jenner.* How long have you known him?

Dell. Ever ſince he was an Apprentice.

Mr. Serj. *Jenner.* Did you know him two Years ago?——*Dell.* Yes.

Mr. Serj. *Jenner.* What Condition was he in then?

Dell. I was at the Aſſizes at *Guilford*——

Mr. Serj. *Jenner.* What did you know of him before that Time?

Dell. I took no Notice of ſuch Things.

Mr. Serj. *Jenner.* Can you ſay any Thing of him?

Dell. I can ſay, that the Night before he was before Sir *Thomas Lane* I watch'd with him, and he went to Stool, and in his Excrements there was a Lump of Hair, looſe Pins, a Stump of a Nail, half a Nut-ſhell, and two or three Pieces of Stone.

Mr. Serj. *Jenner.* And this you ſaw?

Dell. I ſaw him in a very deplorable Condition.

L. C. J. Holt. How? In what Condition?

Dell. This is all I have to ſay.

Mr. Serj. *Jenner.* What do you call a deplorable Condition?

Dell. He lay in ſuch a Condition, as if he were dumb; and if he was not, I believe he is the greateſt Villain in the World.

L. C. J. Holt. How do you know thoſe Excrements came from him?

Dell. I was one of the three Men that watch'd with him that Night. We had two Chamber-pots; theſe Things were in the firſt Stool, and when he had done the ſecond Stool, he ſat on the Pot, and when he had done, we look'd, and there was nothing in it.

L. C. J. Holt. And were theſe Things in the firſt?

Dell. Yes, in the firſt; in the other there was none. And there were twenty Neighbours more that ſaw them.

Mr. Serj. *Jenner.* Was *Benn* there?——*Dell.* Yes, he was there.

Mr. Serj. *Jenner.* Mr. *Benn*, was this ſo?——*Benn.* Yes.

Mr. Serj. *Jenner.* Did you help watch with him?——*Benn.* Yes.

Mr. Serj. *Jenner.* And are you ſure thoſe Excrements came from him?

Benn. Yes, I am ſure. I ſtood over him with a naked Sword.

Mr. Serj. *Jenner.* Why did you ſtand over him with a naked Sword?

Benn. Becauſe People ſaid he was bewitch'd.

L. C. J. Holt. Who employed you to watch with him?

Benn. I went into the Houſe, and I told his Maſter, if they would watch him in the Day, I would in the Night.

Powell *called.*

Mr. Serj. *Jenner.* What do you know of this Matter?

Powel. This Man and I went up one Night——

Mr. Serj. *Jenner.* When?

Powel. February was Twelvemonth. We went up and look'd upon him, and he lay as one dead, and he did not wag his Eyes; and preſently he hook'd his Neck about in ſuch a Manner that I thought he had broke it; and he foamed, and we took the Foam from his Mouth, and in it were five Pins, the crookedeſt Rams-horneſt Things that I believe no Man could do them ſo.

Mr. Serj. *Jenner.* That was one Night. Did you ſee the ſame at any other Time?——*Powel.* Yes, Sir.

L. C. J. Holt. But you did not ſee them come from him?

Powel I took it from his Mouth, and they were ruſty.

L. C. J. Holt. How ſhould they be ruſty?

Mr. Serj. *Jenner.* The Stomach will make them ruſty. Call Madam *Da-*

venport (ſhe appear'd). Madam, pray give my Lord and the Jury an Account what you know concerning *Richard Hathaway,* when he came to your Houſe, and how he was managed there.

Mrs. *Davenport.* My Lord, one *Saturday* I accidentally went to Dr. *Hamilton*'s to viſit his Wife, and I ſaw with the Doctor this Fellow's Maſter ſtanding there; and I perceived he was come to deſire the Doctor to perform a Promiſe he had made to him formerly——

L. C. J. Holt. Was this before the Trial, or after?

Mrs. *Davenport.* It was after the Trial. I came accidentally to the Doctor's, and ſaw the Fellow's Maſter with the Doctor.

L. C. J. Holt. Was the Fellow there himſelf?

Mrs. *Davenport.* No, my Lord, I never ſaw him there. But ſtanding there, I perceived him expecting the Doctor to make good a Promiſe he had made him about this Fellow. I found the Doctor demurr'd upon it, not knowing where to put him. At laſt, ſays he to me, Mrs. *Davenport,* will you let me have a Garret in your Houſe? Doctor, ſays I, you ſhall have my whole Houſe at your Service, if you have Occaſion for it: I thought nothing of this Fellow, till the Doctor told me it was for him. And the Doctor told me he ſhould come that Night. Says the Fellow's Maſter, I will not ſend a Bed, that the Doctor may be ſatisfied there is no Cheat. And the Doctor, to prevent any Cheat, deſired me to go and buy an old Bed. So I went and got a Bed in *Long-lane,* and at Night he was brought by his Maſter and ſome of his Neighbours. And truly I was ſurprized when I ſaw him, he ſeemed very weak.

Mr. Serj. *Jenner.* What did you do with him?

Mrs. *Davenport.* They ſaid he had Fits, and I found I muſt take other Meaſures with him than I thought of. His Maſter deſired he might be ſearch'd; and my Son and two Men more ſearch'd him. So he went to Bed, and was watch'd with that Night, and in the Morning he was ſtruck blind.

L. C. J. Holt. At your Houſe?——Mrs. *Davenport.* Yes, my Lord.

Mr. Serj. *Jenner.* Did you appoint any Perſons to watch with him?

Mrs. *Davenport.* Yes.

Mr. Serj. *Jenner.* Did you watch with him yourſelf?

Mrs. *Davenport.* Yes, ſeveral Times.

L. C. J. Holt. How long at a Time did you watch with him?

Mrs. *Davenport.* But one Night at a Time myſelf.

L. C. J. Holt. When you did watch with him, did you watch the whole Night?

Mrs. *Davenport.* Yes, ſeveral Nights; and this Gentlewoman or myſelf took care of him always.

Mr. Serj. *Jenner.* What did he eat or drink while he was there?

Mrs. *Davenport.* Nothing. As for his Faſting, the Doctor gave me a great Charge, and ſaid he knew I would do it.

Mr. Serj. *Jenner.* All the Time you watch'd with him, you ſay he did neither eat nor drink.

L. C. J. Holt. How many Nights did you watch with him in the ſeventeen?——Mrs. *Davenport.* But two.

L. C. J. Holt. How many Days?——Mrs. *Davenport.* Every Day.

L. C. J. Holt. Did you watch with him every Day yourſelf.

Mrs. *Davenport.* Either myſelf, or this Woman, or the Servant, or my Son *Davenport.* He is now gone to Sea. My Lord, I do not tell you I kept him in the Garret all this Time.

Mr. Serj. *Jenner.* When you left him, who reliev'd you?

Mrs. *Davenport.* This Gentlewoman or my Servant.

Mr. Serj. *Jenner.* What is that Gentlewoman's Name?

Mrs. *Walker.* *Walker.*

She was ſworn.

Mr. Serj. *Jenner.* Mrs. *Walker,* did you watch with him in this Place?

Mrs. *Walker.* Yes.

Mr. Serj. *Jenner.* Did he eat or drink while he was there?

Mrs. *Walker.* He did neither eat nor drink.

Mr. *Conyers.* How often was it that you watch'd with him?

Mrs. *Walker.* I cannot tell whether one or two Nights.

L. C. J. Holt. I would be ſatisfied in ſome Things. Is that *Davenport* you ſpeak of your Son?

Mrs. *Davenport.* Yes, my Lord. He is now gone to Sea.

L. C. J. Holt. How long has he been gone to Sea?

Mrs. *Davenport.* But a Week.

Mrs. Dorman *ſworn.*

Mr. Serj. *Jenner.* Mrs. *Dorman,* did you watch with this Man at Mrs. *Davenport*'s?——Mrs. *Dorman.* Yes.

Mr. Serj. *Jenner.* Within the ſeventeen Days that he was there, did he eat or drink?——Mrs. *Dorman.* No.

Mr. *Phipps.* How many Nights or Days did you watch with him?

Mr. Serj. *Jenner.* Give an Account of the Time when you watch'd with him, and no longer.

Mrs. *Dorman.* Two Nights, and every Day.

L. C. J. Holt. He might have eat, and you not ſee him, might he not?

Mrs. *Dorman.* But the Time I ſaw him, he did neither eat nor drink. And he made Water, and I believe five times more came from him than he took.

Mrs. Dean *ſworn.*

Mr. Serj. *Jenner.* Mrs. *Dean,* do you know *Richard Hathaway?*

Mrs. *Dean.* Yes.

Mr. Serj. *Jenner.* How long have you known him?

Mrs. *Dean.* Not till he was at Madam *Davenport*'s.

Mr. Serj. *Jenner.* Was you there all the ſeventeen Days?

Mrs. *Dean.* Not all the Time. I ſat up with him two Nights.

Mr. Serj. *Jenner.* Who ſat up with you?

Mrs. *Dean.* Madam *Davenport.*

Mr. Serj. *Jenner.* While you were there, did he eat or drink?

Mrs. *Dean.* No.

Mr. Serj. *Jenner.* Call Dr. *Hamilton.* *(He was ſworn.)* Doctor, pray give an Account of what you know concerning this *Richard Hathaway.*

Dr. *Hamilton.* My Lord, I have very little to ſay upon my own perſonal Knowledge. But happening to be at Sir *Thomas Lane*'s when he was brought before him, I heard what paſs'd, and I deſired Sir *Thomas* to let me try his Throat,—and I did try it, and found nothing amiſs. But at laſt I found there was nothing to be depended upon, for there are abundance of Legerdemain Tricks, therefore his vomiting Pins, and other Actions, were not to be truſted to; and therefore there was nothing to be depended on but his Faſting; and if you would diſcover whether he be an Impoſtor, or no, he muſt be lock'd up in a Room for a Fortnight, and watch'd. And then I ſaid to the Fellow's Maſter, for my curioſity, If you pleaſe, I will lock him up in a Room a Fortnight, and I ſhall find out whether he counterfeits or no. And he came to me afterwards, and ſaid, Doctor, you promiſed you would make this Trial of my Man. I did ſo, ſays I, and if I can I will. I had Thoughts of putting him in the Garret; but then I conſider'd, if I ſhould put him in the Garret by himſelf, he might die. But at the ſame time Mrs. *Davenport* happen'd to come to my Houſe; and I ſaid to her, I dare truſt you with an Experiment, for I believe he is an Impoſtor; and I deſired her to let me have her Garret to put him in, and ſhe conſented. And I deſired her either to go herſelf, or ſend to *Long-lane,* and buy Things for him; and that ſhe ſhould ſtrip him, and ſee that nothing may be about him to hide Bread or any thing elſe in; and, ſaid I, let none come to him, and let one or two of your Family ſit up with him every Night. And ſhe promiſed me ſhe would. Accordingly ſhe bought a Bed for him and other Things, and he was ſent to her; and the next Day they ſent me Word that he had ſtrange kind of Motions; but I ſaid, there is nothing to be depended on as to theſe Things; but I would fain know whether he faſts or no. I have heard of many that have faſted many Weeks, but they have taken Water, or ſome ſuch thing, which, tho' they are very weak things, yet may keep one alive; but none can live without taking ſomething: And if he ſhould live to the End of the ſeventeen Days without eating or drinking any thing, I ſhould have ſomething to take hold of. They told me——

Mr. Serj. *Jenner.* That is no matter what they told you. Did you ſee him afterwards?

Dr. *Hamilton.* I was mightily concerned for the poor Creature when I ſaw him at Sir *Thomas Lane*'s; and I was willing to try him.

Mr. Serj. *Jenner.* Did you ſee him after that?

Dr. *Hamilton.* Yes, when he was blind for ſeveral Days. And I ſent to Dr. *Martin,* and deſired the Favour of him to call upon me; and I ſaid—

Mr. Serj. *Jenner.* Did you ſee him after he had been at Madam *Davenport*'s?——Dr. *Hamilton.* Yes.

Mr. Serj. *Jenner.* Did you ſee him while he was there?

Dr. *Hamilton.* Yes. The thing that I depended upon was purely his Faſting. I ſaw him myſelf ſeveral times, and I could not believe but that he had eat, becauſe his Pulſe were ſtrong; that was one Reaſon that I thought he muſt eat.

Mr. Serj. *Jenner.* Did you ſee him the laſt Day of the Fortnight?

Dr. *Hamilton.* I was juſt going to Dinner when Dr. *Martin* came to me; and I ſaid to him, Doctor *Martin,* let us try every thing: Will you go along with me to him? Says he, If I go he will fall in a Paſſion. But after I had dined I went, and enquired about him, and they told me he had ſtrange Motions.

Mr. *Broderick.* You ſay you reject every thing except that of his Faſting.

Dr. *Hamilton.* Yes.

L. C. J. Holt. Doctor, do you think it is poſſible in Nature for a Man to faſt a Fortnight?

Dr. *Hamilton.* I think not, my Lord.

L. C. J. Holt. Can all the Devils in Hell help a Man to faſt ſo long?

Dr. *Hamilton.* No, my Lord, I think not; and that made me to ſuſpect him.

Mr. *Phipps.* Do you think the Pulſe of a Man can be ſtrong when he has faſted eight Days?——Dr. *Hamilton.* I think not.

Sir Thomas Lane *called and ſworn.*

Mr. Serj. *Jenner.* Sir *Thomas,* be pleaſed to tell my Lord and the Jury what you know of this Man.

Sir. *Tho. Lane.* It was above a Twelve-month ago that his Maſter brought a Woman before me, upon Suſpicion that ſhe was a Witch, and that ſhe had bewitched his Man; but there having been a Trial, I ſhall wave that. I enquired what kind of Life he had lived; and his Maſter ſaid he had behaved himſelf very civilly, and gave him a very good Character. He told me how grievouſly he had been afflicted, and that he had been ſix or ſeven Months in the Hoſpital, and had faſted a great while, above eight Weeks, and had voided and vomited Pins; and two Witneſſes ſwore to Chains of Hundreds of Pins that came from him in his Excrements. And it ſeems they had a fancy that ſcratching *Sarah Morduck* would give him Relief, and they were in earneſt with me that I would command this Woman to be ſcratch'd, and I appeal to them, whether I did not refuſe it. I ſaid, if I ſhould order this, it would be an Aſſault; but if ſhe will conſent, you may do it. Says ſhe, If I may be ſecured for the future, I will let him. Says I, if you do it, do it in your own way: there are ſeveral here that know it was ſo. And ſhe did give her Conſent; and he ſcratch'd her, and I pull'd away her Arm from him. The Fellow had Bread and Cheeſe brought him; and as ſoon as he had ſcratch'd this Woman, he took the Bread and Cheeſe and eat prodigiouſly; and he had about a Quart of Drink, and he drank it up at a Gulp. I aſk'd Mrs. *Morduck,* and her Friends, whether they did ever know that this Fellow had got any Money by theſe Tricks? No, they could not tell of any; ſo that there appeared to be neither Profit nor Revenge in the Caſe. And I thought he could not be ſuch a Fool to pretend all this for no End, and run the Hazard of being whipp'd.

L. C. J. Holt. The Queſtion is not whether he ſhall be puniſh'd for a Fool, but whether he be a Knave? Whatever Puniſhment he may ſuffer, if convicted, does not belong to you to determine.

Sir *Tho. Lane.* I ſent for Mr. *Martin,* and I ſent for him, and I ſent for the Woman, and I examined them both; and Mr. *Martin* told me he ſuſpected the Fellow might be an Impoſtor, for he had got a Woman to be ſcratch'd for *Sarah Morduck.* And he aſk'd the Woman that Mr. *Martin* had hired, and ſhe ſaid, in her Opinion he could ſee no more than a Poſt.

L. C. J. Holt. Call *Johnſon* again. This man ſcratch'd you? When he had done it, did you ſee him afterwards?——Mrs. *Johnſon.* Yes.

L. C. J. Holt. Were his eyes open?——Mrs. *Johnſon.* Yes.

L. C. J. Holt. But could he ſee?

Mrs. *Johnſon.* No. When he ſcratch'd me, they were ſhut.

L. C. J. Holt. Every Body can ſee when their Eyes are open.

Sir *Tho. Lane.* This Woman ſaid, ſhe believed he could neither ſee nor hear any more than a Poſt.

Dr. *Martin.* It was after I was gone; I heard nothing of it.

Sir *Tho. Lane.* I ſent for him after the Examination; all the Evidence that was before, was of his Faſting.

L. C. J. Holt. Anne Eaton, How long did you watch with him?

Anne Eaton. Nine Weeks.

L. C. J. Holt. Was he dumb and blind ſo long?

Anne Eaton. No, my Lord.

L. C. J. Holt. How long did he faſt?

Anne Eaton. Thirteen Weeks in all.

Mr. Serj. *Jenner.* Did you watch with him all the Time?

Anne Eaton. Sometimes by Night, but not by Day.

Heycock *Sworn.*

Mr. Serj. *Jenner.* What do you know of this Man?

Heycock. I ſaw this Man in a very dreadful Condition ſince the laſt Aſſizes.

Mr. Serj. *Jenner.* Where did you ſee him?

Heycock. At Mr. *Welling*'s. I ſaw him blind and dumb, and his Eyes were ready to ſtart out of his Head.

Mr. Serj. *Jenner.* How long ſince was it that you ſaw him thus?

Heycock. I ſaw him ſeveral times in that Condition. And I was once in Company, when there were four or five to hold him in his Bed, whereas at another Time he had not half the Strength of a Man.

L. C. J. Holt. When was this?——*Heycock.* Since the Aſſizes.

Spurling *Sworn.*

Mr. Serj. *Jenner.* What did you ſee of this Perſon?

Spurling. I ſaw him at Madam *Davenport*'s.

Mr. Serj. *Jenner.* How often did you ſee him?

Spurling. Three Times.

Mr. Serj. *Jenner.* Did you watch with him there?

Spurling. I went to ſee him, becauſe I heard he was under a ſupernatural Power.

L. C. J. Holt. What do you think that was? Was it an infernal Power?

Spurling. A diabolical Spirit.

L. C. J. Holt. Did you ever hear the Power of a diabolical Spirit deſcribed?

Spurling. But I ſuppoſe thoſe that are under Witchcraft are under ſuch a Spirit.

L. C. J. Holt. But can a diabolical Spirit enable a Man to faſt forty Days?

Spurling. I can't tell that. I was acquainted with one that was under a ſupernatural Power, that was in ſuch a Condition as this Man was.

L. C. J. Holt. Did he faſt too?——*Spurling.* I know not that.

L. C. J. Holt. I never heard that the Devil ever made ſuch a bold Attempt.

Spurling. That Perſon, the Devil, acted him ſo ſubtilly, that it was impoſſible to proſecute him.

L. C. J. Holt. How could you know that?

Spurling. Becauſe when his Eyes were ſhut, he could tell any Man's Name that was coming up.

L. C. J. Holt. Was not he very well pleaſed to be bewitch'd?

Spurling. No, he was actually poſſeſſed.

L. C. J. Holt. Was he ſick, or out of order?

Spurling. No, my Lord; but he had crooked Pins came from him.

L. C. J. Holt. Did he accuſe any body of bewitching him?

Spurling. Yes.

L. C. J. Holt. What is become of that Perſon he accuſed?

Spurling. He accuſed ſeveral.

L. C. J. Holt. How many did he accuſe?

Spurling. Five Women; eſpecially one.

L. C. J. Holt. Where is that Woman?——*Spurling.* She is deceaſed.

L. C. J. Holt. Gentlemen of the Jury, you have heard a very long and tedious Evidence. The Information is againſt this *Richard Hathaway*, for that he, with an evil Deſign to take away the Life of *Sarah Morduck*, pretended to be bewitch'd, and to have faſted for a conſiderable Time, being not able to take any Suſtenance for divers Days; nay, for ſeveral Weeks, which he pretended to faſt. And his faſting was imputed to this Woman's bewitching him; that he did not pretend to faſt a conſiderable Time; that he did procure this Woman to be committed for being a Witch; that ſhe was Indicted, Tried, and Acquitted, is plainly proved to you, without all manner of Queſtion. The only Queſtion that you are now to try, is, Whether this Man did do this by reaſon of any Diſability of his Mind, or Deluſion that was upon him; or did counterfeit? (what was the Reaſon to induce him to counterfeit, does not appear, whether to get Money, or what elſe, will not be material;) but if this Man was under a Delirium of his Mind, and did fancy himſelf to be bewitch'd, then there will be no Reaſon to convict him.

Now it is urged, that he did this maliciouſly, and with a Deſign to take away the Woman's Life. Firſt, they tell you, that this Man had been a Servant to one *Welling* a Blackſmith: He came to him about four or five Years ago; then he had Fits, and was put into the Hoſpital; and being there, he pretends he could not eat. After that, he was dumb; and after that, he began to be blind; and being blind and dumb, and faſting, theſe were look'd upon to be the three Tokens that he was bewitch'd. Then the Man had a fancy that he was bewitch'd by this Woman, but for what Reaſons does not appear; but his Fancy appear'd to be very ſtrong, that ſhe brought him into theſe Miſchiefs. Therefore he muſt go and ſcratch her; which he did, and preſently he could ſee and eat. This was look'd on as very ſtrange, and People concluded that this Woman was the Cauſe of theſe Maladies that were upon this Man. It ſeems that this ſcratching was thought to be ſo effectual, that he was well for about ſix Weeks; after which he appeared to be ill again, and his Sight and his Stomach were gone again, and then it was propoſed he ſhould ſcratch her again. It ſeems that before that, Dr. *Martin* was deſired to come to him, and pray with him, and he did: And to try whether he was ſenſible or not, he took him by the Hand, and by the Signs he made, found he was ſenſible; and therefore he did pity his Condition, but could not tell what to make of it. But *Welling* his Maſter told the Doctor he had received great Benefit by ſcratching the Woman before; and thereupon deſired ſhe might be ſcratch'd again. But he ſuſpecting this might be a mere Counterfeit, and that it could not have that Effect, he thereupon gets the Woman ſeemingly to conſent to be ſcratch'd, being reſolved to try whether this was an Impoſtor or no. And *Hathaway* pretending himſelf to be blind, gave him an Opportunity to make the Experiment; for he procured another Woman to repreſent *Sarah Morduck*, and ſhe conſented to be ſcratch'd in her ſtead; *Hathaway* was laid up in a Bed, and *Sarah Morduck* was in the Room, and ſpake to him. It was obſerv'd, when this other Woman, whoſe Name was *Johnſon*, was brought to repreſent this *Morduck* to *Hathaway*, ſhe put her Hand into his, and then he examin'd it, and her Wriſt, and her Arm; and ſo it ſeems he had ſome Apprehenſions of a Deſign to impoſe upon him. And then he proceeds to ſcratch that other Woman, who takes it patiently, till the Blood was ready to come; and then ſhe was ſuddenly taken away; and ſome of the Company ſaid the Blood is come, and preſently his Eyes opened, and he laid hold on *Sarah Morduck*, and ſeizes her, and did not only appear to ſee, but to ſpeak. This is proved to you by other Evidence beſides Dr. *Martin.* Upon this, ſays Dr. *Martin*, you are miſtaken; you have deceived the World, you have not ſcratch'd *Sarah Morduck*, but another Woman. When he underſtood that, he was very much concern'd, and ſeem'd to begin to be ill again; and *Welling* ſaid, He will not be well till he hath ſcratch'd the right Woman; ſo to appearance he fell ill again. You have heard how the Matter had been carry'd on afterwards; for many looked on this Blindneſs and Faſting as an errant Impoſture. *Welling* and his Wife complained to Dr. *Martin*, ſaying, You have undone us all, and our Family too. What ſhould be the meaning of that? What, becauſe he had diſcovered a Cheat, therefore they were undone. It ſeemed likely, that if it were a Cheat, and *Welling* not conſcious to himſelf of carrying it on, he need not have been concern'd at it. But they reſt not here, the Woman, *Sarah Morduck*, muſt be ſcratch'd again; which was perform'd with Violence, againſt her Conſent; and the Woman being purſued by the Rabble, not able to live quietly in *Southwark*, was forced to go on the other ſide of the Water, and take a Lodging there for her Security; where ſhe was again purſued, and aſſaulted by *Hathaway* and others, in a riotous Manner, in order to ſcratch her again; and tho' Complaint on her Behalf was made of this Violence to Sir *Thomas Lane*, he did not think fit to give her any Relief, being (as it ſeems upon ſome Evidence) poſſeſſed with an Opinion that there might be ſome Grounds for purſuing this Woman in that manner. She was carried before him, and he being informed that this Fellow could not eat nor drink, thereupon it was thought convenient by Sir *Thomas*, in order to make a full Diſcovery, that ſhe ſhould be ſcratch'd again; and accordingly ſhe was perſuaded to ſubmit to be ſcratched, and preſently after the ſcratching, *Hathaway* did eat and drank very greedily; and thereupon this Woman was committed to Priſon. This was thought a great Evidence of this Man's being bewitched by this Woman, *Sarah Morduck.* What Rule they have for it either in Philoſophy or Divinity, I cannot tell. There was a Trial, and the Woman was acquitted, and upon full Evidence. He then pretended to have faſted for a long Time. That of our Saviour's faſting forty Days, is mentioned in Scripture as miraculous, and an Effect of divine Power, being one Evidence of the Truth of the Chriſtian Religion. Who can imagine, that without ſuch Aſſiſtance, a Man can faſt forty Days, or above, and yet continue in Health? It is not within the Compaſs of my Underſtanding to conceive it; I muſt leave you to conſult your own, and to conſider with yourſelves, whether you have any Evidence to induce you to believe it to be in the Power of all the Witches in the World, or all the Devils in Hell, to enable a Man to faſt beyond the uſual Time that Nature will allow; they cannot invert the Order of Nature: And if the Thing be impoſſible, and he endeavour all this while to make the World believe he has faſted ſo long a Time, it is moſt evident he is a Cheat; for he muſt contrive to have ſome Victuals ſome way or other ſecretly convey'd to him; of which the Impoſſibility of his being able to faſt ſo long is a Demonſtration. But notwithſtanding this Trial, and that this Woman was acquitted, yet this Matter muſt be carried on ſtill. He was bailed out, and then returns to his Fits again; and tho' then he was not blind, or pretended to be ſo, yet he ſeemed to faſt, and to be dumb again for a long Time. This made a great Hubbub about the Town, and the People clamour'd that the Man had Injuſtice done him in the Trial at the Aſſizes; and Reports were ſpread, that the Woman was acquitted by Favour or Corruption both of Judge and Jury. Upon this Account, the Woman was purſued by a Rabble, and came to be in imminent Danger of her Life. Wherefore it was thought highly neceſſary that the Proſecution againſt this Man, and others concern'd with him, ſhould be ſpeedy; and thereupon he was apprehended, and bound to appear in the *King's-Bench*, and there he pretended ſtill to be dumb. His Bail deliver'd him up, and he was ſent to the *Marſhalſea.* There he lay without eating or ſpeaking for ſome ſhort time, till it was conſidered, that if he was under any real Affliction, it was proper he ſhould be under the Care of ſome proper Perſon: Therefore he was put to the Houſe of Mr. *Kenſy*, a Chirurgeon in *Fetter-Lane*, who was order'd to take care of him, and uſe him well; alſo to watch him, and endeavour to make a Diſcovery of the Truth of his Condition. He was deliver'd into his Hands the firſt of *November* laſt. The People of the Houſe took care of him, and he faſted from *Saturday* till *Monday*; and Mr. *Kenſy* aſked him how many Weeks he had faſted, he counted on his Fingers twelve: But Mr. *Kenſy* thought he did not deal truly, but had a mind to impoſe upon the World, and therefore he locks him up. He eat nothing all *Saturday* and *Sunday*: But Mr. *Kenſy* found he had made Water, for he diſcovered the Rug or Counterpane or the Bed to be wet; and that it appear'd to come from the Teſter of the Bed: He made Water it ſeems in an old Box, and ſet it over the Bed. Drink was offered him, but he refuſed it. After this Mr. *Kenſy* makes uſe of this Stratagem: He pretends to quarrel with his Maid, and gives her reproachful Language, in the hearing of *Hathaway*; calling her Hypocrite, like unto him. At which the Maid ſeemed to be provoked; and out of Revenge, to prevent her Maſter's Deſign in making a Diſcovery, ſhe takes an Opportunity and ſays to him, Take heed of my Maſter, he will betray you. And ſhe had inſinuated herſelf ſo far into him, that he began to truſt her. She gave him on the *Monday* a Glaſs of Brandy, which he drank; and a Piece of Pudding, which he received and put into his Pocket; and afterwards a Toaſt and Beer, which he eat and drank, and afterwards he entirely truſted this Woman. And Day by Day he did eat plentifully for ſeveral Days together in her Preſence, from *Tueſday* to *Friday* Se'ennight following, thinking Mr. *Kenſy* did not ſee him; but he being in a ſecret Place, *Hathaway*, did ſee him eat and drink ſeveral Days, ſometimes he drank ſo much, that he was perfectly drunk; and all this while he pretended to faſt, tho' divers others beſides Mr. *Kenſy* and the Maid were Witneſſes to his eating and drinking. Then it was thought to be time to diſcover this to the World; and he was told plainly by Mr. *Kenſy*, that he was diſcover'd, and if he would tell the Truth, he ſhould be pardon'd, ſeeing he could carry it on no longer. Now it is plain this Man had counterfeited during the Time he was at Mr. *Kenſy*'s; tho' that particular Time be not laid in the Information, yet it is a Continuance of that Time which is laid therein.

And if he was an Impoſtor by pretending to have faſted while he was at Mr. *Kenſey*'s Houſe, I leave you to conſider whether he was not ſo all the while before. You hear what Management there has been, how he was at *Welling*'s Home, how Pins were pretended to come from him, how they were made uſe of, and Charms ſewed to him. You hear how ſome Time ago one Mr. *Bateman* came to him, hearing at the Beginning of the Buſineſs he vomited Pins: He ſaw ſome on the Ground; when he vomited a conſiderable Number, they were linked up together: for it is hard to manage ſo many looſe Pins; but when they are linked together, they are the eaſier to manage in the Mouth. Here he pretended to vomit Pins, and would be ſtill putting his Hands to his Pocket, and Mr. *Bateman* fancied he pulled them out from thence. Therefore he took the Chamber-Pot, and would not let his Hands come near it; then he vomited no Pins there; and he ſearched his Pockets, and there were great Quantities of Pins found therein; neither did he at any Time ſeem to vomit any Pins, until he had drank a Draught of Ale. But notwithſtanding all this, there are People that come and tell you that he was ſick; he was diſturbed, and had theſe Fits. One Woman tells you, ſhe has watched with him ſeveral Times; ſometimes by Night: Another Woman tells you, that ſhe watched with him when the other did not, and ſometimes by Day; and that he did not eat, but was ſick, and out of Order. And another tells you, he ſaw him; that he was in great Diſorder, threw himſelf backward and forward, and would turn his Face round towards his Back; and that he was blind, tho' his Eyes were open. But how could he tell that he was blind? Said he, When I pulled him by his Eye-lids, his Eyes did not ſtir; and therefore he infers that he was blind. And then they give you an Account that he was in the Hoſpital five Months; and that he was weak, and went upon his Ancles, and had Quickſilver given him; and that he lay ſeven or eight Days, and did not eat; but then there was no Apprehenſion of Witchcraft. And one Mr. *Smith*, an Apothecary, a Witneſs called on his Part, and a Neighbour, ſaid, he knew him four or five Years ago; and that *Hathaway* was then with his Maſter and had Fits, and would fall down, and ſeem to be dead; whether he was really ſick, or counterfeited, he cannot tell; he applied his Cupping-Glaſſes to him, and preſently brought him to himſelf. This is one of his own Witneſſes. And then there is Mrs. *Willoughby*; ſhe ſaw him in his Maſter's Houſe, and ſhe ſaid his Breath made a Noiſe like the Barking of a Dog, and ſhe believed he was bewitched, for ſhe herſelf had been bewitched and was made to fly, and ſhe fancies he was bewitched, becauſe of his breathing in that Manner. And then they tell you what Care was taken of him, and he was put into an empty Houſe about nine or ten Days, and one Man watched with him by Day, and another by Night, and how they came to do that: And they ſwear they never ſaw him eat or drink all that Time; but they ſay, he did ſeveral Times vomit Pins in that Time; but it ſeems he was put there merely out of Charity, the Pariſh would not be charged with him: Then they tell you there were People appointed to watch with him, there were two Chamber-Pots, and in one there were Excrements, and there were Pins in it, and Hair, and a Piece of a Nail, but after he ſat on the ſecond Pot, there was nothing found therein; but they conclude him bewitched. Then there are others that ſay he lay as dead, and that they took out of his Mouth ſeveral Pins. And then you have an Account after the Trial, what happened at Mrs. *Davenport*'s, where he was ſent by Dr. *Hamilton* to be tried whether he was an Impoſtor or not. She ſays, ſhe watched with him herſelf ſometimes, another Woman at other Times, and another at other Times, and that they could never perceive that he eat any thing. But there is one Mr. *Davenport* that was with him ſome other Times, but he is gone to Sea, and could not appear. Then comes in at laſt Dr. *Hamilton*, and he tells you he was by when this Matter was brought before Sir *Thomas Lane*, and he could not tell what to think of his Faſting, but as to his Fits and the Pins, he ſays, thoſe may be eaſily counterfeited by Legerdemain Tricks; but, ſays he, Faſting for ſo long, as ſome People did believe he did, is more than Nature can bear; nobody can think the Devil has ſuch a Power to enable a Man to undergo it. Tricks the Devil may play, but not work a Miracle; it is not to be thought that God ſhould let him looſe ſo far. This is the Sum of the Matter: his pretending to be dumb and blind, and to faſt, and to be reſtored to his Speech, his Sight, and Stomach, by ſcratching this Woman, is fully proved. You are to conſider whether he did labour under theſe Infirmities, or counterfeited them, and whether ſcratching and drawing Blood of the old Woman could be effectual to the cure of them, if they had been real? If not, then it is a ſtrong Argument that theſe Infirmities were counterfeited. His ſcratching and drawing Blood of a ſtrange Woman, inſtead of *Sarah Morduck*, did ſeem to avail him, as much as if he had ſcratch'd her, until he underſtood he was impoſed upon; then he ſeemed to relapſe to his former Condition. You will remember what paſſed at Mr. *Kenſy*'s, and the Manner of vomiting of Pins as was pretended. You are to conſider whether this Man was *non compos mentis*, or under a Deluſion; therefore I ſhall ſpare troubling you with more Words, but leave it wholly to you. If you do believe, upon the whole Matter, that this Man has impoſed upon the Magiſtrate and on the World, or endeavoured, by counterfeiting theſe Infirmities, to perſuade People to believe that this Woman was a Witch, and had bewitched him, then there is all the Reaſon that can be to find him guilty. But if you believe he did not counterfeit, or that he was *non compos mentis*, or under any Kind of Deluſions, you muſt acquit him.

The Jury conſulted, and, without going from the Bar, brought him in Guilty.

A ſhort Account of the Trial held at *Surrey* Aſſizes, in the Borough of *Southwark*, *March* 26, 1703.

In an Information, againſt Richard Hathaway, Thomas Welling, *and* Elizabeth *his Wife*, and Elizabeth Willoughby, *Wife of* Walter Willoughby, *upon an Information for a Riot and Aſſault*, &c.

THE Information ſets forth, that the Defendants, with divers other Perſons, the 25th of *September*, in the 12th Year of King *William*, at *Southwark*, in a riotous and unlawful Manner aſſembled themſelves, and made a great Affray and Riot, and upon one *Sarah Morduck*, the Wife of *Edward Morduck*, being an honeſt Woman, and not a Witch, nor ever uſing Witchcraft, Inchantment, Charm or Sorcery, did make an Aſſault, and under a wicked Colour, againſt the Law, to try whether the ſaid *Sarah* was then a Witch, (the Defendant *Hathaway* then falſly and maliciouſly affirming himſelf to be bewitched by her the ſaid *Sarah*, tho' in Truth he was never bewitched, and well knew himſelf not to be ſo) her the ſaid *Sarah* did then and there ſcratch, wound, *&c.* againſt the Peace, *&c.*

The Information further ſets forth, That the ſaid Defendants, the 11th of *February*, in the 12th Year of King *William*, at *Southwark* aforeſaid, aſſembling themſelves together riotouſly and unlawfully, did then and there make a great Affray and Riot, and alſo aſſaulted the ſaid *Sarah*, and beat, ſcratch'd and wounded her, in Contempt of the King, and againſt the Peace, *&c.*

The Information further ſets forth, That the ſaid Defendants, the ſaid 11th of *February*, did aſſault the ſaid *Sarah*, and wounded her the ſaid *Sarah*, againſt the Peace, *&c.*

The Defendants pleaded Not Guilty, and Iſſue was taken thereupon. The Counſel for the King opened the Caſe to this Effect: That the Defendants' Caſe was the ſame in the other Information. *Hathaway* pretended himſelf bewitch'd, and the Contrivance was carried on by the other Defendants and divers others; but whether for the Hopes of getting Money by it, or out of Malice to take away the poor Woman's Life, or what the Deſign was, was not then known; but it was certain that ſeveral Riots and Aſſemblies were made, and great Numbers of People came together in a Body at ſeveral Times to *Morduck*'s Houſe, and in a violent Manner enter'd the ſame, and by Force took her out and carried her away to the Defendant *Welling*'s Houſe, where the Defendant *Hathaway* ſcratch'd her; and the other Defendants alſo in a very barbarous Manner beat her, pulled out her Teeth, tore her Face, Hair and Cloaths, threw her on the Ground, ſtamp'd upon her Belly, and threw her into the Street, where ſhe lay as murdered, until taken into a Neighbour's Houſe; which the Defendants and others in a riotous Manner beſet, and threatned to pull it down, unleſs *Morduck* (the pretended Witch) was again delivered to them. Theſe Riots and Aſſaults happened to be encouraged by an Accident, which fell out as *Morduck* was going through *Newgate-Market*, where the People crying out, A Witch, the Rabble ſeized her, and threatened to throw her into a Horſe-pond; that one of theſe Rioters being taken away, was carried before a Magiſtrate in the City, but he was ſo far from taking notice thereof, that he declared that there was Cauſe enough for it; and being deſired to aſk the Perſon's Name, refuſed it; but the ſame Magiſtrate afterwards ordered the Defendant *Hathaway* to ſcratch *Morduck* in his Preſence, where were alſo preſent ſome of the Aldermen of *London*. Theſe Matters being acted by publick Authority, gave the licentious Mob ſuch a Confidence, that even after the Woman was tried and acquitted, and the Defendant *Hathaway* committed for an Impoſtor, yet he, with the other Defendants, did again, in a riotous Manner aſſault, ſcratch, and wound the ſaid *Morduck*, and purſued her after a cruel Manner from Day to Day, till they were taken into Cuſtody, in order to be puniſhed for the ſame. For which ſeveral barbarous Facts the Defendants were then to be tried.

Then the Counſel for the King called their Evidence to prove the ſeveral Branches of the Information.

SARAH Morduck being called and ſworn, depoſed to this Effect: That in *September* laſt, *Richard Hathaway* came to this Informant in *Surrey*, as ſhe was opening her Window, and being behind, ſcratch'd her Face in a very cruel Manner, and forc'd out one of her Teeth, and carried away her Cloaths. And upon the 11th of *February* laſt, *Thomas Oſbourn*, *Thomas Hatton*, with four other Perſons unknown, all in Diſguiſe, came to this Informer's Houſe in *Surrey*, and forced her out of her Houſe, and carried her to the Houſe of *Thomas Welling*, who is Maſter to the ſaid *Richard Hathaway*; and there the ſaid *Hathaway*, by the Encouragement of the ſaid *Oſbourn* and *Hatton*, and the reſt of the Company, did again ſcratch this Informant in a moſt barbarous Manner; and afterwards *Elizabeth*, Wife to the ſaid *Thomas Welling*, fell upon her and ſcratch'd her in a moſt cruel Manner, and tore her Face, and tore off her Head-cloaths and Hair; and then the ſaid *Thomas Welling* gave this Informant two or three Kicks on her Belly, and threw her on the Ground and ſtampt upon her, and ſo much bruiſed her, that ſhe was forced to keep her Bed for about a Fortnight. And this Informant further depoſeth, That in *September* laſt, one *Elizabeth Willoughby*, the Wife of *Walter Willoughby*, came to this Informant's Houſe in *Surrey*, and brought a great many Perſons unknown to this Informant with her; and the ſaid *Elizabeth* gave this Informant ſeveral Blows with her Fiſt, and would have pulled her out of her Houſe, for him the aforeſaid *Richard Hathaway* to have ſcratch'd her, he ſtanding at a Corner hard by, but was prevented by Mrs. *Sarah Hall*. And further ſaith, That in the Month of *September* laſt, ſhe having Occaſion to go into *Newgate-Market*, a Boy, his Name is *John Hopkins*, called out, ſaying, *There goes the old Witch*; whereupon a great Company of People, in a riotous Manner, flocked about her, and threatened to throw her into a Horſe-pond; and this Informant being got into an Ale-Houſe by the Aſſiſtance of ſome Women, avoided the Fury of the Rabble, otherwiſe ſhe had been murdered, as ſhe verily believes; and afterwards Mr. *Burrel* her Landlord, with others his Aſſiſtants, came and conveyed her home.

Sarah Hall was the next Witneſs, who ſaid, That in *September* 1700, about 8 in the Forenoon, the Defendant *Willoughby* came with *Hathaway* and others, pretending to buy Fruit of *Morduck*, and told *Morduck* ſhe came to have her out, that *Hathaway* might ſcratch her; and *Willoughby* ſtruck *Morduck* ſeveral Blows, and forced her out of Doors, before *Hall* could come to her Aſſiſtance, who with difficulty got *Morduck* into her Houſe again; upon which the Defendants *Willoughby* and *Hathaway*, and others, beſet her Houſe and threatned to pull it down, unleſs they had *Morduck* delivered to them; but *Hall* calling up her Huſband, who was a-Bed, the Perſon went away.

Robert Adams and *John Bowrer*, both Watermen, declared, That plying for their Fare at *Maſon*'s Stairs, they ſaw the Defendant *Hathaway* come behind *Morduck* as ſhe was opening her Window, and took her about the Neck with one Arm, and pulled her almoſt to the Ground, and ſcratch'd her Face in ſeveral Places till the Blood came, and tore her Mouth, and tore her Hood and Headcloaths from her Head; and being taken off, *Morduck* got into a Neighbour's Houſe, whom *Hathaway* would have purſued in at a Window, had not *Adams* ſtopt him.

To prove the Riot and Aſſault in *February* 1700,

Sarah Morduck declared, That the 11th of *February*, 1700, *Thomas Oſbourn*, *Thomas Hatton*, with four others unknown, all diſguiſed, came to and forced her out of her Houſe, and carried her to the Houſe of the Defendant *Welling*, *Hathaway*'s Maſter; where *Hathaway*, by the Encouragement of the Company, ſcratched her barbarouſly, and after that, *Welling*'s Wife ſcratch'd her, and tore her Hair, and Face, and pulled off her Head-cloaths; then *Welling* kicked her two or three Times on the Belly, and threw her on the Ground, and ſtamp'd on her, and bruiſed her ſo much, that ſhe was forced to keep her Bed for a Fortnight,

Mrs. *Hall* ſaid, That in *February* 1700, in the Evening, ſeveral Perſons unknown came to her Houſe, and forced *Morduck* from thence, and carried her to *Welling*'s (as ſhe was told): That about half an Hour after, *Morduck* was caſt into the Street, and being received into a Neighbour's Houſe, *Hall* went to her, and found her Face much torn, in a moſt barbarous Manner, and her Legs, Arms, and Body cruelly bruiſed and black.

Then the Counſel called Witneſſes to prove the Third Part of the Information.

Samuel Burrel being ſworn, depoſed, That *Edmund Jones*, in Company with Two more, came to his Houſe, and deſired to ſpeak with *Morduck*, who lodged there; who being called to *Jones*, he aſk'd her to go over the Water to be ſcratch'd by *Hathaway*, who declared he was bewitched by her; but ſhe refuſing to go, *Jones* ſaid, if ſhe walked *London* he would have her ſcratch'd; and further, that about *Eaſter* or *Whitſon* Week laſt, the ſaid *Jones* came to his Houſe with about fourteen Strangers, among whom was *Hathaway*, and would have forced into *Morduck*'s Chamber; but a Conſtable coming, they all but *Jones* diſpers'd, who the Conſtable took, and carried before Sir *Thomas Lane*; but Sir *Thomas* would take no Notice of it.

Thomas Knowlton being ſworn, depoſed, That in *Eaſter* Week laſt, *Jones* and *Hathaway*, and ſeveral others, went into *Burrel*'s Houſe, and aſked for *Sarah Murdock*, who was called down to them, when *Burrel* deſired them to go up Stairs into the common Drinking-Room, and deſired *Knowlton* to ſee *Morduck* had no Harm done her. That ſoon after came in about fourteen Perſons, one of which ſaid, they came to give *Hathaway* Eaſe, and that they would do it before they went: upon which *Morduck*, at *Knowlton*'s Deſire, retired into her Chamber.

Thomas Noon being ſworn, declared, That all the Time aforeſaid he ſaw Three or Four Perſons, who were of *Jones*'s Company, endeavouring to get into *Morduck*'s Chamber; and upon *Noon*'s aſking them their Buſineſs, they cry'd they would ſpeak with *Morduck*, but upon his threatning them they went into the Room below Stairs from whence they came.

Henry Armſtrong declared, That in *September* was Twelve-month he ſaw a great Number of People following *Morduck*, calling her Witch; and going home afterwards, he ſaw a Crowd of People at an Alehouſe Door, near St. *Paul*'s Church-yard, who declared *Morduck* a Witch; and that he aſſiſted *Burrel* in ſecuring *Morduck* from the Rabble.

James Hearne being called, depoſed, that in *Eaſter* or *Whitſon* Week laſt, one *Jones* was apprehended for a Riot by him and others committed in *Burrel*'s Houſe, and carried before Sir *Thomas Lane*, who diſcharged *Jones*, ſaying there was Cauſe enough for the Riot, and tho' often intreated by *Hearne*, yet Sir *Thomas* refuſed to let him know *Jones*'s Name. And the ſaid *Hearne* further declared, That the Day after *Jones* was carried before Sir *Thomas*, he and *Burrel*, by Sir *Thomas*'s Directions. carried *Morduck* before him, where were preſent Sir *Owin Buckingham* and Dr. *Hamilton* and the Defendant *Hathaway*. That Sir *Thomas* would have had *Morduck* ſcratched by *Hathaway*, which ſhe refuſed, unleſs ſhe might be at Peace for the future: And after Dr. *Hamilton* had given *Hathaway* ſome Beer, Sir *Thomas* would have had *Morduck* ſcratch'd; but the Doctor ſaid, Let her alone a little, to ſee what Effect the Drink would have on *Hathaway*; and ſaid, If ſhe was ſcratch'd, it would be ſaid that the Scratching, and not the Drink made the Alteration. And when Sir *Thomas* had heard ſome more Diſcourſe of *Hathaway*'s vomiting Pins, *&c.* Sir *Thomas* ſaid again, Let her be ſcratch'd; but *Hearne* oppoſed it; ſaying, ſhe had been too much abuſed already; notwithſtanding which, Sir *Thomas* ordered *Hathaway* to ſcratch her, and ordered her to be ſtript and ſearch'd by ſome Women in his own Houſe. That *Hearne* ſeeing Sir *Thomas*'s Reſolution, bid him ſatisfy himſelf. After which Sir *Thomas* committed *Morduck* to *Wood-ſtreet-Compter*, and refuſed 500 *l.* Bail for her Appearance: But upon Application made to him by Dr. *Barton* and Dr. *Martin*, Sir *Thomas* accepted *Hearne*'s and his Brother's Bail for *Morduck*.

The Witneſſes for the Defendants being called and heard, and the Right Honourable Lord Chief Juſtice Holt *having ſpoken to the Jury, they withdrew, and ſoon after brought them all in Guilty.*

CLXXVIII. *Proceedings againſt* JAMES BOUCHER, * *Gent. at the* Queen's Bench *for* High-Treaſon, February 28. 1703-4. Hil. 2. Ann.

THE Court being ſet, the Priſoner was called, and the Clerk of Arraignments ordered Proclamation to be made, for the Under Sheriff of *Suſſex* to return the Precept, and the Keeper of *Newgate* to bring into Court the Body of *James Boucher*. Accordingly the Precept was return'd, and the Priſoner ſet to the Bar.

Clerk of Arr. *James Boucher*, hold up thy Hand. *(Which he did.)*

Then the Grand Jury of Suſſex'*s Preſentments were read.*

Suſſex. ſſ. “ THE Jurors for our Lady the Queen upon their Oaths do
“ preſent, That *James Boucher*, late of *London*, Gent. who
“ was a Subject of the late King *William* the Third, and now Subject of
“ Queen *Anne*, after the 11th Day of *December* 1688, *viz.* the firſt Day of
“ *Auguſt* 1689, was in the Kingdom of *Ireland*, and after and before the
“ Third Day of *December* 1697, *viz.* the firſt Day of *December* 1694, the ſaid
“ *James Boucher* did voluntarily go into the Kingdom of *France*, without
“ Licence from the late King *William* the Third, or from the late Queen
“ *Mary*: And that the ſaid *James Boucher*, on the ſaid third Day of *December*
“ 1697, was not within the Dominions of the late King *William* the Third:
“ And that he the ſaid *James Boucher*, not having the Fear of God in his
“ Heart, nor weighing the Duty of his Allegiance towards Our ſaid Lady the
“ Queen, that now is, his Supreme, True, Legitimate, Lawful and Undoubted
“ Lady; and as a falſe Traitor againſt our ſaid Lady *Anne*, the
“ Queen that now is, after the 14th Day of *January* 1697, viz. the tenth
“ Day of *December*, in the ſecond Year of the Reign of our Lady *Anne*,
“ the Queen that now is; did Traiterouſly return and come into the
“ Kingdom of *England*, *viz.* at *Eaſt Bourne* in the County of *Suſſex*, without
“ Licence from the late King *William* under his Privy Seal, or from our
“ ſaid Lady the Queen under her Privy Seal, obtained; againſt the Duty
“ of his Allegiance, and againſt the Form of the Statute in this Caſe provided,
“ and againſt the Peace of our ſaid Lady the Queen, her Crown and
“ Dignity, *&c.*”

Clerk of Arr. What ſayeſt thou, Art thou Guilty of the ſaid Treaſon whereof thou art indicted, or Not Guilty?

J. Boucher. Guilty.

L. C. J. Holt. What ſay you? Speak out.

J. Boucher. Guilty.

Clerk of Arr. *James Boucher*, hold up thy Hand. *(Which he did.)*

Then the Second Preſentment was read.

Suſſex ſſ. “ THE Jurors of our Lady the Queen, upon their Oaths, preſent,
“ That *James Boucher*, late of *London*, Gent. who
“ was a Subject of the late King *William* the Third, and now a Subject of
“ her preſent Majeſty; after the 13th Day of *February* 1688, and before
“ the 3d of *February* 1697 *(viz.)* the firſt Day of *Auguſt* 1689, was in
“ Arms in the Service of the late King *James*, in *Europe*, *viz.* in the
“ Kingdom of *Ireland*; and that the ſaid *James Boucher*, afterwards and
“ before the ſaid third Day of *December* 1697 (*viz.*) the firſt Day of *December*
“ 1694, did voluntarily go into the Kingdom of *France*, and the Third
“ Day of *December* 1697, was not within the Dominions of the late King
“ *William*. That the ſaid *James Boucher*, not having the Fear of God in
“ his Heart, and not regarding the Duty of his Allegiance to our Lady the
“ Queen, his Supreme, True, Lawful and Undoubted Lady, and as a falſe
“ Traytor againſt the ſaid Lady the Queen, after the 14th Day of *January*
“ 1697, *viz.* the 10th Day of *December*, in the ſecond Year of the
“ Reign of our ſaid Lady the Queen, did Traiterouſly return and come into
“ this Kingdom of *England*, *viz.* at *Eaſt Bourne* in the County of *Suſſex*,
“ without Licence from the late King *William* under his Privy Seal, or from
“ our ſaid Lady the Queen under her Privy Seal, obtain'd; againſt the
“ Duty of his Allegiance, and againſt the Form of the Statute in this Caſe
“ made and provided, and againſt the Peace of our ſaid Lady the Queen, her
“ Crown and Dignity, *&c.*”

Clerk of Arr. How ſayeſt thou, art thou Guilty of the ſaid Treaſon whereof thou art indicted, or not guilty?

J. Boucher. Guilty.

J. Boucher. My Lord, I humbly beg that I may have leave to ſpeak Two or Three Words.

L. C. J. Holt. What would you ſay?

J. Boucher. My Lord, I humbly beg leave to ſpeak Two or Three Words.

L. C. J. Holt. Ay, let us hear what you have to ſay.

J. Boucher. My Lord, it is very well known, that I have ſollicited this Two Years for Leave to come over into *England*. And while I have been in *France*, I have done all that I could to ſubſiſt the *Engliſh* that were brought Priſoners to the *French* Camp, and have to my Power aſſiſted them with Money, and other Neceſſaries, eſpecially one Troop of Horſe. I apply'd my ſelf to Colonel *Lumly*, and he promiſed to lay my Caſe before the Queen. But not hearing from him, I went to his Son, and he told me he had no Opportunity to acquaint the Queen with it. Afterwards I was taken going for *Holland*, and then I ſent to Colonel *Lumly*, and he promiſed to Remember me. And I continued ſtill to ſollicit the Service of Her Majeſty's Subjects, and have procured their Horſes that have been taken from them, to be reſtored to them. I ſpoke to Colonel *Godfrey*, and he promiſed to ſpeak to ——

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* See *State Trials*, vol. viii. p. 519.

who promiſed to make it their Intereſt to procure my Return. And after the Camp was over, I came over into *England* at Noon-day, with my Children, and ſent up a Letter to my Lord *Nottingham* to acquaint him where I was. It's true, I followed King *James* into *Ireland*, but had no Commiſſion, only ſerved the Duke of *Berwick* as *Aid de Camp*. And afterwards I went into *France*, but never ſerved there with any Commiſſion, but as Maſter of the Horſe to the Duke of *Berwick*. And I did hope that the Articles of *Limerick* would take off a great Part of my Offence. My Lord, I hope you will repreſent my Caſe favourably to the Queen.

Dr. *Sandys.* My Lord, I beg leave to ſpeak a Word or two on Behalf of the Priſoner. My Lord, I ſollicited——

L. C. J. Holt. What you can ſay to us will ſignify nothing; but if you have any thing to ſay for the Priſoner, you muſt apply yourſelf elſewhere.

Mr. *Att. Gen.* My Lord, as it is my Duty, I demand Judgment againſt the Priſoner, upon his Confeſſion of the two Indictments.

Clerk of Arr. James Boucher, thou haſt been indicted on two Indictments, and confeſſed thyſelf Guilty of both. What haſt thou to ſay why Sentence of Death ſhould not be pronounced againſt thee?

J. Boucher. I hope your Lordſhip will be pleaſed to intercede for me to the Queen.

Clerk of Arr. My Lords the Queen's Juſtices do ſtrictly command all Perſons to keep Silence while Judgment is giving, on Pain of Impriſonment.

L. C. J. Holt. Mr. *Boucher*, you are, by your own Confeſſion, convicted of High-Treaſon, for which Judgment of Death is to be pronounced upon you, and which you are to ſuffer under thoſe Circumſtances which the Law hath appointed.

The Fact of which you were Accuſed, and have now Confeſſed, is, That ſince the Eleventh Day of *December*, 1688, you went into *France* without Licence either from the late King or Queen, and have returned ſince the Fourteenth of *January*, 1697, without any Licence under the Privy Seal, either from the late King, or her Majeſty that now is; which Fact is made High Treaſon by the Statute of the ninth Year of the late King.

The Wiſdom and Juſtice in making that Law, will be very evident to any one that will but reflect upon the Poſture of our Affairs at that Time: For in the Year preceding to that of the making thereof, there was an horrid Conſpiracy formed from among that Party of Men who had ſo left the Kingdom, to aſſaſſinate the late King; to introduce a *Popiſh* and *French* Power, for the Subverſion of the *Proteſtant* Religion, and the Liberties and Properties of the People of *England*: Which was managed with that Privacy, carried on with that Secrecy, that it was not diſcovered, nay, not ſo much as ſuſpected, until it arrived to that Maturity, that it was come to the very Point of being put in Execution.

The Truth of which is very clear, as well by the Proofs produced at the Trials of ſeveral of the Malefactors, as even by their own Confeſſion.

In the following Year the Peace of *Ryſwick* was made, whereby the Intercourſe was reſtored between *England* and *France*. From thence it was evident, that divers of that Party of Men would return into the Realm, and thereby have an Opportunity to revive and carry on that horrid Deſign, in the Succeſs whereof they had been ſo diſappointed; for which, no doubt, they were not a little enraged, and it could not be otherwiſe expected but they would make uſe of it: For thoſe of the ſame Principles will be guilty of the ſame Practices.

Therefore it was neceſſary to make a Returning into *England* by any of thoſe who were under theſe Circumſtances, to be ſo very penal, unleſs they ſhould firſt give Satisfaction to the Government, either of their Innocence or Repentance, and obtain a Licence and Approbation for their Return, under the Privy Seal; for their Returning in any other Manner, is a Danger to the Queen's Perſon, and her Kingdom.

This Treaſon, tho' it ſeems, and is new in the Form, yet it is compounded of an old Treaſon, known in the ancient Law of the Kingdom, which is, that of adhering to the King's Enemies. For what can be thought of thoſe who, in Time of War, ſhall abandon their own Country, be harboured and protected in any Enemy's Country, for being of an Intereſt inconſiſtent with, even repugnant to, that of their own?

What your Deſign might be in returning in this Manner, whether to revive and purſue thoſe wicked Practices, your own Conſcience is your Witneſs, and will be your Judge; and if that ſhall acquit you, it will be for your Advantage in the World to come. But you are an Offender againſt the Law of the Land, which hath made this your Offence to be High-Treaſon, and therefore that Judgment appointed for one guilty thereof muſt be pronounced; the Court therefore doth award, *That you be conveyed from hence to* Newgate, *the Priſon from whence you came, and from thence you are to be drawn upon a Hurdle to* Tyburn; *where you are to be hanged by the Neck, and while you are alive to be cut down, your privy Members to be cut off, and your Bowels to be cut out of your Body, and burnt in your View*; *your Head is to be cut off, and your Body is to be divided into four Parts, and your Head and your Quarters are to be diſpoſed as her Majeſty ſhall appoint.* And the Lord have Mercy upon your Soul.

Clerk of Arr. Gaoler, look to your Priſoner.

J. Boucher. My Lord, I beg that my Friends may have Leave to come to me.

L. C. J. Holt. You ſhall have ſuch as is uſual, and as is fitting.

Clerk of Arr. Take away the Priſoner.

Accordingly he was carried back to Newgate, *but was repriev'd.*

CLXXIX. *The Trial of* DAVID LINDSAY, *at the* Old-Bailey, *for* High-Treaſon, April 19. 1704. 3 Ann.

THE Court being ſet, Proclamation was made.

Clerk of Arr. David Lindſay, hold up your Hand. (*Which he did.*) *Thou ſtandeſt indicted by the Name of* David Lindſay *of* London, *Gent. for that thou being a Subject of the late King* William, *and now a Subject of her preſent Majeſty, after the Eleventh Day of* December, 1688, viz. *the 26th Day of* March, 1689, *was in the Kingdom of* England, viz. *at the Pariſh of* St. Martins-in-the-Fields, *in the County of* Middleſex; *and afterwards and before the Third Day of* December, 1697, viz. *the Firſt Day of* October, 1696, *Thou the ſaid* David Lindſay *did voluntarily go into* France *without Licence from the late King* William *or the late Queen* Mary; *and that thou the ſaid* David Lindſay, *on the ſaid Third Day of* December, 1697, *was not within the Dominions of the late King* William; *and that thou the ſaid* David Lindſay *not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance towards our Lady the Queen that now is thy Supreme, True, Legitimate, Lawful and Undoubted Lady*; *and as a falſe Traitor againſt our ſaid Lady* Anne, *the Queen that now is, after the 14th Day of* January, 1697, viz. *the 10th of* December, *in the ſecond Year of the Reign of our Lady the Queen, did traiterouſly return and come into the Kingdom of* England, viz. *at the Pariſh of* St. Martins-in-the-Fields, *in the County of* Middleſex, *without Licence from the late King* William *under his Privy Seal, or from our ſaid Lady the Queen under her Privy Seal, obtained*; *againſt the Duty of thy Allegiance, and againſt the Form of the Statute, and againſt the Peace of our Lady the Queen, her Crown and Dignity*, &c.

Mr. *Lindſay* (*taking a Paper out of his Pocket, read it to the Court.*) My Lord, I am very ſorry I am ſo unfortunate as to fall under the Diſpleaſure of the Government; and being willing to ſave the Court all unneceſſary Trouble upon my Trial, I have therefore reſolved to confeſs moſt of the Facts charged upon me in the Indictment, *viz.* As to my being in *France*, and coming into *England* without Licence. But I am adviſed that there is ſomething ſo ſingular for my Benefit in this Caſe, that I beg your Lordſhip to hear me by Counſel before my Arraignment; the Counſel I deſire, are Mr. *Williams* and Mr. *Raymond.*

[*] Mr. *Att. Gen.* My Lord, he might have had Counſel aſſigned him before, if he had deſired it.

L. C. J. Trevor. You ſhall have theſe Counſel aſſigned you which you deſire.

[*] Mr. *Soll. Gen.* My Lord, I ſuppoſe this is not deſired now, with any Deſign to delay the Trial; the Priſoner muſt firſt plead to his Indictment.

L. C. J. Trevor. If his Counſel be here, we are willing to hear what they have to ſay.

Clerk of Arr. Call Mr. *Williams* and Mr. *Raymond.* (*Who came into the Court.*)

L. C. J. Trevor. Mr. *Raymond* and Mr. *Williams*, the Priſoner here deſires you may be of Counſel for him, and the Court have aſſigned you to be of Counſel for him accordingly.

Mr. *Att. Gen.* He has heard the Indictment read to him, but he has not yet pleaded to it.

Mr. *Lindſay.* My Lord, I deſire to be heard by my Counſel firſt.

Mr. *Raymond.* My Lord, I apprehend Mr. *Lindſay*'s Intention is, to give the Court as little Trouble as may be, and therefore the Facts, of which he is Guilty, and that are charged upon him in this Indictment, he will confeſs. But, my Lord, he has been adviſed by his Friends, and other Counſel, that his Caſe has ſomething particular in it, which he hopes will be for his Advantage, and deſires to have the Benefit of what can be pleaded, beſides Guilty or not Guilty.

L. C. J. Trevor. Is there any other Plea, that he can plead ſpecially?

Mr. *Williams.* My Lord, not any that we know of; I deſired him to adviſe with ſome other Perſons about it; I hope he has done ſo. As to the Priſoner's Confeſſing, or pleading Not Guilty to the Indictment, it's a Matter of Prudence, and not of Law.

L. C. J. Trevor. Let him plead then.

Clerk of Arr. David Lindſay, art thou Guilty of this High-Treaſon, whereof thou art indicted, or Not Guilty?

David Lindſay. Not Guilty.

Clerk of Arr. Culprit, How wilt thou be Tried?

David Lindſay. By God and my Country.

Clerk of Arr. God ſend thee a good Deliverance.

Mr. *Lindſay.* My Lord, I have one Favour to beg, that my Wife and Children may come to me.

L. C. J. Trevor. I think he may have that Liberty, in the Preſence of the Keeper, if you have nothing to object againſt it.

Mr. *Att. Gen.* My Lord, we are willing they ſhould come to him, in the Preſence of the Keeper. We will not abridge any Man of what he can reaſonably and juſtly deſire.

L. C. J. Trevor. Have you pitch'd upon any Time to appoint for the Trial?

Mr. *Att. Gen.* Yes, my Lord, on *Monday* next, if it ſuit the Court. He ſhall have a Copy of the Pannel, and all other Things that are fit for him. I ſuppoſe, my Lord, the Priſoner is now committed to the Sheriff, as is uſual on theſe Occaſions.

L. C. J. Trevor. Yes; he is committed to the Care of the Sheriff.

Clerk of Arr. Where is the Keeper of *Newgate*? (*He appeared, and took Charge of the Priſoner. And then the Court adjourned till* Monday, *Nine of the Clock.*)

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[*] Sir *Edw. Northey.*

[*] Sir *Simon Harcourt.*

Monday, April 24, 1704.

THE Court being ſet, and the Pannel called over, as uſual, the Priſoner making no Exceptions; the following Gentlemen were ſworn upon the Jury:

Timothy Lenoy, Eſq;
Richard Brown, Eſq;
Joſeph Jorey, Eſq;
Tanner Arnold, Eſq;
Arthur Bayly, Eſq;
George Ford, Eſq;
Tho. Ellis, Eſq;
Nich. Goodwin, Eſq;
Tho. Blackmore, jun. Eſq;
Will. Snelling, Eſq;
Peter Lekeux, Eſq;
Jo. Pack, Eſq;

L. C. J. Holt. You, Gentlemen, that are ſworn, go within the Bar.

Clerk of Arr. *David Lindſay*, hold up thy Hand *(which he did)*. Gentlemen of the Jury, look upon the Priſoner, and hearken to the Charge. He ſtands indicted by the Name of *David Lindſay*, of the City of *London*, Gentleman, *&c.* as before in the Indictment. Upon which Indictment he hath been arraigned, and hath pleaded *Not Guilty*. Your Charge is, to enquire whether he be guilty of the ſaid Treaſon, whereof he ſtands indicted. If you find him Guilty, you are to enquire what Goods and Chattels he had at that Time, or if he fled for it. But if you find him Not Guilty, you are to ſay ſo, and no more. And ſtand together, and hear your Evidence.

Mr. *Morley*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, This is an Indictment preferred againſt *David Lindſay*, the Priſoner at the Bar, for High Treaſon; for that he being a Subject of the late King *William*, and now a Subject of her preſent Majeſty, after the Eleventh Day of *December*, 1688, *viz.* the Twenty-ſixth Day of *March*, 1689, was in this Kingdom of *England*, *viz.* in St. *Martins in the Fields*, in the County of *Middleſex*, and afterwards and before the Third Day of *December*, 1697, *viz.* the firſt Day of *October*, 1696, the Priſoner did voluntarily go into *France*, without Licence either from the late King *William*, or the late Queen *Mary:* And that the Priſoner, on the Third Day of *December*, 1697, was not within the Dominions of the late King *William*. But the Priſoner, not weighing the Duty of his Allegiance towards our Sovereign Lady the Queen, did, as a falſe Traitor, after the 14th Day of *January*, 1697, *viz.* the 10th Day of *December*, in the ſecond Year of the Reign of her now Majeſty, traiterouſly return and come into this Kingdom of *England*, *viz.* in the Pariſh of St. *Martins in the Fields*, in the County of *Middleſex*, without Licence either from the late King *William* under his Privy Seal, or from her now Majeſty under her Privy Seal; and this he hath done againſt the Duty of his Allegiance, and againſt the Form of the Statute in this Caſe made and provided. To this Charge he hath pleaded *Not Guilty*.

If we prove him Guilty, I doubt not but you will find him ſo.

Mr. *Lindſay*. I ſhall give your Lordſhips, and the Court, as little Trouble as may be. I ſhall only beg Leave to ſtate my Caſe truly before you, and then I ſhall ſubmit to your Judgment.

L. C. J. Holt. Mr. *Lindſay*, if you had a Mind to confeſs, you ſhould have done it before; now the Jury are to enquire whether you are Guilty or not.

Mr. *Lindſay*. My Lord, I only deſire to be heard as to the Fact.

L. C. J. Holt. You muſt ſtay till the Queen's Evidence is heard, and then you may ſay what you can.

Mr *Williams*. My Lord, his Intentions may be as to ſome Things to ſave the Time of the Court; and perhaps to eaſe the Queen's Counſel of ſome Trouble.

L. C. J. Holt. Let the Queen's Counſel ſtate the Evidence firſt, and then it may be proper for him to ſay what he will.

Sir *T. Powis* [the Queen's Serjeant]. You muſt either confeſs the Treaſon wherewith you are charged, or elſe we muſt proceed to prove it.

L. C. J. Holt. If you open the Evidence, then it may be he will confeſs; but it muſt be firſt opened.

Sir *T. Powis* My Lord, there is nothing meant by us to reſtrain him in any Thing that he has to ſay; all that we deſign is, to put him in a proper Method. It is proper that he ſhould underſtand the Caſe. He has pleaded *Not Guilty*, and we are under a Neceſſity to ſhew what Evidence we have to prove him Guilty. My Lord, this Indictment is founded on an Act of Parliament made in the ninth Year of the late King *William*. And it is grounded on very good Reaſons; for as it is taken Notice of in this Act, there had been a former Act made in the third and fourth Years of the Reign of the late King *William* and Queen *Mary*, by which it was made High Treaſon for any to repair into *France* without Licence; that any one that did ſo, ſhould fall under the Guilt of High Treaſon. But that Act was calculated only for the Time the War laſted, and was of no longer Continuance; and there being a Peace concluded, the Preamble of this Act takes Notice, that thereby it would become neceſſary for the carrying on of Trade and Commerce between *England* and *France*, that there ſhould be a Freedom of going and coming out of, and into the ſaid Kingdoms reſpectively. And therefore the Act further ſays, That whereas ſeveral Perſons who had been in Arms, or had been engaged in treaſonable Practices againſt the King and Government, and other diſaffected Perſons (as all that reſorted into *France* without Licence, during the War, were ſuppoſed to have ſufficiently ſhewed themſelves diſaffected to the Government), therefore the Act goes on, and provides againſt the Miſchiefs that might enſue; and ſays, If any of his Majeſty's Subjects, who had voluntarily, ſince the Eleventh of *December*, 1688, gone into *France* without Licence, and ſhould at any Time, after the 14th of *January*, 1697, return into *England* without Licence, that ſuch Perſon ſo doing, ſhould fall under the Guilt and Penalty of High Treaſon. This is the Subſtance of the Act upon which the Indictment is formed. Now, that which we have to charge and prove upon the Priſoner, is, That he was here, in *England*, after the 11th of *December*, 1688. We are ready to prove that he was here in the Beginning of *March*, 1689; that he went into *France* in *October*, 1696, that he afterwards returned into *England* in *December* laſt. We ſay, He went into *France* without Licence, and returned without Licence; and it will be his Part, if he can, to make it appear otherwiſe. If he does not admit theſe Facts, we ſhall call our Witneſſes to prove them upon him. If they are Facts that he admits, then he may regularly proceed.

Mr. *Lindſay*. My Lord, may I ſpeak now?

L. C. J. Holt. Yes, you may.

Mr. *Lindſay*. My Lord, I do confeſs, that being a Native of *Scotland*, and never having had any Office in *England*, I did go into *France* without his late Majeſty's Licence, after the Time mentioned in the Act; and I did continue beyond Sea, till I was informed that her Majeſty did, according to her uſual Clemency, by her Gracious Proclamation in 1702-3, give a general Pardon to all her Subjects; and being deſirous to take the Advantage of it, and to return to my native Country, I came into *Scotland*, where I preſented myſelf before the Government, and had the Benefit of the Queen's Proclamation allowed me. Whereupon, my Lord, being adviſed by ſome eminent Counſel there, that I was as free to come into *England* as any other Subject; and having my Wife and Children here, I came to *London* by the Way of *Berwick*. Therefore, my Lord, humbly conceiving, in theſe Circumſtances, that I am not guilty of Treaſon within the Intent of this Act, I deſire to be heard by my Counſel.

L. C. J. Holt. You own you went into *France* ſince the 11th of *December*, 1688.——Mr. *Lindſay*. Yes, my Lord.

L. C. J. Holt. From what Place did you go into *France?* From *England* or from *Scotland?*——Mr. *Lindſay*. From *England*.

L. C. J. Holt. Then he confeſſes the whole Fact.

Mr. *Soll. Gen.* But, my Lord, he was there before 1697.

L. C. J. Holt. You muſt agree on the Fact. He ſays, He did go into *Scotland* within the Time mentioned in that Proclamation. And being in *Scotland*, he ſays, he did adviſe with ſome learned Counſel, and they told him he might ſafely come into *England*. Now, do you admit that he did go into *Scotland* on that Occaſion of the Queen's Proclamation?

Mr. *Att. Gen.* My Lord, as to that Fact, we cannot admit it. There was no Licence mentioned in it; the Proclamation gives no Licence to come into *England*, only a general Pardon. What his Counſel will make of it, I cannot tell.

L. C. J. Holt. Do you expect it ſhould be proved?

Mr. *Att. Gen.* If he will ſhew us the Proclamation, if it be the ſame that I have, I will allow it.

L. C. J. Holt. Produce that Proclamation; look upon it, it may be you will admit it without any further Proof.

Then the Proclamation was produced, and Mr. Attorney General looked on it.

Sir *T. Powis*. Will they have it read?

Mr. *Att. Gen.* It may be read, if they deſire it.

Mr. *Williams*. My Lord, we deſire it may be read.

Sir *T. Powis*. My Lord, we would not have it look'd on as a Thing of Right to be read, without further Proof.

L. C. J. Holt. No, that is of Grace, it is a voluntary Offer of yours.

Mr. *Att. Gen.* Then I ſhall not oppoſe the reading of it.

L. C. J. Holt. Then you do admit that to be the Queen's Proclamation for *Scotland?*

Mr. *Att. Gen.* Yes, my Lord.

Mr. *Williams*. I deſire to know, whether they admit the Priſoner to be a Native of *Scotland?*

Mr. *Att. Gen.* We do not know that.

L. C. J. Holt. Then you muſt prove it, if you think it material.

Sir *T. Powis*. My Lord, he went from *England* into *France*, and returned from *France* into *England* again.

L. C. J. Holt. He muſt be taken for a Native of *England*, unleſs he can prove the contrary.

Mr. *Williams*. My Lord, ſhall we firſt read the Proclamation, or prove him a Native of *Scotland?*

L. C. J. Holt. Read the Proclamation firſt.

[*Then the Clerk read the Proclamation.*]

A Proclamation of Indemnity.

ANNE R.

" *ANNE* by the Grace of God, Queen of *Scotland*, *England*, *France*, and
" *Ireland*, Defender of the Faith, *&c.* To all and ſundry our good
" Subjects, to whom theſe Preſents do or may concern, Greeting. Foraſ-
" much as it has been, and is, our conſtant Reſolution and Deſign to eſta-
" bliſh the Peace, and promote the Welfare of our People; not only by
" procuring the equal and impartial Adminiſtration of Juſtice, but alſo by
" ſuch a Mixture of the benign Influences of our Goodneſs and Clemency,
" as may beſt compoſe all Diſtempers, and give a juſt Aſſurance againſt
" all Fears and Jealouſies: And for that Effect, we being deſirous to com-
" plete the Indulgence that hitherto we have ſhewed, and to reclaim even
" ſuch Offenders as might juſtly have expected the deſerved Effects of our
" Diſpleaſure. And that, for Time to come, we may by a Gracious Pardon
" and Act of Oblivion, eſtabliſh firm Peace and Concord amongſt all our
" Subjects Therefore we, of certain Knowledge, and by Virtue of our
" Sovereign Power and Authority, Pardon, Remit, Indemnify, and for
" ever Acquit, all and every one of our Subjects, of all Crimes of Perduel-
" lion, Rebellion, *Treaſon*, Concealing of Treaſon, Harbouring, Receipt,
" Supplying, *Correſponding* and Intercommuning *with Rebels, and Declared*
" *Enemies*, the impugning the Dignity and the Authority of the Eſtates of
" Parliament, and all other Kinds of Treaſon or Leſe-Majeſty, whether
" Common or Statutory, and of all Crimes of Leſing-making, whether to
" us or our Subjects, or to our Subjects of us, Depraving or Miſconſtruing
" our Laws, or of any of our Proceedings, or Miſrepreſenting or Slander-
" ing us or our Proceedings in any Sort; and all Breaches or Abuſes of, or
" Malverſations in public Truſts, with *all other Crimes, Delinquencies or*
" *Tranſgreſſions of whatſoever Nature or Quality, committed*, acted or done
" by any of her Subjects by Word or Writ, *or incurred by any other Act ei-*
" *ther by Commiſſion or Omiſſion*, preceding the Date of theſe Preſents, *and*
" *which* directly or indirectly *are, or may import the Contravention of any*
" *Law or Act of Parliament*, Cuſtom or Conſtitution of that our ancient
" Kingdom; *and that in ſo far as the ſame may infer any Pain or Puniſhment*
" *againſt any of our Subjects, either in their Lives, Fortunes, Eſtates*, Fame or
" Reputation. All which we, by Virtue of our Royal Power and Autho-
" rity aforeſaid, Will, Declare, and Ordain to be hereby Pardoned, Ac-
" quitted, and Indemnified, and put in perpetual Oblivion; *and that this*
" *General Pardon and Indemnity ſhall be as valid and effectual to all our Sub-*
" *jects for their Exoneration and Diſcharge of all Pains and Puniſhments, as if*
" *every* particular Crime, Offence, Delinquency, or Miſdemeanor, *were*
" *here ſet down, and as if Remiſſions, under our Great Seal, were paſt and*
" *granted for the ſame, wherewith we for Ourſelves and Succeſſors*
" *diſpenſe for ever.* Like as we hereby Prohibit and Diſcharge

“ any of our Miniſters or Judges to call in Queſtion, or proceed againſt any of our ſaid Subjects for the ſaid Crimes, and their Crimes and Puniſhments in any Time coming; *Declaring and Ordaining this our general Pardon and Indemnity to be interpreted and underſtood in the moſt benign, favourable and comprehenſive Senſe the ſame can admit, for the Security of our Subjects.* Excepting always forth and from this general Pardon and Indemnity, all *Fore-faulters*, and Sentences and Dooms thereof, and all pecunial Fines and Unlaws already paid or tranſacted; and but prejudice to us, or theſe commiſſioned by us, to call all Collectors and other Intromitters with publick Money, to give Account of their Intermiſſions, and to make Payment of what ſhall be found due by their Intermiſſions. And farther excepting, all Manſlaughters, Murders, Aſſaſſinations, Witchcrafts, Fire, Raiſings, Depredations, Robberies, Rapes, Spulzies, Thefts, Houſebreakings, Mutilations, Adulteries, Blaſphemies, and Delinquencies of Immorality. All which Crimes, and thoſe guilty thereof, are no ways to be comprehended in, or have any Benefit by this our Pardon and Indemnity as the ſaid Crimes excepted. And laſtly, to the End all our good Subjects may have Notice of our Royal Will and Pleaſure, we do hereby command our Lion King at Arms, and his Brethren, Heraulds, Purſivants, and Meſſengers at Arms, to make due Publication hereof at the Market-Croſs of *Edinburgh*; for all which theſe Preſents ſhall be a ſufficient Warrant.” *Given at our Court at St.* James's, March 16*th*, 1702-3, *and of our Reign the ſecond Year.*

By her Majeſty's Command,

Queenſberry.

GOD ſave the QUEEN.

Mr. *Raymond.* Look on the Backſide.

Mr. *Att. Gen.* What is that?

Mr. *Raymond.* A Certificate from the Duke of *Queenſberry*, Secretary of State of *Scotland*, that it is a true Copy.

Mr. *Att. Gen.* We admit it.

Mr. *Williams.* Then, my Lord, it is inſiſted on that we ſhould prove the Priſoner a Native of *Scotland.*

Mr. *Att. Gen.* If you think it material, you may prove it.

L. C. J. Holt. They did think it material, and therefore made it a Part of their Caſe.

Mr. *Williams.* Call *James Grey*, Eſq; (*Who appeared, and was ſworn.*) Sir, do you know the Priſoner at the Bar?——*J. Grey.* Yes.

Mr. *Williams.* What Countryman is he?

J. Grey. Always reputed of *Scotland.* I have known him this 20 Years, and he was always reputed ſo.

L. C. J. Holt. Have you known him 20 Years in *England?*

J. Grey. Yes, my Lord, in *England*; not in *Scotland.*

Mr. *Soll. Gen.* Have you had any Correſpondence with him?

J. Grey. No, Sir, no great Correſpondence. In King *James*'s Time he was Secretary to the Lord *Melfort.*

Mr. *Williams.* What Countryman was he reputed then?

J. Grey. A *Scotchman.*

L. C. J. Holt. Did you know his Family?

J. Grey. No, I have always been in *England*; I did not know his Family.

Mr. *Williams.* We have another Evidence.

L. C. J. Holt. You muſt bring better Proof than this, or elſe it will not do.

Mr. *Williams.* Call Mr. *Trumbal.* (*Who appeared, and was ſworn.*) Mr. *Trumbal*, do you know the Priſoner at the Bar?——*Trumbal.* Yes.

Mr. *Williams.* How long have you known him?

Trumbal. I have known him theſe twenty Years.

Mr. *Williams.* What Countryman did you always reckon him?

Trumbal. A *Scotchman.*

L. C. J. Holt. How do you know that?

Trumbal. He has always been reputed ſo. He dealt in Wine with one that I knew, and ſo I came to know him.

Mr. *Williams.* Did you know him in *Scotland?*——*Trumbal.* No.

Mr. *Att. Gen.* Have you known him any where but in *England?*

Trumbal. No; but he has been reputed a *Scotchman* that dealt in Wine. He had always the Repute of an honeſt Man.

Mr. *Williams.* Call *Charles Canair.* (*Who appeared.*)

Mr. *Att. Gen.* You ſhould bring your Witneſſes into the Court. What is your Name, Sir?——Mr. *Canair. Charles Canair.*

Mr. *Williams.* How long have you known the Priſoner?

Mr. *Canair.* Ever ſince I was a Child.

Mr. *Williams.* Where did you know him?

Mr. *Canair.* In *Scotland.* I remember him from a Child.

L. C. J. Holt. And you knew him to have been a Native of *Scotland?*

Mr. *Canair.* Yes, my Lord, of *Dundee*, in *Scotland.*

L. C. J. Holt. Did you know any of his Relations?

Mr. *Canair.* Yes, my Lord; his Father was of *Dundee*, in *Scotland.*

Mr. *Williams.* My Lord, we have ſomething farther to prove.

L. C. J. Holt. What is it?

Mr. *Williams.* That the Priſoner was allowed the Benefit of this Proclamation in *Scotland*; and we beg leave to ſay, this Fact, which is now charged againſt him, is already pardoned.

Mr. *Att. Gen.* That Pardon has Influence in *Scotland*, not in *England.*

L. C. J. Holt. Then you admit alſo that the Priſoner had the Benefit of this Proclamation allowed him in *Scotland?*

Mr. *Att. Gen.* I know nothing of that.

L. C. J. Holt. Now go on, and ſtate your Caſe.

Mr. *Williams.* My Lord, Mr. *Attorney General* is not pleaſed to admit we had the Benefit of the Proclamation allowed us in *Scotland.*

Mr. *Att. Gen.* They inſiſt on what I know nothing of; if they think they can have any Benefit by it, they may prove it.

Mr. *Raymond.* We have done our Endeavour to have the Secretary of State of *Scotland* appear here, but I don't know whether he has done us the Favour. We have the Certificate under his Hand?

L. C. J. Holt. Is it the ſame Hand.

Mr. *Att. Gen.* My Lord, he aſſerts that Certificate, but we know not whether it be true.

L. C. J. Holt. Then that muſt be proved.

Mr. *Raymond.* Call *Thomas Bruce*, Eſq; (*Who appeared, and was ſworn.*) Mr. *Bruce*, do you know the Priſoner, and whether he had Benefit of the Pardon in *Scotland?*

Mr. *Bruce.* I know very little of him. I know he was at *Edinburgh* laſt Summer, and was under Confinement there, and under Examination ſeveral Times; but after ſome Days he was at Liberty again. That's all that I know.

Mr. *Raymond.* Was he not at Liberty by Leave of the Government?

Mr. *Bruce.* It was ſo believed.

Mr. *Att. Gen.* Can you tell when he came back to *Scotland?*

Mr. *Bruce.* No, Sir. He was in Cuſtody about *July* laſt.

Mr. *Att. Gen.* Can you be particular to the Time? Was it in *June* or *July?*

Mr. *Bruce.* I can't be poſitive; it was in the Time when the Parliament ſate. I never was in his Company.

Mr. *Raymond.* Call Mr. *Southerland.*

Mr. *Att. Gen.* I know not why we ſhould trouble the Court with this. What ſignifies the Pardon?

L. C. J. Holt. Let them make what Uſe they can of it.

Mr. *Att. Gen.* Sir, what is your Name?

Mr. *Southerland. Southerland.*

Mr. *Raymond.* Do you know any thing of the Priſoner's having any Benefit allow'd him of the *Scotch Pardon?*

Mr. *Southerland.* I heard he had ſurrendered to the Government.

Mr. *Raymond.* Was he diſcharged by the Government?

Mr. *Southerland.* Yes, it was generally reported ſo.

Mr. *Att. Gen.* What Time was that, Sir?

Mr. *Southerland.* In *June* or *July* laſt Summer.

Mr. *Att. Gen.* Was he there the 27th of *July*, or before?

Mr. *Southerland.* I cannot be poſitive.

Mr. *Raymond.* Call Dr. *Hutton.* (*Who appeared.*) Doctor, what do you know of the Priſoner's having the Benefit of the *Scotch* Pardon, and its being allow'd him by the Government?

Dr. *Hutton.* I was, in *September*, at *Edinburgh*, and there I ſaw Mr. *Lindſay*, at the *Queen*'s-*Head*, with the *Attorney-General.* He had been examined about ſome Letters (as I heard ſay) that had been directed to him. And there I heard Sir *John Stuart* tell him, the Council had ſet him free. And I met him afterwards at Liberty, and it was done upon the Proclamation of Indemnity.

Mr. *Williams.* What Religion is he reputed of?

Dr. *Hutton.* I know not that. But I have known him ſix-and-twenty Years, and I heard him tell Sir *James Stuart* (who aſked him why he came away from *France*) becauſe he would not be a Papiſt, and he ſaid, he had rather go to the Gallows than return again.

Mr. *Williams.* What is his Temper? Is he a quiet Man in relation to the Government; or of a turbulent Temper?

Dr. *Hutton.* I have always known him a fair, peaceable, friendly Man.

Mr. *Raymond.* Doctor, I would aſk you one Queſtion; whether you have any Law in *Scotland* that prohibits going into *France?*

Dr. *Hutton.* I do not know. I know ſeveral Perſons that came from *France* to *Scotland.*

Mr. *Att. Gen.* Doctor, you give him a fair Character. Can you tell in whoſe Service he was in *France?*

Dr. *Hutton.* No, Sir; I cannot.

Mr. *Att. Gen.* What was his Affection towards the Government?

Dr. *Hutton.* I know nothing of that.

Mr. *Soll. Gen.* When did he return into *Scotland?* Was it before or after the 27th of *July?*

Dr. *Hutton.* I do not know.

Mr. *Raymond.* He came into *England* in *September* laſt, after he had his Pardon. We ſay he came through *Northumberland*, and other Places hither, and in this County he was taken.

Mr. *Lindſay.* I was taken no where, but ſurrendered myſelf to Sir *Charles Hedges.*

Mr. *Williams.* The Fact is, that he came from *Scotland*, through *Northumberland*, &c. and ſo into *Middleſex*, and ſurrendered himſelf; ſo that *Northumberland* was the firſt County of *England* that the Priſoner came into, after his leaving *Scotland*; and ſo that the Treaſon, if any, was committed there, and we inſiſt that the Arraignment and Trial ought to be there.

L. C. J. Holt. If you inſiſt upon it, that the Treaſon committed was in *Northumberland*, then you muſt prove it.

Mr. *Williams.* My Lord, with Submiſſion, tho' the Fact being that *Northumberland* was the firſt County of *England* that he came into, yet it may be difficult to us to prove it; but, with Submiſſion, it may not be abſolutely neceſſary for us to prove, that *Northumberland* was the firſt County, in regard that your Lordſhip will take notice that *Middleſex* cannot be the firſt County, it being impoſſible to come from *Scotland* into *Middleſex* without being in other Counties before; and the Indictment ought to have been in the firſt County of *England* he came into.

Mr. *Att. Gen.* My Lord, we indict him where we find him.

Mr. *Raymond.* We can prove that he came firſt to *Berwick*, then thro' *Northumberland*, before he came into *Middleſex.*

L. C. J. Holt. If you can, do.

Mr. *Raymond.* Dr. *Hutton*, do you know where he came firſt into *England*, and which Way he came hither?

Dr. *Hutton.* No, indeed; I have heard that he came through *Northumberland*, *&c.*

Mr. *Raymond.* Did you lend him your Horſe?

Dr. *Hutton.* No, Sir; but a Friend of mine did lend him his Horſe.

Mr. *Raymond.* Where does your Friend live?

Dr. *Hutton.* At *Edinburgh.*

Mr. *Raymond.* Did he come hither on that Horſe?

Dr. *Hutton.* That I know not. He was left there by a Friend of mine, to be ſent into *England* with the firſt Opportunity, and ſo he ſent him by Mr. *Lindſay.*

Mr. *Raymond.* Did he make uſe of that Horſe all the Way?

Dr. *Hutton.* I know not that.

Mr. *Williams.* My Lord, I am, by your Lordſhip's Permiſſion, of Counſel for the Priſoner: And I hope this free and ingenuous Confeſſion, which he has now made at the Bar, being the very ſame which he before made at his Arraignment; and being the very ſame Confeſſion which he made before the Secretary of State, and others, before whom the Priſoner was examined, will be taken and weighed by the Court as a good Argument of the Sincerity of this unfortunate Gentleman; and that he deſigns in his Trial to put your Lordſhip to as little Trouble as poſſible. My Lord, it has been proved that he is a Native of *Scotland*, and he always has been of the *Proteſtant* Religion. He has been indeed in *France*, but finding he could not enjoy his Religion there, he was reſolved by the firſt Opportunity to endeavour to gain a Licence from the Government for his Return into his own Country. In the mean time comes out Her Majeſty's Gracious Proclamation of Indemnity. That Proclamation was proclaimed in a Publick Manner, by all Her Majeſty's Heralds, at the Market-Croſs at *Edinburgh*, and it has very extenſive Words in it, pardoning all Treaſons, Felons, *&c.* all Crimes and Miſdemeanors whatſoever. My Lord, in Confidence of this Her Majeſty's Royal Proclamation, we came from *France* to *Scotland*, and there claimed, and were allowed by that Government, the Benefit of the Queen's Mercy. Afterwards having been adviſed by the moſt eminent Advocates and Counſel of *Scotland*, that by this Proclamation we were rendered in every Reſpect as a free Subject, and might with Safety come from thence to *England*; we accordingly came from thence hither; but all this while we paid all the due Submiſſion and Regard that could be, as well to the Law as to the Government; for we came from *France* unto the *Hague*, and we there attended upon Her Majeſty's Envoy, Mr. *Stanhope*, and acquainted him with our Intentions of returning home. Immediately upon our Return into *Scotland*, we voluntarily came before the Chief Commiſſioner and Magiſtrates there; who, upon our Claim, were pleaſed, at length, to allow us the Benefit of Her Majeſty's Royal Proclamation and Pardon; and when we were in *England*, on the firſt Notice of a Warrant againſt us, we, of our own Accord, waited on the Secretary of State, Sir *Charles Hedges*, and he happening not to be then at Leiſure, we voluntarily attended upon him a ſecond and a third Time; and upon our third Attendance we were committed. And now, my Lord, we ſtand indicted before your Lordſhip for the greateſt of Crimes, *High-Treaſon*. My Lord, as to the Statute upon which we were indicted, tho' ſome Part of it, without doubt, was not only very reaſonable, but abſolutely neceſſary, I mean that Part of it which was for the Preſervation of his late Majeſty's Perſon and Government; but as to that Part of it upon which we are indicted, it ſeems, with great Submiſſion, a ſevere Law. That the bare returning into our native Country, when we before were convicted of no Crime, or guilty, at moſt, but of a bare Contempt, in going out of the Queen's Dominions without Licence; that this ſhould be made High-Treaſon, this, with Submiſſion, is ſomewhat ſevere: So that in reſpect of the Severity of this Law, beſides the common Arguments of its being a Penal Law, your Lordſhip will be the rather induced to admit of the moſt favourable and merciful Conſtruction to every Part and Clauſe of this Act, that it will bear. My Lord, we do humbly inſiſt on the Words of the Proclamation; and we take it, that thoſe Words do amount to a Licence to us to come into *Scotland:* And if ſo, then we are not guilty within this Act of Parliament, of coming to the Queen's Dominions without Licence. And we likewiſe further inſiſt, that one that has the Queen's Licence to come into *Scotland*, may, without any further Licence, come into *England*——I beg your Lordſhip's Leave to read that Part of the Proclamation, which we chiefly inſiſt on. The Proclamation pardons all Treaſons, and all correſponding and intercommuning with Rebels, or declared Enemies of the Queen. My Lord, it pardons all other Crimes, of what Nature ſoever. It pardons any Act, that may infer any Pain or Puniſhment, on the Lives or Eſtates of Her Majeſty's Subjects. And it is declared to be as available to all Subjects, to pardon them all Crimes, as if the particular Crime were named, and as if Remiſſions under the Great Seal were paſs'd. And then Her Majeſty declares, That this ſhall be taken in the moſt favourable and comprehenſive Senſe that may be, for the Security of the Subject. Now, my Lord, taking this Proclamation in the moſt favourable and extenſive Senſe, in favour of the Priſoner; which Her Majeſty has been pleaſed expreſly to direct it ſhould; with Submiſſion, I take it, it will amount to a Licence from her Majeſty, to return from *France* to *Scotland:* And we humbly take it, that if the Priſoner did by Licence come from *France* to *Scotland*, that he afterwards coming from *Scotland* into *England*, is not within the Act.

My Lord, I would beg Leave to conſider what it was that hinder'd the Priſoner from returning from *France* to *Scotland:* Sure it was his going to *France* without Licence. Then, when her Majeſty is graciouſly pleaſed to pardon this Offence, we take it, that Her Majeſty, by removing the Obſtacle, does by neceſſary Implication give Leave to the Priſoner to return to *Scotland* again. Her Majeſty is pleaſed (with Submiſſion) plainly to give him this Leave, by taking off that that hinder'd his coming. That Parliament plainly did take it, and have been pleaſed to declare it an Offence, to go into *France* without Licence; and have therefore been pleaſed to puniſh that Offence with a temporary Baniſhment: But when that Offence is pardoned, when that Baniſhment is remitted, then the Priſoner ſeems at Liberty to return home: And that Liberty being given by the Queen's Proclamation, this, with Submiſſion, amounts to a Licence from the Queen, for the Priſoner's returning home. My Lord, there are many Inſtances, wherein the King or Queen's Grants or Pardons ſhall have a double Operation, for the Benefit of the Perſons upon whom they are beſtowed. But theſe Caſes, as I humbly conceive, not immediately relating to this Point now before your Lordſhip, I ſhall not trouble your Lordſhip with citing them. My Lord, if we, when in *France*, had been guilty of more than what is charged upon us in the Indictment; I mean, had we correſponded, or adher'd to the Queen's declared Enemies; ſtill the expreſs Words of the Proclamation ſeem plainly to extend to us, when it pardons all correſponding and intercommuning with the Queen's declared Enemies, which the *French* then were, and now are. My Lord, If this Proclamation could in any Part of it bear two Conſtructions (the one making for the Priſoner, the other againſt him), the Queen has been pleaſed to determine in what Senſe it ſhall be taken; in the moſt beneficial manner for the offending Subject. But, with humble Submiſſion, would this be obſerving of Her Majeſty's Gracious Directions? Inſtead of allowing to the Priſoner the Benefit of this Proclamation, to make his very coming to *Scotland* to claim the Benefit of it, and humbly to lay hold of Her Majeſty's Mercy; to make this very Act to amount to a Crime; to make it the greateſt of Crimes, High Treaſon! This ſurely would be the very Reverſe of Her Majeſty's moſt Gracious Intentions: And yet this, with Submiſſion, would be the Conſequence, if the Priſoner's coming from *France* into *Scotland* ſhould be conſtrued to be Treaſon. My Lord, I admit the Words of this Act are, If any return into *England*, or any other of Her Majeſty's Dominions, without a Licence under the Privy-Seal, it ſhall be High-Treaſon.

Sir *T. Powis.* But this is not a Licence under the Privy-Seal.

Mr. *Att. Gen.* The Great Seal of *Scotland* will not vacate an *Engliſh* Act.

Mr. *Williams.* Now we humbly take it, if the Queen is pleaſed to beſtow her Licence by any Act, or in any manner equally notorious with her Privy-Seal, 'tis ſufficient, and within the Meaning and Equity of the Statute. And this Proclamation made by all the Heralds at Arms, at the moſt publick Place in *Edinburgh*, is as notorious, nay much more notorious, and publick, than a Licence under the Privy-Seal only; and therefore within the meaning of this Act. Beſides, the very Words of the Proclamation are, That it ſhall be in every Reſpect as valid and effectual, as if it were under the Great Seal: And if under the Great Seal, ſurely it muſt be at leaſt as ſtrong, as if under the Privy-Seal. Beſides, the Statute does not ſay, that the Licence muſt be under the Privy-Seal of *England*. The Words of the Act are, If any return into *England*, or any other of her Majeſty's Dominions, without Licence under the Privy-Seal, without ſaying of what Kingdom. Now, with Submiſſion, it not being ſaid what Privy-Seal, or of what Kingdom; it muſt be intended, according to the Subject-Matter, the Seal of that Kingdom or Dominion where the Licence is granted; and that being *Scotland*, the Licence under the Great Seal of *Scotland* is ſufficient: For it ſeems improper, that the Seal of one Kingdom ſhould be made uſe of, to licenſe an Act in another Kingdom. Now, if a Licence under the Great Seal of *Scotland* be ſufficient, this Proclamation declares, that it ſhall be as valid as if 'twere under the Great Seal: And it can't be deny'd, as I have ſaid, but a Licence under the Great Seal muſt be equivalent with a Licence under the Privy-Seal. Beſides, the Queen's Proclamation does not mention what Great Seal, or of what Kingdom; and ſo it may be intended, that Great Seal that would be moſt beneficial to the Priſoner; taking it in its moſt favourable Senſe, as Her Majeſty is pleaſed to direct it ſhould be.

But 'twill be ſaid, That taking this to be a Licence, this is only a Licence to come into *Scotland*; but the Priſoner is indicted for coming into *England* without Licence. But we take it, If we had a Licence to come into any one of the Queen's Dominions, and we firſt came into that Dominion with this Licence; we can't then be guilty of Treaſon within this Act. The Words of the Act make it Treaſon to come into *England*, or any other of the Queen's Dominions without Licence; ſo 'tis the ſame thing as if it ſaid, that it ſhould be Treaſon to come into the Queen's Dominions without Licence. Then if one comes into *Scotland* with Licence, *Scotland* being one of the Queen's Dominions, the Priſoner can't be ſaid to come into the Queen's Dominions without Licence: So that by this Licence the Priſoner is wholly out of the Act. This Act, with Submiſſion, muſt operate and take its Effect upon the firſt Step made from *France* into any of the Queen's Dominions; ſo that if the Priſoner be guilty of High-Treaſon within the Act, it muſt be when he made his firſt Step from *France* into *Scotland:* But that being made lawful, by the Proclamation amounting (as we ſay) to a Licence; it can't be afterwards Treaſon, for the Priſoner to come into *England*. Take it, that the Priſoner had had Her Majeſty's Licence to come from *France* into *England*; and accordingly the Priſoner comes into *England*, and afterwards goes into *Scotland*; had this been Treaſon? Surely not. Take it, that a Man within this Act returns from *France* into *England* without Licence, and is pardoned, and he afterwards goes into *Scotland*; would this have been a new Treaſon, for which the Man that was before pardoned muſt loſe his Life? We humbly take it, that it would not.

Beſides, with Submiſſion, this Proclamation amounts to a Pardon of the Treaſon, tho' it be before the Priſoner return'd to any of the Queen's Dominions. And if it appears to your Lordſhip, that the Priſoner is pardon'd, tho' we have not pleaded it, your Lordſhip will not be pleaſed to ſuffer the greateſt of Puniſhments to be inflicted on any that your Lordſhip perceives are entitled to Her Majeſty's Mercy, or on any that are ſo much as within Her Majeſty's Intentions of being pardon'd. Beſides, another Conſequence of the Priſoner's being pardon'd, is, That then if he be pardon'd, he is a free Subject, and has Liberty to go any where, and into any of the Queen's Dominions. My Lord, as to this Point, whether the Treaſon be pardon'd, 'tis neceſſary, with humble Submiſſion, to conſider what makes this Treaſon. 'Tis the going into *France* without Licence, and returning home without Licence: 'Tis both joined together make the Treaſon; and the one without the other does not make the Treaſon. Had not the Priſoner gone into *France* without Licence, his returning without Licence would not have amounted to Treaſon: So that the going into *France*, is the Foundation of the Treaſon. And I humbly take it, that this Act of Parliament has made the bare going into *France* without Licence, an Offence; and has puniſh'd it as ſuch, by Baniſhment during the Queen's Pleaſure: So that the Priſoner, from the Time he went into *France* without Licence, was an Offender, and conſequently capable of a Pardon. So, with Submiſſion, 'tis plain, there was ſome things on which the Pardon might operate, tho' the Pardon was before the Priſoner's landing in *Scotland*. Then taking it, that the Priſoner's going into *France* without Licence was an Offence, and the original Foundation of the Treaſon; this original Offence is, with Submiſſion, pardon'd by the Proclamation, by the Pardon of all Crimes and Miſdemeanors, of what Nature ſoever. And if the original Offence be pardoned, all the Conſequences, all the Dependences upon that Offence, all that enſues upon that Offence are, with Submiſſion, at the ſame Time pardon'd. This, my Lord, ſeems to be proved by *Cole*'s Caſe, *Plowd.* 401. where, after one had feloniouſly wounded another, then comes a Pardon of all Crimes and Miſdemeanors; and afterwards the Party wounded dies. The original Miſdemeanor being pardon'd, all that enſues upon it is pardon'd; and conſequently the Murder is pardon'd, by the Pardon only of all Miſdemeanors. Now in our Caſe 'tis plain, the original Offence is going into *France* without Licence; and that being pardon'd, all that enſues that Offence, all the Dependences upon that Offence, according to the expreſs Words of that Caſe, are pardon'd alſo: And therefore, the returning into the Queen's Dominions without Licence, being only a Conſequent and a Dependent upon the going into *France* without Licence, is pardon'd alſo. Beſides, my Lord, ſo favourable a Conſtruction does the Law make upon Acts of Mercy, that when the Crown pardons any Crime, the Pardon reſtores the Man in ſuch a Manner, as if the Offence had never been committed. And conſequently, after this Pardon, 'tis the ſame Thing as if the Priſoner had never gone into *France* without Licence: And if the Priſoner had never gone into *France* without Licence, 'tis plain his coming home without Licence would not have been Treaſon.

In *Hob.* 81. *Cuddington v. Wilkins*, If a Man commits a Theft, and is pardon'd; if afterwards he is called Thief, an Action lies, tho' he is called ſo by one that had no Notice of the Pardon; for that after the Pardon, 'tis as if he had never been guilty of Theft. There is likewiſe another Caſe put there, which ſeems much ſtronger than the Priſoner's Caſe; which is this: If an Appeal of Felony be brought againſt a Man, and the Defendant prays Trial by Battle; the Plaintiff counterpleads the Battle, by ſaying, that the Defendant, when committed to Priſon for his Felony, broke the Priſon, and ſo eſcaped (which is a Preſumption of Guilt), and ſo takes off the Trial by Battle; yet 'tis adjudged, that when the King Pardons the Breach of Priſon, this reſtores the Defendant to his Trial by Battle, and 'tis then as if the Defendant had not broken the Priſon at all. Yet in this Caſe it might have been objected, That tho' the King has pardon'd the Breach of Priſon, tho' the Proſecution or Puniſhment for Breach of Priſon is pardon'd, yet the collateral Effect of it, which is the Preſumption of Guilt upon the Party's Flight, might remain; eſpecially as to the Appellant, whoſe Suit (according to the general Rule) the King's Pardon can't influence. Yet here 'tis adjudg'd, that even as to the Appellant, the King's Pardon of the Breach of Priſon, makes it as if the Party had never been guilty of it. Now this is ſtronger than the Priſoner's Caſe; for in the Priſoner's Caſe, the Queen's Pardon is only made uſe of, to prevent her own Proſecution, and not the Suit of any Appellant. Therefore in the preſent Caſe, the Proclamation pardoning all Miſdemeanors, pardons the Offence of going into *France* without Licence: And that being pardon'd, 'tis as if the Priſoner had never gone into *France* without Licence; and without this, the bare Return without Licence will not amount to Treaſon. So that, with Submiſſion, we take this Proclamation to be a Licence to the Priſoner to return into the Queen's Dominions. Nay, we take it to be a Pardon even of the Treaſon of which he ſtands indicted.

Beſides, I would humbly beg Leave to offer to your Lordſhip's Conſideration, whether a *Scotchman* that was not in *England* at the Time of the making of this Act of Parliament, be within the Meaning of this Act. The Act ſays, If any of his Majeſty's Subjects ſhall go into *France* without Licence, if he return without Licence, 'tis Treaſon. I don't pretend to call in queſtion *Calvin*'s Caſe, which was (at that Time at leaſt) a very convenient Reſolution. I don't deny, but a Natural-born Subject of *Scotland* is, as to many Purpoſes, a natural-born Subject of *England*. But whether (upon the Conſtruction of ſo very penal a Law as this is) a *Scotchman* is within the Meaning of this Law, is the only Queſtion. Now, with Submiſſion, when the Act ſays, If any of his Majeſty's Subjects ſhall go into *France* without Licence, this (according to a reaſonable Conſtruction) ſhall be intended only of *Engliſh* Subjects, ſtrictly ſpeaking, that is, thoſe of *England*; it muſt be intended only of ſuch of His Majeſty's Subjects, who were repreſented by the Parliament that made this Law, and who are preſumed to conſent to the making of this Law; 'tis theſe Subjects only that may reaſonably be ſuppoſed to have Notice of this Law, and therefore 'tis reaſonable that they only ſhould be bound by it; eſpecially in the Caſe of ſo ſevere a Law, where a Man's Life, Eſtate, and all that is dear to a Man is at Stake. There may be a great deal of Difference betwixt an Act of Parliament that puniſhes a Fact that was before *Malum in ſe*, and an Act which makes that an Offence which was before lawful: Every one of any Nation is, at his Peril, to abſtain from committing any Act that is *Malum in ſe*; and if he commits ſuch an Act in any Country, he ſeems ſubject to be puniſh'd according to the Laws of that Country where the Fact was committed. But going into *France*, or any Place beyond Sea, without Licence, ſeems only *Malum Prohibitum* by this Statute: And therefore, when the Act ſays, If any of his Majeſty's Subjects who went into *France* without Licence, ſhall return without Licence, ſhall be deem'd guilty of Treaſon; it ſhall be intended only of thoſe of *England*; ſuch Subjects as, either by themſelves or their Repreſentatives, were conſenting to the making of this Law. Therefore I humbly beg Leave to put the Caſe, That if one of Her Majeſty's Subjects of her remote Plantations (as *Barbadoes* or *Antigua)* that was reſident there at the Time of the making this Law, ſhould have ſince the Year 1688, gone into *France* on any private or particular Account, without Licence; and afterwards ſhould come into *England*; would this Subject (who, in all Probability, knew nothing of the making of this Law) be guilty of High Treaſon, for coming into *England?* Surely this would be exceſſive hard. Then, if one reſident at *Barbadoes* or *Antigua* at the Time of the making of this Act, ſhould not be within this Law; much leſs ſhall a *Scotchman* be within it, in regard *Scotland* is a ſeparate Kingdom, that can't be bound by our Acts of Parliament; whereas any of the foreign Plantations are plainly liable to be bound by *Engliſh* Acts of Parliament.

Beſides, there is another Reaſon from the very Words of the Act, why a *Scotchman* that was not reſident in *England* at the Time of the making this Law, can't be intended within the Meaning of the Act: And that is not only becauſe the Act mentions nothing of *Scotland*; but becauſe the Words of the Act are, If any of his Majeſty's Subjects who went into *France* without Licence, ſhall return into *England*, or any other of His Majeſty's Dominions, without Licence, 'tis Treaſon. Now the Word (Return) muſt plainly have Relation only to that Country where the Party was reſident at the making of the Law, or to the Country that he left at the Time of his going towards *France*. But it does not appear that the Priſoner, who is a *Scotchman*, was in *England* at the making the Act; and he having been proved to be a Native of *Scotland*, muſt be intended to be then in *Scotland*, unleſs proved to be elſewhere: And therefore the Priſoner's coming into *England* can never be within the Meaning of the Word *Returning into England*, any more than a Man can be ſaid to return to a Place where he was not before.

There is another Objection (becauſe I will give Mr. *Attorney* only one Trouble) and that is, That this Indictment (or Trial) can't in this Caſe be in *Middleſex*, but muſt be in that County where the Priſoner firſt came, after his leaving *France*; which really was *Northumberland*, as he came from *Scotland*; or at leaſt your Lordſhip will take Notice, that it can't be *Middleſex*. 'Tis a known Rule, that all Indictments and Trials for Treaſons and all other Crimes, muſt be in the County where the Treaſon was committed: And 'tis clear (taking the Proclamation out of the Caſe) that the Treaſon was committed in that County which the Priſoner firſt came into after leaving *France*. The Treaſon (taking the Pardon out of the Caſe) was completed by the firſt Step made into *England*. Nay, if the Priſoner, immediately after his making his firſt Step into *England*, had returned, ſtill it had been a complete Treaſon; and the Party had returned with his Guilt upon him. And, my Lord, I do not take it, that the Party commits a new Treaſon, by his going into another County. 'Tis true, 'tis ſaid, If I ſteal Goods in one County, and carry them into another, this is Felony (tho' not Robbery) in every County where I carry them: But even in this Caſe, the Law (as I take it) is ſaid to be otherwiſe, in *Fitz. Abr. Tit. Coron. Par.* 194. and that the Trial muſt be in the County where the Goods were firſt taken. But taking this to be Law, That the Felon may be tried in any of the Counties where he carries the Goods he ſtole; as I muſt needs own, the Law is now allowed ſo to be; yet this depends upon a different Reaſon, no Way affecting the Principal Caſe. For the Reaſon given of this Caſe, in *Dyer* 40. and 7 *Coke* 2. and *Bulwer's Caſe*, is, That the Robbery or Felony does not alter the Property of the Goods; and therefore, into whatever County the Felon carries the Goods, 'tis a new Felony. But there 'tis not that ſpecial Reaſon in the principal Caſe, and therefore the Law is not the ſame. Suppoſing the Priſoner had been pardon'd the Treaſon, in coming into the firſt County of *Northumberland* without Licence; could he afterwards have been puniſh'd for Treaſon, for coming into the next adjacent County? This would be a pretty ſtrange Conſtruction of multiplying Treaſons. And if coming into every County would make a freſh Treaſon, a Man at that Rate may be brought to ſuffer as a Traitor, tho' with many Pardons about him. No ſurely, my Lord, 'tis the Original Act the Law regards; and the coming into a ſecond County does not make it a ſecond Treaſon; and therefore we take it, that the Indictment or Trial in this Caſe can't be in *Middleſex*, but muſt be in *Northumberland*, or ſuch other County, which was the firſt County of *England* that the Priſoner came into. Upon the whole Matter, we, with great Submiſſion, inſiſt, Firſt, That Her Majeſty's Proclamation amounts in Law to a Licence for the Priſoner to come from *France* into *Scotland*; nay, that it amounts to a Pardon to him, even of his Treaſon that he is now indicted for. But if that be againſt us, we, in the next Place, take it, That a *Scotchman* not reſident in *England* at the Time of the making this Act, is not within the Meaning of this Act. But if that alſo be againſt us, yet, in the next Place, we humbly inſiſt, That he cannot be indicted for this Treaſon in *Middleſex*, but muſt be indicted in the County where he firſt enter'd *England*. And 'tis ſufficient if any one of theſe Points are for us; and therefore we humbly hope the Priſoner ſhall be acquitted.

Mr. *Raymond.* My Lord, if your Lordſhip pleaſe, I'd beg the Liberty to offer a Word or two on the ſame Side for the Priſoner at the Bar.

I humbly apprehend, your Lordſhip expects no Apology from us, for appearing as Counſel in a Cauſe of this Nature, ſince 'tis by your Lordſhip's Permiſſion granted us in Purſuance of an Act of Parliament, that we have this Liberty; and I can't forget what your Lordſhip has ſaid formerly in this Place on the like Occaſion; That it is as lawful for the Gentlemen of the Bar to be Counſel in ſuch a Caſe, and that they are as much obliged to do their Duty for their Client in it, as in any other Caſe wherein by Law they are allowed to plead.

I ſhall therefore, the Fact being agreed on by both Sides, ſtate it as a Caſe, and ſubmit the Obſervations I ſhall make upon it to your Lordſhip's Opinion.

The Fact is no more but this:

Mr. *Lindſay*, being a Native of *Scotland*, came into *England*, and reſided ſome Time here; from thence he went into *France*, where he continued a conſiderable Time; after he was gone into *France*, and whilſt he was there, the Act of Parliament upon which he now ſtands indicted, was made. Afterwards the Queen granted a general Pardon and Indemnity to her Subjects in *Scotland* for all Treaſons, *&c.* Depending upon which, Mr. *Lindſay* returned into *Scotland*; and having had the Allowance of the Benefit of it there, he returned into *England*, coming by the Way of *Berwick* and *Northumberland* to *London*.

My Lord, I ſhall humbly inſiſt upon it in behalf of the Priſoner at the Bar:

Firſt, That he is not comprehended within the Words of this Act.

Secondly, That if he ſhould be within the Words, yet that he is not within the Meaning of the Act.

My Lord, I ſhall by no means preſume to arraign the Wiſdom or Juſtice of the Law-makers in making this Act, which, doubtleſs, was founded on great Reaſon, and was very neceſſary for the Preſervation of his late Majeſty's Perſon and Government. But let it be never ſo wiſe, never ſo juſt, or never ſo neceſſary, yet, with great Submiſſion, 'tis a very penal Law; partly, becauſe it has a Retroſpect, and makes that Fact an Offence, which was none at the Time when it was done (for before this Act, it was lawful for any one to have gone into *France*, between the Eleventh of *December*, 1688, and the Time of the proclaiming War with *France)*. But principally becauſe it makes the Offender againſt it a Traitor, therefore it muſt be expounded according to thoſe ſtrict Rules of Conſtruction the Law has appointed for other penal Statutes, and muſt never be extended by Equity beyond the Letter.

My Lord, as to the Penning of this Act, I muſt obſerve, there is not one Word in it of *Scotland*, or the Subjects of *Scotland*, in expreſs Terms.

The Queſtion then will be, What other Words in it can extend to Mr. *Lindſay*'s being a Native of *Scotland?* The moſt comprehenſive Words ſeem to be theſe at the Beginning of the enacting Part; *If any of her Majeſty's Subjects, who have*, &c.

I muſt beg Leave to inſiſt upon it, that Mr. *Lindſay* can't be called one of His late Majeſty's Subjects within this Act. I do agree he was the late King's Subject, as King of *Scotland*, but not as King of *England*; but this Act being made in *England* by the *Engliſh* Parliament, and uſing the Word Subjects, muſt mean ſuch Subjects as that Parliament were able to oblige; which are only the Subjects of *England*, or the Dominions depending on the Crown of *England*; but not the Subjects of *Scotland*, which is a diſtinct Dominion from *England*.

The King of *England* has a double politick Capacity in him, one as King of *England*, the other as King of *Scotland*; the two Nations are abſolutely diſtinct, and ſo are the Laws by which they are reſpectively governed: If therefore the King, as King of theſe two Kingdoms, has two ſeveral politick Capacities in him; if the Nations and the Laws are diſtinct, with Submiſſion, the Subjects of Neceſſity muſt be conſidered ſo too.

I am very ſenſible, My Lord, with what Solemnity *Calvin*'s Caſe in 7 *Rep.* is ſaid by my Lord *Coke* to have been adjudged; it ſhall be therefore, with a great deal of Submiſſion to your Lordſhip's Opinion, and Deference to the Authority of that Caſe, if I ſhall ſay any Thing that may ſeem to claſh with that Reſolution.

I confeſs that Caſe has determined, that Allegiance is a Quality of the Mind, and can't be circumſcribed by Place; that 'tis due to the Perſon of the King; and becauſe his natural Perſon can't be divided, the Allegiance owing to him is inſeparable and indiviſible, and therefore that there is an Union of Allegiance of both Kingdoms; and that a Man can't be conſider'd as a Liegeman or Subject, which is all one to the King, as King of *Scotland*, and not as King of *England*, and ſo *Vice Verſa*.

I'll beg Leave to conſider my Lord *Coke*'s Foundation, upon which this Reſolution is built, and ſubmit it entirely to your Lordſhip, whether that is able to ſupport it.

According to my Lord *Coke* himſelf in *Calvin*'s Caſe, Legiance is a true and faithful Obedience of the Subject due to the Sovereign, for which the Sovereign is obliged to protect his Subjects. *Protectio trahit Subjectionem, Subjectio Protectionem.* 7 *Co.* 5.

I ſuppoſe it will not be pretended that this Obedience due from the Subject to the Sovereign, is an abſolute blind Obedience to every arbitrary Command of the Sovereign; but is only ſuch an Obedience as the Law of the Kingdom, or Principality, or Dominion, has reſpectively preſcribed for the Subject to pay to his Sovereign; and the ſame holds as to the Sovereign's Part in point of Protection. If therefore this Obedience or Legiance (which is the ſame) is altogether preſcribed and governed by the Law of the Place where 'tis due, it muſt neceſſarily follow, that where the Laws are different, the Legiance or Rule of Obedience and Subjection muſt be different alſo; and conſequently the Legiance due to the King as King of *England*, and the Legiance due to him as King of *Scotland*, (ſince the Laws of both Nations are diſtinct) muſt be ſeparate and diſtinguiſhable: Were it not ſo, the ſame Act, if ſo in one, muſt in both Kingdoms be the Performance of the Subjects Legiance; and the ſame Act, if ſo in either, muſt in both Kingdoms be the Breach of it. But that that is otherwiſe, is eaſily to be proved; as for Inſtance, according to my Lord *Coke* in *Calvin*'s Caſe, 7 *Co.* 7, 6. The King of *England* may command any Subject of *England* to attend him in his Wars beyond Sea; but ſuppoſe by the Law of *Scotland*, a Subject of *Scotland* is not oblig'd to go with the King out of the Kingdom: The King commands a Native of *Scotland* to wait on him out of *Scotland* beyond Sea, and he refuſes; now by the Law of *England* he has broke his Legiance to the King, and yet in *Scotland* he is as good a Liege Subject (notwithſtanding this Refuſal) as any Subject the King has there.——In this very Caſe of Mr. *Lindſay*, by his Return into *Scotland* from *France* (if your Lordſhip takes the Word Dominions in the Act in as large a Senſe as I ſuppoſe the Queen's Counſel would have the Word Subjects took, that is, to all the Places in Subjection to the King, tho' not dependent on the Crown of *England*) he was become a Traitor to the Queen as Queen of *England*, which is the higheſt Breach of Allegiance that can be; and yet at the ſame Time (laying the Pardon out of the Caſe, and ſuppoſing there was no Law in *Scotland* to prohibit his coming thither) he was a very good Subject of the Queen's in *Scotland*, and not guilty of any Breach of Allegiance due to her there. Then certainly theſe two Allegiances are not the ſame, but diſtinguiſhable; one owing to the King as King of *Scotland*, the other owing to the King as King of *England*; and if the Allegiances may be conſidered ſeparately, ſo may the Subject (who owes thoſe Allegiances, and by owing of which he becomes a Subject) be ſeparately conſidered as ſuch in reſpect of them; and conſequently, that Mr. *Lindſay* being a Native of *Scotland*, muſt be regarded as a Subject of the King as King of *Scotland*, and not a Subject of the King as King of *England*, and ſo not within the Words of the Act, for the Reaſons offered to your Lordſhip before.

The ſecond Thing I begg'd your Lordſhip's Leave to inſiſt upon was, That taking it, that Mr. *Lindſay*, tho' a Native of *Scotland*, ſhould be comprehended within the Words, *any of his Majeſty's Subjects*, yet that this Act did not deſign to extend to any Native of *Scotland*, and conſequently not to him. With great Submiſſion to your Lordſhip, there are many Caſes in the Books where Statutes have received a Conſtruction contrary to the Words, to comply with their Intent. The Statute of *Glouceſter*, *Cap.* 1. Enacts, That the Diſſeiſee ſhall recover Damage, in a Writ of Entry, founded upon the Diſſeiſin, againſt him who is found Tenant; upon which *Litt. Sect.* 685. puts this Caſe, That if the Diſſeiſor makes a Feoffment of the Land to *B. C.* and *D.* and Livery of Seiſin is made to *B.* and *C.*; but *D.* was abſent, and never would agree to this Feoffment, nor take the Profits; *B.* and *C.* die, the Diſſeiſee brings a Writ of Diſſeiſin in the *Per* againſt *D.* who pleads this Matter; tho' he is a Tenant of the Freehold of this Land, yet no Damages ſhall be recovered againſt him. So in this Caſe, tho' the Words of the Act in their utmoſt Extent would comprize the Priſoner at the Bar; yet if the Parliament did not deſign they ſhould, a Conſtruction ſhall be made accordingly.

That the Parliament did not intend to concern themſelves with *Scotland*, or the Natives thereof, appears, with Submiſſion, by the Preamble (which is, as my Lord *Coke* terms it, *Co. Litt.* 79. a Key to find out the Meaning of the Law-makers).

The Words of the Preamble are, That upon the Concluſion of the Peace between his Majeſty and the *French* King, it was become neceſſary for the carrying on a Trade between *England* and *France*, That the Subjects of each Kingdom ſhould have, *&c.*——I ſuppoſe it will not be pretended that *Scotland* can be comprehended under the Word, of *England*; nor *Scotchman* under the Word, the Subjects of each Kingdom, that is, of *England* and *France*.——For if a *Scotchman* ſhould be took to be a Subject of the King of *England*, yet I humbly conceive he was never took to be a Subject of the Kingdom of *England*; the word Kingdom is the ſame as Realm, and is uſually applied to the Land of *England*, and not to the Dominions dependent on the Crown of *England*; as on the 35 *Hen.* VIII. *C.* 2. a Treaſon committed in *Ireland* was adjudged to be a Treaſon committed out of the Realm of *England*, and triable as a foreign Treaſon, *Orurke*'s Caſe, *Ander.* 262. *Pl.* 269. But if Kingdom or Realm ſhould be taken to have the ſame Signification as Dominion, that Caſe could not be Law, becauſe *Ireland* was never held to be out of the Dominion of the Crown of *England*; ſo that, with great Submiſſion to your Lordſhip, nothing in the Preamble affects the Priſoner at the Bar.

The next Thing to be conſider'd, is, what the Parliament meant by the Words, *If any of his Majeſty's Subjects, &c.* And I humbly hope your Lordſhip will think it reaſonable to let that Expreſſion be explained by the Word Subjects uſed in the Preamble, and ſo interpret them his Majeſty's Subjects of the Kingdom of *England*, which this Priſoner is not; and the rather, becauſe to conſtrue them to extend to *Scotchmen*, will be an Interpretation that will make the *Engliſh* Parliament make an Offence a Treaſon, which will not be in the Power of the *Engliſh* Government to puniſh, unleſs by Accident: For if a *Scotchman* returning out of *France* into *Scotland*, contrary to this Act, ſhould be a Traitor, yet he could not be puniſhed here, unleſs he accidentally came hither afterwards, becauſe the *Engliſh* Government has no coercive Means to fetch him from *Scotland* hither to be puniſhed.——But 'tis otherwiſe in reſpect of the Dominions depending on the Crown of *England*, as *Ireland*, *&c.* for a Man may be tranſmitted from *England* to *Ireland*, or *Vice verſa*, to be tried; as Colonel *Lundy* was, 2 *Ventr.* 314. but *England* can't compel the Government of *Scotland* to ſend a Man hither from thence to be tried. Then I humbly conceive that it can't be imagined, that the Parliament deſign'd to make an Offence a Treaſon, which can't be puniſh'd but by Accident here, ſince 'tis below the Dignity of a Government to have Offenders againſt their Laws, in Crimes of ſo high a Nature, out of their Power to puniſh——But of an *Engliſh* Subject it would be otherwiſe, tho' he was in *Scotland*, or any foreign Prince's Dominion, becauſe they might proceed againſt ſuch a Perſon to Outlawry, and upon Attainder confiſcate his Eſtate.

Another Thing I muſt beg leave to offer to your Lordſhip, as a Proof that this Parliament did not intend in this Act to include *Scotland*, or the Natives of *Scotland*, is, that the Paragraph which makes the taking of a Charter or Grant from the late King *James* to be Treaſon, is ſo far from relating to *Scotland*, or the *Scotch*, that it does not make it penal for any *Engliſhman* to take a Grant of Honour or Eſtate in *Scotland* from the late King *James*; the Words of the Act being, to be had or enjoy'd in the Kingdom of *England* or *Ireland*: So that the Parliament ſeemed induſtriouſly not to concern themſelves with any thing relating to *Scotland*; and yet doubtleſs they might have made it Treaſon for any *Engliſhman* to have took ſuch a Grant; and there had been as great Reaſon ſo to have done, if they had thought fit to have meddled with any thing relating to *Scotland*, ſince the taking of ſuch a Grant in *Scotland* by an *Engliſhman* from the late King *James*, had been as great a Derogation to the Liegance owing to the King, as if it had been of any thing in *England*; the Acceptance of ſuch a Grant amounting to an Acknowledgment of another Power beſides the King's.—So that for theſe Reaſons I humbly inſiſt upon it, that the Parliament did not intend to include any *Scotchman* within this Act.

But, my Lord, taking it that Mr. *Lindſay*, tho' a Native of *Scotland*, ſhould be within both the Words and Meaning of this Act; yet I muſt ſubmit it to your Lordſhip's Judgment, whether this Act could bind him, he being beyond Sea, *viz.* in *France*, at the Time when it was made. I do agree, that if any of the *Scots* have Lands, *&c.* in *England*, they ſhall be liable to pay all Duties impoſed by Act of Parliament on thoſe Lands. I do alſo agree, that every *Scotchman* reſident here, is bound by all the Laws of the Land; and ſo are all Foreigners whatſoever (be they *Danes* or *Swedes*, or of whatſoever other Nation they be) who live here under the King's Protection: But as ſoon as they are gone out of the Kingdom, their Allegiance, which was but local, ceaſes, and they are no longer obliged by the Laws of *England*. It muſt be agreed, that no *Engliſh* Act of Parliament can bind *Scotland*, nor, as I humbly apprehend, the *Scots*, whilſt out of *England*; if ſo, then how could this Priſoner be bound by this Act, being a *Scotchman*, and out of this Kingdom at the Time when the Act was made? With great Submiſſion, his coming into *England* alone could not ſubject him to this Law; for there ſeems to be a great Difference between this Act, and other general Acts or Laws of this Place: For, as I ſaid before, if a *Scotchman* comes into *England*, and inhabits here, he is liable to all the Laws then in Force, and ſhall be puniſhed for the Breach of any of them; becauſe he was before protected by thoſe Laws, and therefore muſt be obedient to them. But in this Caſe, the Subjection to the Law, and the Offence, began at the ſame Inſtant; for before his Landing in *England*, this Law had no Power over him, and the very Act of Landing made the Offence in this Indictment; 'twill be therefore ſomething ſevere to conſtrue that Act, which only makes the Priſoner liable to the Law, to be a Breach of it. As to this Matter, there will be no Difference between a *Scotchman* or a *Dane*: Both, when here, are bound by the Laws; neither, when abſent. Suppoſe it ſhould be enacted, That if a *Dane* ſhould land in *England* without Licence from the King, he ſhould be a Traitor; and a *Dane* notwithſtanding ſuch Act ſhould come into *England* without ſuch Licence, would he be a Traitor? With humble Submiſſion, Not. Such Act might amount to a Prohibition of his coming, and make him be uſed as an Alien Enemy, 7 *Co.* 6 *B.* as *Perkin Warbeck* was in *Henry* the VIIth's Time; but could not make him a Traitor, becauſe he owed no Allegiance to the King, nor Subjection to the Law, at the Time when the Act was made. As to the Priſoner's having been in *England*, and having reſided here before; that, I humbly think, will make no Difference, becauſe his Subjection to the *Engliſh* Law ceaſed, as ſoon as he ſtept off from the *Engliſh* Shore.

What I ſhall beg Leave further to inſiſt upon for the Priſoner (ſuppoſing your Lordſhip ſhould be of Opinion againſt him on the former Points) is, That this Evidence don't maintain the Indictment. The Indictment is for returning without Licence from *France* into *England*: The Evidence is, That he returned out of *France* into *Scotland*, and from thence into *England.* The Act of Parliament is, *That if any of His Majeſty's Subjects,* &c. *return into this Kingdom of* England, *or other His Majeſty's Dominions:* The Meaning of which, we for the Priſoner humbly take to be, That the firſt coming of any ſuch Perſon as is within the Act, into any of his Majeſty's Dominions, ſhall be the Treaſon; and that the Act did not intend to make every ſeveral Coming into every diſtinct Dominion a new Treaſon; as if ſuch Perſon ſhould come out of *France* firſt into *Scotland,* then into *Ireland,* thence into *Jerſey,* and ſo into *England,* the Act, with Submiſſion, did not deſign to make this Perſon liable to be indicted for four Treaſons; but that into what Dominion he firſt came, for that he was a Traitor and puniſhable: And that Conſtruction ſufficiently prevents the Miſchief and Danger the Act deſign'd to arm againſt. For if a Man ſhould come without Licence into any one Dominion, and is look'd on as a dangerous Perſon, the taking away his Life will prevent any future Miſchiefs from him. If he has a Licence to come into one, 'tis to be believ'd, with a great deal of Reaſon, he may be truſted in any other of his Majeſty's Dominions; or elſe his Majeſty would never have granted him a Licence to return into any of his Dominions, where he would be equally capable of putting in Execution any dangerous Practices againſt the Government. If that ſhould be the Meaning of the Act, then, with Submiſſion, this Indictment ought to have been for coming into *Scotland,* which was the Place he firſt came into, for there was the Treaſon, and not for coming into *England.* Beſides, if the coming into *Scotland* was the firſt and only Treaſon puniſhable by this Act, then we muſt offer the general Pardon of *Scotland* in the Priſoner's Excuſe: Not, my Lord, that I can pretend that a Pardon in *Scotland* can pardon a Treaſon in *England*; but we muſt beg Leave to inſiſt upon it, as amounting to a Licence to return into *Scotland.* I do expect that it will be objected, that the Licence which this Act appoints, muſt be under the Privy-Seal of *England,* which this *Scotch* Pardon can't be pretended to be. I confeſs, my Lord, the Words are, without Licence from his Majeſty under his Privy Seal. But 'tis not ſaid Privy-Seal of *England.* And tho' generally ſpeaking, when an *Engliſh* Act mentions the Great-Seal or Privy-Seal, it muſt be took to be the Great-Seal or Privy-Seal of *England*; yet in this *Engliſh* Act, if your Lordſhip will conſtrue the Words, *His Majeſty's Subjects,* not only to be his Subjects as King of *England,* but as King of *Scotland,* or any other Nation; if your Lordſhip will conſtrue the Word *Dominions,* to be not only the Dominions dependent on the Crown of *England,* but alſo all other Dominions of which his Majeſty was King, as *Scotland*; by Parity, the Words, Privy-Seal, ought to be extended to all the Privy-Seals the King has, as King of *England,* or King of *Scotland.* And if ſo, then ſince the Queen has in Her Proclamation declared, that her Pardon ſhall be took as beneficially as if it had been under the Great-Seal; but the Great-Seal includes the Privy-Seal, and is of greater Efficacy: We humbly hope, that it will be as beneficial to the Priſoner, as if it had been under the Privy-Seal; nay, rather more, becauſe as to *Scotland* it pardons the Offence; for tho' the Return is after the Pardon, yet it pardons the going into *France,* which is the Foundation of the Crime, and without which the returning into *Scotland,* or any of His Majeſty's Dominions, was no Offence: This is the Uſe the Priſoner would make of this Pardon. I can't preſs it as a Pardon of an *Engliſh* Crime; tho' with great Submiſſion to your Lordſhip, it ſeems ſomething ſtrange, that Mr. *Lindſay* ſhould by virtue of this Pardon be a very good Subject of the Queen's in *Scotland,* and have all the ſame Liberties other of his Countrymen have there, and yet that he ſhould be a Traitor againſt the Queen here in *England*; that he ſhould be within the Queen's Protection there, and out of her Protection here; and yet at the ſame Time that his Allegiance to her can't be ſevered, nor he conſidered as a Subject to her, as Queen of *Scotland,* and not as Queen of *England.*

But admitting the Pardon will not avail the Priſoner in any reſpect, and that your Lordſhip ſhould be of Opinion that his coming to *England* is a Treaſon, notwithſtanding he returned from *France* into *Scotland* firſt; then I muſt inſiſt upon what Mr. *Williams* has before mentioned, that this Indictment is ill, and that he ought to have been indicted in the County which he firſt came into, which was impoſſible to be *Middleſex*; and I muſt ground it on the general Rule that all Crimes are local, and inquirable by the Grand Jury of the County where they are committed. Even in Batteries, which are tranſitory in Actions; yet, with Submiſſion, Indictments are local, and muſt be enquired of by the Grand Jury of the County where they are committed. My Lord, I ſhall treſpaſs no longer upon your Lordſhip's Patience, only juſt beg Leave to ſay, that upon the whole Matter, for the Priſoner at the Bar, I humbly inſiſt upon it, That he being a Native of *Scotland,* is not within the Words of this Act: For if he ſhould be within the Words, yet he is not within the Meaning of the Act. But if both thoſe Points are againſt me, That, as this Caſe is, he is not obliged by it. If I ſhould fail in all theſe, then I muſt have recourſe to the Conſtruction of the Act, that it intended only to make the firſt Entry into any of the Queen's Dominions Treaſon, and conſequently that this Treaſon was upon his Return to *Scotland,* and ought in the Indictment to have been laid as ſuch: For which Reaſon I humbly conceive, that the Indictment is not only ill, but that the Pardon will amount to a Licence. But if your Lordſhip ſhould be of Opinion he is indictable for coming into *England,* that then the Indictment ought to have been laid in that County where he firſt came into. If any of which Points hold, with Submiſſion, the Priſoner can't be found guilty on this Indictment; but your Lordſhip will be pleaſed to direct the Gentlemen of the Jury to acquit him, which I humbly pray in his Behalf.

Sir *Thomas Powis.* My Lord, I have obſerved theſe Gentlemen in the Method they have gone, and will follow them in the ſame Manner to give them an Anſwer. What we have to ſay will be nothing but with reſpect to the Law, as it now ſtands upon the Act of Parliament: Whether the Caſe deſerves Mercy or no, is not the Queſtion here, that will be conſider'd in another Place. Our Part is to maintain the Law as it ſtands with reference to this Indictment; it muſt be owned, that a great deal of that which has been ſaid might have carried Weight with it, if it had been pleaded in *Scotland,* where the Proclamation was made; but to make uſe of it here in *England,* as having any Force in this Caſe, is not agreeable to Law or Reaſon. Firſt, no Man can ſay a Pardon, if it had been under the Great-Seal of *Scotland,* could pardon a Crime committed here in *England*; but it is not ſo, for it is not under any Seal at all. But ſuppoſing it were to be taken in the Extent they would have it, yet it would not be a ſufficient Pardon in this Caſe. For theſe two Things muſt be conſidered. Firſt, It is a Pardon only of Crimes committed in that Kingdom. Secondly, It cannot be a Pardon of a Crime committed ſince that Pardon granted; for we muſt mind the Date of that Pardon, and the Crime he is tried for. The *Scotch* Pardon is dated in *March* 1702-3, that was *March* was Twelvemonth. No Man can ſay a Proclamation in that Kingdom can pardon a Crime that was committed afterwards. Now this Crime was committed in *December* laſt, for then it was he returned into *England*; therefore that Pardon can never extend to this Caſe. So that theſe two Things, if conſidered, will be ſufficient to anſwer all that has been inſiſted on by way of Pardon. Firſt, it is a Pardon of another Kingdom for Offences committed againſt the Crown of *Scotland*; whereas this Indictment is for an Offence committed againſt the Crown of *England.* And ſecondly, It was granted at a Time precedent to the Time of this Offence committed: But next, they ſay, the Pardon in *Scotland* will amount to a Licence from the Queen to go into *Scotland,* and that then by Conſequence he was free to come into *England*; with Submiſſion, we think they cannot make ſuch an Inference, for the Queen's Pardon cannot extend to ſuch a double Purpoſe. Suppoſe the Queen had expreſly pardoned his going into *France* and returning into *Scotland,* that would not have amounted to a Licence to come into *England.* So that we deny their Inference, that the Pardon in *Scotland* amounts to a Licence to come into *England.* But in the ſecond Place, If the Queen had expreſly given him a Licence to go into *Scotland,* (tho' I do not admit that to be the Caſe) yet I deny that that would have been a Licence to come into *England.* If the Queen under the Privy-Seal of *Scotland,* ſhould have admitted him to come into *Scotland,* yet that would not have been a Licence for him to come into *England*; for it would have been a ſpecial Licence to go to one Place, which can never be reckoned, in ſuch a Caſe as this is, a Licence to go to another Place in another Kingdom. For the King or Queen might perhaps think fit to licenſe one to come into *Scotland,* and yet not think it convenient to licenſe him to come ſo near their Royal Perſon, as he would be here in *England.* So that there is no ſuch Licenſe in that Pardon as is inſiſted on; and if there had been, yet it would not have had that Operation to licenſe him to come to *England.* The next Thing they ſpeak moſt fully to (and which is very conſiderable, if they make it out) is, that the Words of this Act of Parliament, upon which the Indictment is founded, or at leaſt the Meaning of them, cannot be extended to a Native of *Scotland.* As for the Words of the Act, we need do no more than read them, to make it appear to be otherwiſe. It is obſerved by them very truly, that *Scotland* is no Part of the Kingdom of *England*; but they muſt admit it as a Part of the Dominions of the Queen of *England,* though not Part of the Kingdom of *England.* They would do little Service to the Subjects of *Scotland,* if they ſhould endeavour to overthrow *Calvin*'s Caſe, which was ſo ſolemnly determined near an hundred Years ago, which enables them of *Scotland* to come into *England,* and enjoy the ſame Privileges here, as the Subjects of *England* do. Certainly, as they are let into all theſe Benefits by the Reſolution of that Caſe, ſo they are at the ſame Time the Subjects of the King or Queen of *England.* That the Words therefore of the Act are againſt them, nothing can be plainer; *If any of His Majeſty's Subjects, who, ſince the Eleventh of* December, 1688, *have gone into* France.———This leaves them no room for Diſpute; it ſays not, if any of the Subjects of the Kingdom of *England,* but if any of his Majeſty's Subjects; ſo that whoever was a Subject of the late King is within the Act. The Words are without any Reſtriction whatever, *If any of His Majeſty's Subjects*; and they will not deny but that a *Scotchman* was a Subject of His late Majeſty. But then they ſay, if the Words ſhould extend to it, the Meaning of the Act cannot. With Submiſſion, we think the Caſe before you is within the Words and Meaning of the Act, and within the Miſchief which the Act provides againſt. For at the Time this Act was made, it being taken Notice of, that upon the Peace concluded, there would be a Door opened for a Communication between *England* and *France,* and that many Perſons who had reſorted thither, who had been actually in Arms there, and other diſaffected Perſons, might take Advantage, and be encouraged from thence to form and carry on treaſonable Deſigns and Practices againſt His Majeſty's Perſon and Government; Therefore, to obviate that Miſchief, this Act was made in ſuch general Words, That if any of His Majeſty's Subjects, who had gone voluntarily into *France,* ſince the Time mentioned in the Act, without Licence, let them be born where they would, whether they were of the one Kingdom or the other, the Miſchief of their returning without Licence was equal. And by conſequence, it was the Meaning of the Act to exclude one as well as the other; for the Deſign of the Act was to prevent the Danger that might ariſe by ſuch Perſons coming over. But as to this preſent Caſe, if what the Witneſſes have ſaid be true, it would be very miſchievous indeed, if a Perſon that had been reſident here for near twenty Years, as the Priſoner was, by his own Witneſſes, and afterwards went into *France* without a Licence, if he may be allowed to return back again without a Licence, becauſe not originally a Native of *England.* By the ſame Rule, all thoſe Perſons that have done the like, both of *Scotland* and *Ireland,* would be at Liberty to return alſo, becauſe not Natives of *England*; which was not ſurely the Meaning of the Act of Parliament, nor ought the Conſtruction of the Words ſo to be taken. It's true, we can't here by an Act bind them in *Scotland*; but we are not now putting in Execution this Act in *Scotland,* but putting it in Execution here in *England* on a *Scotchman* that had been long an Inhabitant here before. My Lord, the next Thing that was inſiſted on, is, that if he be ſuch a Subject as may be conſtrued within this Act, and if the Pardon ſhould not have the Effect they contend for, yet they ſay, this Indictment is laid in the wrong Place, it ought to have been laid in the County where he firſt arrived. There need little to be ſaid to this, becauſe the Proſecution is made where the Party was apprehended. The Objection they make, is that which would render it impracticable to proſecute any for this Offence. For how is it poſſible to know where a Man firſt privately arrived? That which is enough to charge him, is, that he was firſt found in ſuch a Place in *England*; for 'tis not ſaid in the Act, that they ſhall not return to this or that County, but not to *England.* And then wherever he is found in *England*, there the Indictment may be laid againſt him. And the Caſe of the Felony comes home to this Point; the Man that ſteals Goods in one County, may be indicted in any other County where he carries them. So he that returns into *England* contrary to the Act, wherever he is apprehended, he carries the Crime with him. And it does not appear, but that this is the firſt Place where he was found. They ſay, It is impoſſible to come from *Scotland* into *Middleſex*, without firſt coming into ſome other County; but it is agreed, that this is the Place where he was firſt apprehended. Therefore, upon the whole Matter, the Fact being confeſſed, we inſiſt that he is within the Words and the Meaning of the Act, and within the miſchievous Conſequences which are intended to be prevented by it.

Mr. *Att. Gen.* My Lord, I would not ſpeak any Thing to aggravate Matters againſt the Priſoner; but there have been ſome Things ſaid by his Counſel, which I think fit to be taken Notice of.—They have given him a Character for his Faithfulneſs to the Queen, and called ſome Witneſſes to it: And Mr. *Williams* was pleaſed to ſay, His owning the Facts charged againſt him in the Indictment (whereby he ſaved the Court and the Queen's Counſel a great deal of Trouble) was an Argument of his Sincerity.—I only ſay, I believe he had a better Opportunity by other Methods, to have ſhewn it. My Lord, Every one knows from whence he came (*viz.* from *France*), and how long he ſtay'd there, and in whoſe Service. And it would have been a better Argument of his Sincerity, if he had given an Account of his Knowledge of what paſs'd in *France* while he was there; and probably would have been of more Advantage to him, than ſaving the Trouble of proving what (he knew) we were ready and able to prove.

What has been ſaid as to the Act in general, is ſomething ſurprizing to me; to hear any *Engliſhman* complain of the Hardſhip of this Law, on which the Priſoner is indicted, which was made for the Preſervation of the King's Perſon and the Government, and by the Wiſdom of the Nation thought neceſſary. But as to the Matters of Law the Priſoner's Counſel have inſiſted on, they are reducible to two Heads.

Firſt, That the Queen's Proclamation in *Scotland*, pardoning Her Subjects of *Scotland* of all Treaſons, *&c.* amounts to a Licence to return to *Scotland*, by pardoning the Offence in going to *France*; and every Subject of *Scotland* may lawfully come thence into *England.*

Secondly, That the Priſoner ought to have been indicted in the firſt County into which he firſt returned; which is impoſſible to be *Middleſex.*

As to the firſt Matter, it has been ſaid, That a Native of *Scotland* is not bound, nor can be puniſh'd by a Law made in *England.* And the Counſel, tho' they have not denied the Authority of *Calvin*'s Caſe, yet they do ſeem to diſlike the Reſolution of it. Now he is (according to *Calvin*'s Caſe) a Subject of *England.* That Caſe was more beneficial to the Subjects of *Scotland* than to the Subjects of *England*; and it has been always allowed to be Law ever ſince. But, my Lord, we are not to conſider this Gentleman in this Caſe as a *Scotchman* abſolutely, but as a *Scotchman* here in *England.* How far an Act made in *England* would affect a *Scotchman* that ſhould return into *Scotland*, I need not meddle with. But the Queſtion here is, Whether an Act of Parliament made in *England*, will not bind every Perſon that is reſident here in *England?* Now the Priſoner was reſident here in *England* with his Family, and went hence to *France:* And by the Law, every *Scotchman* reſiding in *England*, is an *Engliſhman*, and hath Right to enjoy the Privileges of an *Engliſhman.* This is the Reſolution of *Calvin*'s Caſe. I will give but one Inſtance of this. The Act of Navigation made 12 *Car.* II. requires, in many Caſes of Goods imported, that the Maſter, and three fourth Parts of the Mariners, ſhall be *Engliſh.* The Act of 14 *Car.* II. *Chap.* 11. of Frauds, declares, That any of her Majeſty's Subjects of *England*, *Ireland*, and the Plantations, ſhall be accounted *Engliſh*, and no others.

Now the Natives of *Scotland* inhabiting in *England* or *Ireland*, have always been allowed to be *Engliſh* or *Iriſh* within the Act of Frauds; and have enjoy'd the Privilege ever ſince of being Maſters of Ships: And the ſame hath been allowed them on all Trials in the Court of *Exchequer*, that is, according to *Calvin*'s Caſe; That to all Intents and Purpoſes, a *Scotchman* being in *England*, enjoys the Privileges of an *Engliſhman*, he is a Subject of the Crown of *England.*

But give me Leave, my Lord, to conſider how the Priſoner comes to be affected by this Act: Not as being her Majeſty's Subject, living in *Scotland*; but he is bound by this Act, as he is a Subject reſiding here in *England.* For as to what they ſay, that his Offence is going into *France*; that is not the Matter he is charged with: That is the Deſcription of the Perſon that falls under the Diſability of the Act: [A Man under theſe Circumſtances.] But his returning from *France* into *England* (being a Perſon deſcrib'd by the Act) is the Offence.

My Lord, his returning is the Offence: Not his returning to *Scotland*, but returning to *England*, or any other her Majeſty's Dominions, bound by the Acts of Parliament made in *England.* The Act is, *If any of his Majeſty's Subjects return:* And every *Scotchman* that reſides here, is a Subject of the Queen. Every Law that is made in *England* will bind every *Scotchman* that reſides here; and this will bind him from returning into *England* without Licence; which is all that is in this Caſe.

It hath been objected, The Act cannot bind the *Scots* here, becauſe they have no Repreſentative in Parliament. But that is not ſo: They may be Freemen of Corporations, and are capable of being Freeholders; and as ſuch, may be repreſented in Parliament. The Penning of the Act ſhews, the Parliament intended to include all Subjects, that might in the utmoſt Latitude be called Subjects. The Words are [If any of his Majeſty's Subjects, that have gone into *France*, ſhall return into *England.*] So that the Act ſays, They that were his Majeſty's Subjects, and went into *France*, and did return, ſhall be guilty. Therefore, what hath been ſaid of the Laws of *England* binding *Scotland*, is quite out of this Caſe.

The Counſel for the Priſoner have argued, That the Proclamation of Indemnity in *Scotland*, is a Licence to return into *Scotland.* I would fain know where they find that. If there were a Pardon under the Great Seal of *England* for all Offences committed, I would be glad to know whether that would be accounted a Licence to return into *Scotland?* No, certainly. They have ſaid, That the Matter that hinder'd the returning to *Scotland*, was the Offence of going to *France* without a Licence; which Offence is remitted by the Pardon. That is plainly a Miſtake: For the Act had not Regard to any Offence of going to *France*; referring to the 11th of *December*, 1688, when, and long after, it was not any Offence to go thither without a Licence: Every Man, till the War was declar'd, might have gone thither without Licence. And yet by this Act, thoſe that went between that Time and the War declared, as well as thoſe that went during the War, are prohibited to return without Licence. So that the Pardon which they rely on, cannot avail the Priſoner: For the Act did not regard Crimes committed; but, as the Preamble is, it was made to prevent an Inconvenience which might follow by diſaffected Perſons returning, who might form and carry on traiterous Conſpiracies againſt the late King and the Government. And the Parliament look'd on Perſons to be diſaffected, that left their Country, and went and ſtay'd in *France* after the late King went thither; and therefore judg'd it not reaſonable to have ſuch truſted here, without the Government ſhould licence their Return.

The Perſons mentioned in the Act are characterized: So that as to the Matter of the Pardon (if it were an *Engliſh* Pardon) it would not bring them from under the Act. Beſides, any Licence or Pardon in *Scotland*, cannot indemnify them from an Act made in *England.*——The Law and the Seals of each Kingdom are diſtinct: And an expreſs Licence under the Seal of *Scotland* to return to *England*, nay an Act of Parliament for that Purpoſe there, would not avail; for no Act of *Scotland* can take off a Diſability laid on by any Act made in *England.* For this Act is a baniſhing them from *England*, unleſs the Queen gives a Licence to return.

My Lord, It is an extraordinary Thing which they argue from the Preamble of the Act, that mentions the carrying on the Trade between *England* and *France*; and *Scotland* being not named, the Act ſhall not extend to the *Scotchmen.* I do not ſee what can be gather'd from that—The *Scotchmen* reſiding here, are conſidered as *Engliſh*; and being here, are bound by the *Engliſh* Laws; elſe the *Scots* would be in a better Condition here than the *Engliſh.* But, my Lord, that which we inſiſt on, is, That the *Scots* reſiding here, are to all Intents *Engliſhmen*; that they are ſubject to the Laws of *England*, and bound by them. The going firſt to *Scotland* will not avail the Priſoner; for the Offence is, returning to the Place from whence he went, that is, *England.* Whether his returning to *Scotland* be an Offence within this Act or not, is not material; nor whether an Act of Parliament made in *England*, can baniſh a *Scotchman* from *Scotland:* But it is, That an Act of Parliament in *England* may prohibit any *Scotchman*, or any other Perſon, from returning out of *France* into *England.*

My Lord, The next Matter, which they mightily inſiſt on, is, as to the Place of Trial: But if that Objection ſhould prevail, it would make the Act ridiculous and uſeleſs. For then it would lie on the Queen's Counſel to prove, Where a Perſon (who privately return'd, and got into the Kingdom) firſt landed. But the Act ſays (If they ſhall return into *England.*) And wherever he is found, thither he is returned. There was an extraordinary Thing ſaid indeed: That if we can make it Treaſon wherever he is found, then he may be tried in every County he comes into, although he be pardoned, or tried, for returning into one County. Certainly that will not be ſo. For the returning is but one Treaſon; and tho' he may go into ſeveral Places, yet when he is tried in one Place, and convicted and pardon'd for that, it diſcharges him wholly. For the returning is but one entire Offence, tho' having been in many Places: The Queen may proceed againſt him in any one of them. It is like the common Caſe of an Eſcape. An Eſcape is an Eſcape in every County, wherever the Party goes afterwards: And the Party eſcaped, or the Sheriff may be proceeded againſt in any County whither the Party eſcaped goes, as well as in that whither he firſt eſcaped. And without this be ſo, the Act can never be put in Execution.

My Lord, I think this is the Subſtance of what they have ſaid; that an Act made in *England*, will not bind a Native of *Scotland.* We think an Act made in *England*, will bind ſuch a one reſiding in *England.* Now the Priſoner was reſiding in *England* for twenty Years; and he is both within the direct Words, and within the Intent and Meaning of the Act. There are a great many of them that are in *France:* And I believe the Parliament never intended to leave the *Scots* free to return into *England*, any more than the *Engliſh.*

Mr. *Lindſay.* My Lord, I deſire to know, whether the Queen's Licence does not ſet us free, as well in *England* as in *Scotland?* And whether one that has a Licence to come into *Scotland*, may not come into *England* too?

Mr. *Att. Gen.* One may be brought to a Trial here, tho' he had a Licence in *Scotland.*

Mr. *Lindſay.* My Lord, Her Majeſty's Pardon extends further than a Licence: It reſtores to all the Privileges I had before.

L. C. J. Holt. If I take you right, you mean This Pardon in *Scotland* ſecured to you all the Advantages you had at the Time of your Birth, or at any Time before your Departure out of *England*; ſo that you are not to be impeach'd, or convicted of any Crime you have committed againſt the Laws of *Scotland*; but you are thereby upon the ſame Foot, and have the ſame Rights and Privileges as any other *Scotchman* hath, that hath never offended: And every innocent *Scotchman* hath a Right and Liberty to come into *England* when he will. Which is very true, that the Pardon diſcharges all Diſabilities and Incapacities that you have incurr'd by any Offence committed againſt the Laws of *Scotland*, but not any committed againſt the Laws of *England.* That is, ſuppoſing the Pardon had been ſubſequent to your Return into *Scotland*, and that your Return hither had been High Treaſon by this Act.

Mr. *Lindſay.* My Lord, I think this Pardon reinſtates me in all the Privileges I enjoy'd before.

L. C. J. Holt. I tell you no: It only reſtores you to the Privileges that you had as a *Scotchman*; and which you would have loſt, if convicted of thoſe Offences by the Law of *Scotland*; but exempts you not from any Puniſhment to which you were then obnoxious by the Law of *England.*

Mr. *Att. Gen.* My Lord, I would ſay but this only; That ſpeaking of the Pardon, as a Pardon, it cannot pardon a Crime before it is committed. If the Pardon granted in *Scotland*, would pardon a Crime committed in *England*; yet it would not pardon a Crime committed afterwards.

L. C. J. Holt. But obſerve what he ſays. Says he, I am by this Pardon made a Free *Scotchman:* (And it is to be admitted, that the Pardon of *Scotland* has that Effect.) And if, ſays he, this Pardon has made me as Free a *Scotchman* as I was before, *Ergo*, I may come into *England*, as well as any other *Scotchman* that was under no Diſability.

Mr. *Att. Gen.* My Lord, he is bound by the Laws of *England*, as he reſided here: It has been the conſtant Practice. He does not pretend that he had King *William*'s, or the preſent Queen's Licence to come into *England*; only that he had the Queen's Licence to come into *Scotland*.

L. C. J. Holt. You hear what he ſays.

Mr. *Soll. Gen.* My Lord, the ſeveral Facts alledged in the Indictment, are admitted to be true; except that the Priſoner was a Subject to his late Majeſty; and, that his Return into *England* ſince the 14th of *January*, 1697, was without Licence.

'Tis objected, he was not a Subject of his late Majeſty within the Meaning of the Act, becauſe he was a *Scotchman*.

Whoever is born under the Legiance of the King of *England* is a Subject of the King; and 'tis admitted Mr. *Lindſay* was ſo born.

It has been likewiſe objected, His Return was not without Licence.

'Tis not pretended he had ſuch a Licence as the Act of Parliament ſpecifies, and the Indictment mentions; a Licence under the Privy Seal, to return into *England*.

But 'tis inſiſted on, That the General Pardon in *Scotland* does, by Conſtruction of Law, amount to ſuch a Licence.

It can't ſurely, with any Colour of Reaſon, be urg'd, That ſuch a Pardon ſhould be conſtrued any farther than a Licence to return into *Scotland*; and ſuch a Licence would not excuſe the Priſoner.

My Lord, this Pardon in *Scotland* can have no Relation to the Offence in Queſtion. A Pardon in that Kingdom can't extend to any Crime, which by the Laws of *Scotland* can't be there puniſh'd. But had that Pardon, which paſs'd in *Scotland*, been under the Great Seal of *England*, it could have been of no Service to the Priſoner. As a Pardon it could not, becauſe 'tis precedent to the Offence, and it can't by any Implication amount to a Licence.

The Reaſon offer'd, why it ſhould be ſo conſtrued, is, That the Offence, whereof the Priſoner ſtands indicted, is of a complicated Nature: That it conſiſts of two Parts; going out of *England* into *France*; and, returning out of *France* into *England*. That the firſt Part of this Offence (his going to *France*) being pardoned, he can't be proſecuted for his Return.

The Suppoſition whereupon this Argument is founded, is a Miſtake: For after the 11th of *December*, 1688, any Man might (before the War was proclaim'd) have, without any Offence, gone into *France:* And therefore, his going thither after the 11th of *December*, 1688, is no Part of the Crime; but a Deſcription of the Perſon, whoſe Return without Licence was enacted to be High Treaſon.

Mr. *Conyers.* My Lord, the Priſoner inſiſts on the Benefit of Her Majeſty's Proclamation of Pardon in *Scotland*; which (as has been already taken notice of) bears Date in March, 1702-3, and cannot extend to pardon a Treaſon ſince that Time. The Treaſon for which he ſtands charged, was not till *December* laſt; then he came into *England* without Licence of the Queen: He voluntarily went into *France* without Licence, ſince the 11th of *December*, 1688. He came back into *England* without Licence, in *December* laſt; and for that he ſtands charged with Treaſon, by Virtue of the Act of Parliament in the ninth Year of the late King. But the Inference he makes from this Pardon, by the Queen's Proclamation in *Scotland*, is, That he is thereby reſtored to all the Privileges of a *Scotch* Subject, and conſequently may freely come into the Kingdom of *England*, as any other of her Majeſty's native Subjects of that Kingdom may do. Now the Pardon in *Scotland* can only extend to exempt him from Puniſhment for any Crimes committed in that Kingdom; and he can have no Benefit of it for a Crime committed againſt the Laws and Statutes of *England*, which is a diſtinct Kingdom, and govern'd by Diſtinct Laws. And ſuch Inference as he makes from this Pardon, is both againſt the very Words and Meaning of the Act of Parliament, upon which he ſtands indicted. The Words are very expreſs and plain: *Any of her Majeſty's Subjects, who have at any Time ſince the* 11*th of* December 1688, *voluntarily gone into* France *without Licence* (as the Priſoner confeſſes he did) *and after the* 14*th Day of* January, 1697, *ſhall return into* England, *or any other Her Majeſty's Dominions, without Licence* ——— *ſhall be judged guilty of High-Treaſon.* He was reſiding in *England* after the 11th of *December*, 1688. He went from *England* into *France*; and is returned into *England* without Licence, ſince the 14th of *January*, 1697, and ſo is within the expreſs Words of this Act. And the Intent of the Act will appear by the Preamble. The Miſchiefs and Inconveniencies apprehended at the making of this Act, were, That *the Freedom of going and coming out of* England *into* France, *and from* France *to* England, *by the reſpective Subjects of each Kingdom after the Peace, might be an Encouragement to ſuch of the King's Subjects, who had been engaged in traiterous Deſigns and Conſpiracies againſt his Majeſty, who might be encouraged to form and carry on treaſonable Deſigns and Practices againſt the King and the Government, to come out of* France *into* England. The Perſons from whom thoſe Dangers were apprehended, were ſuch Perſons as are deſcribed in this Act; and therefore, for the Safety and Preſervation of His Majeſty's Perſon and Government, the Intent of this Law was to prohibit their returning into *England*, without ſuch Licence from His Majeſty under His Privy-Seal.

L. C. J. Holt. Have you any more to ſay? Or have you any thing to reply?

Mr. *Williams.* My Lord, we would ſave your Lordſhip's Time as much as might be; but we humbly inſiſt, that our Objections are not anſwer'd: And it being upon a new Law, and in Caſe of Life, we pray that the Matter may be found Specially.

L. C. J. Holt. If we ſee any Reaſon to doubt it, it ſhall be found Specially. But what you have ſaid, overthrows *Calvin*'s Caſe; for you urge, That you are a Subject of *Scotland*, and ſo not within this Act of Parliament. But you ought to conſider, That as you are a Subject of *Scotland*, ſo alſo you are a Subject of the Crown of *England* by being a Native of *Scotland* ſince the Acceſſion of *Scotland* to *England*, which is by the Law of *England*. And if the Caſe had been, that you had only departed from *Scotland* into *France*, and from thence returned into *Scotland*, and ſtay'd there without ever coming into *England*, the Caſe would have been much different: For it may be, the Law of *England* cannot oblige a *Scotchman*, for any Act by him done in his own Country (though there is no Occaſion to give any Opinion of that); but an Act of Parliament in *England*, may ſubject any *Scotchman* to any Penalty, for any Act that he ſhould do in *England*. Suppoſe a *Scotchman* going out of *Scotland* into *France*, ſince the 11th of *December*, 1688, that ſhall return into *England* ſince the 14th of *January*, 1697, he ſeems to be within the Words and Meaning of the Act. But there is no need of determining that Point now: The Priſoner being a *Scotchman* born, and having been in *England* for a long Time, and departing from *England* into *France* within that Time, and returning into *England* afterward, is to all the Purpoſes within the Letter and Deſign of the Act: For being a Reſident in *England* at that Time, you are to all Purpoſes a Subject of the Crown of *England*, as much as any Native of *England*; and your departing into *France*, and remaining there for ſo long Time, and returning without Licence, is the ſame Danger that the Act of Parliament intended to prevent.

Mr. *Williams.* My Lord, I would not preſume to ſay any thing in Derogation of *Calvin*'s Caſe: But I ſay, that tho' a *Scotchman* may be as a Natural-born Subject of *England*, yet he may not be within the Meaning of this ſo penal a Law.

L. C. J. Holt. Certainly within the Meaning, if within the Words and Reaſon. But there is another Point that you, his Counſel, have urged in his Behalf; which is, That this Pardon is a Licence to him to return into *Scotland*. Which in Truth is not; for it is to another Purpoſe, *viz.* To pardon and diſcharge all Treaſons and Crimes committed in *Scotland*; but not give a Licence to return into that Realm: But ſuppoſe it to be a Licence to go into *Scotland*, that will not be a Licence to return into *England*. The Treaſon is, to return into the Realm of *England*, or any other His Majeſty's Dominions. Another Matter that you have inſiſted upon, is, That ſuppoſing this to be a good Pardon under the Great Seal of *Scotland*, it hath pardon'd the Offence of going into *France*. The Return into *England* can't be High Treaſon; becauſe the Treaſon conſiſts of two Facts, ſay you, which are, The departing into *France*, and, The returning into the Queen's Dominions. Like unto the Caſe, when one gives another a mortal Wound, of which he languiſhes, and before he dies the Stroke is pardon'd, and then the Party dies: Afterwards it will not be Murder; becauſe that Act, which ſhould make it ſo, is diſcharged by the Pardon. To this a plain Anſwer has been before given by the Queen's Counſel: That going into *France* ſince the 11th of *December*, 1688, is no Offence originally; but only the Return of ſuch Perſon is made High Treaſon, and from that Return doth the High Treaſon commence. Therefore ſuch a Pardon, under the Great Seal of *England*, could not have diſcharged him from being guilty of High Treaſon, if he had returned afterwards.

But, ſays he for himſelf (as I apprehend him,) That this Pardon hath made him a Free *Scotchman*, to all Purpoſes, as if he had never offended. And tho' the Pardon can't have any Operation to diſcharge him of any Crime committed againſt the Law of *England*; yet it hath this Effect, by putting him in the ſame State of other *Scotchmen*, to enable him to come into *England*. It is true, this Pardon puts him in the ſame Condition, in which other *Scotchmen* are by the Law of *Scotland*; but it puts him not in the ſame Condition that other *Scotchmen* are by the Law of *England*. By the Law of *England*, *Scotchmen* may at any Time come into *England:* But the Law prohibits thoſe who are Subjects, and went into *France* without Licence, to return into *England*.

They who were born in *Scotland*, may inherit Lands in *England:* But if an Alien to *England* and *Scotland* be naturaliz'd by Act of Parliament in *Scotland*; though he is to all Purpoſes a Natural-born Subject of *Scotland* by the Law of that Realm; yet not therefore Inheritable to Lands in *England*, becauſe he is not a Natural-born Subject by the Law of *England*.

There is another Queſtion hath been ſtirr'd; which is, That he ſhould have been indicted in the firſt *Engliſh* County into which he came: For it appears, upon the Evidence, that he came from *Scotland*. Now *Middleſex* can't be the firſt County; but it muſt be *Northumberland:* For upon his coming there, the Treaſon is complete; and his proceeding further into other Counties, can't make it more Treaſons than it was before. As to the Caſe of Felony, ſtealing Goods in one County, and carrying them into another; it is Felony in every County they are carried into. A Priſoner eſcapes from a Gaol in one County, and then goes into ſeveral Counties; it is an Eſcape in every County into which he comes; which is a Caſe very oppoſite to this in Queſtion. Suppoſe a Man committed for Felony has eſcaped out of *Newgate* into *Northumberland*; may he not be indicted in *Northumberland?* He came voluntarily into this County of *Middleſex*; and certainly may be indicted, and tried here. Indeed, if he had been taken in one County, and carried into another County, that would be another Caſe; becauſe he came there by Coercion.

Mr. *Williams.* Now, my Lord, in this Caſe, the Priſoner comes into this County of *Middleſex* to ſurrender himſelf; and coming into *Middleſex* with an Intention to ſurrender himſelf, when a Warrant is out againſt him, will not be Treaſon in *Middleſex*, tho' his firſt coming into *England* were admitted to be Treaſon.

L. C. J. Holt. That does not appear: He ſays otherwiſe himſelf. He ſays, he heard there was a Warrant out againſt him; and then he ſurrender'd himſelf.

L. C. J. Trevor. I do not think, if he had come into this County to ſurrender himſelf, it would have alter'd the Caſe. If he had ſurrender'd himſelf in the firſt County he came into, he would have been within the Law.

Mr. *Williams.* My Lord, with humble Submiſſion, if he comes into *England*, he, by that, commits Treaſon. But if, after his coming into *England*, and before he comes into *Middleſex*, he hears that in *Middleſex* there is a Warrant out againſt him; and, purely to ſurrender himſelf upon this Warrant, he comes into *Middleſex*, and ſurrenders himſelf in *Middleſex*; with humble Submiſſion, this Act of Surrendering himſelf, which the Priſoner does in Obedience, and in Juſtice to the Proceſs of Law, won't amount to make him guilty of High-Treaſon in *Middleſex*.

L. C. J. Holt. This is not the Caſe. However, we are all of Opinion, that alters not the Caſe: (For I have conſulted my Lord and Brothers.) Have you any more to ſay for the Priſoner? Or has he any thing more to ſay for himſelf?

Mr. *Lindſay.* My Lord, I have told you what was the Motive that brought me into *England*; That I was to come to my Wife and Children, believing that I might have done it without treſpaſſing againſt the Law, becauſe I ſaw others did ſo before me. Now, if it be taken as a Fault in me, and not in others; that will be very hard, my Lord. If I have offended, it is out of Ignorance.

L. C. J. Holt. Ignorance of the Law is no Excuſe: But that may fall under another Conſideration, which doth not belong to us. Have you any more to ſay?

Mr. *Lindſay*. If I have by my Ignorance offended in this Point; and if you think my Indemnity in *Scotland* will not avail me, I humbly beg your Lordſhip will intercede for me to her Majeſty.

L. C. J. Holt. Gentlemen of the Jury, this Priſoner, *David Lindſay*, is indicted for High-Treaſon upon the Statute that was made in the Ninth of King *William*. The Offence ſet forth in the Indictment is to this Effect, That he, being a Subject of the late King, did, ſince the 11th of *December*, 1688, go out of this Realm into *France*, and that he has returned into *England* without Licence under the Privy-Seal, ſince the 14th of *January*, 1697; which returning, by that Act is made High-Treaſon. This Act was made upon the concluding the Peace of *Ryſwick*, becauſe then (as the Act recites in the Preamble) the Seas would be open for Commerce between *England* and *France*, and that would give an Opportunity to thoſe Perſons to return to *England*, whom the Wiſdom of the Nation thought dangerous to the Government; that is, thoſe that had been in the Service of the *French* King, and others, that by departing the Realm ſince the 11th of *December*, 1688. Therefore, to prevent all Danger to the King and his Government; this Act was made, to make ſuch a Return to *England* by ſuch Perſons, to be ſo penal as to amount to High-Treaſon.

Now, the Queſtion is, whether this Priſoner be guilty. It does appear that he is a Native of *Scotland*, and alſo that he was here in *England* for many Years (I think one of his own Witneſſes ſays about twenty), and did depart ſince the 11th of *December*, 1688, and he returned into *Scotland* ſince *March* was Twelve-month, and came into *England* afterwards about *December* laſt, which is alſo admitted. So that it appears he is in the Words of the Act, and had no Licence under the Privy-Seal.

But that which he inſiſts upon by his Counſel is, that he was a *Scotchman* by Birth, and had an Invitation to return into *Scotland*, and had the Queen's Pardon, whereby he was pardon'd all Manner of Offences. It's true, he admits he was at *St. Germains*, but returned into *Scotland* in order to take the Benefit of that Pardon. He was at firſt ſecured by the Government there, but he had the Benefit of the Pardon allow'd him, and was diſcharged. And then he ſays, he did deſire to come into *England*, and would not continue longer in *France*, becauſe he would not be a Papiſt. That when he was in *Scotland*, he deſired to come into *England* too, which he thought he might upon the Account of his Pardon in *Scotland*; and he adviſed with Counſel, whether he might ſafely come into *England*, and they told him he might, as he ſays.

The Queſtion is, whether any of theſe Things will be to his Advantage. Firſt, It is a Law of *England* that he is indicted upon; no Pardon under the Great-Seal of *Scotland* can diſcharge any Crime committed againſt the Law of *England*, neither can a Pardon under the Great-Seal of *England* diſcharge any Crime againſt the Law of *Scotland*. But ſuppoſe he had had a Pardon under the Great-Seal of *England* before his Return; that would not have pardon'd him in this Caſe: For his Offence is not in going into *France*, and coming into *England* in Time of Peace; but that having ſo gone, he returns without Licence, that is the Fact that is made ſo penal. Now a Pardon given before a Man commits any Offence is ineffectual; the Queen cannot pardon a Crime before it is committed.

But, ſays he, I am by this Pardon, made to all Purpoſes a free *Scotchman*, I am reſtored to all my Capacities that I had loſt; therefore, if I have all the Capacities that I had as a *Scotchman* before, I may come into *England*. Now that is a Miſtake. It's true, he is reſtored to all the Capacities of a *Scotchman*, which is to be had by the Laws of *Scotland*; but a Pardon in *Scotland* cannot give him thoſe Privileges he had by the Law of *England*, and therefore cannot diſcharge him from an Offence committed againſt the Law of *England*. Nay, if he had been in *Scotland*, having eſcaped after he had been here, that would not have been effectual to diſcharge him from his Offence againſt the Law of *England*. Gentlemen, the Matter is before you; he is a Subject of the Queen of *England*, he has departed from *England* ſince the 11th of *December*, 1688, and has returned hither without Licence under the Privy-Seal. And if you do believe all this, then you are to find him guilty; but if you do not believe it, you are to acquit him.

Then the Jury withdrew, and in about Half an Hour returned into Court.

Cl. of Arr. Gentlemen, are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſpeak for you?

Jury. Our Foreman.

Cl. of Arr. David Lindſay, hold up thy Hand. (*Which he did.*) How ſay you? Is he guilty of the High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels had he at the Time of this High-Treaſon committed?

Foreman. None that we know of.

Then the Court adjourned till Five of the Clock.

About Five of the Clock the Court met, and the Priſoner being brought, the Court proceeded.

Mr. *Att. Gen.* My Lord, Mr. *Lindſay* the Priſoner hath been convicted of High-Treaſon, and I pray the Judgment of the Court.

Cl. of Arr. David Lindſay, thou haſt been arraigned for High-Treaſon, and thereof convicted; What haſt thou to ſay why Judgment ſhould not paſs againſt thee?

Mr. *Lindſay*. My Lord, I refer myſelf to the Queen's Mercy.

L. C. J. Holt. Have you any thing to plead for yourſelf, or by your Counſel?

Mr. *Williams.* My Lord, I did deſign to have inſiſted upon a Point in relation to this Statute, upon which the Indictment againſt the Priſoner is grounded; but underſtanding it has been already under the Conſideration of your Lordſhip, and the reſt of my Lords the Judges, and that it has received your Lordſhip's Determination, I ſhall chooſe to wave it; but this, with Submiſſion, I do inſiſt upon: That it is not ſhewn in this Indictment that the Priſoner was a Subject of King *William* at the Time of his going into *France*; or at the making of this Act. Now, as I humbly conceive, the very Words of the Act require, that the Party ſhould be a Subject at that Time. The Words are thus, If any of His Majeſty's Subjects, who have after the 11th of *December* gone into *France*, if they return without Licence, they ſhall be guilty of High-Treaſon. Now, by the Words of the Act, it ſeems requiſite that he ſhould be a Subject at the Time of his going into *France*; or at leaſt at the Time of the making of the Act. So that, with Submiſſion, the Indictment does not agree with the Act of Parliament, unleſs it be ſhewn that the Priſoner was a Subject at the Time of his going to *France*; and no Indictment in any Caſe, much leſs an Indictment for High-Treaſon, ſhall be aided by Intendment. ——— And in this Caſe, my Lord, there is the leſs Room for an Intendment, that the Priſoner was then a Subject, becauſe it is not ſhewn that the Priſoner was a natural-born Subject, or that his Treaſon was *contra naturalis Allegiantiæ Debitum*. And it not being ſhewn that he was a natural Subject, it muſt be ſuppoſed he became a Subject by Naturalization, or by Denization, which might be ſince his going into *France*.——My Lord, I muſt own, 'tis ſaid in the Indictment that he was a Subject of King *William*, but 'tis not ſaid when he was a Subject; ſo that it may be as well ſuppoſed he became ſo after he went into *France*, as before; and the rather in regard he is not ſhewn to be a natural-born Subject. And we take it, that by the Penning of this Law, which ſays, *If any of His Majeſty's Subjects, who have gone into* France, &c.——it muſt be meant of a Subject at that Time, or at the Time of his going into *France*; and it not being ſhewn that he was a Subject at that Time, we humbly take it, that the Indictment is inſufficient.

Mr. *Raymond.* My Lord, we ſay, with great Submiſſion, that this Indictment is not good, becauſe it does not ſhew that Mr. *Lindſay* was a Subject of the late King at the Time of the making the Act, or any Time before. If this Perſon had become a Subject of the King after the making of the Act, as he might by Derivation, and had returned into *England*, having been in *France* in the Time mentioned in the Act, he would not be within the Act. Therefore, it was neceſſary to ſhew at what Time he was a Subject. It is not laid in the Indictment, that he was a natural-born Subject, nor do I pretend that it is neceſſary in an Indictment for Treaſon, becauſe one that owes Local Allegiance may be guilty of Treaſon. But they ought to have averr'd either that he was a natural-born Subject, and that he ſhall be intended ſo always; or elſe, that he was a Subject at the Time of the making of the Act, otherwiſe we won't be within the Act; becauſe the Words of the Act ſeem to tie it up to Subjects at the Time of the making the Act, by the Words which follow, *viz.* Who have gone into *France*, &c.

Sir *T. Powis.* I have look'd both into the Indictment and the Act. One Part of the Objection is, that he is not a natural Subject. That is not to be inſiſted on, for there is no ſuch Thing in the Act; for the Act ſays, *If any of his Majeſty's Subjects*; and there is no Need of laying any more in the Indictment than the Act requires; and it was not intended to be confined to ſuch. The other Part of the Objection is, That it is not alledged that the Priſoner at the Bar was the Subject of King *William* at the Time when the Act was made. Now there is no Need of alledging theſe Words in the Indictment; for the Act runs thus: *Therefore be it enacted, that if any of his Majeſty's Subjects, who have at any Time, ſince the* 11*th of* December, 1688, *voluntarily gone into* France, *without Licence from His Majeſty King* William, *or from Queen* Mary, *ſhall return:* And the Indictment does lay it, that this Priſoner was a Subject of the late King *William*, and that he is now a Subject to the preſent Queen; and that he, after the 11th of *December*, 1688, did go into *France*. Now ſure here is alledged in this Indictment that the Act refers to; that is, *That if any Subject, who went into* France *after the* 11*th of* December, 1688, *ſhall return into* England. And the Indictment ſays, he was a Subject of King *William*, and that he did go into *France* after that Time, and did return into *England* after the Time prohibited by the Act. Here is nothing required in the Act, but what is laid in the Indictment. And it is a very ſtrange Objection, to ſay, That we ſhould aver that he was a Subject when this Act was made: This ought to have been ſhewed on the other Side, if it be otherwiſe. Here is that in the Indictment which is conformable to the Act, and there is no more neceſſary, than to deſcribe the Perſon according to the Act.

Mr. *Att. Gen.* My Lord, we have taken that Method in the Indictment that is proper; that is, to purſue the Act of Parliament: We have laid him as the Act deſcribes. Now they ſay, That it being not ſhewn that he was a Subject at the Time of his going into *France*, he is not within the Act. But when a Man is laid in the Indictment to be a Subject, it is a ſtrange Objection, to fancy we muſt mention the Time of his beginning to be a Subject. We have ſhewed he was a Subject before the making of the Act, and we have ſhewed he was a Subject after; and he is preſumed to have always been a Subject, unleſs ſpecial Matter is ſhewn when he was not a Subject, as that he was an Alien, and at a particular Time naturalized or made a Denizon; which without Proof will not be preſumed; and this Objection ſhould have before ariſen from Evidence. It is laid likewiſe to be contrary to the Duty of his Allegiance, being a Subject of the late King *William*, and of the preſent *Queen*.

Mr. *Williams.* My Lord, this Exception againſt the Indictment ſeems, with great Submiſſion, not to be anſwered; I go upon the Words of the Act: *If any of his Majeſty's Subjects, who have ſince the* 11*th of* December, 1688, *gone into* France. My Objection is, That it is not ſhewn, that at the Time of going into *France*, nor when the Act was made, that the Priſoner was a Subject; and it not being ſo ſhewn, to intend the Priſoner then a Subject, is helping the Indictment by Intendment, which cannot be. And I ſay, there is the leſs Room for this Intendment here, becauſe this Priſoner is not ſhewn to be a natural Subject.

Mr. *Raymond.* My Lord, every Word of this Indictment would have been true, if this Gentleman had been an Alien, and become a Subject after

ter the Act was made, and before the late King died. And yet in ſuch a Caſe he would not have been within the Act: For if he had been a Stranger, and after the Act had been denizon'd, and then had returned into *England*, having before been in *France*, that would not have been within the Act, becauſe the Act ſays, *If any of the King's Subjects, who have gone into* France, *ſhall return:* Which muſt be meant, that were ſo before the Act was made: And yet that is all this Indictment ſays.

L. C. J. Holt. That is a foreign Suppoſition. Can any Man ſuppoſe, that ſuch a Man that has been in *France*, that he ſhould be naturaliz'd or indenizon'd after ſuch an Act was made? And ſuppoſe it were ſo, that he was an Alien, and happen to be naturaliz'd by general Words; the Act does not ſay, If he ſhall be a Subject at his Departure; but if he were in *France* ſince ſuch Time, and return after this Act.

He was a Subject to King *William*, and to Queen *Anne*; and that he went away ſince the 11th of *December*, 1688, and returned into *England* without Licence.

This is an Indictment formed ſuitable to the Act of Parliament; it purſues the Words of the Act of Parliament. The Act deſcribes the Perſon, and ſets out what ſhall be the Offence; that is, one that is a Subject of the King, and has gone away into *France* ſince the 11th of *December*, 1688, and ſhall return without Licence.

Mr. *Williams.* It appears not he was a Subject when he went away.

L. C. J. Holt. If any of his Majeſty's Subjects, that have gone away ſince the 11th of December. It does not ſay, Any that ſhall go away; but that have gone away after the 11th of *December*.

Mr. Juſtice *Powel.* A Subject is ſuppoſed to be a natural Subject, unleſs he be naturalized afterwards: But now he being ſaid to be a Subject according to the Act, ſuppoſes him to be a Subject then.

Mr. *Raymond.* My Lord, we think, with Submiſſion, this is not an Indictment according to other Indictments.

Mr. Juſtice *Powel.* It's enough that he is ſaid to be a Subject.

Mr. *Raymond.* But, my Lord, muſt there not be a Diſtinction between a Subject that owes natural Subjection, and commits Treaſon, and one that only owes local Legiance?

Mr. Juſtice *Powel.* You might have ſhewn that, when you were upon the Evidence.

Mr. *Williams.* My Lord, we humbly think it muſt be ſhewn that he was a Subject, at leaſt at the Time of the making of the Act.

Mr. Juſtice *Powel.* We muſt take him to be a natural Subject, unleſs the contrary appear.

L. C. J. Trevor. We ſuppoſe that he was a Subject at the Time of his going out of *England*; and that the Indictment ſufficiently ſets forth. If you could have ſhewn that he became a Subject afterwards, that might have help'd you; but elſe it ſignifies nothing.

L. C. J. Holt. Have you any more to ſay?

Mr. *Williams.* If we have ſlipt any Thing on Behalf of the Priſoner, which might have been of Service to him, we hope he ſhall not ſuffer for any Omiſſion of his Counſel; and therefore humbly pray, that your Lordſhip will favour him, and will be pleaſed to hear him for himſelf.

Mr. *Lindſay.* My Lord, What I have done has been out of Ignorance, and being ſupported by what other People did. And therefore, my Lord, having come into *England* by myſelf, I did not come with any Deſign of Harm, or to do any Thing contrary to the Law. As I am a *Scotchman*, it is not to be preſumed I can underſtand the Laws of *England:* And therefore, if I have done any Thing amiſs out of Ignorance, I hope your Lordſhip will make a favourable Conſtruction of it; and repreſent my Caſe to the Queen. And I hope, as Her Majeſty has given me the Effects of her Mercy in *Scotland*, I ſhall not feel the Effects of her Diſpleaſure in *England*.

L. C. J. Holt. Mr. *Lindſay*, You have been indicted, and upon the Evidence of your own Confeſſion of the Fact alledged againſt you, and after a great Debate in Matter of Law (which by you, and your Counſel, was urged on your Behalf) are convicted of High-Treaſon. That which now remains, is, To pronounce Judgment of Death upon you, which you are to ſuffer in that Manner which the Law hath appointed. Your Crime is, returning from *France* without the Queen's Licence; having before gone thither without any Licence from the late King or Queen. That Law which hath made ſuch your Return to be an Offence of ſo high Nature, cannot (by any conſidering *Engliſh* Proteſtant) be thought to be ſevere: For they who, in the Time mention'd in the Act, choſe rather to run into *France*, than to ſtay in *England*, could have no other Inducement, than an Affection to an Intereſt oppoſite to the Proteſtant Religion, and the ancient Conſtitution of this Kingdom. For they were received, protected, and encouraged by that Prince, who is a dangerous and profeſs'd Enemy both to our Religion and Government. The Wiſdom of the Nation thought it abſolutely neceſſary to keep them out; unleſs they ſhould either clear their Innocence, or give Satisfaction by their Repentance, that they were fit to be truſted here. For he that ſhould adventure to return, without doing either, muſt be preſumed to come in upon the ſame Principles, and with the ſame Purpoſes, with which he went out: Which muſt be a conſtant Danger, even to the Foundation of our Government, which is eſtabliſhed upon the Proteſtant Religion, and the Laws of the Kingdom. As to theſe Circumſtances which you have mentioned to be peculiar to your Caſe, they fall not under Conſideration; ſince they are not ſufficient to juſtify you in acting contrary to the Law. Of what Conſideration they may be to obtain the Queen's Mercy, falls not under our Cognizance; for that is a peculiar Attribute, inſeparable from Her Majeſty's Royal Perſon, by whom it can only be diſpenſed. Our Buſineſs is to put the Law in Execution. And you muſt be convinced in your own Conſcience, that you have been convicted on a full Evidence, proving the Fact, which hath proceeded from your own Mouth. We have all heard, and debated that Matter of Law which you urged by your Counſel in your own Behalf; and are all of Opinion, that doth not avail you; but you are an Offender againſt an Act of Parliament: And nothing remains now, but to pronounce the Sentence of the Law upon you; which is,

That you ſhall be conveyed from hence to Newgate, *the Priſon from whence you came, and from thence to be drawn upon a Hurdle to* Tyburn; *where you are to be hanged by the Neck, and while you are alive to be taken down, your privy Members are to be cut off, and your Bowels to be taken out of your Body, and burnt in your View; your Head is to be cut off, your Body is to be divided into four Parts, and your Head and your Quarters are to be diſpoſed as her Majeſty ſhall appoint. And the Lord have Mercy upon your Soul.*

Mr. *Lindſay.* My Lord, I beg that my Wife and Children may come to me; and that I may have a Miniſter of the Church of *England* allow'd me.

L. C. J. Holt. You ſhall have whom you will, according to what is uſual in ſuch Caſes.

Mr. *Lindſay.* I deſire my Wife and Children may come to me alone, without the Keeper.

L. C. J. Holt. That is not to be permitted, that may occaſion Danger.

Mr. *Lindſay.* I deſire they may be lock'd up with me.

L. C. J. Holt. Mr. *Lindſay*, It is a Charge on the Keeper, that he admit them; but ſo as may not occaſion any Danger.

Mr. *Lindſay.* It is a Trouble to the Keeper to wait on me ſo long (two or three Hours together) which was the Reaſon I deſired it. And if a Miniſter come to me, I deſire we may be private.

L. C. J. Holt. He will uſe you with all the Charity that may be; but he muſt do what is prudent. Nothing that is reaſonable, or fit, ſhall be deny'd you.

Mr. *Lindſay.* My Lord, I ſhould be ſorry, if I deſired any thing that is unreaſonable. My Lord, I ſuppoſe it is my Time now to ſay any Thing. I ſhall ſay only thus much; that is, I well underſtood what Circumſtances I was in: I believe no *Scotchman* has been call'd in Queſtion upon that Act; and I believed in my Conſcience I was not guilty.

L. C. J. Holt. You are guilty of the Fact charg'd upon you; and it was a very reaſonable Law.

Mr. *Lindſay.* My Lord, I own, the Reaſon was good for making the Act; but that the Reaſon that I am guilty of the breaking it, I cannot own that.

L. C. J. Holt. You are guilty of the Thing you are charg'd with. All that you can do now, is, To appeal to the Mercy of the Queen: She is the beſt Judge of it.

Mr. *Lindſay.* My Lord, I reſt upon your Lordſhip's repreſenting my Caſe to the Queen.

Her Majeſty was afterwards pleaſed to grant him a Reprieve.

CLXXX. *The Trial of* JOHN TUTCHIN *at the* Guild-Hall *of* London, *for a Libel*, *entitled*, The Obſervator, Nov. 4. 1704. 3 Ann.

The Queen againſt John Tutchin.

London ſſ. THE Information ſets forth, *That the Defendant being a ſeditious Perſon, and a daily Inventor and Publiſher of falſe News, and horrible and falſe Lies and ſeditious Libels, and a perpetual Diſturber of the Peace of this Kingdom; and wickedly and maliciouſly deviſing the Government, and Adminiſtration of Juſtice under our Lady the Queen, to traduce, ſcandalize and vilify; and our ſaid Lady the Queen, her Miniſters and Officers, to bring into Suſpicion, and the ill Opinion of her Subjects: The 30th Day of* May, *in the Firſt Year of her Majeſty's Reign, at* London, &c. *did falſly, ſeditiouſly and ſcandalouſly, write, compoſe and publiſh, and cauſe to be written, compoſed and publiſhed, a certain falſe, malicious, ſeditious and ſcandalous Libel, entitled,* The Obſervator. *In which Libel, (of and concerning this Kingdom, and the Officers and Miniſters of the Queen) are contained* (inter alia) *as follows.*

N° 11. Saturday, *the 30th of* May, 1702.

" At the ſame Time we [*the Subjects of this Kingdom meaning*] conſider the *French King's Succeſs in his Bribery and Corruption*, we ought to lament the ſad State of our own Country [*the Kingdom of England meaning*] which affords ſo many Inſtances of Treachery. If we may judge by our national Miſcarriages, perhaps no Nation in *Europe* has felt the Influences of *French* Gold more than *England:* And worthy it is our greateſt Lamentation, that our dear Country [*meaning this Kingdom*] ſhould be thus *weaken'd by Men of mercenary Principles*; when Countries inferior to us in Strength and Riches, are ſecured from Attempts of this Nature only by the Fidelity of their People. What is the Reaſon that *French* Gold has not affected *Holland* as well as *England*; but that their *Miniſtry* is ſuch as *is entirely in the Intereſt of their Country*, and altogether incorruptible? They prefer Men that are knowing in their Poſts, and are active in Buſineſs: When, in *England*, we find out Offices for Men, not Men for Offices. And a Title of Honour gives a Man a Title to a great Employment he is altogether ignorant of. By this, and by preferring of Men by Intereſt and Favour, has *the Exciſe, the Cuſtoms, and other Branches of the Revenue intolerably ſunk:* And by this Means has the Navy of *England*, our chief Support, *been hitherto perfectly bewitch'd*. And can *Lewis* ſpend his Money better, than in getting Men into Offices in *England*, who are either falſe, or ignorant in the Buſineſs, or are his Friends?

N° 23. Saturday, the 11*th of* July, 1702.

That the Defendant afterwards, the 11*th of* July *following, another falſe, malicious, ſeditious, and pernicious Libel, entitled,* The Obſervator, *falſly, maliciouſly, and ſeditiouſly, did write, compoſe, and publiſh, and cauſed to be written and publiſhed: In which Libel (of and concerning the Government of this Kingdom, and the Power of the People of this Kingdom) are contained* (inter alia) *as follows.*

" And this is a *Prerogative* of ſingular Advantage to the *People* of *England*; in that their Repreſentatives are the Judges of the Male-Adminiſtration of their Governors; that they can call them in Queſtion for the ſame, *and can appoint ſuch to wear the Crown* (meaning the Crown of “this Kingdom) who are fitteſt for Government: Which they have often done, and indeed which is the Privilege of all free People, who are authorized by the Laws of God and Nature, to chuſe their own Governors.”

N° 19. Saturday *the 12th of* June, 1703.

That the Defendant afterwards, the 12th of June, *in the ſecond Year of the Queen, did write and publiſh, and cauſed to be written and publiſhed, another falſe, ſcandalous, and ſeditious Libel, Entituled,* The Obſervator. *In which ſaid Libel (of and concerning the Royal Navy of this Kingdom, and the Government of the ſaid Navy) are contained* (inter alia) *as follows:* “Take one Time with another, the Miſmanagements of the Navy *(meaning the Royal Navy of this Kingdom)* “have been a greater Tax on the Merchants, than the Duties raiſed by Parliament: We never had a better Navy, but the Wiſdom of the Managers thereof is like a bottomleſs Pit, paſt finding out.”

N° 20. Wedneſday *the 16th of* June, 1703.

That the Defendant afterwards, the 16th Day of the ſaid June, *did write and publiſh, and cauſed to be written and publiſhed, another falſe, ſcandalous, and ſeditious Libel, Entituled,* The Obſervator. *In which was contained* (inter alia, *of the ſaid Royal Navy, and the Officers of the ſaid Navy) as follows:* “What avails it a Man of Learning and Parts, to qualify himſelf for the Service of his Country on the Ocean? If he has Knowledge enough to adviſe *Neptune* himſelf, if he has no Intereſt, he ſhall have no Preferment. How much does it look to our Nation's Diſadvantage, to have Men in eminent Stations in the Navy, who have not ſo much as an Idea, a Notion, a Thought of Naval Affairs? To have Men to ſuperintend the Building of our floating Caſtles, who know not the Nature of any Part of the Management? To have Men employ'd in the Victualling, who qualify themſelves for that Poſt by learning to write their Names, which is indeed a Poſt for a Philoſopher bred to the Sea?”

N° 27. Saturday *the 10th of* July, 1703.

That the Defendant afterwards, the 10th of July *following, did write and publiſh, and cauſe to be written and publiſhed, another falſe, ſcandalous, and defamatory Libel, Entituled,* The Obſervator. *In which are contained* (inter alia, *of one* Daniel de Foe, *who was indicted the 24th of* February, *in the firſt Year of the Queen, before the Juſtices of* Oyer *and* Terminer *at the* Old-Bailey, London: *And in* July *following, was convicted upon his own Confeſſion, for compoſing and publiſhing a ſeditious Libel, Entituled,* The ſhorteſt Way with the Diſſenters, or Propoſals for the Eſtabliſhment of the Church, *and of the Judgment againſt him to pay a Fine of* 200 *Marks, and to ſtand three Times in the Pillory, and to find Security for his good Behaviour for ſeven Years) as follows:* “*Countryman.* Truly, Maſter *Obſervator,* I have no very good News for you: Mr. *Daniel De Foe* has pleaded Guilty to the Indictment againſt him, for writing and publiſhing *the ſhorteſt Way with the Diſſenters*; and he is ſentenc'd to ſtand three Times in the Pillory, to pay a Fine of 200 Marks, and to find Security for his good Behaviour for ſeven Years. *Obſerv.* The Court could do no otherwiſe than convict him, upon his pleading Guilty; *habemus confitentem reum,* is very often the Voice of Courts of Judicature, 'tis the Eaſe of Judges and Juries: If *Daniel De Foe* was in Expectation of *Coleman*'s Black Box, he has found a Pillory inſtead of it. I don't trouble my Head about the Cuſtom of giving the Pillory to Authors, which is the Puniſhment of Bakers. You talk'd juſt now of turning Author, have a Care of your Candle; you ſee which is the ſhorteſt Way with Authors; you muſt all enter yourſelves into the Regiment of Colonel *Foe:* The Law of *England* directs, that no Man ſhall be fined *ultra tenementum*; and I make no Queſtion, but the Juſtice of the Court has fined Mr. *Foe* anſwerable to his Eſtate: His Security for his good Behaviour for ſeven Years, without doubt, was rationally conſidered, as to the Legality thereof. For my Part, I am only acquainted with old Laws of *England,* the ancient Birthrights and Immunities of *Engliſhmen:* This I take to be the Foundation of new Laws.”

N° 17. Saturday *the 20th of* May, 1704.

That the Defendant afterwards, the 20th of May *laſt, did write and publiſh, and cauſe to be written and publiſh'd, another falſe, ſcandalous, and ſeditious Libel, Entituled,* The Obſervator. *In which are contained (of and concerning the Defendant, and a Proſecution to be had againſt him for divers ſeditious Libels by him, before that Time, compoſed and publiſh'd) as follows:* “*Countrym.* Maſter *Obſervator,* there's another Plot againſt you *(meaning the Defendant.)* *Obſerv.* Prithee, Man, there's a Plot againſt the Queen, and the whole Nation; is it any Wonder then, that there are Plots againſt me? The High-Flyers are now plotting againſt every honeſt Man in *England.* I'll tell you more of it, the next Time we meet. *Countrym.* I fancy ſome ſort of People plot againſt you, becauſe you endeavour to countermine their Plots againſt the Queen and Nation. *Obſerv.* You are right enough; but that ſhan't hinder me from detecting their Deſigns, and from opening the People's Eyes: But prithee, what Plot is this? *Countrym.* Why, Sir, it is a Plot preparatory to your Trial; and if they can't effect this Plot, I ſuppoſe you'll never be tried. They inſinuate into the Citizens of *London,* that you have lately written very ſcandalouſly, maliciouſly, and treaſonably, and I don't know how many other Lies, againſt them the ſaid Citizens; and by this Means they are minded to ſet your Jurors againſt you. *Obſ.* This is likely enough; they'll leave no Stone unturn'd, to ſuppreſs the Truth. I underſtand, I ſhould have been proſecuted by Bill the laſt Seſſions, but that the High-Flyers did not like the Jury; nay, they ſay they don't like the two Sheriffs, becauſe they won't pack Juries to find innocent Men guilty.” *To the Diſturbance of the Peace of this Kingdom, to the great Scandal of the Queen and her Government, and againſt the Peace of the Queen, her Crown and Dignity,* &c.

Proclamation was made for all Perſons to attend.

Then the Jury was called.

John Cooper, | *Thomas Briſcoe,* | *Alexander Pollington.*

Edward Pinfold *being called, deſired to be excuſed.*

Mr. *Pinfold.* My Lord, I deſire I may be excuſed. I do not know Mr. *Tutchin,* for I never ſaw him in my Life; but I have read his *Obſervators,* and have ſeveral Times publickly diſallowed them; and therefore ſome may think I am prejudiced againſt him.

* Mr. *Att. Gen.* The Queſtion is only, whether he was the Author of theſe Papers? For that is the Matter to be tried.

Mr. *Pinfold.* I do not know that.

Mr. *Mountague.* But, my Lord, there may be ſomething more in it, for he publickly diſallowed his Papers.

L. C. J. Holt. You muſt not be excuſed unleſs the Queen's Counſel will.

Mr. *Mountague.* My Lord, we challenge him on behalf of the Defendant.

Mr. *Att. Gen.* Shew your Cauſe.

Mr. *Mountague.* My Lord, our Cauſe is, that he himſelf looks upon himſelf as not indifferent.

L. C. J. Holt. He ſays, he has read ſome of his Papers, and has publickly condemned them, that he did not approve of the Matter contained in them, but he does not know the Author.

Mr. *Whitaker.* But he ſaid he did not doubt but he was the Author of them.

Mr. Serj. *Darnel.* He is the fitter Man for a Jury.

Sir *T. Powis.* He does not ſay he has diſapproved all the Papers he has read, and it may be thoſe were not the Papers now in Queſtion.

Mr. *Mountague.* My Lord, the Matter we are contending for, is, that one that is not altogether an indifferent Perſon ſhould not be on the Jury.

Mr. *Att. Gen.* The Queſtion is not whether the Papers are criminal, but whether the Defendant is the Author of the Papers; and if this Gentleman knows him to be Author of them, he is proper to be on the Jury: For the Jury are by Law to be of the Neighbourhood of the Place where the Fact is alledged to be done, becauſe they are preſumed to know what is done there. And if this be a Cauſe of Challenge, you may Challenge all People, and ſo there could be no Trial.

L. C. J. Holt. He can't be challenged, unleſs he had given his Verdict before.

* Mr. *Soll. Gen.* My Lord, we can have no Jury in this way they are going. A Juryman is not to be aſked what his Opinion of the Cauſe is; what he will voluntarily ſay, he may; and if upon what he ſays voluntarily he is liable to Exception, he may be ſet aſide.

L. C. J. Holt. It is not a Challenge.

Mr. *Mountague.* Surely, my Lord, he is not ſo indifferent as he ought to be. He ſays he has already declared his Opinion publickly concerning Mr. *Tutchin*'s Papers.

Mr. *Pinfold.* My Lord, I know not well what he is indicted for, but it may be they are thoſe Papers that I have given my Opinion of.

Mr. *Att. Gen.* I believe no Man that has read them, but has given his Opinion of them one way or other; but that is not a ſufficient Cauſe of Challenge.

Mr. *Whitaker.* Mr. *Attorney,* I hope you will not contend for one Juryman.

Mr. *Att. Gen.* He ſays, he knows not what Papers he was indicted for; he ſays only that he has read ſome of his Papers, and has declared his Diſlike of them.

L. C. J. Holt. Draw up your Challenge in Form, and it ſhall be conſider'd.

Mr. *Att. Gen.* If theſe Gentlemen think there is nothing in it, what need they put us to this Trouble?

Mr. *Mountague.* Indeed I believe there is ſomething more than ordinary in it, for I object only to what he himſelf has ſaid.

L. C. J. Holt. I will have it done, that it may remain a Deciſion *in perpetuam rei memoriam.* But if you that are for the Defendant will wave it, you may.

Mr. *Mountague.* My Lord, we muſt inſiſt on it; they have Jurymen enough.

Mr. *Soll. Gen.* We can't tell whether we have or no, for you may challenge them all, as well as this Man.

Mr. *Mountague.* No, I will challenge nobody beſides; and I challenged him, only becauſe he mentioned himſelf as not an indifferent Perſon.

Mr. *Soll. Gen.* Is it a principal Challenge, or to the Favour?

L. C. J. Holt. A principal Challenge, if any.

Mr. *Soll. Gen.* He can't challenge to the Favour in Caſe of the Crown.

L. C. J. Holt. He makes it as a principal Challenge; which muſt be determined, and you ſhall have my Judgment when drawn up; it muſt be a principal Challenge or nothing; for there can be no Challenge to Favour in the Caſe of the Crown.

Mr. *Att. Gen.* My Lord, we are not willing to put you to this Trouble, we will leave it to Mr. *Pinfold* himſelf.

L. C. J. Holt. Then aſk Mr. *Pinfold.*

Mr. *Att. Gen.* Mr. *Pinfold,* Do you know who is the Author of theſe Papers?

Mr. *Pinfold.* I know nothing of it but what is commonly reported. I know not Mr. *Tutchin* if I ſee him; I have read his Writings.

Mr. *Att. Gen.* My Lord, we leave it to the Juryman himſelf.

Mr. *Pinfold.* My Lord, I deſire to be excuſed.

Mr. *Att. Gen.* Then we excuſe you.

Then the Perſons following were ſworn on the Jury.

John Cooper,
Thomas Briſcoe,
Alexander Pollington,
James Dod,
Iſaac Bennet,
Robert Fotherby,
Mark Proctor,
William Grub,
James Lund,
John Baker,
Thomas Allen,
Jaſper Waters.

Then Proclamation for Information being made, the Court proceeded.

Mr. Serj. *Weld.* This is an Information againſt *John Tutchin:* The Information ſets forth, That he being a ſeditious Perſon, and a daily Inventor and Publiſher of Lies, and maliciouſly deſigning to aſperſe the Government, and the Adminiſtration of it, has compoſed and publiſhed ſeveral malicious and ſcandalous Libels; ſome of them are relating to the Government, ſome to the Parliament, ſome to the Courts of Juſtice, other of them to the Miniſtry. I ſhall not now take up your Time in opening the Words at large, becauſe they are very long, and for that you will have them read to you, when the Witneſſes come to prove them. He hath pleaded, Not Guilty.

Mr. *Att. Gen.* You muſt recite the Words of the Charge.

Mr. Serj. *Weld.* The Charge is very long. The Information ſets forth, That he did write, and compoſe, and publiſh a falſe and ſcandalous Libel, called *The Obſervator*, of and concerning the Government. This is laid to be on *Saturday* the 30th of *May*, 1702. And the Words therein charged againſt him, are theſe: "At the ſame Time, we the Subjects of *England* conſidering the Succeſs of the *French* King, in his Bribery and Corruption, we ought to lament the ſad State of our own Country, which affords ſo many Inſtances of Treachery. If we may judge by our national Miſcarriages, perhaps no Nation in *Europe* has felt the Influences of *French* Gold, more than *England*; and worthy it is our greateſt Lamentation, that our dear Country ſhould be thus weaken'd by Men of mercenary Principles, when Countries inferior to us in Strength and Riches are ſecured from Attempts of this Nature, only by the Fidelity of their People. What is the Reaſon that *French* Gold has not affected *Holland*, as well as *England*; but that their Miniſtry is ſuch, as is entirely in the Intereſt of their Country, and altogether incorruptible? They prefer Men that are knowing in their Poſts, and are active in Buſineſs. When in *England* we find Offices for Men, not Men for Offices; and a Title of Honour gives a Man a Title to a great Employment he is altogether ignorant of. By this, and by preferring of Men by Intereſt and Favour, has the Exciſe, the Cuſtoms, and other Branches of the Revenue, intolerably ſunk; and by this Means has the Navy of *England*, our chief Support, been hitherto perfectly bewitch'd: And can *Lewis* ſpend his Money better, than in getting Men into Offices in *England*, who are either falſe or ignorant in the Buſineſs, or are his Friends?" And the Information further ſets forth, That on *Saturday* the 11th of *July*, 1702, he publiſh'd another Libel, call'd *The Obſervator*; in which are theſe Words: "And this is a Prerogative of ſingular Advantage to the People of *England*, in that their Repreſentatives are the Judges of the Male-Adminiſtration of their Governors; that they can call them in Queſtion for the ſame, and can appoint ſuch to wear the Crown, who are fitteſt for Government: Which they have often done, and indeed which is the Privilege of all free People, who are authorized by the Laws of God and Nature to chuſe their own Governors." It further ſets forth, That *June* 12, 1703, he publiſh'd another Libel, call'd *The Obſervator*; in which are theſe Words: "Take one Time with another, the Miſmanagements of the Navy have been a greater Tax on the Merchants, than the Duties raiſed by Parliament. We never had a better Navy; but the Wiſdom of the Managers thereof is like a Bottomleſs-Pit, paſt finding out." The Information further chargeth, That on the 16th of *June*, 1703, he publiſh'd another Libel, called *The Obſervator*; in which were theſe Words: "What avails it a Man of Learning and Parts, to qualify himſelf for the Service of his Country on the Ocean? If he has Knowledge enough to adviſe *Neptune* himſelf, if he has no Intereſt, he ſhall have no Preferment. How much does it look to our Nation's Diſadvantage, to have Men in eminent Stations in the Navy, who have not ſo much as an Idea, a Notion, a Thought of Naval Affairs? To have Men to ſuperintend the Building of our floating Caſtles, who know not the Nature of any one Part of the Management? To have Men employ'd in the Victualling, to qualify themſelves for that Poſt by learning to write their Names, which is indeed a Poſt for a Philoſopher bred to the Sea?" It's farther ſet forth in the Information, That on the 10th of *July*, 1703, he publiſh'd another Libel, wherein, among other things, are theſe Words relating to *Daniel De Foe*. "*Countrym.* Truly, Maſter *Obſervator*, I have no very good News for you. Mr. *Daniel De Foe* has pleaded guilty to the Indictment againſt him, for writing and publiſhing *The ſhorteſt Way with the Diſſenters*; and he is ſentenced to ſtand three Times in the Pillory, to pay a Fine of 200 Marks, and to find Security for his good Behaviour for ſeven Years. *Obſerv.* The Court could do no otherwiſe than convict him, upon his pleading Guilty; *habemus confitentem reum* is very often the Voice of Courts of Judicature; 'tis the Eaſe of the Judges and Juries: If *Daniel De Foe* was in expectation of *Coleman*'s black Box, he has found a Pillory inſtead of it. I don't trouble my Head about the Cuſtom of giving the Pillory to Authors, which is the Puniſhment of Bakers. You talk'd juſt now of turning Author, have a care of your Candle; you ſee which is the ſhorteſt way with Authors: You muſt all enter yourſelves into the Regiment of Colonel *De Foe*. The Law of *England* directs, That no Man ſhall be fined *ultra tenementum*; and I make no Queſtion, but the Juſtice of the Court has fined Mr. *Foe* anſwerable to his Eſtate: His Security for his good Behaviour for ſeven Years, without doubt, was rationally conſidered, as to the Legality thereof. For my Part, I am only acquainted with old Laws of *England*, the ancient Birthrights and Immunities of *Engliſhmen*: This I take to be the Foundation of new Laws." And that on *Saturday*, *May* 20, 1704, he publiſh'd another Libel, call'd *The Obſervator*; wherein, among other things, are theſe Words: "*Countryman.* Maſter *Obſervator*, There's another Plot againſt you. *Obſ.* Prithee, Man, there's a Plot againſt the Queen and the whole Nation; is it any Wonder that there are Plots againſt me? The High-Flyers are now plotting againſt every honeſt Man in *England*. I'll tell you more of it the next time we meet. *Countrym.* I fancy ſome Sort of People plot againſt you, becauſe you endeavour to countermine their Plots againſt the Queen and Nation. *Obſervat.* You are right enough; but that ſhan't hinder me from detecting their Deſigns, and from opening the People's Eyes: But, prithee, what Plot is this? *Countrym.* Why, Sir, it is a Plot preparatory to your Trial; and if they can't effect this Plot, I ſuppoſe you'll never be tried. They inſinuate into the Citizens of *London*, that you have lately written very ſcandalouſly, maliciouſly and treaſonably, and I don't know how many other Lies againſt them, the ſaid Citizens; and by this means, they are minded to ſet your Jurors againſt you. *Obſerv.* This is likely enough: They'll leave no Stone unturn'd, to ſuppreſs the Truth. I underſtand, I ſhould have been proſecuted by Bill the laſt Seſſions, but that the High-Flyers did not like the Jury. Nay, they ſay they don't like the two Sheriffs, becauſe they won't pack Juries, to find innocent Men guilty." The Defendant has pleaded, Not Guilty: But if we prove the Charge, I doubt not but you will find him Guilty.

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* *Sir* E. Northey.

* *Sir* S. Harcourt.

Sir *T. Powis.* My Lord, I am of Counſel with Her Majeſty. This Information is brought on the Behalf of the Queen, againſt Mr. *Tutchin*. I ſhall not long entertain you about it, becauſe the Matter is ſhort. The Charge is, That he has publiſh'd ſeveral Libels, ſcandalous and ſeditious, reflecting on the Government, and the Adminiſtration of it, in many Inſtances given at large. I think the Papers are ſix in Number; and by and by you will have them more particularly before you. I preſume, there ought to be made a Difference between a juſt Liberty and Licentiouſneſs. This Information is brought, that Men may be warned. The Plea he has made is, That he is not Guilty. The Matter we are to prove is, That he was the Perſon that did write and compoſe theſe Papers, and did publiſh them, or cauſe them to be done. My Lord, we ſhall call our Witneſſes: And notwithſtanding what you have heard of late from the Defendant, relating to this Trial, I do not doubt but there will be all Juſtice done. I am ſure, on our Side, nothing elſe is intended. And I doubt not, but if we prove that he did publiſh theſe Papers the Jury will find him Guilty.

Mr. *Att. Gen.* My Lord, the Information is laid againſt Mr. *Tutchin*, for a few of his *Obſervators* of the many he has writ; ſometimes two, ſometimes three in a Week. It is a great while that he has done it; and it has been the great Indulgence of the Government, that he has not been proſecuted before. He has been taken notice of by the *Houſe of Commons*, and been before the Secretary of State; where he has been admoniſh'd to take care of what he ſhould write: But he would not take Warning. And now he is to be try'd for ſome of his Papers; wherein it will appear, that he has taken the greateſt Liberty, I believe, that ever Man took. Libels uſed to come out by Stealth, and in the dark; but theſe have been publiſh'd openly, with all the Defiance imaginable. You may ſee how mild the Proſecution hath been, by what he has done ſince the Beginning of it: He has been writing in ſuch a Manner, to prepare for the Trial, as I think was never done before. A Proſecution of this nature is of the greateſt Conſequence: And it may be, I may be blam'd, being in the Office wherein I am, that there have not been more ſuch made. Here is the higheſt Reflection on the Government imaginable. There can be no Reflection on them that are in Office under her Majeſty, but it muſt caſt ſome Reflection on the Queen who employs them. I believe there is hardly one in any conſiderable Poſt under the Government, but has been criminated by him: Nothing eſcapes him. He cenſures all Mankind; writes magiſterially, and defies all Authority, and caſts the vileſt Reflections on the Government: As if we, who are in the Queen's Service, made it our Buſineſs to corrupt Juries. And makes Reflections both on Sheriffs and Juries. Theſe are of the greateſt Conſequence in the World to the Government, and to every Body. For if ſuch mercenary Writers may have the Liberty to reflect on whom they pleaſe, no Man's Reputation can be ſafe.

Gentlemen of the Jury, the Matter you are to enquire into is, whether the Defendant be the Author or Publiſher of theſe Libels: That is the Matter you are to try. What the Puniſhment muſt be, if you find him Guilty, is in the Judgment of the Court. We will produce our Witneſſes; and doubt not but you will do the Queen Juſtice.

Mr. *Soll. Gen.* Call *John How.* (*He appear'd, and was ſworn.*) Shew him thoſe *Obſervators.* (*Which was done; and he look'd them over.*) Have you look'd over them?——Mr. *How.* Yes.

Mr. *Soll. Gen.* Then pray acquaint my Lord and the Jury, whether you know who compoſed and brought them to the Preſs?

Mr. *How.* I do ſuppoſe them to be Mr. *Tutchin*'s. I dealt with no other Man for them.

Mr. *Att. Gen.* Acquaint my Lord and the Jury, how they came to be printed.

Mr. *How.* About the latter End of *March*, 1702, I treated with Mr. *Tutchin* about writing an *Obſervator*, to be publiſh'd Weekly: The firſt of which was publiſh'd in *April*, 1702. And all that have been printed ſince, I had from him, to this Year.

Mr. *Att. Gen.* You look'd on theſe Papers here: Were theſe printed by the Direction of Mr. *Tutchin*?

Mr. *How.* To the beſt of my Knowledge, they were. They were always brought from him to me.

Mr. *Att. Gen.* Was there any Agreement made between you about the writing of it?

Mr. *How.* Yes, it was agreed at firſt to write once a Week; and I was to give him half a Guinea for it. I have printed in all about 266.

Mr. *Att. Gen.* Have you had frequent Diſcourſe with him about them ſince? You ſaid, you printed in all about 266: Have you paid him for all?

Mr. *How.* Yes.

Mr. *Soll. Gen.* Have you had any Diſcourſe with him, wherein he has owned them all to be his?

Mr. *How.* He has owned them from time to time, till within this Week.

Mr. *Soll. Gen.* Has he owned himſelf to be the Author of them?

Mr. *How.* He always own'd himſelf to be the Author.

Mr. *Soll. Gen.* Have you had any Diſcourſe with him, leſt you ſhould come into Danger for it?

Mr. *How.* Yes, I have had Diſcourſe with him about the Danger: And he has ſaid to me, I own myſelf to be the Author: And do not fear; if any Danger happen, you are a Rogue to yourſelf and Family, if you do not diſcover me.

Sir *T. Powis.* Look on theſe Papers, and ſee if he deliver'd theſe very *Obſervators* to you: Were theſe the very ſame?——Mr. *How.* Yes.

Sir *T. Powis.* And was he paid for them by you?——Mr. *How.* Yes.

Mr. *Mountague.* I deſire to ſee them.

Mr. *Att. Gen.* Deliver them to Mr. *Mountague.*

Mr. *Mountague.* Take that *Obſervator*, and look on it: 'Tis that which they are about to read. [*Then Mr.* How *look'd on it.*] How long ago is it that you had that Paper in your Cuſtody?

Mr. *How.* I ſuppoſe this was delivered out of my Shop, to be ſent to Mr. *Borret.*

Mr. *Mountague.* Do you know you ſent that Paper?

Mr. *How.* Yes, I deliver'd it, and put my Mark upon it.

Mr. *Mountague.* How long ago?

Mr. *How.* I do not juſtly remember it.

Mr. *Mountague.* If you do not remember that, do you remember the printing of it?——Mr. *How.* It was done at my Houſe.

Mr. *Mountague.* When a Copy is brought to you to be printed, do you print that Copy always exactly?——Mr. *How.* As near as I can, I do.

Mr. *Mountague.* The Queſtion I would aſk you, is; Do you, when you *have* a Copy, ſtrictly keep to the Letter of the Copy? Or do you, as you think convenient, alter it?

Mr. *How.* I have alter'd it oftentimes, to make it ſafe.

Mr. *Mountague.* Then you do take it on you to alter?

Mr. *How.* To ſtrike out a Line, never to alter his Senſe.

Mr. *Mountague.* Do you not inſert any Thing?

Mr. *How.* Yes, frequently a Word.

Mr. *Mountague.* Do you not take upon you to inſert ſeveral Words, and leave out ſeveral?——Mr. *How.* Yes.

Mr. *Mountague.* You do. Then I aſk you, Are you ſure that that Paper is printed without Alteration?

Mr. *How.* I do not remember any thing of that.

Mr. *Mountague.* I aſk you, Whether that Paper were not alter'd from what was ſent you?——Mr. *How.* I cannot ſwear it.

Mr. *Att. Gen.* Can you ſay that Paper was alter'd?

Mr. *How.* Not that I know of.

Mr. *Whitaker.* Look on the Title; whoſe putting down is that?

Mr. *How.* He agreed to the Title.

Mr. *Mountague.* Does the Paper come to you, entitled The *Obſervator*, or not?——Mr. *How.* I cannot tell whether he ever put it in.

Mr. *Mountague.* Who put it in then?

Mr. *How.* It was agreed between us to call it *The Obſervator.*

Mr. *Mountague.* Does he write The *Obſervator*, or did you?

Mr. *How.* There is no occaſion for the Title, that I know of.

Mr. *Mountague.* But who writ the Title to it?

L. C. J. Holt. They aſk you this Queſtion: Who was it that put this Title to this Paper?

Mr. *How.* I do not know but I might write it in the Paper at firſt, and ſo it was inſerted afterwards.

L. C. J. Holt. Who was it firſt writ that Title?

Mr. *How.* I do not know who did write that, He or I. I did firſt propoſe the Title to him.

L. C. J. Holt. Was that Title writ by him or you?

Mr. *How.* I do not know, my Lord.

L. C. J. Holt. Was there an Agreement made between you, that this Paper ſhould be writ once a Week with that Title?

Mr. *How.* Yes, my Lord.

L. C. J. Holt. Did he agree to that Title? And was he privy to it?

Mr. *How.* Yes, my Lord, it was agreed upon between us; and he agreed to write ſuch a Paper, with ſuch a Title.

Mr. *Whitaker.* Where did you come to this Agreement?

Mr. *How.* I cannot tell.

Mr. *Whitaker.* Was it in *London*, or *Middleſex*, or *Surrey*?

Mr. *How.* I cannot tell.——Mr. *Whitaker.* Where were they printed?

Mr. *How.* I printed ſome of them in *Fanchurch-ſtreet*, about Eighteen; the reſt in *Gracechurch-ſtreet.*

Mr. *Harris.* Was that Paper alter'd by you, or not?

Mr. *How.* I cannot remember whether I alter'd that or no.

L. C. J. Holt. You ſay you alter'd ſometimes: Did you acquaint him with the Alterations you made?

Mr. *How.* Sometimes they have been ſent to me; I knew not where to find him; and then I have alter'd them myſelf, rather than be diſappointed. At other Times, I have been in his Company; and then I complain'd, and he has alter'd them. And ſometimes he ſaid, You have the Pen; do you alter them.

Mr. *Soll. Gen.* Can you ſay, You alter'd a Syllable in theſe Papers?

Mr. *How.* I cannot ſay ſo.

Mr. *Soll. Gen.* Since the firſt publiſhing of them, have you not publiſh'd them in Volumes?——Mr. *How.* Yes.

Mr. *Soll. Gen.* And who gave Order for it?——Mr. *How.* Mr. *Tutchin.*

Mr. *Att. Gen.* What Direction had you about this Volume? [*A Volume bound up being in Court*].

Mr. *How.* That Volume was order'd by Mr. *Tutchin.* He ordered me to bind up Three Volumes: One of which he order'd to be deliver'd to Mr. *Borret*; which I did not deliver, by reaſon of a Proſecution at the *Old-Bailey.*

Mr. *Att. Gen.* Did he order any other Man's Works to be bound up, or his own?

Mr. *How.* He order'd me to bind his own, with the *Preface.*

Mr. *Att. Gen.* Where is that *Preface*?

Mr. *How.* Before the Book: And he owned that, and put his Hand to it.

Mr. *Att. Gen.* Had you paid for theſe?

Mr. *How.* Yes; He order'd me to bind up theſe together, and to deliver one of them to Mr. *Borret.*

Sir *T. Powis.* Did you pay him for the *Preface*?

Mr. *How.* Yes, and for the *Index.*

L. C. J. Holt. Who made the *Index*?——Mr. *How.* He did.

L. C. J. Holt. Did he write his Name to the *Preface*, after it was brought to you?

Mr. *How.* It was deliver'd to me with his Hand to it; and he owned it.

Mr. *Soll. Gen.* Then he owned all the *Obſervators* to be his, by ſetting his Name to the Volume?

Mr. *Mountague.* Where was this Book deliver'd to you to be bound up?

Mr. *How.* I do not know, whether in *London*, or *Middleſex*, or *Surrey.*

Mr. *Mountague.* Recollect where it was that you had this Diſcourſe about a Book.——Mr. *How.* I do not remember the exact Time.

Mr. *Mountague.* But you remember the Diſcourſe: And can't you ſay where it was?——Mr. *How.* No, indeed.

Mr. *Mountague.* The *Preface* they talk of, was it brought in Writing?

Mr. *How.* It was brought, or ſent in Writing; and I printed it from a Manuſcript Copy.——Mr. *Mountague.* How do you know he ſent it?

L. C. J. Holt. What did you give him for that *Preface* and *Index*?

Mr. *How.* I think it was ten Shillings.

Mr. *Mountague.* My Lord, with Submiſſion, they cannot read this Paper: For if it be read, it muſt be read as the Paper of Mr. *Tutchin.* Now, as to this Paper that they produce, we do inſiſt upon it, that is Mr. *How*'s Paper, and not Mr. *Tutchin*'s. For he tells you, That whatever Papers he had, or whatever Directions were given him from Mr. *Tutchin*, were in Writing. Now if Mr. *Tutchin* is to be charged with a Libel in Writing, they muſt produce that very Writing, or a true Copy thereof. And another Man's taking a Copy of my Writing, cannot be ſaid to make it my Writing; eſpecially when it is not prov'd to be a true Copy. So that this Paper, which is printed by Mr. *How*, cannot be charged on Mr. *Tutchin.* If one ſingle Penman had taken a Copy of it, if he could not be ſure it was an exact Copy, it could not be read; much leſs ſuch a Paper, which goes thro' ſo many Hands as this has done. And Mr. *How* ſays, He did often alter it, according to the beſt of his Underſtanding; and therefore that makes it his Paper. For, by a very ſmall Alteration, a Thing may be made a Libel, that was not ſo before. And beſides, it appears by Mr. *How*'s own Evidence, that Mr. *How* makes an Advantage by the Printing and Publiſhing of it: And perhaps he makes Alterations, to make it ſell the better. That makes it nothing like to Mr. *Tutchin*'s Paper; and therefore they ought to produce that very Paper that was brought from Mr. *Tutchin*: And this Paper ought not to be read againſt him.

Mr. *Harris.* My Lord, he does not ſwear it is a true Copy; and therefore we cannot allow it to be read.

Mr. *Whitaker.* He has added the very Title: It is called an *Obſervator*; and he has put that Title to it. And he gives you no Account when, or where there was any Agreement made with Mr. *Tutchin* about it.

L. C. J. Holt. Where was the Agreement made for printing the Papers?

Mr. *How.* I am not poſitive where it was; whether in *London* or *Middleſex.* I did think it was in *Fanchurch-ſtreet*; but he ſays it was in the *Strand.*

Mr. *Mountague.* Can you be poſitive it was in *Fanchurch ſtreet*?

Mr. *How.* I cannot be poſitive.

Mr. *Att. Gen.* Where were they printed?—Mr. *How.* In *Fanchurch-ſtreet.*

Mr. *Att. Gen.* Where did you bind the Book, and put the *Preface*?

Mr. *How.* That Book was ſent out of my Houſe to be bound; and when it was done, it was ſent from my Houſe again.

Mr. *Conyers.* Did he come to *Fanchurch-ſtreet*, to direct the Printing at any time?——Mr. *How.* Yes, ſeveral Times.

Mr. *Weld.* Did he agree with you to have them printed and publiſh'd?

Mr. *How.* Yes.

L. C. J. Holt. Have you the original Papers of theſe *Obſervators*?

Mr. *How.* I have very few of them now.

L. C. J. Holt. How came you to part with them?

Mr. *How.* I thought there would be no Uſe made of them, and ſo I did not keep them: But I have moſt of the third Volume by me.

Sir *T. Powis.* My Lord, in anſwer to this Objection, I muſt ſay, If this ſhall prevail in that Strictneſs, I take it for granted, that inſtead of reſtraining Libels, it will be the beſt and moſt effectual Way to publiſh them. For the Author then hath nothing to do, but when a Copy is printed, to deſtroy the ſame; and then no Evidence can be againſt him: Becauſe the Printer will be called on, to know if that which is printed agree with the written Copy to a Letter. If that be ſo, it will be impoſſible to come at the Author. It is not an Anſwer, to ſay, You may go to the Printer: For tho' he is puniſhable; yet it is more reaſonable to come at the Author. We have given a fair Evidence, that this is the ſame that was brought to this Man: And they do not make it appear, that he did add to, or diminiſh any of theſe Papers. The Printer ſays, The Defendant has avowed and juſtified all that he did for him ſince the Beginning. That by his Order he collected all thoſe *Obſervators* we inſiſt on, in this Volume; which he has owned, and publiſh'd ſufficiently: For here is his *Index* and *Preface.* And that he did publiſh this Volume there is no room to queſtion. We have given as good Evidence of this as the Matter will bear.

Mr. *Att. Gen.* My Lord, we have given as good Evidence as can be expected, of a Matter of this Nature. We are proſecuting the Author, and have brought the Printer to give his Evidence; which is all we are able to get: For it is not in our Power to prove, where the Defendant did actually write them. The Printer had no Reaſon to take care of the original Papers, becauſe when they were printed, they were of no Uſe. He tells you, the whole Volume was printed, and owned by Mr. *Tutchin* continually, and by him directed to be made up into a Book, and he paid Mr. *Tutchin* for writing them from Time to Time. If this be not a ſufficient Evidence of his publiſhing of them, it would be impoſſible to give any Evidence; for the Author would always take away his Copy, and then he is ſafe. Theſe were printed and publiſhed in *London*; and wherever the Agreement was made, we may charge the Defendant, where the Papers were printed, purſuant to an Agreement made between him and Mr. *How*; which makes the Compoſing and Printing his Act.

Mr. Serj. *Darnel.* My Lord, if this be not Evidence, that this Man is the Maker or Publiſher of theſe Papers, his Agreement to have it done, his owning after it is done, and his own Confeſſion, and his being paid for it; if this be not Evidence, nothing is.

L. C. J. Holt. His Agreement to publiſh that Book, is ſufficient to prove that he owned it.

Mr. *Conyers.* My Lord, there is one Thing very conſiderable; the Diſcourſe he had with this Man. Says he, *If you are queſtion'd about it, I am the Author, I gave you the Copy, and directed the printing of it*; *and you are unjuſt to yourſelf and your Family, if you do not diſcover me.* My Lord, they make this Objection: We did contract with Mr. *How* to make an *Obſervator*, but he made Alterations as he thought fit; and ſometimes he ſhew'd them to him, and ſometimes not. Now it's clear, Mr. *Tutchin* did give him that Liberty; and he cannot ſay, that there was any one of theſe Papers that was altered.

Mr. *Soll. Gen.* And, my Lord, after there were an Hundred compoſed, he directs Mr. *How* to bind them up in a Volume, and puts a *Preface* and *Index* to them, and ſets his Name to it. Now that is certainly a Publication and owning of them.

Mr. *Weld.* So far as in that Book goes, there is Evidence that he is the Author and Publiſher; and they have objected nothing to it: So that the only Queſtion is concerning the other *Obſervators.* Now he ſays he had leave from the *Obſervator* to make thoſe Alterations.

L. C. J. Holt. No, he does not ſay ſo. Hark you, Sir, Did you ever add any Thing?

Mr. *How.* Not that I know of, but a Word ſometimes to make it Senſe.

Mr. *Weld.* Did he ever allow you to do it?

Mr. *How.* He has often ſaid, that Printer was a Blockhead that did not.

Mr. *Mountague.* My Lord, my Objection was ſingly, as to the reading the Papers, not of the Book. The Thing they offer'd as Evidence, was the Papers; and we ſay they ought to produce the Originals, which they have not done.

L. C. J. Holt.

L. C. J. Holt. They offer the Book in Proof.

Mr. *Mountague.* Then, my Lord, I muſt beg Leave to oppoſe that likewiſe. For this Book is proved to be his, no otherwiſe, than by the Printer's ſwearing, that Mr. *Tutchin* order'd him to bind up three Volumes of his *Obſervators*; and the Printer himſelf has put together theſe Papers, and Mr. *Tutchin* has writ a Preface before them; but whether the Papers thus put together were ever examined, *non conſtat*; or whether the Bookbinder has made no Alterations, *non conſtat.* And it does not appear that Mr. *Tutchin* look'd over any of the Papers that are here bound up. So that the moſt the Queen's Counſel can make of this Evidence, is this: Here is a Book Mr. *Tutchin* took to be his Book, upon the outward View of it, or at leaſt upon the Credit of his Printer; and therefore every Thing in it muſt be read againſt him, as his. Surely, My Lord, that ought not to be allowed of. When Dr. *Drake* was here tried for being the Author of a ſcandalous Book, it was ſworn againſt him, That upon ſhewing him one of the Books he was charged with, he owned himſelf to be the Author of it. But a Queſtion being aſk'd, Whether the Book that was offer'd to be read in Evidence againſt him, was that very Book that had been ſhewn him, when he owned himſelf to be the Author? It was anſwered, No: But it was a Book of the ſame Impreſſion, and therefore ought as much to be read againſt him, as the Book he owned. But, as I take it, that Evidence was diſallowed.

Mr. *Att. Gen.* Mr. *Mountague*, you ſtate it wrong, for that Book was read.

L. C. J. Holt. That Book was read, tho' it was not proved as that very Book that was deliver'd. It was the Bookſeller that ſaid the Book was printed by Dr. *Drake*; but he would not ſay it was that very Book that was given in Evidence. He took a Book with ſuch a Title: But was this the Book? But he could ſay, the other Book was never taken away. Now this Book is owned by Mr. *Tutchin*, by making the *Preface* and *Index* to it.

Mr. *Mountague.* It was a Book of the ſame Impreſſion with that which Dr. *Drake* had own'd himſelf to be the Author of, that was offer'd in Evidence.

L. C. J. Holt. He took the Book from the Shop that was read, the other Book was in the Shop.

Mr. *Att. Gen.* The Bookſeller ſaid, He knew who writ the Book, but not who writ the Preface.

Mr. *Mountague.* But, my Lord, be the Caſe one Way or the other: The Thing we inſiſt on is, That they cannot read the firſt Papers produced, becauſe Mr. *Tutchin* has not owned that Paper in particular for his, that is inſerted in the Book.

L. C. J. Holt. If the firſt Paper was printed by his Order, according to the Bargain made between them, it is reaſonable it ſhould be read. *I do not know*, ſays he, *that I made any Alteration here*; *ſometimes I did alter*, *and ſometimes ſtrike out*, *and made the Expreſſion lower*; *but I know not that I made any Alteration here*; *and when I did*, *I oftentimes acquainted him with it*; *but that I made any Alteration here*, *I know not*: *I printed it by the Copy*, *and the Copy is loſt.* Now, Mr. *Tutchin* would have him make up a Volume; and, ſays he, This Volume I bound up by his Order.

Mr. *Mountague.* My Lord, here is a Paper offer'd, which they cannot prove to be a true Copy; and will you let them read it, becauſe they produce another Paper like it, bound up in a Volume; which, by the Way, is proved no otherwiſe to be his, than by his beſpeaking a Set of *Obſervators* to be bound up for him?——*L. C. J. Holt.* It is the ſame.

Mr. *Mountague.* My Lord, I think, with Submiſſion, they may not read any of the Papers, if they have not examined the firſt Copy ſent to the Printer.

L. C. J. Holt. A Man ſends a Copy to print, which is a Libel, and the Print is produced that is ſaid to be according to the Copy: There is another Print produced, that agrees with the firſt, which he hath owned.

Mr. *Mountague.* My Lord, I did hope that the Queen's Counſel would have given an Anſwer to that Part of my Objection, That theſe printed Papers are no more than Copies.

L. C. J. Holt. It is more than a Copy. Every Copy of a Libel is a Libel; and every Printer of a Libel is guilty of a Libel.

Mr. *Mountague.* My Lord, 'tis true, every Copy of a Libel is a Libel; but whoſe Libel is it?

Mr. *Harris.* My Lord, it is not proved, that he ever peruſed that Copy.

Mr. *Mountague.* Pray, Mr. *How*, was it his Direction to put theſe very Sheets together, or to make up a Volume of *Obſervators?* I do aſk you, Whether your Direction was to make up a Book of *Obſervators*, or to bind up theſe very Sheets?

Mr. *How.* He gave me Direction to make up a Set of *Obſervators.*

Mr. *Mountague.* Then you ſay, it was only to bind up a Set of *Obſervators*; and ſo, on your own Head, you bound up theſe *Obſervators?* But can you ſay, he has look'd over all the Papers in that Book, and own'd them?

Mr. Serj. *Weld.* My Lord, here is a Man ſays, He order'd him to deliver them to my Lord *Nottingham.*

Mr. *Mountague.* How long is it ſince he gave you theſe Directions?

Mr. *How.* I believe it was about a Week after the Volume was publiſhed.

Mr. *Mountague.* How long ſince is it that the Volume was publiſhed?

Mr. *How.* It was about *April*, 1703.

Mr. *Mountague.* How long after did you deliver them?

Mr. *How.* I deliver'd them within a Week after.

Mr. *Att. Gen.* There are but two of the *Obſervators* we charge the Defendant with in that Book; and therefore we humbly inſiſt on reading of the printed Papers, on the Evidence we have given, which we take to be ſufficient to read them without the Book: Theſe Papers being printed after this Agreement was made between them, and bound up by his Directions, he is anſwerable for them.

Mr. *Mountague.* My Lord, I do, with Submiſſion, ſay, It ought not to be read, tho' it be in that Book; for no Man has proved that Paper that is in it to be his. But if they lay any Weight on the owning the Book, the publiſhing the Book is a new Crime, for which he may be puniſhed afterwards, and he is not charged with it in this Information.

Mr. *Att. Gen.* If a Man be indicted for being the Author of a Book; being indicted once, he is indicted once for the whole Book.

Mr. *Whitaker.* My Lord, we are indicted for a ſingle Paper; and that Book is not the Matter of the Indictment.

Queen's Counſel. My Lord, we have done now. We deſire the Papers may be read.——*L. C. J. Holt.* Read them both.

Then the firſt Obſervator *was read.*

Obſervator, *May* 30, 1702. " At the ſame Time we conſider the *French*
" King's Succeſs in his Bribery and Corruption, we ought to lament the
" ſad State of our own Country, which affords ſo many Inſtances of
" Treachery. If we may judge by our national Miſcarriages, perhaps no
" Nation in *Europe* has felt the Influences of *French* Gold more than *Eng-*
" *land*; and worthy it is our greateſt Lamentation, that our Dear Country
" ſhould be weaken'd by Men of mercenary Principles, when Countries
" inferior to us in Strength and Riches are ſecured from Attempts of this
" Nature, only by the Fidelity of their People. What is the Reaſon that
" *French* Gold has not affected *Holland*, as well as *England?* but that their
" Miniſtry is ſuch, as is entirely in the Intereſt of their Country, and al-
" together incorruptible: They prefer Men that are knowing in their
" Poſts, and are active in Buſineſs. When in *England*, we find Offices
" for Men, not Men for Offices; and a Title of Honour gives a Man a
" Title to a great Employment he is altogether ignorant of. By this, and by
" preferring of Men by Intereſt and Favour, has the Exciſe, the Cuſtoms,
" and other Branches of the Revenue, intolerably ſunk; and by this
" Means has the Navy of *England*, our chief Support, been hitherto per-
" fectly bewitch'd: And can *Lewis* ſpend his Money better, than in get-
" ting Men into Offices in *England*, who are either falſe or ignorant in
" the Buſineſs, or are his Friends?"

Mr. *Soll. Gen.* The next is No. 23. *Saturday*, *July* 11, 1702.

" And this is a Prerogative of ſingular Advantage to the People of *Eng-*
" *land*, in that their Repreſentatives are the Judges of the Male-Admini-
" ſtration of their Governors, that they can call them in Queſtion for the
" ſame, and can appoint ſuch to wear the Crown who are fitteſt for Go-
" vernment; which they have often done, and indeed which is the Pri-
" vilege of all free People, who are authorized by the Laws of God and
" Nature to chooſe their own Governors."

Mr. *Att. Gen.* Now we will ſhew theſe Papers to Mr. *How*, for theſe are all that are in the Book. (*They were ſhewn him.*) Mr. *How*, pray tell us who was the Author of theſe Papers?——Mr. *How.* Mr. *Tutchin.*

L. C. J. Holt. How do you know that?—Mr. *How.* I had them of him.

Mr. *Att. Gen.* Did you pay him for them?

Mr. *How.* I paid him for theſe very Papers.

Mr. *Mountague.* What, theſe Papers that are now produced? You never ſhewed them to him, did you?

Mr. *How.* No; but I ſhew'd him the ſame Number.

Mr. *Mountague.* Have you read them to him?

Mr. *How.* He has owned them all; he has owned them an hundred and an hundred Times, all of them.

Mr. *Mountague.* Have you the Copy of theſe Papers by you?

Mr. *How.* No.

Mr. *Mountague.* Did you ſearch for them?

Mr. *How.* No, I have not.

Mr. *Harris.* My Lord, if we had ſeen theſe Papers, then we might have ſeen what Alterations were made in them.

Mr. *How.* I believe he had them back again.

Mr. *Mountague.* I believe he has not been aſk'd to ſearch for them.

Mr. *Att. Gen.* Did not Mr. *Borret* ſend to you about the Original Papers?——Mr. *How.* Yes.

Mr. *Att. Gen.* Did you look out what you had?

Mr. *How.* Thoſe that I had were look'd out.

Mr. *Att. Gen.* What became of them?

Mr. *How.* I know not, but he might have them back again.

Mr. *Att. Gen.* Thoſe that you did find, what did you do with them?

Mr. *How.* Thoſe that I have now, are but Two or Three.

Mr. *Att. Gen.* Did you carry all the Original Papers you had to Mr. *Borret?*——Mr. *How.* Yes, all that I know of.

Mr. *Mountague.* Have you no Copies? Did you not ſay you were not deſired to look for theſe *Obſervators?*

Mr. *How.* I ſaid, I did not know whether I was ordered to ſearch for theſe particular *Obſervators.*

Mr. *Mountague.* Did Mr. *Borret* deſire you to look after theſe Original *Obſervators?*——Mr. *How.* I am not poſitive.

L. C. J. Holt. Did you deliver all thoſe that you had to Mr. *Borret?*

Mr. *How.* Yes, my Lord, all that I had at that Time; but I have had ſome ſince.

Mr. *Att. Gen.* He told you before, That till there was like to be a Proſecution, he did not keep them, but ſince he did; and now he look'd for what he had, and deliver'd them to Mr. *Borret.*

L. C. J. Holt. Then Mr. *Borret* muſt be ſworn.

And he was ſworn accordingly.

Sir *T. Powis.* Mr. *Borret*, acquaint my Lord, and the Jury, whether you deſired Mr. *How* to look out the Copies of the *Obſervators.*

Mr. *Borret.* I ſent to deſire Mr. *How* to look out all the written Copies of the *Obſervators* which he had received from Mr. *Tutchin*; and he afterwards brought me a conſiderable Number of them, and ſaid, they were all he could find: And I have very carefully look'd them all over, but cannot find any one amongſt them that relates to any of thoſe *Obſervators* mentioned in the Information, except one, which is in *May* laſt, the which I have here in Court.

Mr. *Mountague.* Did you ſend to Mr. *How*, to aſk for the Original of theſe Papers here named?——Mr. *Borret.* I did.

Mr. *Mountague.* Will you produce the Papers you have? My Lord, they have taken thoſe Original Papers; and if they were produced, you would ſee how they are mangled.

Mr. *Att. Gen.* If they were nothing to the Matter, what did they ſignify? Only this is a popular Thing, and they muſt ſay a great deal.

Mr. *Conyers.* Read the *Obſervator* of the 12th of *June*, 1703, which contains theſe Words. (*Which the Clerk read*, *as follows.*)

" Take one Time with another, the Miſmanagements of the Navy have
" been a greater Tax on the Merchants, than the Duties raiſed by Parlia-
" ment. We never had a better Navy; but the Wiſdom of the Managers
" thereof is like a Bottomleſs-Pit, paſt finding out."

Mr. *Conyers.* Now go on to N° 20, the 16th of *June*, 1703. (*Which the Clerk read*, *as follows.*)

" What avails it a Man of Learning and Parts, to qualify himſelf for
" the Service of his Country on the Ocean? If he has Knowledge enough
" to adviſe *Neptune* himſelf, if he has no Intereſt, he ſhall have no Prefer-
" ment. How much does it look to our Nation's Diſadvantage, to have
" Men in eminent Stations in the Navy, who have not ſo much as an Idea,

" a No-

“ a Notion, a Thought of Naval Affairs? To have Men to ſuperintend
“ the Building of our Floating Caſtles, who know not the Nature of any
“ Part of the Management? To have Men employ'd in the Victualling,
“ who qualify themſelves for that Poſt by learning to write their Names,
“ which is indeed a Poſt for a Philoſopher bred to the Sea?”

Then Mr. Tanner *was ſworn, as to an original Record, which he produced about* Daniel De Foe*'s Trial, to be compared with the Paſſage to be next read.*

Mr. *Conyers.* Now read the *Obſervator*, N° 27. *Saturday* the 10th of *July*, 1703. *(Which was read, as follows.)*

“ *Countrym.* Truly, Maſter *Obſervator*, I have no very good News for
“ you. Mr. *Daniel De Foe* has pleaded Guilty to the Indictment againſt
“ him, for writing and publiſhing *the ſhorteſt Way with the Diſſenters*; and
“ he is ſentenc'd to ſtand three Times in the Pillory, to pay a Fine of 200
“ Marks, and to find Security for his good Behaviour for ſeven Years.
“ *Obſerv.* The Court could do no otherwiſe than convict him, upon his
“ pleading Guilty; *habemus confitentem reum* is very often the Voice of
“ Courts of Judicature: 'Tis the Eaſe of Judges and Juries. If *Daniel*
“ *De Foe* was in Expectation of *Coleman*'s Black-Box, he has found a
“ Pillory inſtead of it. I don't trouble my Head about the Cuſtom of
“ giving the Pillory to Authors, which is the Puniſhment of Bakers.
“ You talked juſt now of turning Author, have a Care of your Candle;
“ you ſee which is the ſhorteſt Way with Authors: You muſt all enter
“ yourſelves in the Regiment of Colonel *Foe.* The Law of *England* directs,
“ That no Man ſhall be fined *ultra tenementum*; and I make no
“ Queſtion, but the Juſtice of the Court has fined Mr. *Foe* anſwerable
“ to his Eſtate: His Security for his good Behaviour for ſeven Years,
“ without doubt, was rationally conſider'd, as to the Legality thereof.
“ For my Part, I am only acquainted with old Laws of *England*, the ancient
“ Birthrights and Immunities of *Engliſhmen:* This I take to be the
“ Foundation of new Laws.”

Sir *T. Powis.* The laſt is of the 20th of *May* laſt; Mr. *Borret*, is the Original of that here?——Mr. *Borret.* Yes.

Sir *T. Powis.* Who had you this of?

Mr. *Borret.* I had it from Mr. *How.*

Sir *T. Powis.* Shew it to Mr. *How.* *(Which was done.)*

L. C. J. Holt. Whoſe Hand is that?

Mr. *How.* To the beſt of my Knowledge, it is Mr. *Tutchin*'s.

L. C. J. Holt. Who had you it from?

Mr. *How.* From Mr. *Tutchin*, or his Order.

L. C. J. Holt. Did you pay him for it?——Mr. *How.* Yes, my Lord.

Mr. *Att. Gen.* Then that likewiſe was printed under the Title of the *Obſervator?*——Mr. *How.* Yes, Sir.

Then the Paragraph was read.

“ *Countrym.* Maſter *Obſervator*, there's another Plot againſt you.
“ *Obſerv.* Prithee, Man, there's a Plot againſt the Queen, and the whole
“ Nation; is it any wonder then that there are Plots againſt me? The
“ High-Flyers are now plotting againſt every honeſt Man in *England.* I'll
“ tell you more of it the next Time we meet. *Countrym.* I fancy ſome
“ Sort of People plot againſt you, becauſe you endeavour to countermine
“ their Plots againſt the Queen and Nation. *Obſerv.* You are right
“ enough; but that ſhan't hinder me from detecting their Deſigns, and
“ from opening the People's Eyes. But, prithee, what Plot is this?
“ *Countrym.* Why, Sir, it is a Plot preparatory to your Trial; and if
“ they can't effect this Plot, I ſuppoſe you'll never be try'd. They insinuate
“ into the Citizens of *London*, that you have lately written very
“ ſcandalouſly, maliciouſly, and treaſonably, and I don't know how many
“ other Lies, againſt 'em the ſaid Citizens; and by this Means they are
“ minded to ſet your Jurors againſt you. *Obſ.* This is likely enough;
“ they'll leave no Stone unturn'd, to ſuppreſs the Truth. I underſtand,
“ I ſhould have been proſecuted by Bill the laſt Seſſions, but that the
“ High-Flyers did not like the Jury; nay, they ſay they don't like the two
“ Sheriffs, becauſe they won't pack Juries to find innocent Men Guilty.”

Mr. *Mountague.* Now, my Lord, we take it, there is a Variation between this Paper, and the Information. In the Copy, it is only *C.*; in the Information, it is *Countryman.* Now when they deſcribe any Paper, it muſt be as it is writ; and they cannot ſay *Countryman*, when it is but *C.*

L. C. J. Holt. He writes a Dialogue between the *Countryman* and the *Obſervator*; but now he makes *C.* for *Countryman.*

Mr. *Mountague.* My Lord, if they go upon the Libel, they muſt give it as it is under his own Hand.

Sir *T. Powis.* That Letter is to be underſtood *Countryman.*

L. C. J. Holt. When he uſed to write *C.* were you not to write *Countryman* at large?

Mr. *How.* At firſt we were; afterwards as it might be intelligible.

Mr. *Mountague.* Still we think they have not done enough: They have not proved this Thing ſufficiently, by the Witneſſes they have called. For, my Lord, we take it, that they muſt poſitively ſhew it was writ within the City. In the Trial of the Biſhops, it was proved to be all under their Hands: Yet it was required then, that they might make it appear, that that Paper was writ in the County of *Middleſex.*

Mr. *Att. Gen.* Mr. *How*, where do you live now?

Mr. *How.* In *Grace-church-ſtreet.*

Mr. *Att. Gen.* Let that Agreement be made where it will, the Publiſhing was in *London*; and we may lay the Information here.

L. C. J. Holt. Where did you receive theſe Papers?

Mr. *How.* Moſt commonly they were ſent to my Houſe, in *Talbot-court, Grace-church-ſtreet.*

Mr. *Whitaker.* Have you not fetch'd ſome of them from *Lambeth?*

Mr. *How.* Yes, ſome of them.

L. C. J. Holt. Suppoſe a Man draws up a Libel in *Middleſex*, and there agrees with a Printer who lives in *London* to print it: He takes it away, and prints it in *London*, and there publiſhes it. Now the Queſtion is, Whether he that drew it, is not guilty of Compoſing and Publiſhing of it in *London?* Every Copy is a Libel of itſelf.

Mr. *Mountague.* Every Copy is a Libel; and the taking a Copy of a Libel, may be a Publication: But that is not the Thing laid to his Charge; it is *Scripſit & Compoſuit.* Now the Writing is in the County of *Surrey*; there he writes, and there he compoſes.

L. C. J. Holt. He is charged with Writing, Compoſing, and Publiſhing a Libel in *London.* Though he be not guilty of Writing there, yet he may be guilty of Compoſing it there.

Mr. *Mountague.* Now, my Lord, as to the Publiſhing, the Printing is not the Defendant's Publiſhing: That affects another Man. Therefore we think they ſhould give ſome Evidence of his writing theſe Papers in *London.*

Sir *T. Powis.* My Lord, As to that, the Word *Compoſuit* is proper to relate to the Printing of it; (For the Printers have ſuch a Term as Compoſing.) And that is fully proved to be in *London.* And for Writing (whether that be a material Thing between us) I take it, that he that does write a Libel, and ſends it to *London*; and there, by his Authority and Directions, it is compoſed again in another Paper, and printed; that Paper is ſtill his Writing, wherever it goes. However, the other Words come up to the Caſe fully; becauſe if that which he writes is ſo publiſhed, it may be ſaid to be writ by him, wherever it is ſo publiſhed.

Mr. *Att. Gen.* We have proved his owning himſelf to be the Author, and his cauſing it to be printed in *London.*

L. C. J. Holt. That is not an Evidence of his writing it.

Mr. *Att. Gen.* My Lord, It is a Proof of his cauſing it to be printed.

L. C. J. Holt. If he be guilty of a Fact in one County, you cannot charge it in another. But if he caus'd it to be printed in *London*, no queſtion it will be a Publication here.

Mr. *Att. Gen.* The Compoſing and Printing is a Publication; and that we have proved to be done in *London*, purſuant to his Agreement. And we alſo charged him with writing the ſame; and as a Proof of that, we have proved his owning himſelf to be the Author. If that be not an Evidence of his writing it, we can hardly ever prove that part of the Charge of writing: For he that writes a Libel, will do it alone; and proving the Copies to be received in *London*, is an Evidence they were writ there firſt, if the Defendant did not prove the contrary.

Mr. *Whitaker.* Mr. *How* ſwears, he had the Copy from *Lambeth.*

Mr. *Att. Gen.* Where was it compoſed?——Mr. *How.* At my Houſe.

Mr. *Att. Gen.* Was he there at your Houſe?

Mr. *How.* Yes; and I had them from him there.

L. C. J. Holt. Did he write any of them there?

Mr. *How.* Not that I know of.

Mr. *Att. Gen.* Is Mr. *Tutchin* in the Court?

Mr. *Mountague.* I believe not.

L. C. J. Holt. Why is he not here?

Mr. *Mountague.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, to ſpare me a few Words in Behalf of the Defendant. I can hardly ſay I am of Counſel with Mr. *Tutchin*, becauſe I have never ſeen him, but upon recording his Appearance in open Court; and he has not thought fit to ſend us any Inſtructions till this Morning, when we were juſt going down to *Weſtminſter.* But I do ſuppoſe, this Remiſſneſs in his Temper, does proceed from his Innocency of the Accuſation againſt him: And he has a Mind to let the World ſee, how eaſy it is to make his Defence; ſince he has pitch'd upon me for his Advocate, and given me ſo little Time to prepare myſelf for it. But as ſhort Notice as I have had of this Information againſt him, thus much I will beg Leave to ſay to it in general; That it does by no Means come up to what the Gentlemen on the other Side call it, *A Charge of Writing and Publiſhing a falſe and ſcandalous Libel.* My Lord *Coke* has given us a Definition, or rather a Deſcription of a Libel: Says he, “ *Famoſus Libellus, ſeu infamatoria Scriptura*,
“ is made either againſt a private Man, or a Magiſtrate. If it be
“ againſt a private Man, it does deſerve to be puniſhed; becauſe it is
“ likely to incite all the Family or Kindred of ſuch Perſon, to revenge
“ the Injury; which tends to the Breach of the publick Peace. If it be
“ againſt a publick Perſon, as a Magiſtrate, it is a greater Offence: Becauſe
“ it concerns not only the Breach of the Peace, but it is a Scandal
“ to the Government. And it matters not whether ſuch private Man, or
“ Magiſtrate, be dead or alive at the making of ſuch Libel; becauſe the
“ Friends and Relations of ſuch Perſons, are incited thereby to diſturb the
“ Peace of the Kingdom.” By all which Sayings of my Lord *Coke*, I do humbly ſuppoſe, That there can be no Libel, where no Perſon certain is reflected upon, or ſcandalized. A Libel that points at nobody in particular, is like a Shot at Random, that ſeldom does any Miſchief. And therefore I do take it, with great Submiſſion, That in this Caſe, Mr. *Attorney* ſhould have ſhew'd us what Perſon (either publick or private) theſe *Obſervators* have aſperſed. My Lord *Coke*, in another Place, does liken libelling to Poiſon, which ſecretly deſtroys a Man's Reputation, as the other does his Life. But certainly it would be thought a ſtrange Sort of Indictment, to charge a Man with being guilty of Murder; and not mention ſome one in particular, that has loſt his Life through the Defendant's Means or Procurement. Now pray, my Lord, how much does this Information differ from ſuch an Indictment? Here it is ſaid, That the Defendant *Tutchin* has wrote and publiſhed a falſe and ſcandalous Libel, of and concerning this Kingdom of *England*, and the Officers and Miniſters of the Queen. But a national Reflection, that equally concerns every individual Perſon in the Kingdom with the Reflector himſelf, cannot excite and ſtir up the People to quarrel one with the other. And to tell me, the Miniſters and Officers of the Queen are particularly concern'd, does but give me Occaſion to aſk, what Officers and Miniſters Mr. *Attorney* is taking care of? For I do not find any Miniſter of State, or other great Officer, ſo much as mention'd throughout this Record. A Bailiff, or Conſtable, is one of the Queen's Officers; and yet very few will think, a Man ought to be puniſh'd for Scandal, that ſhall ſay of ſuch Officers and Miniſters, they commit frequent Miſdemeanors, and are of mercenary Principles. Would it not have been eaſy for Mr. *Attorney* to have aſſigned the Particulars, if he knows of any body that has been defamed by theſe *Obſervators?* But ſince the Information ſets forth no Particulars, I hope the Jury will take it for granted, that nothing in theſe Papers can be affixed to any Man's Door: But whatever has been writ, is ſpent in the Air; and I hope this Accuſation will vaniſh there likewiſe.

In the next Place, my Lord, I would beg Leave to take Notice of the particular Papers, which have been ſeverally read in Evidence. And the firſt that has been produced, is one of the printed *Obſervators*, agreed on all Hands to have been publiſh'd ſo long ago as the 30th of *May*, which was in the firſt Year of her preſent Majeſty's Reign. And as to this, the

Charge is, That the Defendant has written, compoſed and publiſh'd it. But how many of theſe three Particulars have been made out, muſt be next obſerved. And as to the writing of it, Mr. *How* has ſworn, That there was an Agreement made betwixt him and the Defendant, (but where, he cannot ſay) that Mr. *Tutchin* ſhould write a Paper, ſometimes once, ſometimes twice a Week, of the publick Tranſactions; and ſuch a Paper has been writ by Mr. *Tutchin*; but where this Paper was wrote by Mr. *Tutchin*, or delivered, Mr. *How* cannot ſwear. However, ſo far he goes, that from theſe Papers of Mr. *Tutchin* he has printed at his Houſe in *London*, theſe Papers are now produced. But on this Evidence, I muſt, with your Lordſhip's Favour, obſerve, That there are two different Sorts of Libels ſpoken of: The one is in Writing, ſuppoſed to be written by Mr. *Tutchin*, but God knows where: The other in Print, own'd by Mr. *How* to be printed and publiſhed from the written Paper; which does not appear, and of which no true Copy has been proved. Now we hope, therefore, my Lord, that the Gentlemen of the Jury will rightly diſtinguiſh betwixt this firſt and ſecond Libel, and make a Difference betwixt the Act of Mr. *How* and that of Mr. *Tutchin*. The printed Papers here produced are ſtil'd the *Obſervator*; ſo was not the written ones, if Mr. *How* be to be believed. The printed *Obſervators* are ſold about for the ſole Benefit of Mr. *How*; and Mr. *Tutchin* receives only a ſmall *Præmium* for the writing once or twice in a Week. Mr. *Tutchin* only earns his weekly Subſiſtence by making Obſervations in the Country; and it does not appear, that he concerns himſelf further about the printing or publiſhing of them. If he gets his Money, Mr. *How* may do with his Papers as he thinks fit. So that I muſt humbly inſiſt upon it, That what Mr. *How* has done within this City of *London*, can never reach Mr. *Tutchin* into *Surry* or *Eſſex*. It has been ſaid indeed, and I ſhall not contradict it, That the bare tranſcribing of a Libel, will make a Man guilty of libelling: But for this Reaſon I do ſay, That Mr. *How* only has been guilty of making and publiſhing theſe printed *Obſervators* in *London*; and Mr. *Tutchin*, if he be guilty, muſt be convicted of the making and publiſhing that, which can be ſworn to be his written Obſervations; eſpecially ſince it has plainly appear'd that the Papers written by Mr. *Tutchin*, have been frequently altered by Mr. *How*, before they were printed off.

And if we conſider the Paſſages that have been produced, the Gentlemen of the Jury will perceive a very little Alteration will make theſe Papers quite different from what they are. However, as they be, I hope there is no great Matter in any of them. The firſt *Obſervator* ſays: "At the "ſame Time, if we conſider the *French* King's Succeſs, in his Bribery "and Corruption, we ought to lament the ſad State of our own Country, "which affords ſo many Inſtances of Treachery, *&c.*" Now, pray who is *We* in this Caſe? Says Mr. *Attorney*, in his *Innuendo*, The People of *England*. But I hope an *Innuendo* ſhall not make a Man guilty of a Crime, which otherwiſe can't be affixed upon him. But ſuppoſing this ſame Paper were in truth written with relation to *England*, Will any one ſay, that (no Times whatſoever) this Country has afforded not any Inſtances of Treachery? And what Part of this Information does ſo much as fix the Time to which the *Obſervator* alludes? If all that is here ſet forth were written of a former Miniſtry, I do ſuppoſe there would not be ſo much Blame laid on the Author, as if he comes nearer the preſent Times: So the Time to which theſe Papers do refer, muſt certainly be material, and fit to be conſidered of, before any one can rightly judge of this Caſe. And for want of its being aſcertained and determined whither theſe Reflections may extend, I hope the Jury will not very much regard them.

The next Charge does ſet forth a wicked Aſſertion to have been made, *de & concernen' Poteſtat. Populi Anglicani.* But we muſt be in your Lordſhip's Judgment, whether the Paper that is produced does make out that Aſſertion to be juſt as it's laid. I take it, with Submiſſion, that there is a manifeſt Variance betwixt the Charge and the Libel. The Charge makes him ſpeak of the Power of the People at large; when the Paper comes to be read, that ſpeaks of our Repreſentatives in Parliament. And ſurely there is a Difference to ſay, The People at large can do ſo and ſo; and to ſay, Our Repreſentatives in Parliament can do it. For Inſtance, The making of Laws is not in the People diſperſed over *England*, but in their Repreſentatives in Parliament, in Concurrence with the Houſe of Lords, when the Royal Aſſent does likewiſe concur with them; therefore, I think, this Charge can't affect us upon Account of this Variance. The next Article then to be taken notice of, is that concerning the Navy.——

Mr. *Soll. Gen.* But Mr. *Mountague* ſays nothing of the Prerogative the People have, that the Repreſentatives are the Judges of the Male-Adminiſtration of their Governors; that they can call them in Queſtion for the ſame, *and can appoint ſuch to wear the Crown*, who are fitteſt for Government, which they have often done. He paſſes by all this ſcandalous Matter.

Mr. *Mountague.* I did ſo, Mr. *Sollicitor*, and I did it on Purpoſe, becauſe I look'd upon it as a Matter not proper for you and me to talk of as Advocates in this Place. And I am apt to think my Diſcretion in paſſing it by will be more eaſily juſtified, than theirs that ſhall bring ſuch Points as theſe upon the Stage to be talk'd on before this Aſſembly. I muſt declare, for my own Part, that I think the Rights of Princes and the Power of the People too high Topicks for me to meddle with; let others do as they think beſt. I ſhall paſs over to the next Article concerning the Navy. "Take one Time with another, the Miſmanagements of the Navy have "been a greater Tax on the Merchants, than the Duties raiſed by Par"liament." Now, how does this relate only to the Navy-Royal? It is no where ſaid, the Miſmanagement of the King's Navy, or the Queen's Navy. And the Word Navy does, in my poor Underſtanding, ſignify no more than a Number of Ships got together; and therefore I do humbly conceive, there may be a Navy of Merchant Ships as well as a Navy of Men of War, 'tis altogether uncertain what Navy the Author does allude to.

L. C. J. Holt. Surely the Navy muſt be the Navy Royal.

Mr. *Mountague.* If it muſt, my Lord, yet nobody can ſay that we never had any Miſmanagements in the Royal Navy, and whenever that has happened, the Merchants of *England*, in all Probability, have ſuffer'd for it.

Mr. *Att. Gen.* My Lord, I think all this Diſcourſe is ſuch as is not to be allowed.

Mr. *Soll. Gen.* When a Man complains of the Miſmanagement of the Government, and then comes after this, and ſays, that the People have a Power inherent in them to call their Governors to an Account: What is this? Does it want an Expoſition, thus to poſſeſs the People with an Opinion of the Power they have to call the King or Queen to an Account? What does ſuch Things tend to, but to raiſe in the People an Indignation againſt the Government?

Mr. *Mountague.* My Lord, the Thing I was inſiſting upon was, that whatever is here ſet forth, is not brought within any Compaſs of Time, and there is no particular Reflection upon any Perſon whatſoever. Tho' Mention is made of divers Miſmanagements, and of ſeveral Miſcarriages; yet all theſe Things may be ſaid of other Times long ſince. And therefore, ſince this Exception goes to all the reſt of the Charges in the Information, I ſhall paſs by the other Particulars. And ſince I have taken up a great deal of your Lordſhip's Time already, I ſhall leave the reſt to theſe Gentlemen that are to ſpeak after me.

Mr. Serj. *Darnel.* Will you ſay they are true?

Mr. *Whitaker.* My Lord, here is an Accuſation that we did write, and compoſe, and publiſh, theſe Papers; now it appears, that the firſt Author was often out of *London*, and that the Copy was often fetch'd from *Lambeth*, and other Places; and the Witneſs did apply the Title of *Obſervator* to every one of theſe Papers. Now that which they call Libellous is not in the Writing which we did write; and if we did not write it in *London*, I hope you will not find us guilty of writing and publiſhing a Libel.

Mr. *Mountague.* My Lord, we have not done any thing as to the Printing at all; we had nothing to do with it.

L. C. J. Holt. Were not you concerned in printing it? I can't imagine how Mr. *How* came to pay for it elſe. Mr. *How*, what were you to give for every *Obſervator?*

Mr. *How.* For about ſixty-ſix of the laſt, I paid twenty Shillings a Time.

L. C. J. Holt. What did you give for them before?

Mr. *How.* Half a Guinea a Time.

L. C. J. Holt. Was it the ſame thing to him whether you printed it or not?

Mr. *How.* Yes; but I would not have given it him, if it had not been to be publiſhed.

Mr. *Whitaker.* My Lord, we are in your Judgment as to this Matter, whether they can find us guilty of a Libel in *London?*

Mr. *Soll. Gen.* It was in *London.*

L. C. J. Holt. Where was the Agreement made?

Mr. *How.* I did think at firſt that it was in the City, and I do think ſo; but he ſays it was in *Surry*. The Papers were delivered ſometimes at my own Houſe, and ſometimes in the Country.

Mr. *Att. Gen.* Were they deliver'd to you to be printed?

Mr. *How.* Yes.

Mr. *Att. Gen.* You ſaid you and he have mended the Papers; has that been done at your Houſe in *London*, or in the Country?

Mr. *How.* I do not know which.

Mr. *Mountague.* Let me aſk you one Queſtion: Can you ſwear to any particular Paper, that he deliver'd that Paper in *London?*

Mr. *How.* I do not know where they were delivered.

Mr. *Weld.* It need not be inſiſted on to find him guilty of all; if they find him guilty of the Publication, that will be enough; and that they cannot deny but he is guilty of that. When it is deliver'd to be printed, it is as much a Publication as the compoſing of it.

Mr. *Mountague.* But it does not appear that it was delivered in *London.*

Mr. *Weld.* But he owned it in *London.*

Sir *T. Powis.* He did cauſe theſe Papers to be printed in *London.*

L. C. J. Holt. He deliver'd them to be printed in *London*: *How* agrees to give him Half a Guinea a Paper at firſt, and Twenty Shillings afterwards; and ſurely then he deſigned to have them printed.

Mr. *Mountague.* He cares not what he does with the Papers, he was only to have ſo much Money for them.

Mr. *Att. Gen.* My Lord, here they are ſetting up a Doctrine that will make libelling ſafe, ſo that no Man ſhall ever be puniſh'd for it. We have charg'd him with writing, compoſing, and publiſhing a Libel: We have proved the Agreement made with the Printer, be it in *London*, or out of *London*, is not very material. Now if there be an Agreement made out of *London* for printing and publiſhing a Libel, wherever that Libel is printed and publiſhed, he is guilty; for whatever is done by his Agreement, he is guilty of it. As to the next thing, I am much concerned to hear them ſay, that which I never before heard urged in any Court, that a Libel is not a Libel unleſs they aſſign ſome particular Perſon; but I look upon it as the higheſt Kind of Libels to reflect on publick Officers in general; on the Adminiſtration of Juſtice in general. I believe every one knows a Libel is a Libel, tho' particular Perſons are not named: If it reflect on Officers in general, as Miniſters of State, or Judges, or the like. Mr. *Mountague* would have it, that Reflections on the Miniſters of the Crown is not a Reflection on the Queen; and he would have it, that we ſhould have averred who theſe Miniſters are that were meant in the Libels. As to the firſt, certainly they that reflect on the publick Adminiſtration of Juſtice by the Queen's Officers, do reflect on Her Majeſty, who places and continues them in their Offices. And to the ſecond Reflection, being in general on the Miniſtry, we ought not, nor could aver, who in particular he meant in theſe Libels; the whole Adminiſtration under the Queen is reflected on, in placing in Officers in general; in the Management of the Navy, and placing in the Officers thereof; and in the Adminiſtration of Juſtice in the Courts of Juſtice; and what can be more ſcandalous? There needs no Averment to explain theſe, in themſelves they appear to be Libels; and I hope ſuch Diſcourſes as have been made on this Occaſion for the Defendant will not meet with any Countenance; but I am ſurprized to hear it juſtified here by a Counſel, That the People have Power to call their Governors to Account.

Mr. *Mountague.* I did not ſay ſo.

Mr. *Att. Gen.* Certainly what you did ſay, *viz.* That you ſhewed more Diſcretion in paſſing it by than we did in queſtioning the Defendant for it, and that we wanted Diſcretion in bringing this Matter on the Stage, could have no other Meaning, but that the Matter was juſtifiable, but you would not in Prudence do it; which, I muſt ſay, is the greateſt Liberty I have known taken by a Counſel.

L. C. J. Holt. I did not hear him ſay ſo.

Mr. *Mountague.* I did not ſay ſo; I ſaid it was more diſcreet to paſs it by than take notice of it.

Mr. *Att. Gen.* I will always proſecute any Man that ſhall aſſert ſuch

Doctrine. My Lord, I think myſelf obliged in Duty, being in the Station I am, always to take Notice of ſuch Diſcourſes as theſe, which no Counſel ought to preſume to make.

L. C. J. Holt. Gentlemen of the Jury, This is an Information that is preferred by the Queen's Attorney-General againſt Mr. *Tutchin*, for writing, and compoſing, and publiſhing, or cauſing to be writ, compoſed, or publiſhed, ſeveral Libels againſt the Queen and her Government; and all theſe that are ſet forth as Libels, are entitled, *The Obſervator*, and they are in Number ſix. The firſt is ſaid to be made and publiſhed *May* 30, 1702, and in which Mr. *Tutchin* is charged with having this libellous, ſcandalous Paragraph againſt the Government, and the Adminiſtration of it. The Words are theſe, "If we conſider the *French* King's Succeſs, in his Bribery and Corruption, we ought to lament the ſad State of our own Country, which affords ſo many Inſtances of Treachery. If we may judge by our national Miſcarriages, perhaps no Nation in *Europe* has felt the Influences of *French* Gold, more than *England*; and worthy it is our greateſt Lamentation, that our dear Country ſhould be thus weaken'd by Men of mercenary Principles, when Countries inferior to ours in Strength and Riches are ſecured from Attempts of this Nature, only by the Fidelity of their People. What is the Reaſon, that *French* Gold has not affected *Holland*, as well as *England?* But that their Miniſtry is ſuch as is entirely in the Intereſt of their Country, and altogether incorruptible: They prefer Men that are knowing in their Poſts, and are active in Buſineſs. When in *England* we find out Offices for Men, and not Men for Offices; and a Title of Honour gives a Man a Title to a great Employment he is altogether ignorant of. By this, and by preferring of Men by Intereſt and Favour, has the Exciſe, the Cuſtoms, and other Branches of the Revenue intolerably ſunk; and by this Means has the Navy of *England*, our chief Support, been hitherto perfectly bewitched: And can *Lewis* ſpend his Money better than in getting Men into Offices in *England*, who are either falſe or ignorant in the Buſineſs, or are his Friends?" This now is charged on him as a defaming the Government, in employing corrupted Officers, or ignorant Officers, when they are not fit for their Places. There is another that has been produced, which is the Second, that hath theſe Words: "And this is a Prerogative of ſingular Advantage to the People of *England*, in that their Repreſentatives are the Judges of the Male-Adminiſtration of their Governors; that they can call them in Queſtion for the ſame, *and can appoint ſuch to wear the Crown*, who are fitteſt for Government: Which they have often done, and indeed which is the Privilege of all free People, who are authorized by the Laws of God and Nature, to chuſe their own Governors." This is to poſſeſs the People, that they may at their Will and Pleaſure, when they take a Fancy thereto, diſſeiſe the Queen, and ſet up what Governor they pleaſe. Theſe two, and the reſt which I ſhall mention by and by, are given in Evidence. And it ſeems at firſt Mr. *Tutchin* came to Mr. *How*, the Printer, and there is a Contract made between them two, to print a weekly Paper, and it was to be entitled, *The Obſervator*, and he was to have half a Guinea a Time. Mr. *Tutchin* was to write, and the other was to print; his Printing-Houſe was here in *London:* Accordingly he enters into this Contract, and from Time to Time has received Copies, and prints them, and has paid Mr. *Tutchin* for them, and has printed all his *Obſervators*, even to this very Day: Afterwards there came two out in a Week. Now it is moſt plain, that a Contract was made between Mr. *Tutchin* and Mr. *How*, for Mr. *Tutchin* to write and frame, and Mr. *How* to print. And nobody can imagine that Mr. *How*, the Printer, would give him Money, unleſs that written Copy were to be printed: But now, ſay they, was there no Alteration made; but were they printed exactly purſuant to the Copy of Mr. *Tutchin?* Yes, but theſe two were not; not but that ſometimes I made ſome Alterations; for, ſays he, when I thought his Expreſſions were too paſſionate and ſevere, I apprehended Danger, and made ſome literal Alterations. But after this, theſe two were read, and Mr. *Tutchin* owned them, and divers others, and ordered him to bind them in a Volume; and he does ſo, and Mr. *Tutchin* makes a *Preface*, and binds it to this Volume. It appears that his own Hand is to it, to the *Preface*, and was paid Money for them, and Mr. *Tutchin* owned this Number; ſo that there is a full Proof that theſe were compoſed by Mr. *Tutchin*, in order to be printed, and they were printed afterwards, and he has received Money for them.

Now there are four more which are charged in the Information, of the ſame Nature. One is thus: "Take one Time with another, the Miſmanagements of the Navy has been a greater Tax on the Merchants, than the Duties raiſed by Parliament: We never had a better Navy; but the Wiſdom of the Managers thereof is like a Bottomleſs-Pit, paſt finding out." A fourth Paper hath theſe Expreſſions. "What avails it a Man of Learning and Parts, to qualify himſelf for the Service of his Country on the Ocean? If he has Knowledge enough to adviſe *Neptune* himſelf, if he has no Intereſt, he ſhall have no Preferment. How much does it look to our Nation's Diſadvantage, to have Men in eminent Stations in the Navy, who have not ſo much as an Idea, a Notion, a Thought of naval Affairs? To have Men to ſuperintend the building of our Floating Caſtles, who know not the Nature of any one Part of the Management? To have Men employ'd in the Victualling, who qualify themſelves for that Poſt by learning to write their Names, which is indeed a Poſt for a Philoſopher bred to the Sea?" This alſo charges the Government for employing unfit Miniſters in the Navy. There is a fifth, and that hath theſe Words. "*Countryman.* Truly, Maſter *Obſervator*, I have no very good News for you: Mr. *Daniel De Foe* has pleaded Guilty to the Indictment againſt him, for writing and publiſhing *The Shorteſt Way with the Diſſenters*; and he is ſentenc'd to ſtand three Times in the Pillory, to pay a Fine of 200 Marks, and to find Security for his good Behaviour for ſeven Years. *Obſervator.* The Court could do no otherwiſe than convict him, upon his pleading Guilty; *habemus confitentem reum*, is very often the Voice of Courts of Judicature, 'tis the Eaſe of Judges and Juries: If *Daniel De Foe* was in Expectation of *Coleman*'s Black-Box, he has found a Pillory inſtead of it. I don't trouble my Head about the Cuſtom of giving the Pillory to Authors, which is the Puniſhment of Bakers. You talk'd juſt now of turning Author, have a Care of your Candle; you ſee which is the ſhorteſt Way with Authors; you muſt all enter yourſelves in the Regiment of Colonel *Foe.* The Law of *England* directs, that no Man ſhall be fined *ultra tenementum*; and I make no queſtion, but the Juſtice of the Court has fined Mr. *Foe* anſwerable to his Eſtate. His Security for his good Behaviour for ſeven Years, without doubt, was rationally conſidered, as to the Legality thereof. For my Part, I am only acquainted with old Laws of *England*, the ancient Birthrights and Immunities of *Engliſhmen:* This I take to be the Foundation of new Laws." And then here is the laſt, which hath theſe Words. "*Countryman.* Maſter *Obſervator*, there's another Plot againſt you. *Obſerv.* Prithee, Man, there's a Plot againſt the Queen, and the whole Nation; is it any wonder then, that there are Plots againſt me? The High-Flyers are now plotting againſt every honeſt Man in *England.* I'll tell you more of it, the next Time we meet. *Countrym.* I fancy ſome ſort of People plot againſt you, becauſe you endeavour to countermine their Plots againſt the Queen and Nation. *Obſerv.* You are right enough; but that ſhan't hinder me from detecting their Deſigns, and from opening the People's Eyes: But prithee, what Plot is this? *Countrym.* Why, Sir, it is a Plot preparatory to your Trial; and if they can't effect this Plot, I ſuppoſe you'll never be tried. They inſinuate into the Citizens of *London*, that you have lately written very ſcandalouſly, maliciouſly, and treaſonably, and I don't know how many other Lies, againſt them the ſaid Citizens; and by this Means they are minded to ſet your Jurors againſt you. *Obſ.* This is likely enough; they'll leave no Stone unturn'd, to ſuppreſs the Truth. I underſtand, I ſhould have been proſecuted by Bill the laſt Seſſions, but that the High-Flyers did not like the Jury: nay, they ſay, they don't like the two Sheriffs, becauſe they won't pack Juries to find innocent Men guilty."

This is the laſt of the Libels. Now whatever you admit concerning theſe, the ſame is proved concerning the other two, except that of the Volume. Theſe he did receive from Mr. *Tutchin*, or by his Agent. He alſo paid Mr. *Tutchin* upon the ſame Account that he paid for the reſt, and they were printed here in *London*, and publiſhed. Now Mr. *Tutchin* did not at any Time complain that they were not printed according to the Copies ſent. As to the Copies, they are loſt all of them but one of theſe four. There are divers others, but they concern not this Information, but one, and that is Mr. *Tutchin*'s Hand, the ſame Hand as the other Papers, and by that Copy the Paper was printed, and Mr. *Tutchin* alſo received the Money for it. So that now you have heard this Evidence, you are to conſider whether you are ſatisfied that Mr. *Tutchin* is guilty of writing, compoſing, and publiſhing theſe Libels. They ſay they are innocent Papers, and no Libels, and they ſay nothing is a Libel but what reflects upon ſome particular Perſon. But this is a very ſtrange Doctrine, to ſay, it is not a Libel reflecting on the Government, endeavouring to poſſeſs the People that the Government is Male-adminiſtred by corrupt Perſons, that are employed in ſuch or ſuch Stations either in the Navy or Army.

To ſay that corrupt Officers are appointed to adminiſter Affairs, is certainly a Reflection on the Government. If People ſhould not be called to Account for poſſeſſing the People with an ill Opinion of the Government, no Government can ſubſiſt. For it is very neceſſary for all Governments that the People ſhould have a good Opinion of it. And nothing can be worſe to any Government, than to endeavour to procure Animoſities, as to the Management of it; this has been always look'd upon as a Crime, and no Government can be ſafe without it be puniſhed.

Now you are to conſider, whether theſe Words I have read to you, do not tend to beget an ill Opinion of the Adminiſtration of the Government? To tell us, that thoſe that are employed know nothing of the Matter, and thoſe that do know are not employed. Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Intereſt, and not to their Fitneſs for the Places; this is the Purport of theſe Papers.

Now they on his Behalf inſiſt on theſe Things: Firſt, they ſay you do not prove any Crime againſt him in *London.* Indeed it is not proved that he writ them in *London*; but the Queſtion is, whether there is not Proof of the Compoſing and Publication in *London?* There is Proof that they were ſent to Mr. *How*, in order to print them in *London.* Now, whether he received them from him in *London* or no (but ſuppoſe out of *London*), yet if he received them to print them in *London*, that is a Publication in *London.* If they ſcruple that Matter, it ſhall be ſpecially found. If they were delivered to be printed at *London*, I muſt leave it to your Conſideration, whether you will not find him guilty of publiſhing them in *London.* They were ſome of them printed in *Fanchurch-ſtreet*, and others in *Gracechurch-ſtreet.* He knew where the Printer lived, the Contract was made, and he was paid for them. Gentlemen, I muſt leave it to you; if you are ſatisfied that he is guilty of Compoſing and Publiſhing theſe Papers at *London*, you are to find him Guilty.

Then the Jury withdrew, and about a Quarter of an Hour after return'd into Court.

Clerk. Anſwer to your Names, &c. How ſay you, Is *John Tutchin* guilty of the Charge laid againſt him, or Not Guilty?

Foreman. Guilty of Compoſing and Publiſhing.

L. C. J. Holt. They appeal from my Opinion; they don't find the Writing in *London*, but they find him guilty of Compoſing and Publiſhing in *London*, that is, ſuppoſing he did write them out of *London*, and deliver them in order to be printed in *London.*

Mr. *Soll. Gen.* Do you find that the Papers, the ſeveral Copies of theſe ſix *Obſervators*, were delivered to be printed in *London?*

Foreman. Yes, guilty of Compoſing and Publiſhing, but not of Writing.

Mr. *Soll. Gen.* Do you find him guilty of the whole Charge, except the Writing?——*Foreman.* Yes.

Clerk. Gentlemen, hearken to your Verdict, you ſay *John Tutchin* is guilty of the whole Information, except the Writing?——*Foreman.* Yes.

Clerk. And ſo you ſay all? *Jury.* Yes.

November 13.

Mr. *Att. Gen.* MY Lord, Mr. *Tutchin* has given me Notice that he will bring an Appeal in Arreſt of Judgment; and indeed he has given publick Notice of it, for it is put into the News-Papers.

L. C. J. Holt. Is he here?

Mr. *Mountague*. Yes, my Lord, he is about the Court.

Mr. *Att. Gen.* Call him.

Cryer. *John Tutchin*, Gentleman. (*Then he came into Court.*)

Mr. *Mountague*. May it pleaſe your Lordſhip to favour me a few Words in Behalf of the Defendant, *John Tutchin*. He was tried before your Lordſhip at the *Guildhall*, *London*, on *Saturday* was ſeven-night, for being the Author, Compoſer and Publiſher of ſome Papers entitled, *The Obſervator*; and there is a Verdict enter'd againſt him, and now he appears to ſubmit to the Judgment of the Court; which he humbly hopes ſhall not be given againſt him. For, my Lord, in the firſt Place, I beg Leave to take Notice, that we think there is Cauſe why your Lordſhip ſhould ſet aſide the Trial that has been had; for we look on all the Proceedings upon the Writ of *Diſtringas*, on which the Verdict is taken, as null and void. This is an Information againſt Mr. *Tutchin* for a Libel; and the Facts laid in the Information are ſaid to have been tranſacted within the City and County of *London*. To this Information he pleaded the laſt *Trinity* Term, and the *Venire Facias* was awarded the laſt Day of that Term, *Retorn. Die Lunæ proximæ poſt tres Septimanas Sancti Michaelis*, which your Lordſhip knows was *October* 23, the firſt Day of the Term, and the *Diſtringas* ſhould have iſſued the very ſame Day; but it ſo happens, that the *Diſtringas* in this Caſe, does appear to have been ſued forth *October* 24, which is a Day after the Return of the *Venire*; and therefore we ſay the *Diſtringas* is naught, and all the Proceedings thereupon are null, becauſe there is no Award of the Court to warrant this *Diſtringas*. In the next Place, we ſay, That the Return, neither of the *Venire* or the *Diſtringas*, are as by Law they ought to be; for the Return of the *Venire* is *Die Lunæ proximæ poſt tres Septimanas Sancti Michaelis*, and the Jury are to be brought *coram Domina Regina apud Weſtm. Die Jovis prox. poſt*; and the Return of the *Diſtringas* is *Craſt. Anim.* with an *Hab. Corpora coram Regina apud Weſtm.* For both which Reaſons we think it naught, becauſe when any Proceedings in Criminal Matters are laid in a foreign County, the Proceſs muſt be made returnable at a Day certain. Day might be given *coram Regina ubicunque*.

L. C. J. Holt. You mean at a common Day; and it is ſo, whenever Indictments are removed hither by *Certiorari* out of foreign Counties.

Mr. *Mountague*. My Lord, we think there is no Difference to be made between the Proceedings in *London*, and other Counties more remote from *Weſtminſter*.

L. C. J. Holt. In Informations exhibited by Mr. *Att. Gen.* in this Court for Crimes done in foreign Counties, 'tis uſual to return the Proceſs upon Day certain.

Mr. *Att. Gen.* My Lord, Informations are of the Nature of a Bill.

L. C. J. Holt. Proceſs on an Indictment may be made returnable on a certain Day, if it be found in this Court; but if it be removed hither by *Certiorari*, it is otherwiſe.

Mr. *Mountague*. My Lord, we take it, that the Proceſs that has been hitherto taken out upon all Informations that charge Crimes on Defendants as done out of the County of *Middleſex*, has been made returnable on ſome common Return Day, and not at a Day certain.

Mr. *Att. Gen.* It has always been allowed to be upon a Day certain, as well as upon a general Return-Day; and it is ſettled and declared ſo by the Court.

L. C. J. Holt. I am apt to think the Clerks have gone both Ways.

Mr. *Att. Gen.* A Man takes a long Day, if he will.

Mr. *Mountague*. We have look'd over many Informations, and the Practice does not appear to have been ſo. But what does Mr. *Attorney* ſay to the firſt Exception we have taken? Here is a Diſcontinuance after the Return of the *Venire*, which was upon *October* 23, and the *Diſtringas* bears *Teſte viceſſimo quarto die Octobris*.

L. C. J. Holt. Ay, what can you ſay to that, Mr. *Attorney*? That very Day the Writ is enter'd, there muſt be a *Diſtringas*.

Mr *Att. Gen.* My Lord, I know not how it came to paſs. I believe, ſomebody has done it on Purpoſe. I deſire the Clerk may give an Account of it. I never ſaw the Writ. I deſire Time to know how this has been manag'd.

L. C. J. Holt. There muſt be a Continuance to that Day; if there be no Continuance, all is fallen.

Mr *Att. Gen.* If they come again, we will ſee how this has paſt.

L. C. J. Holt. If it be ſo, the Plea is diſcontinued, and you muſt plead *de Novo*.

Mr. *Mountague*. My Lord, ſeeing it is in Court, I deſire it may be read now.

L. C. J. Holt. What need you make that Reflection? Do you think we will make any Alteration in it?

Mr. *Mountague*. I hope I may aſk that without making any Reflection: I am ſure I did not intend it ſo.

Then the Record was read.

Mr. *Att. Gen.* Come again To-morrow.

Mr. *Mountague*. Mr. *Tutchin*, then you may go for To-day; but be here again To-morrow.

L. C. J. Holt. Is the *Venire* made returnable *Die Lunæ*?

Mr. *Mountague*. Yes, my Lord, it is; I look'd upon it.

Mr. *Att. Gen.* I will ſee if it can't be found out.

November 20.

L. C. J. Holt. Mr. *Attorney*, will you go on?

Mr. *Att. Gen.* My Lord, we are ready, if they will maintain their Exceptions.

Mr. *Mountague*. My Lord, we think, we have no Occaſion to cite many Authorities and Precedents to maintain the Exception, when it is apparent that there is a Diſcontinuance; the reading of it makes it appear, that the *Diſtringas* was ſued out a Day after the *Venire*, ſo that here is a *Niſi Prius* that has been iſſued out erroneouſly. The Statute ſays, the Day and Place for taking Inquiſitions muſt be in *Præſentia Partium*. And, 'tis plain, the Day and Place mentioned in this Writ, was appointed when the Defendant was not in Court, and therefore is null and void.

L. C. J. Holt. *In Præſentia Partium*, where is that required?

Mr. *Mountague*. By the Statute of *Niſi Prius*, which ſays, *nec alterminentur hujuſmodi Inquiſitiones coram aliquibus Juſticiariis de Banco niſi ſtatuatur certus Dies & Locus in Comitatu in Præſentia Partium.*

L. C. J. Holt. Which Statute do you mean?

Mr. *Mountague*. The Statute of *Weſtminſter* the Second, *cap.* 30.

L. C. J. Holt. Call for that Statute.

Mr. *Att. Gen.* My Lord, I deſire that they will maintain their Exception, for I am in the Dark about it, and that they maintain it by the Authority of the Law, and not only by an *ipſe dixit*, and a Noiſe in the Town.

L. C. J. Holt. They ſay, The Exception maintains itſelf.

Mr. *Att. Gen.* My Lord, let them go on firſt, and then we will anſwer them. If they will rely upon this Exception without Authority, then we muſt pray the Judgment of the Court; but if they will bring Authority for it, we do deſire to hear them, and ſhall give them an Anſwer.

Sir *T. Powis*. My Lord, if they have any other Exception to make, I deſire they may make it now.

Mr. *J. Powel*. Mr. *Mountague*, you have made one Exception; that is, of the Diſcontinuance of the Proceſs; now, if you have any other Exceptions to make, you may make them now.

Mr. *Mountague*. My Lord, the Exceptions I have hitherto taken, have been to the Trial. I mention'd this, and I mention'd another, which I do not inſiſt on; ſince I underſtand it has been otherwiſe ſettled, that is, about the Return of theſe Writs upon a Day certain; which, my Lord, I did look upon to have been wrong; becauſe I did not think Mr. *Attorney* could ſhew any Precedents of any ſuch Returns to warrant this; for I can find none, and I have ſearched in the Time of King *Charles* I. and in King *Charles* II. and King *James*.

L. C. J. Holt. If a Suit be commenced in the *Common Pleas* by Bill, as if an *Attorney* ſhall file a Bill there, the Proceſs is made returnable at a Day certain, and here our Proceedings by Bill are always at a Day certain. Now an Information which is originally filed here, is in Nature of a Bill, and the Proceedings therefore may be confined to a Day certain; but if any Indictment be brought hither by *Certiorari*, the Proceſs muſt be returned at a common Day, and not at a Day certain. We had this Matter under Conſideration before, upon another Occaſion, and we thought it very reaſonable the Proceedings on Informations here ſhould be the ſame as the Proceedings by Bill, which are returnable on Days certain from any County of *England*.

Mr. *Mountague*. My Lord, if that be your Opinion, I have nothing to ſay to it. I have ſome Records here in my Hand, ſome in King *Charles*'s Reign, and ſome in King *James*'s Time; and all theſe are made returnable on the common Return, and one of theſe Records was ſettled by Sir *William Jones*. As to what the Officers ſay, they are divided, I find; for ſome of them have told me, it is quite contrary to what Mr. *Harcourt* reports the Courſe of the Court to be.

Mr. *Att. Gen.* My Lord, I dare appeal to you, whether this has not been argued twenty Times?

Mr. *Mountague*. My Lord, let Mr. *Attorney* ſhew Precedents.

Mr. *Att. Gen.* You muſt ſhew Precedents.

Mr. J. *Powel*. It is otherwiſe when there is an original Proceeding.

L. C. J. Holt. Have you any more Exceptions?

Mr. *Mountague*. I rely on the firſt Exception. It lies on Mr. *Attorney* to anſwer this Exception.

Mr. *Att. Gen.* My Lord, I deſire they may ſhew any Caſe or Reſolution of Law, that the *Diſtringas* ſhould bear *Teſte* the ſame Day the *Venire* is return'd upon. The *Diſtringas* is awarded on the Roll upon the firſt Day of Term; and the *Venire* is returned the firſt Day of Term: And at the ſame Time it is awarded, that there ſhall be a *Diſtringas*, Day is given to the Party; that is the Warrant: For the *Diſtringas* and the *Teſte* never appear upon the Roll. If they have any Authority, I deſire they may ſhew it. My Lord, I think we can ſatisfy you, that it is right; or that it is amendable. This is a Maxim of the Law, *There muſt be Authority*.

L. C. J. Holt. It may be, the Thing is ſo plain, as to need no Authority.

Sir *T. Powis*. I deſire to know, whether the Award of the *Diſtringas* is right on the Roll. I take it, that the *Venire* is return'd the firſt Day of the Term; and that there is thereupon a *Diſtringas* awarded returnable, *Die Jovis prox. poſt Craſt. Anim.* I beg to know whether it be ſo or no?

L. C. J. Holt. I have it in my Hand; and I was apprized of that before; and was going to ſtate it. For the Continuance of the Roll is right. The *Venire Facias* is return'd, *Die Lunæ prox. poſt tres Mich.* On which Day, the Attorney appears on the Queen's Behalf; and the Defendant appears likewiſe. What is then done? *Ideo præceptum eſt Vicecomitibus London, quod diſtringant eos; itaque habeant Corpora eorum coram Domina Regina, Die Jovis prox. poſt Craſt. Anim.* Now, on what Day muſt this Award be ſaid to be? That muſt be that Day whereon the *Venire* is ſaid to be return'd, which is, *Dies Lunæ prox. poſt Tres Mich.* The Award of the *Diſtringas* therefore, by the Roll, is that very Day, the 23d: But the *Diſtringas* bears Date, not the 23d, but the 24th.

Sir *T. Powis*. Now do they rely on it, that notwithſtanding the Roll has awarded it *Die Lunæ*, yet becauſe the *Diſtringas* is dated *Die Martis*, do they rely on it, that this is to prevail, without any more to be ſaid to it?

L. C. J. Holt. This is the true State of the Matter. Now there is no Diſcontinuance on the Roll; for it appears on the Roll, that the *Diſtringas* was awarded the 23d.

Mr. *Broderick*. The Objection is, That the *Diſtringas* has been ſued out without Warrant. They aſk for Authorities. I believe, we might ſhew Twenty.

Mr. *Att. Gen.* My Lord, I deſire they would cite ſome Authorities of the Twenty they ſpeak of. I can ſhew them Caſes, where the *Diſtringas's* have been *Teſted* out of Term, or upon the *Sunday*: Theſe are to be ſet right. I would be glad to ſee any Authority, wherein it appears the *Diſtringas* muſt be the ſame Day. I would be glad they would do more than ſay it.

Mr. *Mountague*. My Lord, before I anſwer this, I would aſk, Whether that Roll be the *Niſi Prius* Roll, or the Plea Roll?

L. C. J. Holt. It is the *Niſi Prius* Roll.

Mr. *Mountague*. My Lord, the Plea Roll has been made right ſince I took my Exceptions. The *Niſi Prius* Roll ought to be a Tranſcript of the Plea Roll.

Mr. J. *Powel.* The *Niſi Prius* Roll is made out of the other: If the *Niſi Prius* Roll be good, it is well enough.

Mr. *Mountague.* My Lord, to have a Tranſcript of a Roll that has been made up ſince, is not right.

Mr. *Att. Gen.* My Lord, he ſtrikes at the Root of the Court.

Mr. *Broderick.* My Lord, I would take notice, that it is the Courſe of the Court, that the *Diſtringas* ſhall bear Date the Day of the Return of the *Venire.* The Clerks tell me, they never knew it otherwiſe.

Mr. J. *Powel.* The Award is right; but you have not taken out a Writ according to the Award of the Court: Whether that will be warranted?

Mr. *Att. Gen.* They have no Authority, but the Reaſon of the Thing; and then I think we may give this ſhort Anſwer: We do affirm, That it is right as it is: But if it were not right, we ſay it is amendable.

L. C. J. Holt. All the Matter will be to prove that it is amendable.

Sir *T. Powis.* If need be, we may put the Matter into the right Way: For if the *Diſtringas* be not the ſame Day with the Award, we pray that it may be amended.

L. C. J. Holt. By what Law muſt it be amended? You are in the Affirmative: If you acknowledge it wants Amendment, by what Law muſt it be amended?

Sir *T. Powis.* It is amendable by the Common Law.

Mr. J. *Powel.* You ſay it is no Fault; and if it be, it is amendable by the Common Law.

L. C. J. Holt. Firſt let us know whether it needs Amendment? And then next, whether it can be amended?

Sir *T. Powis.* My Lord, let them ſhew that it needs Amendment: For if they make Exceptions, and ſay no more, and we proceed to anſwer them, then they may come upon us again with new Matter, and ſo there will be no End.

Mr. *Mountague.* When we were in the Affirmative in our Exception, we did give ſome Reaſons why we ſaid it is not right.

Mr. J. *Powel.* The Party was in Court the 23d. Then they awarded the *Diſtringas* in his Preſence; ſo that the *Niſi Prius* was awarded in the Preſence of the Party: The Award of it is *Die Lunæ.* But here's the Fault: They did not make a right *Teſte* that Day; ſo that the Fault is, the *Diſtringas* that is ſued out.

Mr. *Mountague.* On *Monday* there is an Award of the *Niſi Prius*; but on *Tueſday* it is taken forth. Now we ſay, that it is not according to the Writ awarded: For the Writ bears *Teſte* the Day after; and upon that Account we ſay, the Proceedings are null. My Lord, Mr. *Attorney* aſks for Precedents for this: But, with Submiſſion, we take it to be plain, that the Motion made for the amending this Thing, ſuppoſes it not to be right.

L. C. J. Holt. The firſt Queſtion to be debated, is, Whether this be a right Trial? or if not, Whether it be a Diſcontinuance of the whole? The *Diſtringas* bears Date the 24th of *October*; the Roll is the 23d of *October*; and there is no ſuch Writ then taken out, but the Day after; ſo that the *Teſte* is not according to the Roll. When a Writ is not awarded according to the Roll, what the Conſequence will be, is another Matter.

Mr. *Att. Gen.* I beg your Lordſhip's Direction in this Matter. It deſerves a great deal of Care; for there has been a great Noiſe in the Town about it. However, we will go your Way. Whether they begin firſt, or we, I am very eaſy.

L. C. J. Holt. It is not warranted by Award of the Court. This is a Matter of the greateſt Conſequence to the Government.

Mr. *Broderick.* Mr. *Attorney* ſpeaks of a Noiſe about the Town: I concern not myſelf about that, nor any further in this Caſe, than as it may be the Caſe of every Subject of *England.*

L. C. J. Holt. He is found to be the Author of the *Obſervators.*

Mr. *Att. Gen.* I do not ſpeak it now upon the Buſineſs of this Proſecution; for he is ſo inconſiderable, that it matters not much how it goes. But if this be not amendable, it will blow up all Proceedings. Every Man muſt have Juſtice; and God forbid but he ſhould.

Sir *T. Powis.* My Lord, if it be thought proper, we will go on. Your Lordſhip obſerves, what Warrant there was for a *Diſtringas*; and that it is rightly awarded on the Roll, which is a Warrant to the Clerk for a *Diſtringas*; and by Conſequence if the *Diſtringas* be not made according to that Award, it is the Miſpriſion of the Clerk. Now if we do admit this to be out of all the Statutes of Amendment (tho' it is fit to be conſidered, whether ſome Statutes do not warrant it) but ſuppoſe it ſhould be out of all the Statutes of Amendments; yet by the Common Law it may be amended.

There were Amendments at the Common Law before any Statute, both in civil and criminal Matters; and theſe Amendments chiefly regarded the Proceſs of the Court, and ſuch Errors as were occaſioned by the Inadvertencies or Neglects of the Officers; but eſpecially in the ſame Term, during which Time the Judges have the Records of the Court in *Scrinio Pectoris.*

My Lord *Coke* ſays ſo expreſly: And ſo was the Opinion of the Court in *Blackmore*'s Caſe, in the eighth Report, *fol.* 156, 157. which is the great Caſe of Amendments.

That Book ſays, *fol.* 156. *b.* Without Queſtion, at Common Law, the Default of Entry of a Continuance, or of an Eſſoign (which was the Miſpriſion of the Court itſelf in the Form of the Entry) was amendable by the Court. And the Objection here is, that there is a Diſcontinuance: And the Inſtance there given from the Caſe in 5 *Ed.* III. *fol.* 25. is very conſiderable; where, after a *Venire Facias* iſſued, and an Award *Quod jurat poniter in reſpectum,* in the Entry whereof there was a great Miſtake of the Parties, which made a Diſcontinuance, and yet amended at the Common Law.

The Inſtances of Amendments at Common Law, out of the Old Books are many: 22 *Edw.* III. *fol.* 7. *b.* and 10. *a.* where a Diſcontinuance was amended. 29 *Edw.* III. *fol.* 32. *b.* a *Habeas Corp. Jurator.* amended. 7 *Hen.* VI. 29 *Broke, Tit. Amendment,* 32. 4 *Hen.* VI. 16. *b.* By which Book it appears, that the Judges had Power to amend in many Caſes at the Common Law, in the Caſe of a common Perſon. And if in the Caſe of a Subject, much more in the Caſe of the King: For, by the Common Law, the King had many Privileges and Advantages in legal Proceedings, which a Subject had not: And the King, in his Suits, hath many great Prerogatives. The King may plead one Title, and afterwards wave it, and plead another. He may wave a Demurrer, and afterwards take Iſſue. And many other Privileges belong to the Crown, of this nature, which a Subject hath not.

And particularly in the Matter of Amendments by the Common Law, the King had a Privilege, which a Subject had not.

An Original Writ was not amendable for a Subject at the Common Law, but in the Caſe of the King it was.

Therefore in *Blackmore*'s Caſe, *fol.* 156. *b.* it is ſaid, That if a *Quare impedit* be ſued forth on the Behalf of the King, and the Writ is *præſentere* inſtead of *præſentare*; it may be amended in the Caſe of the King, after Exception taken; but not ſo in the Caſe of a Subject.

And ſo in *Fitz.* Amendment, 12, 19, 22, ſeveral Amendments at Common Law, eſpecially in the Caſe of the King.

Another Advantage which we have in this Caſe is, That we are in the ſame Term wherein the *Diſtringas* was awarded and made forth.

And in the ſame Caſe of *Blackmore, fol.* 156. *b.* 157. *a.* it is ſaid, That at the Common Law, the Judges may amend as well their Judgment, as any other Part of the Record, in the ſame Term. For during the Term, the Record is in the Heart or Breaſt of the Court, or of the Judges, and not in the Roll: But in another Term, by the Common Law, Miſpriſions of Clerks in Proceſs were not amendable by the Court; for in another Term, the Roll is the Record. So ſays that Book.

But here we are in the ſame Term: And it is the Miſpriſion of the Clerk in Proceſs, and in the making out a judicial Writ, which is in the Power of this Court, as iſſuing out from hence, whereas Original Writs iſſue out of *Chancery*: And Judicial Writs are often amended, where Originals are not. *Vide* Brook's *Amendments,* 20, 22. Owen 62.

But if this were not amendable by the Common Law, it is amendable by Statute.

The firſt Statutes for Amendments were 14 *Edw.* III. *cap.* 6. 9 *H.* V. *cap.* 4. and 4 *H.* VI. *cap.* 3. which extends to the Amendment of a Letter or a Syllable; but the Judges were wonder'd at in Parliament for their great Nicety, when they aſk'd the Queſtion there, Whether they might not amend a whole Word; as appears in 39 *Edw.* III. *f.* 21. And 40 *Edw.* III. *f.* 34. *b.* they were told that undoubtedly they might.

Now here is nothing to be amended but a Figure: And this Statute being general, ſeems to extend to our Caſe.

The Statutes moſt to our Purpoſe are 8 *H.* VI. *c.* 12. whereby it is Enacted, That the Judges may reform and amend all Defects in any Record, Proceſs, Plea, Warrant, Writ, Pannel or Return (except Appeals, Indictments of Murder, and Outlawries for the ſame; and Additions left out in original Writs, Exigents, and other Writs of Proclamation, contrary to the Statute of *H.* V.) ſo that by ſuch Miſpriſion of Clerks, no Judgment ſhall be reverſed or annull'd. And again, the Statute of 8 *H.* VI. *cap.* 15. ordains, that the King's Juſtices, before whom any Miſpriſion or Default ſhall be found, be it in any Records and Proceſſes depending before them, as well by way of Error as otherwiſe, or in the Returns of the ſame, by Miſpriſion of the Clerks, or other Officers or Miniſters whatſoever, in minute Matters (ſuch as this is) they ſhall have Power to amend ſuch Miſpriſion, upon Examination thereof, according to their Diſcretion; except the Proceſſes and Records of Felonies and Treaſons, and the Dependancies thereof.

Now by Reaſon of the particular Exceptions in theſe Statutes, and by Reaſon that the following Statutes of *Jeofail,* in 32 *H.* VIII. 18 *Eliz.* 21 *Jac.* I. *&c.* do not extend to criminal Caſes, an Opinion hath been taken up among ſome Perſons, that no Amendment can be made in criminal Matters by any Statute; which is a ſtrange Miſtake.

For theſe two Statutes of 8 *H.* VI. *cap.* 12. and *cap.* 15. being general Laws, and in general Words, they, in Caſes not excepted, extend to Amendments to be made by the Judges in criminal Proſecutions, as well as in Civil Cauſes, without Diſtinction: And the ſpecial Exceptions, after the general Words, are the higheſt Proofs imaginable. For nothing could be more abſurd and vain, than carefully to except, what the Words precedent, without ſuch Exception, would not have reach'd or extended to; and that would highly reflect on the Wiſdom of Parliament.

This will appear more fully by the following Series of Authorities, whereby the Judges have amended Diſcontinuances of this nature; in criminal Proſecutions at the Suit of the Crown.

2 *Cro. fol.* 502. *Harris*'s Caſe. An Indictment for a Nuſance was proſecuted againſt *Harris*; and a Trial was had, and a Verdict againſt him. Afterwards it was removed by *Certiorari*; and upon View of the Record, it was found, that no Iſſue was joined: For the Clerk of Aſſize had omitted to enter the Iſſue, and ſo the Verdict was without an Iſſue. And upon Motion, the Court of *King's-Bench* order'd it to be amended; for it was the Default of the Clerk. And this was done divers Years afterwards, and in the Time of another Clerk of Aſſize. And it was order'd, that the Clerk of Aſſize which then was (for the former was removed) ſhould amend it; which was done by inſerting theſe Words, *Et Richardus Warer* (who was the former Clerk of Aſſize) *qui pro Dom. Rege ſequitur ſimiliter,* &c. And it was there ſaid by the Court, That if ſuch Faults ſhould not be mended, many Trials upon Indictments ſhould be overthrown.

There is another Caſe in the ſame Book: 'Tis in 2 *Cro. fol.* 529. *Parker verſ.* Sir *John Curſon & Ux.* It was an Information againſt Sir *John Curſon* and his Wife for Recuſancy; and the Iſſue was, *Quod præd. Magdalena dicit, quod ipſa non eſt inde culpabilis; & de hoc ponit ſe ſuper Patriam, & Attornatus Domini Regis ſimiliter.* Upon a Trial at Bar, a Verdict was given againſt the Defendants. It was afterwards moved in Arreſt of Judgment, that there was no Iſſue joined; for it was only the Plea of the *Feme Covert,* and no Iſſue joined, or Plea pleaded for the Huſband. And yet in *Regnard,* the Docket was right, which was the Warrant for the Roll; and the Omiſſion of the Huſband was the Miſpriſion of the Clerk: Therefore it was amended in ſo material a Part, even in another Term.

Another Caſe is in *Cro. Car. fol.* 144. Sir *Humphry Tufton*'s Caſe. A *Quo Warranto* was brought againſt the Corporation of *Maidſtone,* for claiming divers Liberties. Judgment was enter'd by Diſclaimer; and it was intended to have been only a ſpecial Diſclaimer of all Privileges, by Pretence of a Charter bearing Date 17 *Jac. Regis*: But the Clerk in entering the Judgment had omitted thoſe Words, *Virtute vel Prætextu Literar. Patent. geren. dat. Anno decimo ſept. Jac. Regis*: But upon Examination, the

Court finding that it was merely the Miſpriſon of the Clerk, the Court was of Opinion that it was amendable by the Common Law, as well in the King's Caſe, as in the Caſe of a common Perſon; and in another Term too; for ſo it was, and it was amended accordingly.

There is a Caſe in 1 *Siderfin. fol.* 243. 244. The King *v. Percival, Godfrey, &c. al.*

Upon an Indictment for a Riot and a Battery, and Not Guilty pleaded, a *Venire Facias* was awarded *Vicecomitibus* of the City of *Canterbury*; and upon a Trial at Bar, a Verdict was given againſt the Defendants: And it was moved in Arreſt of Judgment, that the *Venire Facias* and other Proceſs was directed *Vicecomitibus* of *Canterbury*, and the Return was made by one Sheriff only; but the Court amended it, by endorſing upon the Writ, that there was but one Sheriff of *Canterbury*. And this Amendment was made by the Common Law, and not by the Statutes of *Jeofails*; altho' it was ſaid at the Bar, that it was amendable within the Statute, becauſe it was not a Caſe within any of the Exceptions; it being an Information at the Common Law. And the Caſe of *Sherington* and *Talbot* was cited, and the Book of 39 *Henry* VI. 40. for the ſame Purpoſe. And with this Caſe in *Siderfin* agrees our preſent Caſe; for it is not an Indictment or Information upon any Penal Statute, but an Information at Common Law.

Now, if this Opinion, as reported by *Siderfin*, be Law, then this Diſcontinuance is plainly made good by the Statutes of *Jeofail*.

So in the Caſe of *Dolphin* and *Clark*, 2 *Cro. fol.* 64, 65. The Appearance and Iſſue were in *Hilary Term*, 1 *Jac.* the *Venire* awarded did bear *Teſte* 23 *Jan.* 1 *Jac.* ſo the *Venire* awarded before the Iſſue or Appearance; but yet amended, for the Roll is the Warrant of the *Venire*, which was right. So where the *Teſte* was upon a *Sunday*, it was amended; for it was the Default of the Clerk, in the miſ-awarding of Proceſs. So if *Teſte* out of Term. So if it be *Vicecom.* and ſays not of what County: Or if the King's Reign be miſtaken; 2 *Cro. fol.* 78. *Lea* v. *Lacon*; the Roll being right, and a Judicial Proceſs, it may be amended.

So *Yelvert. fol.* 64. *Nevill* v. *Bates.* The *Venire fac.* was made returnable *Quind. Hil.* and yet bore *Teſte* 12 *Feb.* which is the laſt Day of the Term: And yet, *per Cur.* it ſhall be amended in the Date of the *Teſte*, for it is but the Default of the Clerk. And other like Inſtances there put.

The like in *Cro. Car. f.* 38. *Ayſleworth* v. *Chadwell.*

So in *Cro. Car. fol.* 90, 91. *Moor* v. *Hodges.* The Iſſue was in *Trinity Term*; and the *Venire* and *Diſtringas* were of Days in *Eaſter Term* before; and yet amended: For the Roll of awarding the *Venire Facias* was well enough; and the miſdating the *Venire Fac.* which is a judicial Proceſs, ſhall alſo be ſet right.

So in later Caſes, *Trin.* 2 *Jac.* II. the King *v. Edes.* The Defendant was convicted of a Miſdemeanor, upon an Information exhibited *per Robertum Sawyer*, &c. The Continuance was, *Ideo dies datus eſt præfat. Sam. Aſtrey*; reſolved it might be amended.

And *Hil.* 3 and 4 *Jac.* II. the King *v. Holmes.* Upon an Information for a Riot, and the Defendant convicted: the Miſtake of *Octabis Martini*, inſtead of *Octabis Hil.* amended.

We are here in a much ſtronger Caſe. The Defendant hath been found Guilty upon a fair Trial: And the Preamble of the Statute of 32 *Hen.* VIII. takes notice, That the ſetting aſide of Verdicts, for Diſcontinuances and other Miſpriſions, is a great Slander to the Common Law and Judges. The *Venire* and *Diſtringas* are duly awarded upon the Roll; and the making the *Teſte* of the *Diſtringas* 24 *Oct.* inſtead of 23 *Oct.* is a plain Miſpriſion: It is in a judicial Proceſs, and it is in the ſame Term. And we humbly inſiſt upon it, That it is amendable, both by the Common and the Statute Law. For according to my Lord *Coke*, in *Blackmore*'s Caſe, *f.* 156 *b.* 157 *a.* it is hard to ſay, what the Court cannot amend in the ſame Term. For, ſays he, at Common Law, the Judges might as well amend their Judgment, as any other Part of the Record in the ſame Term. For during the Term, the Record is in the Breaſt of the Court, and of the Judges, and not in the Roll. And therefore we pray this Miſpriſion may be amended, if it ſtand in need thereof.

Mr. *Att. Gen.* My Lord, becauſe this Matter has been preſs'd with ſo much Warmth, I muſt beg Leave to obſerve ſome few Things in Anſwer to what has been ſaid. This is a Thing, that not only concerns this ſingle Proſecution, but it concerns all the Proſecutions for the Crown; and in all Caſes, not only Criminal, but Civil; and, my Lord, if the Statutes of Amendments extend not to any other Caſes but what they urge, the Caſe of the Crown is worſe than that of the Subject. It is worthy of Conſideration, what Things are amendable by Common Law; for if the Crown be left to the Mercy of the Clerks, it cannot but be of very ill Conſequence. Therefore I hope we may take the Benefit of the Common Law.

My Lord, I would beg Leave to recite ſome few Precedents to ſhew how the Common Law formerly ſtood. And the firſt I ſhall take Notice of is the Preamble of the Statute 32 *Hen.* VIII. *cap.* 30. There it is ſaid, The ſtaying of Judgment after the Verdict, is a great Scandal to the Common Law, and the Miniſters of the ſame. And, my Lord, there is another Thing to be conſider'd; That, admitting the Common Law ſtood as it did before, there is a great Difference between the Proceedings of the Crown at the Common Law, and Civil Caſes. The Crown had many Privileges at Common Law, which the Subject had not. And it will ſound very harſh, that the Crown ſhall be left without thoſe Helps by the Statute of Amendments, when ſo many of the inferior Subjects did not want the Help of them. For it is impoſſible this ſhould not be thought of in Parliament, that ſome Care ſhould be taken for the Crown in thoſe Matters where it needed.

Now there is, in all our Books, Notice taken of a greater Privilege that belongs to the Crown than to the Subject. There ſhall not be a Demurrer to the Evidence in the Caſe of the Queen, without her Counſel's Aſſent; yet in the Caſe of a Subject, there may be a Demurrer to the Evidence. So the Crown may either inſiſt on a Demurrer, or wave it, and take Iſſue at Pleaſure.

There is this likewiſe: Before Judgment, in a Criminal Caſe, the Queen may amend, but the Subject not.

Alſo by *Hardreſs Reports, fol.* 504. before Judgment, no Diſcontinuance may be in the Queen's Caſe, altho' the Iſſue was tried. The Attorney takes Iſſue to one Part; and it is pleaded that this is a Diſcontinuance to the other. Now there can be no Diſcontinuance before the Verdict. And that Book goes further, and ſays, That the Want of Continuance in that Caſe, cannot be objected before Judgment, &c. And in 2 *Bulſ.* 35. an Indictment is ſaid to be amended even after Verdict.

Now there is great Reaſon, that ſuch Miſpriſions in Writs at the Queen's Suit ſhall be amended by the Common Law. And in *Fitzherbert*'s *Abridgment, Tit. Amendment, Placita* 22. if the King bring any Writ, which wants Form, &c. it ſhall be amended. But it is otherwiſe in the Caſe of the Subject. So ſays 8 *Coke* expreſly, *fol.* 156. An Original Writ is not amendable in the Caſe of a common Perſon, but it is amendable in the Caſe of the King.

Now it has been the conſtant Practice, that theſe Privileges have been preſerved to the Crown. The Queen may at any Time amend her Information after Trial, but a Subject cannot.

Theſe Privileges have been preſerved to the Crown even at the Day of Trial: And many Miſtakes of Clerks, in Informations and Indictments, have been ſo amended. This is a Right of the Crown by the Common Law.

In the next Place, my Lord, I would obſerve what is the Matter we are going to amend. It is not what alters the Party's Defence. It alters not the Iſſue, or Trial; nor is it any thing that tends to his Prejudice: And by the Common Law, that may be amended, which is not a Prejudice to the Party.

The Defendant has a Day given by the Roll; and the ſame Day the *Diſtringas* is awarded, he appeared: Every one muſt own, there was no Prejudice to him, whether the *Diſtringas* be of one *Teſte* or another. 'Tis true, there is the Year-Book, 20 *Hen.* VI. *fol.* 18. which is alſo in *Brook*'s *Abridgment, Tit. Amendment, Placit.* 4. There was a *Miſnomer* in the *Capias* and ſubſequent Proceſs, and in the *Exigent:* And the Court held that the *Capias*, &c. might be amended, but not the *Exigent*; becauſe of the Prejudice, if one might be outlawed on ſuch Proceſs, to which he never appear'd; and therefore it might not be amended for that Reaſon. But this Caſe ſtands clear of all Objections of that Kind. He had a Day to appear, and make his Defence: He came in, and did appear accordingly, and no Prejudice happen'd to him.

Now, my Lord, as to the Exception they make, I muſt beg Leave to ſay, it can be of no Weight. I agree, the Award of the *Diſtringas* muſt be according to the Writ of *Venire:* But, with Submiſſion, I obſerve not the Neceſſity that the *Diſtringas* ſhould be *Teſte'd* the ſame Day. No Authority of Law requires it, and by Reaſon it ſhould be otherwiſe. For ſuppoſe the Award is made by the Court the firſt of *January*, the Clerk has all that Day at leaſt to make it. For after the Court has made the Award, the Award is to be drawn up and delivered to the Clerk to make the Writ, and it cannot be ſuppoſed to be made at the ſame Time as the Award is. The Court awards one Day, and the *Diſtringas* is made the next Day, which is as proper and convenient a Time as can be; I ſee nothing in the Reaſon of the Thing againſt it.

My Lord, the Authorities they cite, that where Proceſs iſſues another Day, and not the ſame 'tis awarded, do not prove it a Diſcontinuance; and many Caſes are otherwiſe; as an Award to give Notice of Trial, &c. Alſo there is a Book of *Fitzherbert*'s *Natura Brevium* 20 *G.* & *Brook, Title Diſcontinuance*, 59. which ſays, if the Plaintiff does not aſſign Error the ſame Term, then it is a Diſcontinuance. Now tho' a Writ of Error is returnable at a Day certain, yet he has all that Term to aſſign Error; but if he omits it a whole Term, it is a Diſcontinuance.

My Lord, I do not ſee but this is a regular Proſecution on a Writ not liable to Exception. There is another Book, 21 *Ed.* IV. that ſays, There ſhall be the ſame Day given to the Jury by the *Diſtringas:* but I ſee not the Neceſſity that the *Teſte* ſhould be that Day, *Brook, Diſcontinuance*, 53. At the Return of the *Venire Facias* the Defendant was eſſoyn'd, and the *Eſſoyn* adjourn'd: Now the *Habeas Corpus* ſhall have the ſame Day as the *Eſſoyn* had by Adjournment, and ſo not the ſame Day with the Return of the *Venire*; for, ſays the Book, you ſhall continue the *Venire* to the ſame Day of Adjournment; but that does not ſhew that the Proceſs ſhall be iſſued that Day, but rather the contrary. Now, in this Caſe, there is all done that is neceſſary; the Proceſs is continued, the Jury is adjourned to that Day that it is by the Roll, the Parties are continued to that Day. I know no Caſe that ſhews a Neceſſity of the Writ bearing Date the ſame Day, but one, and that I think is againſt them: 'Tis the Caſe of *Bradley* and *Banks*, in *Yelverton* 204. and that was in an Appeal, and that it was ſo, there was a Diſcontinuance in an Appeal, if there be any Time between the Return and the *Capias*, tho' the Defendant hath appear'd, yet all the Proceſs are diſcontinued; for in that Caſe, the *Teſte* ought to be the ſame Day as the Proceſs was. Now if that were a general Rule, it would be againſt us; but that was founded on a ſpecial Reaſon, and does them no Service. For all Appeals are to be without Intermiſſion, and if they are intermitted any Time, the Appeal is loſt; for the Common Law is not altered by the Statute of *Glouceſter*; therefore there can be no Imparlance after an Appeal; for if an Imparlance be thereon, it is a Diſcontinuance, and therefore that Caſe will be of no Authority to them.

But there is a Caſe in *Crook. Eliz.* (*N.B.* The Caſe intended ſeems that of *Rogers* verſ. *Bird. Cro. Eliz.* 572. *ſed vide ib.* 433. *contra.*) where this Proceſs is taken notice of as good, and that is, that the Proceſs is the very next Day. There a *Venire Facias* was awarded *Craſt. Trin.* the *Diſtringas* was iſſued the Day after, and by that it ought to be ſo; and the Return was amended, and the Proceſs was the next Day after the Return. Now that being ſo particularly ſtated, ſeems to be an Authority that it may be ſo.

L. C. J. Holt. How does it appear to be a Day after?

Mr. *Att. Gen.* The *Venire Facias* was *Craſt. Trin.* the *Diſtringas* was *Die Veneris*, &c. which was the Day after. (*Quære* Cro. El. 433.)

Mr. *Broderick.* In a Criminal Caſe it is not allow'd.

Mr. *Att. Gen.* I do not tell you whether it was a Criminal or a Civil Caſe, but the Exception was taken notice of, and it was amended; but this I only premiſe. Now, my Lord, with great Submiſſion, I don't know that there is any Neceſſity (it being a Proceſs at the Suit of the Crown) to have it *Teſted* on any Day certain; for it ſeems to be well on any Day. If it be in the ſame Term, and Notice having been given to the Jury, and they and the Party appearing thereon, I cannot ſee why it may not be well. In Criminal Caſes the Courſe of the Court is to amend Errors (of Form) in Indictments and Informations the very Day of the Trial, and that has always had its Weight in Criminal Proſecutions; but, with Submiſſion, if it be not right, it is to be made right; if it be a Miſtake of the Clerk, it may be amended. If you award a Writ, it is the Clerk's Duty to make it out; and if he miſtakes in Form, or varies from his Inſtructions, *&c.* all theſe Matters are amendable by the Common Law, and therefore need not the Aid of any Statute. But I cannot give up that neither; for the Crown has certainly the Benefit of the Statutes of Amendments, and I think *Coke* is of that Opinion too, on the Statute of 14 *E.* III. That Statute is general, and to ſay it comes only to Cauſes between Party and Party, and not to Cauſes of the Crown, I cannot underſtand, for there is nothing in it that leads that way. And yet becauſe it ſpeaks of Cauſes between Party and Party, this Rule has been laid down, that it extends not to the Crown; this Rule has indeed prevailed: But where a Statute is in general, and the end of it is to ſuppreſs Fraud, according to all the Rules laid down for expounding Statutes, the Crown ought to have the Benefit of it. It is to take off the Scandal of the Law, and the Miniſters thereof, as the Statute 32 *H.* VIII. ſays. Now the Stat. of 14 *E.* III. is general, that by the Miſpriſion of a Clerk no Proceſs ſhall be annulled or diſcontinued by miſtaking a Letter or Syllable, but as ſoon as it is perceived it ſhall be amended. Now I think there is no Reaſon to be given why it ſhould not extend to Proceſſes of the Crown as well as of the Subject, unleſs they thought the Subject only wanted it. I do not underſtand why a general Law may not extend to the King, as well as the Subject. Now as this Statute is general, I mean the Statute of *E.* III. ſo there is the Statute 16, 17 *Car.* II. *Cap.* 8. which is likewiſe general, and yet it has been always taken to concern the Crown, as well as the Subject. And why not one Statute as well as the other I cannot conceive. Now, my Lord, we are not without good Opinion that the Benefit of the Statute 16 and 17 *Car.* II. does belong to the Crown. 'Twas the Opinion of the Lord Chief Juſtice *Hales*, in the Caſe of the Lord *Fitzwater*, there the *Venire* was directed to one Place, when it ſhould have been to two; and the Queſtion was, whether this could be help'd by the Statute of 14 *Car.* II. He adher'd to that Opinion, and the Jury thereupon gave their Verdict. It was indeed ſet aſide; but Judge *Hales* always abode by that Opinion. And ſo is firſt *Syderfin* 148. The King againſt *Wright.* There it is ſaid the Statute of *Jeofail* does extend to it; and even by the Rule in *Blackmore*'s Caſe the Statute does extend to it; For there, ſays my Lord *Coke*, that Statute does not extend to Appeals, or Indictments, Pleas of the Crown or any Proceedings thereon, for they are excepted. That is his Opinion, where they are excepted, it does not extend to them. Now all Pleas of the Crown are not excepted, but only Appeals, Indictments, *&c.* and therefore Informations on particular Statutes are not excepted. Now on the reading of the Act, no Pleas of the Crown are excepted, but only Appeals and Indictments; therefore my Lord *Coke*'s Opinion muſt be, that that Act extends to all Things that are not excepted therein, and conſequently to this *Caſe.* In *Dyer f.* 153. there is indeed another Queſtion, whether it be a Diſcontinuance in the King's Caſe on the Statute of 32 *H.* VIII. (*Vide* Dyer 353.)

Now if he make a Quæry on that Statute, I cannot imagine why he ſhould not have doubted in other like Caſes. But when he came after to *Fol.* 346, 347. in an Information on the Statute of Uſury, the Book ſays the miſconveying of Proceſs and the misjoining of Iſſues, are amendable by the Statute of *Jeofails*, and accordingly Judgment was given againſt the Defendant, notwithſtanding divers Errors in the Proceedings; ſo that the Judges were of Opinion in that Caſe, that the Statute did extend to Caſes of the Crown.

L. C. J. Holt. The Judges there did not directly conſider the Statute of *Jeofails*, 'twas but an Opinion *obiter*.

Mr. *Att. Gen.* Theſe are the Words of the Book, *Tandem propter Statutum de* Jeofails *que parle de miſconveying de Proceſs*, &c. Judgment was given againſt the Defendant. But I ſhall have Occaſion afterwards to take notice that a great deal of the Practice of the Courts goes on the amending of the Returns. That Statute is for amending of Returns, and I think we are within the Statute, or if not, That the Common Law will help us: But be that as it will, we are now on the firſt Point; and I think it is amendable by the Common Law; and I think I can give you an Account of much greater Amendments made by the Court at Common Law, than this which we now aſk. Now for *Blackmore*'s Caſe, if we had left it there, we might have done it by that Caſe; for it appears by the 8th *Rep.* 156. *b.* without doubt there were Amendments by Common Law; and my Lord *Coke* gives Inſtances of it. Now I yield it was there in a civil Caſe; but I think no Man can pretend that at the Common Law there were any Rules to diſtinguiſh between Caſes of the Crown and Caſes of the Subject, unleſs the Crown had a much greater Power to amend than the Subject had; and that ſo it was, appears by many of our ancient Books. And there are Authorities in the Statute Law likewiſe, that the Crown could amend further than the Subject. For *Coke* in *Blackmore*'s Caſe ſays, That Variance of the Writ from the Original was amendable by the Common Law, and any part of the Record in the ſame Term; for that during the Term it is in the Breaſt of the Judges, but Miſpriſions of Clerks in another Term in Proceſſes were not amendable by the Court. But I ſhall plainly ſhew, that Miſpriſions of Clerks were amendable at Common Law in Caſes of the Crown; and this is prov'd by all the old Authorities. The old Books ſay, they ſhall be amendable in the ſame Term, and we are now within the ſame Term, and ſo hope we ſhall be deliver'd from that Queſtion. Now that Rule of my Lord *Coke*, and the Reaſon of it, extends to criminal Caſes as well as civil, and both Caſes are within the Power of the Court to amend. For if a Fine be ſet within the Term, the Court may in the ſame Term amend it or diſcharge it. This is allow'd to be in the Power of the Court by the Common Law in the Caſe of the Crown. In *Trinity* Term, *vide* 4 *Mod.* 395. between the King and *Walcot*, there was an Error in the Writ of Attainder, and an Exception was taken, and it was amended in the ſame Term. For the Court finding the Form of Entry to be erroneous, they did the ſame Term order the Record to be razed, and made a Rule for the next Term; and this was done by the Power of the Court at Common Law. For while the Proceſs and the Record is in the Breaſt of the Court, they have a Power by the Common Law to make a new Judgment.

My Lord, the next Matter I would obſerve is, That all Miſpriſions of Clerks, or their Aſſiſtants, in the Caption of the Judgment, may be amended in the ſame Term. For that there is *Saunders Reports f.* 209. *Faulkner's Caſe.* If an Indictment be miſtaken in the Stile of the Court, *&c.* the Court may amend any Thing to make the Caption right, firſt *Syderfin* 259. King againſt *Glover*, and this was to amend a material Point. There is the like Caſe in 2d *Croke.* Theſe are criminal Caſes. It was an Inquiſition taken *apud* ——— it was not ſaid *in Portibus* Londini. The Clerk of the Peace was order'd to amend it. And in *Jones*'s *Rep. Stafford*'s Caſe, firſt Abridgment 196, there was an Error in the Reverſion of an Attainder. The Certificate was, that he was arraign'd the 18th of *March*, and convicted the 20th of — In that Caſe Judge *Barclay* was of Opinion it might be amended by Common Law, and the Lord *Coke* agreed; but Judge *Jones* was of another Opinion, and he gave it for a Reaſon, eſpecially where the King had ſignified his Pleaſure of deſiring it; and afterwards it was not amended: But two Judges were of Opinion it might be amended. In *Palmer*'s *Rep.* 480. in *Plum*'s Caſe, there was an Indictment in *Eſſex*, and it is *Exactus eſt ad Comitatum*, without *meum*, and a *Certiorari* was awarded to the Coroners, to certify whether it was exact *ad Com. meum*, and amended accordingly. So 7 *E.* IV. 15. The *Niſi Prius* was *Menſ. Mich.* and the Roll was *Quinden. Mich.* and that was amended. Now this ſeems likewiſe to be warranted by the Statute of *E.* III. and whether that Statute extend to it or not, yet the other Statutes extend to all.

For the old Books, I would only trouble you with ſome Caſes that were before the Statutes of Amendments; and there 'tis plain, both as to civil and criminal Actions, it was the ſame thing. For in both Caſes it was frequently amended; ſo in 5 *E.* III. 25. an Entry of a Continuance was miſtaken, and it was amended by the Court: So in the Caſe of *Chambers* againſt *Barrow* — 430. there was a *Scire Facias* obtained, and it was returnable *Sexto*, and the Entry is *Septimo.* This upon a Demurrer was objected, and that all was thereby diſcontinu'd; it was anſwer'd, the Court might do it at all Times by the Common Law, and this may be amended by the Common Law.

My Lord, this is an expreſs Authority for us, that the Proceſs is amendable at any Time before the End of the Term, and the Judgment is in the ſame Term. In the Book 9 *Ed.* III. *Placita* 3. The Default in Proceſs may be amended at any Time before Judgment; wherever the Roll is contrary to the Writ, it ſhall be amended by it. After Iſſue join'd, the *Diſtringas* was awarded, where no *Tales* was awarded the Clerk found the Award of the *Venire Facias*; and there it is ſaid it is amendable, being in the Breaſt of the Court.

Sir *Bro. Title Amendm. Placita*, 62. The Original was in *Suſſex*, and the Proſecution in *Eſſex*; yet 'twas held amendable, and no Diſcontinuance. Theſe are all by Common Law. So 40 *E.* III. *Placita* 13. and *Brook*'s *Amend. Placita* 17. There was a Writ iſſued againſt three: Two appear'd, and one made Default; againſt whom Proceſs iſſued, and the next Day he appear'd; and this was amended becauſe it was amendable by Common Law. Likewiſe *Fitzherbert's Amend.* 6. There was a Variance by the Default of the Defendant, and it was amended, and it was after a Default. So 39 *E.* III. In the Record it was — and in the *Niſi Prius* it was — and it was amended. Now there is a modern Caſe, *Croke Eliz.* 222, 256, &c. in the *Venire* one of the Jurors was called *Samuel Sutton*, and in the *Diſtringas Saul*: But it appearing to be the Miſpriſion of the Clerk, and that the Writ was right, they held it was amendable by Common Law. And *Brook*'s *Amend. Placita* 27. the Count or Declaration was *ad damnum* an hundred Pounds, the *Niſi Prius* was to the Damage only of an hundred Shillings, and the Court ordered the *Niſi Prius* to be amended, as being only the Miſpriſion of the Clerk. Now that goes a great Way, for the *Teſte* there had no Writ to try it; but yet that is adjudged to be amendable. And ſo in that Book *Placita* 24. and in divers other Places. So that it hath been always obſerved in common Practice as amendable, as being *Vitium Clerici*, *Brook*'s *Placita* 26 and 29. *Fitzherbert* 16, 17 and 29. Theſe are all Caſes at Common Law, and ſo far will juſtify the Amendment in our Caſe. And in *Fitz. Amend.* 43. there is a Caſe to ſhew, that where there is a Prejudice of the Party an Error may be amended, a *Diſtringas* is return'd, where there was a Default in the *Teſte* and the Jurors Names. The *Teſte*, &c. was amended, for they took it before the Roll was made up. There is another Caſe, the 40th of *E.* III. the Proceſs was diſcontinued after the Appearance of the Defendant; and it was amended. There is likewiſe 44 *E.* III. (For I meddle not with thoſe ſince the Statutes of Amendments.) There was a Writ awarded againſt *M.* and *G.* the Proceſs was againſt *M.* only; and afterwards it was amended; and there it is ſaid, both the Roll and the Writ may afterwards be amended, and they were amended accordingly.

My Lord, I cite theſe Caſes to ſhew that Amendments were made by the Common Law, and the Statutes cannot make any Alteration, tho' they ſhould not extend to the Crown. I believe there are not in the old Books many Inſtances of Proceedings by Information; but that ſeems a great Argument to me, that this Nicety that hath crept into theſe Proceedings are not by Common Law; in our old Books they are very little taken notice of; but it ſeems theſe Exceptions were not taken then, if they had, we ſhould have found them; but the Books are quite otherwiſe. Now if the Amendments were allowed at Common Law, I believe none can diſtinguiſh and ſay, That it ſhall not be amended in our Caſe, for I think they cannot be diſtinguiſhed.

There are ſome other modern Caſes wherein greater Things have been done. Firſt the Caſe of Sir *John Aſhly*, that has been cited (*ante* 677.) that it is an Amendment of a Judgment that was entered by Diſclaimer. In the *Niſi Prius* it was right, but all was left out in the Judgment. And it was objected that it was not amendable, becauſe it was not in the ſame Term, and that none of the Statutes of Amendments extended to ſuch Caſes; yet upon Examination it was amended, becauſe it was only a Miſpriſion of the Clerk by miſtaking his Book, there it was thought to be in the Power of the Court by Common Law to do right. Then in the Reverſal of the Attainder of the Lord *Stafford*, there were Proceedings in Court fourteen or fifteen Years; but by Neglect of the Clerk there were no Footſteps of any Thing appear'd, and yet there was a Rule for a Record to be made, whereby there was a Judgment of Reverſal enter'd. Now this Court did think they had a Power to ſet the Records right, and they gave them leave to make a Record, in order to make a Reverſal of that Attainder: And if it may be done againſt the Crown, no doubt it may be done for the Crown, for that it is but ſetting Things right. There have been other Caſes cited, as *Harris*'s Caſe in *Cro. Jac.* 502. *poſt.* 704. and that was a very extraordinary Amendment. It was an Indictment for a Nuſance. Not Guilty was pleaded indeed, but the Clerk who entered it join'd not Iſſue, and the Verdict was againſt the Defendant, and no Iſſue join'd; that was omitted; but the Return was allow'd. Now if we had done ſo, we ſhould have had a great Noiſe about it. But here the Court allow'd Amendment to be made; and it was amended, as being done by the Clerk's Negligence, and this in the Time of another Clerk: And theſe Words were inſerted for it.

And it was ſaid, if ſuch Faults ſhould not be amended, many Courts would be deprived of their Juriſdiction. And I am ſure, if the Courts will not amend theſe Matters, it will overturn many Trials.

There is another Caſe: 'Tis in *Crooke James*, 529. *Parker verſ.* Sir *John Curſon & Ux.* And that was a Trial at Bar. The Iſſue was enter'd, *Et prædict. Johannes Curſon & Magdalena veniunt, et predicta Magdalena dicit, quod non eſt inde culpabilis; & de hoc ponit ſe ſuper Patriam, & Attornatus Domini Regis ſimiliter.* After the Trial at Bar, it was amended by the Docket; and there it was only, *Quod J. Curſon, Mil. & Magdalena Ux. ejus, placitant non Cul.* which was only a ſhort *Memorandum:* Which, I think, goes a great Way further than what we labour for.

There is that Caſe too, 1 *Siderfin.* 243. between the King and *Godfrey.* There the Award was *Vicecomitibus*, when it ſhould have been *Vicecomiti*; for there was but one Sheriff: But upon Examination, they found it was the Miſpriſion of the Clerk; and they ſet it right.

L. C. J. Holt. They indeed ſet it right; but how? Not by Amendment: But it was inſerted as a *Memorandum* on the Roll, and there was but one Sheriff.

Mr. *Att. Gen.* My Lord, with Submiſſion, that's as well: For we do not do ſo much; for that was done after the Trial.

L. C. J. Holt. There was no altering the Writ.

Mr. *Att. Gen.* If we ſhould aſk the Court to alter what we did before the Trial, it would be ſaid, we ſhould have mov'd it before, and not after. Now to enter that after the Trial, was much more than we aſk.

There is another Caſe which had the Opinion of the Court, the Caſe of the Warden of the *Fleet*; where you were of Opinion to amend, *&c.*

L. C. J. Holt. It is not amended yet.

Mr. *Att. Gen.* My Lord, I cite it as an Authority, that you would have amended it, if you had any Thing to amend it by.

L. C. J. Holt. I did not tell you what I would have done.

Mr. *Att. Gen.* My Lord, I was not in Court, but I heard it was ſo. If it was not, I was miſinformed. There was a Commiſſion taken out againſt him, as being guilty of ſeveral voluntary Eſcapes, and a Day was given to appear at the *King's Bench* the 8th of *January.* The Appearance was the 20th of *January*; but the Record was not enter'd itſelf till the 3d of *February* following; ſo that there was a perfect Diſcontinuance.

This was not ſeen at firſt; but on Conſideration of the Court, they found it out; and the Counſel moved the Court to ſet it right. The Court made a Doubt of their Power; but they enquired when it came in; whether in Time or not; and what Minutes were for it. It ſeems the proper Minutes were not to be found. Now that being ſo, it would be ſtrange for the Court to make any Amendments, without any Copy to amend by. If the Clerk's Man had come in, and produced the Minutes, I take it, the Senſe of the Court was, that they would amend it; tho' that was agreed to be a Diſcontinuance.

Now I cite that Caſe, not that you did amend it; but would have done it, if you had any Thing to amend it by: And there was a Diſcontinuance of the Party. Now if they could have amended that, this may be done here for a much better Reaſon. There was a Diſcontinuance both before and after the Trial. I think, we have much ſtronger Reaſon for Amendment, than was in that Caſe: Tho' I muſt ſay, as to that Caſe, the Bar were of Opinion, that the Clerk might have enter'd it as on that Day, and ought to have done it; and therefore they thought it was amendable. And if that were true, no queſtion, it was amendable. But however the Opinion of that Caſe was, it is an Argument to me, that the Court would have amended it, had they any Thing to amend it by: For it was the Opinion of this Court, it is amendable. But I think that Caſe is no Authority for them: And whether that be done by the Help of the Statute or no, is not material: And the Court would have amended it, if it had been the firſt Day of the Term.

This I take to be the Opinion of the Court; and that they did not amend it, becauſe they had no Authority to amend it by.

There is one Matter more, which is, That this Slip is the Fault of the Clerk: For that the Miſteſting of the Writ is the plain Act of the Clerk; and in all the Caſes, it has been held Acts of the Clerk to be amendable by the Common Law: And for that there are a thouſand Caſes. This is in Point of Law.

I would beg Leave to cite a few Authorities in *Crooke's Eliz.* 'Twas agreed, a *Venire Teſted* out of Term, is a Miſpriſion of the Clerk.

L. C. J. Holt. There are Abundance of the like Caſes.

Mr. *Att. Gen.* I believe a Thouſand, therefore I will not cite them.

We ſubmit to your Lordſhip, whether it be right, and wants no Amendment; or if it be not right, whether it be not amendable by Statute or Common Law. And I hope we ſhall have the Benefit of the Verdict.

Mr. Serj. *Darnel.* My Lord, There has been ſo much ſaid already, that I ſhall ſay very little. I ſhall only cite two or three Caſes. The Queſtion is only this: Whether a Miſpriſion of the Clerk is not amendable in the ſame Term? For that we have 10 *Ed.* III. 20. there was an Error amended of 63 for 59. I think, all the other Caſes have been mentioned already. The 5th of *Ed.* III. has been cited, and it is ſtrong. I have thought it always ſufficient, without any Statute of Amendments; and thoſe that have been amended by Common Law, will be Authorities in this Caſe. Now that the Court have always taken on them as their Duty to amend the Faults of the Clerks in any Entry, or Proceſs, or Continuance, the Books are full in it; and I hope it will be amended here.

Mr. *Broderick.* I pray your Lordſhip's Favour to ſpare me a few Words on the other Side. I ſee ſo much Warmth in this Caſe, that I muſt beg Leave to preface ſomething, before I ſpeak to the Point of Law.

Mr. *Att. Gen.* You might have wav'd that.

Mr. *Broderick.* The Occaſion of my ſaying that, was, That Mr. *Attorney* ſaid, There had been a Noiſe about the Town concerning this Exception. And that a whole *Party*——

Mr. *Att. Gen.* There has been ſo——

Mr. *Broderick.* I would not be believ'd to concern myſelf any otherwiſe for this Man, more or leſs, than for any other Client. Nay, what I am concern'd in, and have to ſay at preſent, doth concern every Subject in *England*, as well as Mr. *Tutchin.* But when 'twas ſaid, That there was a Diſcontinuance in the Caſe of the Warden of the *Fleet*, which, after the long Tranſaction of that Cauſe, was not obſerved by the Counſel for him; and that they were clear-ſighted for the *Obſervator*; I could not take that otherwiſe, than as meant to myſelf, who was Counſel for the Warden of the *Fleet*, and am now for this Defendant. I confeſs, I did not obſerve that Fault in the Caſe of the Warden of the *Fleet* (nor ever had a perfect Copy of that Record, to enable me to do it): And I muſt own at the ſame Time, that I had not the Fortune to make the Diſcovery in the preſent Caſe. The Exception was taken before I was any Ways concern'd in the Cauſe: And when 'twas made, I thought it a good Exception; and made no Difficulty of accepting my Fee to ſpeak to it.

Mr. *Att. Gen.* I had another Meaning in it. I knew not that Mr. *Broderick* was Counſel for the Warden of the *Fleet.*

Mr. *Mountague.* My Lord, I believe Mr. *Broderick* is afraid of my Fate in this Caſe: I have been very much reflected upon for being Counſel in this Caſe; and it has been ſpread about all the Counties in *England*, by *Dyer* the News-writer, That I broach'd ſeditious Principles at the Trial, and was reprimanded by your Lordſhip for it: And I believe Mr. *Broderick* is afraid of the like Scandal.

L. C. J. Holt. You muſt not be afraid of Scandals. *Dyer* is very familiar with me too ſometimes: But you need not fear ſuch a little ſcandalous Paper of ſuch a ſcandalous Author.

Mr. *Mountague.* My Lord, I am not much concerned at it, ſeeing it comes from him.

Mr. *Broderick.* I muſt agree, That this is a Point of great Concern to the Crown; becauſe all Proſecutions for the Crown may be affected by it, as Mr. *Attorney General* ſaid: But on the other Side, I beg Leave to ſay, That (whatever the Perſon now before the Court may be) it is of great Concern to the Subject too: For the Rule in this Caſe will be a Rule in the Caſe of every other Subject of *England*; ſo that the Concern is great on both Sides.

I muſt beg Pardon of the Court, if, in anſwering off-hand to very learned and elaborate Arguments, from the ſhort Notes which I have been able to take of them, I happen to be diſorder'd in Method: I muſt take Leave to offer ſuch ſhort Obſervations upon them, and give ſuch Anſwers to them, as I can at preſent; as my Memory ſuggeſts the Objections to me, tho' not in the ſame Order in which they were deliver'd. But I will uſe my Endeavour, not to omit the taking ſome ſhort Notice of the general Heads, under which I apprehend all the Objections will fall.

I would obſerve (which I think would be an Anſwer to a great deal that has been ſaid on the other Side), That our Law-Books make a very great Difference between the King's Proſecutions in his own Name, as a Civil Right, and Proſecutions wholly in his Capacity of King, as he is Head of the Commonwealth; and in the Exerciſe of his Royal Office, to affect the Subject with, or puniſh him for Crimes thereby charged upon him. I agree, the Caſes cited by Sir *Thomas Powis* and Mr. *Attorney General*, of Amendment of the King's Writ of *Qu. Impedit*, and ſome others; and that the Common Law gave greater Indulgences to the Crown, in the Proſecution of its Civil Rights, than to any Subject. The King was known to be employ'd in the Concerns of the whole Kingdom; to have the Care of all his People upon him: Whereas the Subject had only his perſonal and private Affairs to look after. And 'tis no Wonder that the Law ſhould adjudge, that great Allowances were to be made to the Crown, as to its own particular Rights; That it ſhould not be tied up to ſo ſtrict Rules as the Subject, who was ſuppoſed to attend his own Affairs only. This is the Reaſon generally given, why the Crown had ſuch a Prerogative, that greater and more favourable Allowances ſhould be made in its Suits, than in thoſe of its Subject.

But it has hitherto (as far as I have been able to obſerve) been taken, That the Law was very nice and tender in all Proſecutions that aim at the charging the Subject with Crimes and Penalties. It ſeems to be a new Light, ſprung up of late, which has diſcover'd, that there is a greater Neceſſity for that Privilege in Criminal Proſecutions, than in Civil. The Opinion of the ſucceſſive Ages, which have made favourable Acts for amending and curing of particular Defects in Legal Proceedings, ſeems to have been much otherwiſe. In many of theſe, all Criminal Proſecutions, of all Kinds, are expreſly excepted: And where they are not, I muſt ſay, I have not heard yet quoted; nor can find any Caſe of Authority where thoſe Statutes were interpreted to extend to Proſecutions for Crimes. I perceive, the Counſel for her Majeſty in this Cauſe, have in their Arguments relied very much upon Amendments made by the Common Law. I can't pretend to be now prepared to run through each particular Caſe: In general, it cannot be denied, that ſeveral Amendments were made by a Power that the Court had at Common Law; but we think there never was any which came up to this Caſe. And indeed, if all the Amendments in the Multitude of Caſes that have been cited in theſe elaborate Arguments, are allowed as good at Common Law, it would make one wonder, where the Neceſſity was of making an expreſs Statute, for the Amendment of a Letter or Syllable (and of the nice Doubts upon that) or of the other ſubſequent Statutes of *Jeofails* and Amendments. The Court, to me, by theſe Authorities, would ſeem to be arm'd with a ſufficient Power to have done the Buſineſs, without the Help of any Statute.

Tho' her Majeſty's Counſel rely principally upon the Statute of 8 *Hen.* VI. yet in regard they do not wave, or give up the Aid of the Statute 32 *Hen.* VIII. (For Mr. *Attorney* takes Notice, that there is a *Quære* in my Lord *Dyer* (*Dyer* 353) Whether the King, in an *Information* of *Intruſion*, ſhould not have the Advantage of that Act? And he has cited Lord *Dyer*, 346. of an *Information Qui tam*, &c. to be within the Act: And that Lord *Hales*, in Lord *Fitzwater*'s Caſe, held, That 'twas reaſonable that Criminal Proſecutions ſhould be aided) I think it will be very proper to conſider how the Law has been taken upon that Statute: And to ſee whether the Reaſon of thoſe Caſes won't go as far backwards as to the Statute 8 *Hen.* VI. The Words of the Statute, 32 *Hen.* VIII. *C.* 30. are not expreſly reſtrain'd to Actions or Suits *between Party and Party*; though the Word *Party* be mentioned in the Statute, both as to the Plaintiffs or Demandants, as to the Tenants or Defendants. And the enacting Clauſe is, *That from thenceforth, after Iſſue try'd for the Party Plaintiff or Demandant, or for the Party Tenant or Defendant, in any Manner of Action or Suit at the Common Law; the Judges ſhould proceed to give Judgment in the ſame, not-*

withſtanding any of the Miſtakes therein mentioned, in like Form as if no ſuch Default or Negligence had been. It is true, as Mr. *Attorney* has cited it, that 'tis left a *Quære*, as it ſtands printed in my Lord *Dyer*, which was in the 18th Year of Queen *Elizabeth:* But even in that very Caſe, 'twas held, 22 *Eliz.* that the Statute did not extend to it: As appears in 1 *Rolls Reports*, fol. 447. as well as by *Blackmore*'s Caſe, 8 *Cro.* 163. where 'tis expreſly ſaid, That the Statute 32 *H.* VIII. extends not to Pleas of the Crown. And this Point is expreſly agreed by the whole Court, in *Sherington Talbot*'s Caſe, 1 *Cro.* 312.

A *Venire Facias* bearing *Teſte* out of the Term, and an Iſſue tried upon it, is *Miſconveyance of Proceſs*, ſalved after Verdict, by thoſe Words in the Statute of 3 *H.* VIII.

So a *Venire* awarded, which bears *Teſte* on a *Sunday*, is adjudged to be aided within thoſe Words.

Yet in *Theobald* and *Newton*'s Caſe, *Style* 307, there was a Suit upon the *Statute* of *Inmates*; and the *Diſtringas* bore *Teſte* on a *Sunday*, and out of Term. Exception was taken to this after Verdict, and held not to be aided by the *Statutes* of *Jeofails*. I thought it neceſſary, by mentioning the two former Caſes, to ſtate which of the Statutes it was which would have remedied the Fault, if the Statute had extended to the *Suit itſelf*; becauſe the Reporter (which is no Wonder in him) ſo far miſtook the Senſe of the Court, as to omit the material Statute, and to mention the 18th of *Eliz.* and 21 *Jac.* in neither of which Laws there are any Words which reach the Caſe; tho' in this Act of 32 *H.* VIII. there are.

And in Lord *Fitzwater*'s Caſe, cited by Mr. *Attorney*, tho' my Lord *Hales* does ſay, *The Caſe of the King will often ſtand in need of the Amendment of a wrong* Venire; and therefore he was of Opinion to bring him within the Statute of 16 and 17 *Car.* II. which has very extenſive Words; yet he allows the Diſtinction between his *Criminal* Proſecution, and *Civil* Action; as appears in 3 *Keb.* 485, 519.

In *Percy's* Caſe, 21 *Car.* II. 1 *Vent.* 17, 35. an Information of *Forgery* at Common Law, laid the Forging to be of a Releaſe at *Sherborn*; and the giving it in Evidence to be at *Dorcheſter*. The Defendant was convicted by a Jury *de Vicineto* of *Dorcheſter* only: 'Twas adjudged to be a Miſ-trial; and a new *Venire* was awarded. For the King, 'twas laboured to ſupport the Trial by the Word *Suit:* For, ſay they, the Information is *Secta Domini Regis*; ſo that the Word is extenſive enough to reach this Proſecution: *And 'tis plainly out of the Exception*, which excepts no Information, but thoſe upon Penal Statutes. But the Court held, *Any Information, tho' at Common Law, was not remedied by the Words or Intent of the Act.*

In the principal Caſe of *Sherington Talbot*, 1 *Cro.* 311. *Jones*, 320. 2. *Ro. Ab.* 619. Information, in nature of a *Quo Warranto*, for claiming Liberty of free Warren in three Vills, in the *Foreſt* of *D.* Defendant diſclaims in the *Foreſt*, and in all but one Vill; and ſays, That that Vill is Parcel of the *Manor* of *S.* and preſcribes for free Warren in his Manor; Iſſue on that Preſcription, and the *Viſne* is from the Vill, not from the *Manor*; held to be miſtried, and not aided by any of the Statutes of *Jeofails: Tho' not within the Exception*; *becauſe the Statutes do not extend to the King's Caſe: He not being named.* The then Judges thought this a Reaſon; which will equally extend to the King's Caſe, upon the former Statutes of Amendments. And Mr. *Noy*, a very learned Predeceſſor of Mr. *Attorney General*'s, did not venture to carry the Point further for his Maſter, than to a *Peradventure* he might have the Advantage of thoſe Acts, in caſe of a *Quare Impedit*, or the *Civil* Right, where the Suit is in the King's proper Name, and not by his Stile of King only.

Nothing is more plain than the Difference which the Law makes between Caſes where the King proſecutes his Right in his own Name, as for a *Civil* Right, and where the Proſecution is in his Capacity of King, and in the Exerciſe of the Royal Authority. If the King (*Henricus Rex*) brings a *Quare Impedit*, and dies before Judgment, the very Writ abates; becauſe *Henricus Rex*, who was named by his proper Name, ceaſes to be. But if the Proſecution be *pro Domino Rege*, tho' the King *in individuo* be dead, yet *Dominus Rex in genere* not being dead, the Information or Indictment ſhall ſtand, to be proſecuted by the Succeſſor. Yet all Proceſs upon them, wherein his own Name is uſed, and not his Name of Kingly Office only, ſhall fall; becauſe the particular Perſon is dead.

According to this Diſtinction, I do agree, That where the King ſues in his own Name for a *Civil* Right, his Suit has more Favour allow'd to it than that of a common Perſon. And ſo far goes the Caſe in *Blackmore*'s Caſe, 8 *Cro.* 156. before-mentioned, cited by Sir *Thomas Powis*; That a Writ of *Quare Impedit*, which was *preſentere* for *preſentare*, was amended; *being the King's Caſe.* Tho', had it been the Caſe of a Common Perſon, it could not have been amended: For no original Writ was at Common Law amendable in the Caſe of a Common Perſon. But that an Information or Indictment ever found Favour beyond, or equal with a *Civil* Action, I never heard before; nor find any Authority quoted to warrant it now. I would take Leave to mention the Caſe, 13 *Car.* II. in *Scan. Hardreſs*, 217. (9.) *Pitcher* and *Jones:* 'Twas an *Information* upon the Act of *Navigation* for importing Spices, being the Growth of *Aſia*, *Africa*, or *America*, from *Holland* beyond the Seas, not being the Place where ſuch Goods were firſt and moſt uſually ſhipp'd for Tranſportation, *contra Formam Statuti.* The Defendant pleaded, he did not import them *contra Formam Statuti*, and Iſſue upon it; and Verdict againſt the Defendant. He moved in Arreſt of Judgment, That 'twas not laid that theſe Commodities were not of the Growth of *Holland.* To this 'twas ſaid, That the Verdict would help that, it neceſſarily implying it: For that they were laid to be of the Growth of *Aſia*, *Africa*, or *America*, and imported from *Holland*; which ſhews thoſe were diſtinct Places: And the Defendant could not elſe have been found guilty, *contra Formam Statuti.* Yet, after long Debate, the Exception was held to be a good one, and the Judgment was arreſted.

I muſt obſerve, That the Counſel for the Informer in this Caſe, had not the Courage ſo much as to hope for Aid from, or mention the Statutes of *Jeofails* in this Caſe. They cite there *Johnſon*'s Caſe, 2. *Cro.* 609. and *Cholmley*'s, *P.* 1. *Cro.* 464. where in *Criminal* Proſecutions reaſonable Intendments after a Verdict, are allowed at Common Law. But tho' nothing was wanting in this Caſe, but an Averment that *Holland* was not within *Aſia*, *Africa*, or *America* (which muſt neceſſarily be proved at the Trial, elſe the Defendant could not have been convicted) they either did not know that the want of an Averment of a Thing neceſſary to be averred, if Iſſue be taken upon another Point, is aided as a *Miſpleading*, by the Statute 32 *Henry* VIII. (tho' the Caſes of it are numberleſs); or they did not think there was any Colour for offering to extend that *Statute* to a *Penal* Law, with Regard to the Intereſt the King has in the Proſecution, tho' a common Perſon was the Informer; and tho' there is no Exception of Informations on *Penal* Laws.

As to the Caſes cited on the other Side, of Amendments at the Common Law by the King's Prerogative; I muſt rely upon the Difference I have already taken between *Criminal* and *Civil* Caſes; and that there are not any Inſtances of Amendments in *Criminal* Proſecutions. As to ſeveral other Caſes, which have been cited by the other Side, of Amendments upon Returns to *Certiorari's*, Returns upon *Writs* of *Error*, &c. thoſe, with Submiſſion, will not come up at all to the preſent Caſe. When a Record is certified upon a *Certiorari*, &c. the Parchment annexed to the Writ is ſuppoſed to be the real original Record; and that remains in the Court here, and is become by the Return a Record of this Court. Where, by the Courſe of the Court, 'tis enter'd upon a Roll here, if in the Entry it varies from that that is the true Record, it is the Duty of the Court to take Care, that the Miſ-Entry be rectified; and the Record, which is tranſcribed here, made agreeable to the Original. The rectifying ſuch Miſ-Entries, or Miſ-Copyings, are not Amendments of Faults in a Record (for that faulty miſtaken Entry is not really the Record) but making true Entries of the Record. And upon the like Reaſon was the Miſtake rectified in Sir *H. Tufton*'s Caſe, 1. *Cro.* 144. where there was a Conſent of the Parties for entering a Judgment by Diſclaimer, by *Virtue or Pretence of Letters Patents, bearing Date* 7 Jac. which Words were inſerted in the Paper-Book, by the Attorney General's own Hand; yet omitted by the Clerk, in the entering it upon the Roll: There, upon great Examination and Conſideration of the Circumſtances, *all Parties conſenting*, that Miſ-Entry was corrected; being as the Book ſays, no more *than when a Special Verdict is miſenter'd*; *which is rectified by the Notes of the Clerk of the Aſſize.* But it is very much inſiſted on, That the Statute 8 *H.* VI. *C.* 12. ſhall extend to this Caſe, becauſe there are particular *Criminal* Proſecutions excepted therein, of which this is not one. I do not find that there has been one Authority cited, when it was ever held, that that Law extended to any *Pleas of the Crown.* And I take the uniform Opinion of near three Centuries, ſince that Statute, to be againſt it.

Mr. *Attorney* relies much upon the Caſe of the King againſt *Percival* and *Godfrey*, and others, *Sid.* 244. where the *Venire* for the trying the Defendants, upon an Indictment for a Riot, was directed *Vicecomitibus de Canterbury*, and returned by *R. S. Vicecomes*; the City having in truth but one Sheriff: There, upon Examination of the Sheriff himſelf upon Oath, in Court (who ſwore that City had but one Sheriff) there was an Amendment. But what was that? Not of any Thing that was the Act of the Court: But the Sheriff adds to his Indorſement upon the Writ (when he had anſwered ſingle) There that was not any other Sheriff; as it appears in the ſame Book, and in 1 *Keb.* 900 (17) 901 (75): And this the Court held to be well, upon the Authority of the Book of 39 *H.* VI. *f.* 40. where a Writ was directed *Coronatoribus*, and returned by one Coroner only, yet held to be well: For, ſay the Court, We won't take Notice there are more Coroners than one. And ſo Juſt. *Wyndham* ſaid, in this Caſe, We ſhall intend but one Sheriff, unleſs more appear; 1 *Keb.* 901.

A good Part of Mr. *Attorney*'s Argument ſeems to tend to the making it not neceſſary, or at leaſt diſputable, whether it be neceſſary, that the *Diſtringas* ſhould be *Teſted* on the ſame Day that the *Award* is. Won't that Argument turn another Way than 'tis intended? If it be a doubtful Thing, whether it be right or not; I doubt it will be an Error in Judgment, like the making out an improper Writ in the *Debet* and *Detinet*, where it ſhould be in the *Detinet* only: And then, tho' it is a Default of the Clerk, 'twill not be ſuch a Default as will be within the Aid of the Statute, if that ſhould be held to extend to the Caſe. If it were a doubtful Thing, it can't be ſaid he had a certain Rule to walk by: But he ventur'd upon his own Judgment, in which if he has chanced to miſtake, 'tis not amendable as a Thing of courſe. But in Truth, if it were to be enquir'd into, I believe, 'twould be found not to be an Error in Judgment in the Clerk, but a Miſtake of a Matter of Fact, in taking *Sunday* to be the firſt Day of the Term.

Mr. *Att. Gen.* That will not alter it.

Mr. *Broderick.* There has been another Caſe cited; the King and *Walcot*; where a Reverſal of an *Attainder* was pronounced, and the Judgment of Reverſal actually enter'd up; yet, being done by Surprize, the Entry of the Reverſal was ſet aſide, and razed out of the Record. Surely that cannot be an Authority for any. There the Entry was wholly irregular, contrary to the Rules of the Court: For the Judgment of the Court is not complete till the End of the Term.

L. C. J. Holt. 'Tis in the Breaſt of the Court during the whole Term.

Mr. *Broderick.* And if any one within the Term, without the Direction of the Court, will enter a Thing as the Act of the Court; ſhall not the Court have a Power to reform that Irregularity, and do themſelves right? This is not an Amendment of a Record, but a Reforming of an ill Practice; a preventing of an Attempt to make that an Act and Record of the Court, which really is not ſo. Neither does my Lord *Macclesfield*'s Caſe bear any Proportion to this.

There is no Queſtion but that a Court, which is intruſted with the Cuſtody and Preſervation of the Records wherein other Perſons are concerned, may take care upon any Miſchance; and that they have a Power to put Things into their right State: As in caſe of Fire, or any inevitable Accidents, the Court, incident to their Truſt of the Cuſtody of the Records, and by the Authority they have to do Right and Juſtice to all Perſons, muſt have a Power to ſupply ſuch Loſſes.

As to the Caſe of the *Warden* of the *Fleet*, there was no Amendment made: But if there had, it would not have come up to this Caſe. I may, I am ſure, ſafely affirm, that the Court did declare, That was not to be eſteem'd a *Criminal* Proſecution; in regard there was not to be a Judgment to puniſh the Party, but the Proceeding was only to transfer the Eſtate to the Crown by Way of Forfeiture.

The Counſel who have argued for the Queen, have not cited any one Authority of an Amendment in a *Criminal* Caſe, within the Statute of 14 *E.* III. or 8 *H.* VI. *C.* 12. or proving, that thoſe Statutes extend to Caſes of that Kind: But they call upon us, ſince the Words ſeem to be large enough to reach both (eſpecially thoſe of 8 *H.* VI. where there are ſome particular Criminal Proſecutions mentioned and excepted) to produce ſome Authority, to eſtabliſh the Diſtinction between *Criminal* and *Civil* Caſes. We think *the daily Practice in Civil* Caſes, and *the Want of a ſingle Inſtance in a Criminal one*, carries a ſtrong Argument, if we could go no further: But I think we do not want an expreſs Authority in this Point too. *Orde* and *Morton*, *Trin.* 11 *Jac.* I. *Ro. Ab.* 201. There a Writ of *Venire Facias* out of the *B. R.* was *Venire Fac. duodecim*, &c. *coram Nobis apud Weſtmonaſterium, ubicunque fuerimus in Anglia:* But the Roll was well, omitting the Words *apud Weſtmonaſterium.* 'Twas adjudg'd the Writ might be amended by the Roll; for 'tis but Matter of Form. This was a Default in the Body of the Writ, and amended by the Statute of 8 *H.* VI. as a Default of the Clerk.

Yet *Brigs* and *Thompſon*'s, &c. *Yel.* 60. 111. In an *Information* upon the Statute 21 *H.* VIII. *againſt Spiritual Perſons taking Farms*, the Award of the *Venire Facias* upon the Roll was right, returnable *ubicunque*, but the Writ itſelf was returnable *coram nobis*, omitting *ubicunque*, and ſo it did not anſwer the Award upon the Roll. This certainly had been amendable in a *Civil* Plea, but the Report tells us, that Judgment was ſtaid upon it. And, my Lord, I will beg the Liberty to make this Obſervation upon the Caſe of the *King* againſt *Percival* and *Godfry* (which is ſo much relied on). There are ſome Caſes of ſo odious a Nature, and move ſuch Indignation, that there is a Danger of Things being paſſed over unobſerved, which would not have been admitted in another Caſe. That was the Caſe of one of the King's Meſſengers, employed in his Majeſty's immediate Service, barbarouſly inſulted and abuſed in his Inn at *Canterbury*, by the Defendants and a great Rabble of People; As the Offence was very flaming, the Reſentment of the Court ran high: and they thought it reaſonable to do in that Caſe, what perhaps in an ordinary one they might not *eaſily* have done: Yet what was then done, is now to be cited for a Precedent in every Criminal Caſe whatſoever. I muſt ſay the ſame in this Caſe; whatever my Client is charged with, the Rule given in his Caſe may affect every Man in *England*, who ſhall hereafter be charged criminally: And therefore I doubt not your Lordſhip will very well conſider of it.

I hope, my Lord, I have given ſome Anſwer to moſt of the Things that have been inſiſted on; and that upon the whole Matter, this Miſtake will not be accounted a Thing amendable by Law.

Mr. *Mountague.* My Lord, in Anſwer to what has been ſaid, I ſhall not preface what I have to ſay with any Apology for being of Counſel with Mr. *Tutchin*, tho' I have been egregiouſly miſrepreſented in what I did, as Counſel for him at *Guild-Hall.* I know your Lordſhip is no Reſpecter of Perſons, but will have the ſame Regard to one Defendant as another.

Mr. *Att. Gen.* I am not concern'd at any Thing that has been written or printed about that Trial.

L. C. J. Holt. We will take no notice of that.

Mr. *Mountague.* My Lord, as to what Mr. *Attorney-General* and Sir *Thomas Powis* have ſaid, I beg Leave in the firſt Place to take notice wherein it is we agree, and in what we ſhall differ. Firſt, we agree that this Cauſe is a Cauſe of the greateſt Conſequence. Mr. *Attorney* tells your Lordſhip it concerns all the Proceedings of the Crown; and I hope I may be pardoned if I ſay, it is of no leſs Concern to the Defendant and the Subjects of *England.* I would therefore pay that Reſpect to the Court, not haſtily to ſpeak to a Point of this Moment, but ſhall deſire to have Time to look on thoſe Caſes that have been mentioned.

L. C. J. Holt. If you will do this, you may conſider the Statute of *H.* VI. for thoſe Words are general, and not relative either to Civil or Criminal Caſes in particular. It remedies the Miſchief between Plaintiff and Defendant generally.

Mr. J. *Powel.* Mr. *Broderick* has not taken notice of that Objection that my Lord *Coke* takes notice of, Becauſe they are not excepted, therefore they are included.

L. C. J. Holt. I would have you conſider why it is not within the Words of the Statute. It is as plain that it is the Fault of the Clerk as can be; he had the Roll before him, therefore it muſt be the Miſtake of the Clerk. The Award of the Writ is the Act of the Court, and that was the 23d; now this Writ did bear Date the 24th, and I believe we did not award the Writ the 24th, therefore it is to be judged they miſtook the Time of the *Teſte.* For the Record ſays the 23d, and this Writ ſays not till the 24th. Now why ſhould not this be within the Statute of *H.* VI. for it is the Miſpriſion of the Clerk, and then the Queſtion is, whether that Statute does not extend to this Matter.

Mr. J. *Powel.* I do indeed queſtion whether any Statute of *Jeofails* extends to it; but this Statute does not, as appears by 8 *Coke*, becauſe they are excepted. There are Indictments of Felony and Treaſon that are excepted. Now that this is a Miſpriſion of the Clerk is plain, becauſe he had the Award of the Court.

Sir *T. Powis.* I think all agree it was perfectly a Miſtake, and that makes it a diſputable Caſe; I do not ſtand on it as if it were right, but grant it was a perfect Miſtake, and then that Objection is clear, that Criminal Matters are not within the Statutes of *Jeofails*, and it is certain moſt of them are excepted, *viz.* Indictments, in this Statute of *H.* VI. where it is ſaid what are excepted, *&c.* 'Tis true, you cannot amend what are excepted, where the Party was in Danger of Life; but it leaves out in inferior Matters; therefore it ſeems, that whatever was ſaid of Criminal Matters, was intended of the greater Criminal Matters, and ſo was the Opinion in the Caſe of ——————

L. C. J. Holt. That was a Civil Cauſe, but we thought we could not amend it: For it would be contrary to our Duty as Judges to alter a Record. And therefore we refuſed even in Point of Scandal in that Caſe; alſo on Examination we found that we could not amend it, contrary to Truth.

Sir *T. Powis.* My Lord, we had not in that Caſe any thing to amend by; but here we have a Roll to direct us.

Mr. *Att. Gen.* If your Lordſhip indulge them from Time to Time to put it off, we ſhall never have done.

Mr. *Mountague.* My Lord, I am not prepared to anſwer what has been ſaid, for I did not expect this Motion would have been made.

Mr. *Att. Gen.* That we may be once at an End, I would fain hear what they have to ſay, and whether they have any more Exceptions.

L. C. J. Holt. Have you any more Exceptions to make?

Mr. *Mountague.* My Lord, we have no more Exceptions to the Matter we are now upon, which is ſetting aſide the Trial. You know, Mr. *Attorney*, there are two Things incumbent on a Defendant's Counſel. One is, to ſet aſide the Trial if he can, and that is the Thing we are now upon: The other is to move in Arreſt of Judgment. Now Mr. *Attorney* well knows 'twill be a Waver of our Motion for a new Trial, to ſtir any thing in Arreſt of Judgment.

Mr. *Att. Gen.* He that makes Exceptions ſhould be prepared to give all his Exceptions together.

Mr. J. *Powel.* This is not a Motion to ſet aſide the Trial.

Mr. *Mountague.* Yes, my Lord, it is to ſet aſide the Trial; not to arreſt Judgment being given upon the Verdict.

Sir *T. Powis.* My Lord, if they have any more Exceptions to offer, I deſire they may let us have them now.

Mr. J. *Powel.* If there be an Error in the Writ, there muſt be a *Diſtringas de novo*, there muſt be a new *Diſtringas* only iſſued, you cannot make it a Diſcontinuance of the whole Proceedings; but there muſt be a new Award of a *Diſtringas*, the Error wherein is the Cauſe of Exception; if we ſhould give our Opinion that it is not amendable, we ſhould try him next Week.

Mr. *Att. Gen.* My Lord, they ſhould lay down all their Exceptions together.

Mr. *Mountague.* My Lord, I know you do not expect in this Caſe any thing ſhould be done otherwiſe than what is uſual in all other Caſes. Now I appeal to Mr. *Attorney*, if it be not the conſtant Courſe here, to move firſt for a new Trial; and if you object any thing in Arreſt of Judgment, it is generally ſaid you have waved your Motion for a new Trial.

L. C. J. Holt. No, that is not ſo.

Mr. *Mountague.* My Lord, we are now in your Judgment, whether this Man ſhall be tried again, or not? And if we ſhall happen to prevail for a new Trial, then it will be a Diſadvantage to our Client to have told our Exceptions to the Information, for then Mr. *Attorney* will pray to amend.

L. C. J. Holt. You are ſo far in the right, if indeed here were a Verdict ————————— that is unqueſtionable, that is your proper Time to move in Arreſt of Judgment; but if this Verdict be not right, it is too ſoon to make Exceptions to the Information. Then we ſhall tell you what we have to do.

Mr. *Att. Gen.* I am content they ſhould keep their Learning to themſelves; but, my Lord, if they will not do that, I hope you will not give them further Time.

L. C. J. Holt. We ſhall give them but till To-morrow.

Mr. J. *Powel.* Mr. *Mountague*, it is a ſtrange Thing that you ſhall make an Exception, and not be ready to maintain it; at this rate any Proſecution whatever may be hung up and delayed: If this be the Way, we muſt give you the leſs Time.

Mr. *Mountague.* My Lord, I ſhall entirely ſubmit to what the Court ſhall think fit to order; but 'tis now pretty late in the Day, and your Lordſhip knows 'tis a Sitting this Afternoon in *Middleſex*, and To-morrow is another Sitting in *London*, where I am already retained to be, and I know not how late your Lordſhip may keep us in both Places. Your Lordſhip ſeldom diſcharges us till late at Night, and it will be impoſſible for me to look into the Authorities, which have been quoted, much leſs to conſider of any thing that will be fit to offer in Anſwer to both theſe learned Arguments, in a Matter which I muſt profeſs is altogether new to me.

Mr. J. *Powel.* There are Amendments made every Day.

Mr. *Mountague.* My Lord, I hope I ſhall ſhew you it has not been done yet, in any ſuch Caſe as this; neither can it be done, with Submiſſion.

L. C. J. Holt. You ſhould have prepared for it. I will tell you a Caſe at *Hicks's-Hall*, where I myſelf took the like Exception, but it was over-ruled by Sir *William Smith*, the then Chairman of the Seſſions. In an Indictment againſt ——, for a wrongful Entry, *&c.* there was a Miſtake in the Time of the Entry alledged, *&c.* And they amended the Fault by the Statute of *E.* VI.

Mr. *Att. Gen.* My Lord, I hope you will give them but till To-morrow.

Mr. *Mountague.* I hope you will not preſs that, Mr. *Attorney*, who have been ſo lately a *Niſi Prius* Practicer.

Mr. J. *Powel.* You are not preſs'd in it; none can imagine you came here in this Caſe, and that you were not provided to defend it. I hope you are as ready as Mr. *Broderick*; he is but your Aſſiſtant, and yet he was ready.

Mr. *Mountague.* It will be impoſſible for me to be more ready To-morrow. I will rather go on with it now than do it To-morrow. This is a new Motion, and I did not in the leaſt expect it.

Mr. *Att. Gen.* This is no new Motion, I believe none would believe but it would be made.

Mr. J. *Powel.* Why can't you be as ready as Mr. *Broderick* is?

Mr. *Mountague.* I do not pretend to ſet myſelf upon the ſame Level with Mr. *Broderick:* Tho' he be ready to give an Anſwer *extempore* to the Arguments that have been made, I hope your Lordſhip will indulge me with a Day or two more to conſider of what has been ſaid, ſince the Queſtion now before the Court is of that Concern to all the Subjects of *England.* My Lord, I deſire we may have but till *Thurſday* next, and by that Time I will undertake to be ready.

Mr. J. *Powel.* When you make an Exception, you ought to be ready to defend it.

Mr. *Mountague.* It was impoſſible for me to foreſee what Courſe the *Attorney General* would take to obviate the Objections I have made. I muſt own, I did not expect this Motion for an Amendment; I thought of that the leaſt of any thing, becauſe I never knew the like Attempt in a Criminal Proſecution. And ſince Mr. *Attorney General* has been pleaſed to countenance the Exception I have taken, with a Week's Conſideration of it; I ought in Civility to pay as much Reſpect to the Arguments he has made in Anſwer to it. And therefore I muſt beg a little Time of your Lordſhip, as well to ſhew my Reſpect to Mr. *Attorney General*, as to diſcharge my Duty to my Client.

Mr. *Att. Gen.* I deſire none of your Reſpect.

Mr. *Mountague.* I hope, Mr. *Attorney*, you are not angry becauſe I would pay Reſpect to you.

Cur'. Well, take Time till *Thurſday.*

November 23. 1704.

L. C. J. Holt. Mr. *Attorney*, have you any thing to move?

Mr. *Att. Gen.* My Lord, I attend here only upon the Account of Mr. *Tutchin.*

L. C. J. Holt.

L. C. J. Holt. Who is for Mr. *Tutchin?*

Mr. *Mountague.* My Lord, I am of Counſel for Mr. *Tutchin*, and I am To-day to ſhew your Lordſhip Cauſe why the Motion made the other Day by the Counſel for the Queen, to amend the *Teſte* of the Writ of *Diſtringas* cannot be allow'd. And ſince the Court hath been pleaſed to indulge me with a little Time to think of the learned Arguments that have been made both by Sir *Thomas Powis* and Mr. *Attorney General*; and to look into the Authorities which have been cited, I hope I ſhall take up leſs of your Lordſhip's Time than if I had been put to anſwer *extempore* to the ſeveral Matters that have been inſiſted upon. For I muſt beg Leave to ſay, that upon Conſideration of what was then offer'd, I do find that a great many Things that were then ſaid, do not carry that Weight along with them as I did then apprehend. And tho' I do not queſtion but every Thing that can be thought of has been ſaid for the obtaining ſuch an Amendment, yet I have the Satisfaction at laſt to find that there is but one Caſe, and that is what your Lordſhip was pleaſed to mention, of the Judgment of Sir *William Smith*, that looks like a Precedent for this Amendment. My Lord, in ſpeaking to this Matter, I ſhall not trouble the Court with many new Citations out of *Fitzherbert* and *Brook*'s Abridgment, Title *Amendment*; for I perceive the Gentlemen on the other Side have looked over the Bed-Roll of Caſes which are to be met with there, and find that they have taken notice of every Thing that will make to their Purpoſe; my Buſineſs therefore ſhall be cloſely to apply myſelf to the Conſideration of what they on the other Side did inſiſt on; and I hope I ſhall be able to ſhew to your Lordſhip that nothing they have ſaid will warrant this Amendment.

But before I enter upon the Argumentative Part, I muſt beg Leave ſhortly to ſtate the Caſe itſelf, and ſhew how it now ſtands before the Court; and if I miſtake in giving an Account of the leaſt Matter of Fact, I deſire Mr. *Attorney General* would interrupt me ſo far as to ſet me right; for if we do not agree in the State of the Caſe, our arguing will be to very little Purpoſe.

Mr. *Att. Gen.* It is the Record that is in Diſpute; it is not Matter of Fact.

Mr. *Mountague.* Mr. *Attorney*, there is ſomething of Fact beſides the Record, which is now before the Court. This Information was exhibited in *Eaſter* Term laſt, and the Defendant pleaded to it in *Trinity* Term; and Iſſue being then joined, a *Venire Facias* was awarded, and made returnable the firſt Day of this *Michaelmas* Term. On that Day (the Roll ſays) all the Parties did appear; but none of the Jury came, and thereupon the Court did order, that a *Diſtringas* ſhould iſſue, and be returned hither, *Die Jovis proxime poſt Craſt. Animarum:* On the Return of the Writ of *Diſtringas*, which is now before the Court, the Defendant appear'd in Court, and by his Counſel took Exception to the *Teſte* of this Writ, becauſe it was not iſſued as the Roll hath awarded, on the Day he was preſent in Court, which was the 23d Day of *October*, but on the next Day, which was the 24th Day of *October*, when he is ſuppoſed to be out of Court; ſo that the Award has plainly not been complied with, and therefore the Writ which is now before the Court was taken without any Authority from the Court, and the Trial cannot be ſupported, becauſe the Day and Place mentioned in the *Diſtringas* was not appointed *per formam Statuti*, in the Preſence of the Parties. For theſe and other Reaſons, it was prayed in his Behalf, that all the Proceedings upon this *Diſtringas* ſhould be vacated.

Mr. *Att. Gen.* The Day is right when the Perſons are to appear, and the Award of the *Niſi Prius* is as it ſhould be.

Mr. *Mountague.* The Return is *Die Jovis prox. poſt Craſtin. Animarum*, as it is in the Roll, but the *Teſte* of the Writ is the Day after it was awarded.——*L. C. J. Holt.* The Award is right.

Mr. *Mountague.* My Lord, we own the Award is right on the Roll.

L. C. J. Holt. But the Queſtion is, whether the *Teſte* of the Writ be as it ſhould be?

Mr. *Mountague.* My Lord, the Writ that is now before you being *Teſted* on the 24th of *October*, cannot be ſaid to be taken out upon any other Day than the 24th of *October*; and in that it is not purſuant to the Roll. Upon the taking of this Exception, Mr. *Attorney* was ſurprized, and could not then ſay much to it; but deſired Time to enquire how it came to be ſo.

Mr. *Att. Gen.* I could have ſaid as much to it then, as after four Days; it became you to have been as ready.

Mr. *Mountague.* My Lord, Mr. *Attorney* is a little too haſty for me in this Matter. I intend to do him right, if he'll have Patience to hear me out.

L. C. J. Holt. Come to the Point.

Mr. *Att. Gen.* This is a popular Argument, and ſpoken *ad captandum Populum.*

Mr. *Mountague.* Mr. *Attorney* did aſk ſome Time to have this Matter enquired into, and that Requeſt was agreed to: And, upon Examination, it appears that this Writ was actually taken out after the firſt Day of the Term; and the Clerk being doubtful with himſelf how to make the *Teſte*, aſk'd the Maſter how to *Teſte* it; and he directed it to be *Teſted* the 24th of *October*; and upon this ariſes this Motion. The Gentlemen that are of the Queen's Counſel pray that it may be amended; and the Queſtion is, Whether it can be ſet right? and, with Submiſſion, I think it cannot; and that no ſuch Obliteration ought to be made, though the Defendant were found guilty of ſix Times as many Crimes as he ſtands now charged with. I muſt agree with Mr. *Attorney*, in what he ſays with relation to the Conſequence of the Determination of this Point, that it will be a Precedent that will affect all the Proceedings of the Crown in all ſuch Caſes. And this it is that makes it to be a Matter of wonderful Conſequence to the People, as well as to the Crown; for tho' under the preſent Adminiſtration of Affairs, innocent Men may think themſelves very ſafe, yet nobody can be ſure in After-ages that they ſhall not fall under violent Proſecutions; and then Slips and Miſtakes may be of Service. My Lord, hitherto I may ſay, all Advantages of this Kind have been allowed to Defendants in Criminal Caſes; and upon this Occaſion it may be obſerved, that even Actions *Qui tam* upon Penal Statutes, have always been excepted out of the Statutes of *Jeofails*; and from hence, I think, ariſes an Argument *a Fortiori*, that the *Jeofails* of Clerks, in Proſecutions more penal, are not to be amended. Sir *Thomas Powis*, in his Argument, did, as I remember, inſiſt upon theſe two Propoſitions; and as I take it, he was ſeconded in them by Mr. *Attorney*; Firſt, That the *Teſte* of this Writ is amendable by the Common Law; and if not that, Secondly, It is to be amended by the Statutes of Amendments, either by that of 14 *E.* III. or that of 8 *H.* VI. And two Reaſons were given for this Opinion; Firſt, Becauſe it appears to be a plain Miſtake in the Clerk; and Secondly, Becauſe they come to move for the Amendment in the ſame Term wherein the Writ was ſued forth and returned.

Now, my Lord, in Anſwer to both theſe Reaſons and Aſſertions, I hope I ſhall make it appear in the firſt Place, that this *Teſte* cannot be alter'd, either by the Common Law, or by the Statute Law: And, in the next Place, I hope to ſhew your Lordſhip, that the making the *Teſte* of this Writ to be upon *October* 24, is not purely a Slip in the Clerk, but does proceed from the Neſcience of him that was adviſed with about it. And altho' this Motion for an Amendment be made the ſame Term the Error has been committed in; yet it is not in the Power of the Court to ſet it right.

As to the firſt of theſe Particulars, I ſhall readily agree with Sir *Thomas Powis* and Mr. *Attorney General*, That by the Common Law many Things were to be amended without the Help of any Act of Parliament; but the Thing that I deny, and which, with Submiſſion, hath not yet been proved by any Authority that has been quoted, is, That no Error in the *Teſte* of any Proceſs that does iſſue out of the Court and is returned back again by the Sheriff, can be alter'd by the Rules of the Common Law, and I hope by and by to make it appear, not by any Act of Parliament neither. My Lord *Coke*, in *Blackmore*'s Caſe, *Lib.* 8. *Fol.* 156. *b.* 157. *a.* does ſay, as has been obſerved, that the Judges by the Common Law may amend the Entry of their own Judgment, or any other Part of the Record, the ſame Term; but he does not there ſay, that they may amend any Writ made out and returned by any Officer or Miniſter of the Court. And the Reaſon given why they may amend their own Judgments and the Continuance enter'd upon the Roll is, becauſe ſuch Things as they themſelves do, are ſaid to remain in their own Breaſts till the End of the Term: But ſurely the Actions of another Perſon, his Diſobedience to the Order of the Court, can never be look'd upon as an Act of the Judges. And I cannot ſee how a Writ taken out *in Pais*, which is never in Court till it be brought thither by the Hands of the Sheriff, can be ſaid to remain in the Breaſts of the Judges. The Inſtances of Amendments by the Common Law which are given by my Lord *Coke*, are in the Entries of Eſſoigns and Continuances, and ſuch like Miſpriſions *del Court Meſme:* As for Inſtance in 5 *E.* III. *Fol.* 25. *W.* brought a *Præcipe* againſt *B.* who vouches *C.* to warranty, and he enters into the Warranty and pleads to Iſſue, and a *Venire facias* is awarded, and the Jury is afterward put in Reſpite, and the Entry of that upon the Roll was in this Manner, *jurata inter B.* and *C.* that is between the Tenant, and the Vouchee *poniter in Reſpectum*, and ſo it appears on the Roll, whereas it ſhould have been *inter W.* the Demandant, and *C. quem. B. vocavit ad Warrantum.* Now this was look'd on as the Clerk's Miſtake in the Entry of the Order of the Court, and ſo it was amended, *Coke*'s 8th *Report*, *f.* 157. *b.*

Now, my Lord, with Submiſſion, this Caſe and all the reſt of the Caſes that have been mentioned for Amendments at the Common Law will only juſtify an Amendment of the Roll. And indeed had there been an Error in the Entry of the Award of the *Diſtringas*, I ſhould rather think that amendable than this; for 'tis certainly more reaſonable that the Court ſhould intermeddle with their own Acts than with the Acts of another. Till this Writ was return'd annex'd to the *Niſi prius* Roll, the Court had nothing to do with it. And now this Writ is before the Court, your Lordſhip is only to judge whether it be purſuant to your Award or not; if it be not made right, it muſt be imputed to the Fault of the Perſon that made it out; and the Court can never be ſaid to be in Fault, if the Clerk employ'd makes out a Writ contrary to Direction; and if the Party concern'd ſuffer by ſuch Miſtake, he may thank himſelf for employing ſuch an Agent. But Sir *Thomas Powis* ſays, that this Amendment is pray'd on Behalf of the Queen, whoſe Prerogative it is to have many Advantages in Pleading, which the Subject ſhall not have. My Lord, with Submiſſion to better Judgments, I conceive that for this very Reaſon the Queen's Counſel have the leſs Reaſon to pray an Amendment. For ſince they have other Prerogatives to have recourſe to, they ought not to aſk this beſides. Your Lordſhips will often hearken to us when we move for new Trials in Actions of Debt upon a Bond where the Verdict and Judgment are concluſive: When you will not give Ear to ſuch a Motion in Ejectment, where the loſing Side may have freſh Actions if they will. But, my Lord, not to rely altogether on this Anſwer, I ſhall add this one Word further, that according to my ſmall Obſervation, theſe Advantages in Pleading do not belong to the Throne in the Pleas of the Crown, but in ſuch Actions as *Quare impedits*, and the like. As to the particular Inſtances that have been mentioned, I conceive they do not come up to the Caſe in the Queſtion. The firſt Caſe which I have taken down as cited by Sir *Thomas Powis*, is *Brook's Abridgments*, *Title Amendments*, *f.* 32. and that is, That if Judgment be enter'd otherwiſe than the Truth is, it ſhall be amended in the ſame Term, becauſe the Record is, *in les Cores des Juſtices meſme le term & nemy in le Roll.* This Caſe is one of the Authorities taken notice of in the 8th Report, to warrant the Amendments of the Acts of the Court, but does not in the leaſt relate to the Amendment of Writs and Proceſs which are ſued out and executed *in Pais.*

The next Caſe was 4 *H.* VI. *f.* 16. which is only, Whether he that caſts an Eſſoign for a Tenant in a *Formedon* ſhall be permitted to take Exception to the Writ which appears to be vicious. The Demandant there was the Ward of the Crown; and he that caſt the Eſſoign for the Tenant, took Exception to the Writ. The Exception was this; That in the Style of the King he is ſaid to be *Dux Hiberniæ* inſtead of *Dominus*, and he would have had the Writ for that Reaſon to be quaſh'd. And there *Martin* demands whether the Writ ſhall not be amended *ſicome le Roy meſme ſoit parte*, and the Caſe concludes with *quære Legen.*

As to the Caſe of *Fitzherbert*, *Title Amendment*, *f.* 19. that is what my Lord *Coke* takes notice of in *Blackmore*'s Caſe, when he ſays, that in a *quare impedit* brought for the King, the Word *preſentere* was put inſtead of *preſentare*, and it was held that it ſhould be amended; but how does the Book ſay it was amended? Why the Writ itſelf was brought into Chancery, *& la fuit Amend.* Now I take that to be *tantamount* to the iſſuing of a new Writ. Moſt of the other Caſes mention'd out of the old Year Books, are relating to Amendments in Civil Caſes, and therefore I ſhall ſpend no more Time in taking notice of them particularly.

My Lord, the next Thing to be conſidered is, Whether any Statutes do direct ſuch an Amendment as this; and I hold they do not. Indeed the firſt of theſe, which is 14 *E.* 3. *Chap.* 6. is pretty home; the Words are, that by the Miſpriſion of a Clerk, in *any Place whereſoever* it be, no Proceſs ſhall be annull'd, or diſcontinued, by Miſtake in writing one Letter, or one Syllable, too much, or too little; but as ſoon as it ſhall be perceived by Challenge of the Party, or in any other Manner, it ſhall inſtantly be amended in due Form. Now here are as large Words to fit the Purpoſe, as Mr. *Attorney* can deſire, and if he were now to frame an Act of Parliament, I don't know how Mr. *Attorney* could make it fuller; and I muſt confeſs, if I were to argue this Point within a Year after the making of ſuch an Act of Parliament, I ſhould reckon myſelf to have a difficult Province to maintain, that this Miſpriſion does not come within the Purview of ſuch an Act: All therefore that I ſhall ſay to it is, that it is now a great many Years ſince this and all Statutes of Amendments have been made, and no one adjudged Caſe as I know of, does ſay, that criminal Proceedings are within the Purview of this Statute. Mr. *Attorney General*, as I remember, did in his Argument admit that this Statute of 14 *E.* III. *Chap.* 6. did not extend to criminal Caſes.

Mr. *Att. Gen.* I deny that; I did enforce it.

L. C. J. Holt. I do not remember he did admit that.

Mr. *Mountague.* Then I acquit him of it, and to ſhew him that I meant him no wrong by ſuppoſing he ſaid ſo, I will mention ſome Authorities that are expreſs in this Point.

Mr. *Att. Gen.* I did enforce that Statute by ſubſequent Statutes, particularly by the Statute of 8 *Hen.* VI. *Chap.* 12. for there the Word Proceſs is included.

Mr. *Mountague.* Perhaps Mr. *Attorney General* did ſo; but if he had admitted it, he would not have been in the wrong, if my Lord *Coke* be in the right in what he ſays. For in the ſame Caſe of *Blackmore*, *fol.* 157. ſpeaking of the Extent of the Word *Proceſs*, he ſays, "This Statute muſt "be underſtood to mean Proceſs in all Actions, Real, Perſonal, and "Mix'd; and not Proceſs in Pleas of the Crown." And my Lord *Coke* does not here aſſign it for a Reaſon, becauſe they are excepted; for in this Statute of 14 *E.* III. *C.* 6. there is no Exception: And therefore ſpeaking of this Statute, he could not ſay, Pleas of the Crown are there excepted; yet he is poſitive this Statute does not extend to any other Proceſs, than what iſſues in Actions real, perſonal, and mix'd. Now what can be the Reaſon, that Proceſs in all criminal Caſes ſhould be excepted out of this Statute, by the Interpretation of the Judges in all Ages; when the Words are ſo full, that no Proceſs whatſoever ſhall be annull'd by any Miſpriſion, whereſoever it be? Truly, I can't conceive otherwiſe, but that the Judges in all Ages have thought it reaſonable, all Advantages ſhould be allow'd to People under ſuch Proſecutions.

Mr. *Attorney General* did ſeem to give another Reaſon, That the Crown not being named, was a great Argument that it did not want the Aid of ſuch an Act of Parliament; but that the King had a Right by the Common Law to make Amendments. And for this he cited *Hardreſs*, *fol.* 504. That before Judgment, there can be no Diſcontinuance in the Caſe of the King; and 2 *Cro. fol.* 211. *Beecher*'s Caſe. Now if this be ſo, as he would have it, that all Proceſs in the King's Caſe is amendable by the Common Law, and all other Proceſs by this Statute; how comes there to be any Occaſion for my Lord *Coke* to caution us about the Extent of this Act of Parliament, by ſaying, it extends to Proceſs in Pleas real, perſonal, and mix'd; but not in Pleas of the Crown? What does it ſignify, whether this Proceſs be amendable at Common Law, or by the Statute, if it be amendable? But on the other Side, one may ſtrongly infer, that if no Proceſs were amendable before the Statute 14 *E.* III. and that Statute ſays, all Proceſs hereafter ſhall be amended; it was then fit for my Lord *Coke* to tell us, That tho' theſe Words in the Statute ſeem very extenſive, yet it has been the Opinion of all Ages ſince, that no Proceſs, but what iſſues in Actions real, perſonal, and mix'd, are meant by it.

I do take it therefore, with great Submiſſion to Mr. *Attorney*, that the right Inference to be made from this *Notamen* of my Lord *Coke*, is to caution the Reader not to conclude over-haſtily, from the Comprehenſiveneſs of the Words of the Statute, that Proceſs may be amended in criminal Caſes. That way his Admonition may be of Service: But the other way, with great Reſpect to his Memory I ſpeak it, it will ſignify little. As to the Caſe of *Beecher*, and the other Quotation out of *Hardreſs*, nothing more can be inferr'd from them than what already has been taken notice of; that after the Term they may enter Continuances before Judgments. This appears by the Caſe in 3d *Levin.* 430. where all the Caſes cited by Mr. *Attorney* to this Purpoſe are taken Notice of.

Now we come to the next Act of 8 *H.* VI. The Words of which Statute, as I apprehend, Mr. *Attorney* did ſtrongly rely on: For there, ſays he, are Exceptions of Appeals, Indictments of Treaſon, and of Felonies, and of Outlawries for the ſame; and nothing is ſaid of Informations; and the King's Judges have thereby Power to amend all that they think the Miſpriſion of any Clerk, in any Writ, Warrant of Attorney, or Panel in Affirmance of Judgments. Now the Anſwer that I would offer to this Statute is, That the Words in the enacting Part are not larger than the Words are in the 14th of *Edw.* III. that is, they are not larger as to this Purpoſe. The Words indeed of this Act are, That all Miſpriſions of Clerks, in all Writs, ſhall be amended. The Words in the Act of *Edw.* III. are, That all Miſpriſions, in all Proceſſes whatſoever, ſhall be amended. And I take the Words, *all Proceſs whatſoever*, to be as extenſive to the preſent Caſe, as to ſay, All Writs ſhall be amended. Therefore I cannot ſee, from the enacting Part, why one Act, to wit, that of *Henry* VI. ſhould include criminal Proceedings, when that of *Edw.* III. does not include them. Thus much for the enacting Part.

Now I ſhall take Notice of the Exceptions. There are indeed ſome Things mention'd to be excepted out of the Purview of this Act of *Henry* VI. which are not excepted out of the former in *Edward* III's Time; as Appeals and Indictments: But I think they were put in *ex abundanti Cautela*, to ſhew, that the Law-Makers did not intend to include criminal Proceedings. And though ſome Particulars are only mention'd; yet I hope the Rule of *Expreſſio unius*, ſhan't hold in the Expoſition of Acts of Parliament, to exclude every Thing elſe that is not named.

By *Littleton*, Sect. 21. it appears, there are many *Eſtate Tails*, beſides thoſe that are particularly mention'd by the Statute of *Weſt.* 2. *de Donis Conditionalibus.* And there are many Offices not within the Purview of the Statute of 5 and 6 *Edw.* VI. *Chap.* 16. that are of more Conſideration than the Park-Keeper's Place, which are not mentioned in the Exceptions of that Statute, againſt the buying and ſelling Offices. And therefore I can't think any great Weight is to be laid upon the Statutes mentioning Appeals and Indictments; eſpecially ſince the Opinion of all Ages, ſince the making the Statutes of Amendments, ſeems to concur againſt extending the Power of amending to criminal Caſes.

My Lord, It would be an endleſs Thing to enumerate the ſeveral Indictments and Informations, that have been quaſh'd within the Compaſs of my Memory, by reaſon of Clerks Miſtakes. I ſhall inſtance but in one, and that is the Caſe of the Queen and *Frankling*; where no longer ago than the Beginning of this Term, your Lordſhip and the whole Court quaſh'd an Indictment, becauſe the Clerk had writ in the Caption, *Præſentant Exiſtit*, inſtead of *Præſentat Exiſtit.* Here was but a Letter to amend: And this muſt plainly be the Clerk's Miſtake, not his Fault in wanting Skill in ſuch Caſe. But I take it, the Caſe now before the Court is of a different Nature. The *Teſteing* of this Writ the 24th of *October*, cannot be accounted a Slip of the Clerk, but did proceed from wrong Advice. And this is the third Thing I propos'd to ſpeak to: If this Writ with the *Teſte* had been entered upon the Roll, and tranſcribed only thence to deliver to the Sheriff; perhaps the varying from the Day mentioned in the Roll, might be accounted a Slip of the Clerk: But when this Writ was made out, it was certainly a Day after the Time it ought to have iſſued; and upon Advice aſk'd, it was directed ſo to be *Teſte'd.* So this is not a Slip.

If it be inſiſted upon, That this Miſtake happen'd through Forgetfulneſs of the Day the Term did begin on; to that I muſt anſwer, That all Knowledge is ſaid to be nothing but *Reminiſcentia.* If a Man forget any Thing that he has read or heard of, he may be ſaid to be as ignorant of that, as if he had never known it. Now it plainly appears, that they who were adviſed with about the *Teſte* of this Writ, did not then know on what Day the Term did begin, and therefore *Teſte'd* the Writ the 24th, inſtead of the 23d. I muſt therefore, in Behalf of my Client, inſiſt upon it, that this Error proceeds from the Neſcience of the Adviſer, and not from the Slip of the Writer. And this Point will ſet us clear of all the Statutes of Amendments, if they did extend to criminal Caſes.

As to the grand Caſe of *Harris*, reported in *Crooke James*, fol. 502. that has been ſo very much relied on, I hope, upon Conſideration, it will not appear to be ſo great a *Goliah* as it was repreſented to be. There was an Indictment for a Nuſance remov'd hither by *Certiorari*; and the Record that was tranſmitted, was found imperfect, in a Point which was inconſiſtent with the Verdict: For in Truth the Plea of Not Guilty was omitted. And what did the Court do hereupon? Why, they ſent for the Clerk of Aſſize, in whoſe Time the Record was filed below; and he was order'd to amend that which was come hither by the *Certiorari*, and ſet it right: I ſuppoſe, by making it agree with the original Proceedings, which remained upon the File below. Now, does Mr. *Attorney* think this is like the Amendment he would make, ſuppoſing all in *Harris*'s Caſe were rightly done? Does Mr. *Attorney* think, that this will juſtify the Amendment now propos'd? Which is, indeed, making this Writ to be another Writ than it is: For a Writ that is *Teſte'd* on the *Monday*, does as much differ from a Writ *Teſte'd* on a *Tueſday*, as one Day differs from another. And I take it, with Submiſſion, that the Amendment now pray'd, will alter this Writ, as much as the Amendment that is ſo much taken notice of by Juſtice *Ingham*, 2 *Rich.* III. fol. 10. did the Amercement in that Caſe. There was an Amercement recorded of Thirteen Shillings and Four-pence; and becauſe it was a poor Man's Caſe, it was afterwards agreed to make it Six Shillings and Eight-pence. There was a Diminution in the Sum. And here Mr. *Attorney* would have a Diminution of a Day.

L. C. J. Holt. Was that done judiciouſly, or clandeſtinely?

Mr. *Mountague.* My Lord, How it was done, does not appear: But it is ſaid to have been done out of Pity and Commiſeration to the Poverty of the Defendant. And yet that Amendment was look'd upon to be illegal.

Mr. J. *Powel.* That was not done by the Court.

Mr. *Mountague.* It comes to be mention'd in King *Richard* III's Days, upon a Queſtion that was put to the Judges by the King, when they were together in the *Star-Chamber:* "What if a Juſtice of Peace ſhall pro"cure an Indictment, not found by the Jury, to be filed among other "Indictments, as if it really had been found by the Grand Jury; what "Puniſhment ought to be inflicted upon him hereupon?" They take notice of that Obliteration that had been made in a Record by Juſtice *Ingham*, and of the Puniſhment he underwent for it.

But to come to the preſent Caſe. Suppoſe it were *Teſte'd* the 14th Day of *October*, inſtead of the 4th; would Mr. *Attorney* then ſay it were to be amended? Suppoſe the Return was out before the *Teſte* of this *Diſtringas*, that would come nearer to *Gage*'s Caſe in the fifth Report. There was a Writ of Covenant, *Teſte* the 24th of *April*, and made returnable the 15th of *April.* The Lord *Coke* indeed ſays in his *Reports*, It is a Miſpriſion in the Clerk, that is amendable. But your Lordſhip knows, in his own Book of *Entries*, *Fol.* 250. *Part* 9. the contrary to that appears; and that it was not permitted to be amended.

Another Thing they have ſaid, is, That this Writ ſhall be amended by the Award of the Roll in Court. But, with Submiſſion, there is nothing there to amend the *Teſte* by. We know there is a right Order of a *Diſtringas* on the Roll; but that will not help an Error in the *Teſte* of the Writ iſſued forth: And for that I will cite a Caſe out of *Crooke*'s *Eliz.* fol. 825. *Carew.* v. *Marler*; and another Caſe was tried before your Lordſhip in *Michaelmas* Term, in the 11th of King *William*, between *Child* and *Harvey.* There the *Diſtringas* was made returnable *Die Jovis prox. poſt tres Septimanas Sanctæ Trin.* inſtead of *Sancti Michaelis:* So the Day of the Return happen'd to be the ſame Day that the Cauſe was to be tried upon, before your Lordſhip, at the *Niſi Prius.*

L. C. J. Holt.

L. C. J. Holt. It was actually tried at another Day.

Mr. *Mountague.* We came afterwards to the Court, and pray'd the *Diſtringas* might be amended by the Award on the Roll, which was right *Die Jovis prox. poſt tres Septimanas Sancti Michaelis:* But the Court denied our Motion; and we were forc'd to take out a new *Venire Facias*, and try the Cauſe again.

The next great Caſe is that of *Curſon*, which is in *Crooke James*'s Reports, *fol.* 529. There is an Information upon the Statute of *Recuſancy*, againſt *Baron* and *Feme*; and the Declaration demands 220*l.* for ten Months Recuſancy. But the Wife was charged for being abſent thirteen Months from Church. There the Wife only pleaded Not Guilty; and after a Verdict, this Miſ-joining of the Iſſue was amended by the Docket. How agreeable to Law this Caſe is, muſt be left to your Lordſhip's Conſideration. There leſs is demanded, than (of the Plaintiff's own ſhewing) appears to be due: For 'tis laid, that ſhe had been abſent thirteen Months, yet 220*l.* is only demanded; ſo it does not appear how the reſt was ſatisfy'd. And beſides this, it may be obſerved, that Mr. *Hughes*, who has abridg'd the three *Crookes* in his Abridgment of this Caſe, has not thought this Reſolution worthy his taking Notice of.

L. C. J. Holt A good Authority indeed! Did you know him?

Mr. *Mountague.* I did not know him, but I have heard him accounted a learned Man: And he did not, belike, think this Point worth his remembring. Whether he had any Scruple in the Caſe, I know not; but he omits it.

Then there is the Caſe of Sir *Humph. Tufton*, in *Crooke Charles*, 144. There was a *Quo Warranto* brought by Sir *Humph. Tufton* againſt the Corporation of *Maidſtone*; and there a Judgment is enter'd by Diſclaimer, with Conſet of Parties, ſays the Book. And that Diſclaimer is afterwards amended, and made of leſs Conſequence than it was before. But how was that Amendment made? Why, upon the Certificate of the Attorney General, that he with his own Hands had inſerted in the Paper-Book from which the Record was tranſcrib'd, the Words which the Clerk had omitted. Now upon this Caſe I may obſerve, That the Judgment had been enter'd by Conſent, though the Amendment pray'd was to the Diſadvantage of the Crown: Tho' that Amendment was pray'd in the Caſe of a *Quo Warranto*, which is in Nature of a Civil Action; tho' Mr. *Attorney General* did conſent, yet a Difficulty was made in doing it. For all which Reaſons, I do humbly conceive, that that Caſe is for me, rather than againſt me: Eſpecially ſince ſo great a Man as Mr. *Noy* does there aſſert, That none of the Statutes of Amendments extend to Caſes of *Quo Warranto*, or Suits where the King is Party. Now, tho' this Saying of Mr. *Noy*'s were only as he was of Counſel for thoſe that oppos'd the Amendment; yet this muſt have been look'd upon as a ſtrange Aſſertion by the Judges at that Time, if they had been as clear of Opinion as Mr. *Attorney* is, that the Statute of *Hen.* VI. did extend to Criminal Proſecutions. And the learned Judge that reports that Saying of Mr. *Noy*, would hardly have let it paſs, without taking ſome Notice that the Law was otherwiſe, if he had thought ſo.

As to the Caſe of 1 *Siderfin*, fol. 244. it was anſwered by your Lordſhip the other Day: For tho' the Writ is *Vicecomitibus*, where there was but one Sheriff: Yet the Return is help'd by a Suggeſtion that was enter'd, that there is but one Sheriff.

The Caſes out of *Dyer*, 353, 346. have been taken Notice of by Mr. *Broderick*; and the Query is, Whether any Diſcontinuance *in Caſu Reginæ* be aided by any of the Statutes of *Jeofails?* Now I cannot but think, that the Makers of thoſe Laws would have taken as much Care to except *Criminal Informations*, as well as Actions *Qui tam*, if there had been Occaſion. And to ſhew your Lordſhip that none of theſe Statutes do extend to Informations at the Common Law, I would mention a Caſe out of 1 *Vent. f.* 17. It is *Perry*'s Caſe. There in an Information for a Forgery: There happen'd a Miſ-trial; and it was adjudg'd that it could not be help'd by any of thoſe Statutes. The Error was, That the Defendant is charg'd to have forg'd a Leaſe in *Sherborn*, and to have given it in Evidence at *Dorſet:* And the *Venire* was awarded only to *Dorſet.* And this Caſe puts me in mind of the late Caſe of *Paul Tracey*; where the Trial was ſet aſide, becauſe the Defendant himſelf had ſued out a wrong *Venire*; tho' the Proſecutor there, at the ſame Time, had ſued out a right one, in order to have try'd him thereupon, if he had not put in his wrong Writ?

L. C. J. Holt. How was that Writ?

Mr. *Mountague* The *Venire* was to the Pariſh of St. *Clement's Danes* only; whereas it ſhould have been to the Pariſh of St. *Giles's in the Fields* as well.

L. C. J. Holt. Was it try'd on that Writ?

Mr. *Mountague.* The Trial was had upon the Writ the Defendant had taken out, and for that Reaſon ſet aſide.

As to the other Caſe, in 1 *Siderfin*, *fol.* 250. the Caſe of the King againſt *Glover*, an Amendment was made of an Inquiſition *poſt Mortem*; but that is of no Conſequence. For in all theſe Caſes, that Inquiſition is to be travers'd afterwards: And the Jury, when they deliver ſuch Inquiſitions in, are aſk'd, Whether the Clerk ſhall not have leave to amend any Defect in Form, or falſe *Latin*; and it is always allow'd, provided nothing in Subſtance be alter'd. And in this Caſe of *Glover*, the Amendment was of a Matter of Form: For the Inquiſition ſaid, the Deceaſed *ſeipſum ſubmerſus fuit*; but did not ſay, He threw himſelf into the Water.

The Caſe of *Sampſon*, in 1 *Jones* 420. tho' it has been cited on the other Side, yet I take it to be a ſtrong Caſe on our Side. That Caſe plainly ſhews, that it was the Opinion of the Judges, That there was no ſuch Thing as an Amendment of Indictments by Common Law Both *Jones* and *Keeling*, who (I ſuppoſe) was Clerk of the Crown, do affirm, No Precedent can be ſhewn of any ſuch Amendment made. And therefore I may queſtion the Authority of *Harris*'s Caſe, which is ſaid to be adjudg'd *Mich.* 16. of K. *James*'s; and this Caſe of *Sampſon* was in the 14th of K. *Charles* I. And there *Jones* ſays expreſly, That if a Record be certify'd by the Clerk of Aſſize that is faulty, it cannot be amended, either by the Common Law, or by the Statute Law.

My Lord, I doubt I have taken up too much of your Time. There are other Caſes that have been mentioned out of *Brook* and *Fitzherbert*; but I hope none of them will any Ways affect the preſent Caſe. I have taken Notice of thoſe which I think the moſt material; and I hope I have made it appear, that the Error in the *Teſte* of this Writ can neither be amended by Common Law, nor by the Statute Law. And that this Miſtake of a Day is not only a Slip of the Clerk, but an Error in Judgment: And I humbly pray, there may be no Rule made for an Amendment.

Mr. *Parker.* My Lord, Mr. *Mountague* has ſpoken fully to the particular Caſes that have been offered on the other Side: Therefore I will not go thro' them again: But I beg Leave to take Notice of ſome general Heads, from which they have argued, and to which moſt of their Caſes are reducible; and to diſtinguiſh them ſhortly from the preſent Caſe.

1. In the firſt Place, I take it, that the Caſes of Captions of Indictments, removed hither by *Certiorari*, and amended the ſame Term they are brought in, come not up to the preſent Caſe. For the *Certiorari* commands the Return, not of a Copy of the Indictment, but the very Record itſelf; and the Indictment Return'd, is, in Judgment of Law, the individual Parchment that was in the Court below. And ſo it is in Writs of Error: Except Writs of Error to the Court of *King's Bench* in *Ireland*; and in that Caſe, the Books take Notice that only a Tranſcript is to be ſent, by Reaſon of the Hazard of loſing the Original by the Danger of the Seas: And in caſe the Tranſcript arrived here ſafe, it is then ſaid to become, in Conſideration of Law, the very Record. And tho' it be found expedient for the Convenience of keeping the Records, and is now become the general Practice in other Caſes, to make a Tranſcript in another Parchment, and file that: yet, if in tranſcribing there be a Miſtake made, your Lordſhip will amend it, if it be diſcover'd in the ſame Term: For, in truth, that's not amending the real Indictment, but only amending the Return of the Juſtices to whom the *Certiorari* was directed; and providing that a falſe Indictment be not foiſted in amongſt the Records, inſtead of the true. Which cannot juſtify the mending the very Writ itſelf; the Thing prayed in the preſent Caſe.

2. Their Caſes of Amendments of Judgments in the ſame Term they are given, and ſo of other Inrolments of what's done in Court, will not make any Thing in this Caſe. The Reaſons given in thoſe Caſes, are, That the whole Term is, in Judgment of Law, but one Day: And the Judgments and Determinations of the Court are, that whole Day, in the Breaſt of the Court. And theſe being only Amendments of what themſelves do in Court, which is not complete till the Term be ended; they are not ſo ty'd up by the Clerk's haſty Entry of it, but that the Thing may be alter'd as they ſee Cauſe. But this is not applicable to a Writ which has paſs'd the Seal of the Court, and thereby receiv'd all the Sanction it can have, and has then iſſued out to a proper Officer, and is by him return'd back to the Court. The Term is, in the Judgment of Law, but one Day, with reſpect of what is the Act of the Court, and paſſes perfectly in the Court. But it is impoſſible to ſay, without manifeſt Abſurdity, that the Term is to be conſider'd as but one Day, in reſpect of a Writ that is iſſued out one Day in the Term, to command Jurors to appear at another; or that the Day when the Officer comes into Court, to give an Account of his Obedience to a Writ, is the very Day of iſſuing it. And therefore a Diſtinction is to be made between Things done in Court, which are incomplete during the Term, and the Court's giving Directions to an Officer out of Court by Writ, which is perfect, and gone out from them in order to be obeyed.

3. I ſhould think likewiſe, that the Caſes they have mention'd, of the Favour allow'd the Crown, do not come up to this Caſe; becauſe, tho' in Suits for the Recovery of Right, there be great Favour allow'd to the Crown; and by the Statutes of Amendments and *Jeofails*, much Indulgence is given to the Subject *for the Recovery of Right*; yet it is not ſo in Proſecution of Criminals, which is a Matter *ſtricti Juris:* And no Argument can be drawn from the Favour ſhewn in one Caſe, to infer, that the like Favour is to be allowed in the other; for they ſtand on quite different Grounds.

4. I think, with Submiſſion, in the next Place, that the Inſtances of Amendments of Proceſs, where nothing is done upon it, but barely to entitle the Party to ſome Proceſs farther; as of a *Capias*, in order to an *Exigent*, &c. will not come up to this Caſe where the Writ is executed and returned, and the Trial had upon it.

In the Caſe of *Rogers* and *Bird*, that was cited on the other Side, 3 *Cro.* 572. there was a *Venire Facias* returnable *Die Sab. prox. poſt Octab. Trin.* but on the Roll it was awarded returnable *Cro. Trin.* And becauſe that was the Authority for making it out, it was amended in the Return; becauſe the Trial was not had upon it, only it was return'd in order to the *Diſtringas.* But *Popham* there expreſly ſays, that if the Trial had been upon the *Venire Facias*, it were erroneous, and would not have been amendable.

Mr. J. *Powel.* Where is that, Sir?

Mr. *Parker.* 3 *Cro.* 572. There is likewiſe the Caſe of 34 *H.* VI. 20 *Brook*'s Amendments, *Placit* 10. There were twenty-four Jurors returned upon the *Venire Facias*, and in the *Habeas Corpus* one of them omitted: And there the Opinion of the Court was, That they ſhould make out a new *Habeas Corpus.* And tho' there it was plainly the Miſtake of the Clerk, that mentioned only twenty three, inſtead of twenty-four; yet the Court was of Opinion that it could not be amended, but they muſt begin again where the Fault was made. 19 *H* VI. 39. a Juror was return'd upon the *Venire Facias*, by the Name of *J. Hod*; and in the *Diſtringas* he is named *J. Hord*; and upon him the Sheriff return'd *Nihil*, &c. And there was a new *Habeas Corpus* awarded Which Caſes ſeem to prove, that where there is ſomething done upon the Proceſs, more than a mere formal Return, that it is not amendable within the Statutes of *Edw.* III. and *Hen.* VI. which were both of them made before theſe Caſes.

5. In the next Place, I beg Leave to obſerve, That there is a Difference between ſuch Caſes as have been cited, where the Thing was really done right, but by Miſtake enter'd wrong; and this Caſe, where really it was not done right. As where upon a *Diſtringas* a right Juryman is really ſworn, but ſet down by a wrong Name, the Name ſhall there be amended; becauſe the Thing done was really right, only the Mention of it wrong. But in this Caſe it cannot be ſaid that the *Diſtringas* was really taken out right. The Writ was awarded the 23d of *October*, on which Day they would have it bear *Teſte:* But it is not pretended that it was really taken out till the next Day, when it now

bears *Teſte*.——And as to what has already been offer'd, That the *Niſi Prius* ought to be awarded *in Præſentia Partium*; and therefore not upon any other Day than the 23d, when the *Venire Facias* was returnable, and the Parties in Court; I might here, I hope not improperly, add this farther; That that muſt be underſtood, that the making of the Writ ſhould be in the Preſence of the Parties: For the Entry upon the Roll, tho' commonly called an Award of the Writ, is really an Entry of a Writ ſuppoſed to be then actually made; it is not ſo properly a Direction to the Clerk to make a Writ, as an Entry or *Memorandum* upon the Roll, or a Recording that there is a command to the Sheriff, to diſtrain the Jurors to appear at a certain Day, *&c.* And therefore if the *Niſi Prius* is to be awarded in the Preſence of the Parties, the Writ is to be made in their Preſence.

Mr. J. *Powel.* Do you mean, that they ſhould be in the *Crown-Office?*

Mr. *Parker.* The Writ is in Judgment of Law iſſued in Court, tho' actually wrote and ſealed in the Office; and if *Teſte'd* of that Day, is underſtood to be made in Court that Day; which is in Preſence of the Parties; that being the Day given 'em in Court, and their Appearance then enter'd. And we apprehend, that the Court does not command by the Entry of the *præceptum eſt* in the Roll, but by the Writ. The Sheriff, who is abſent, cannot be commanded by the Rolls, but by the Writ which is ſent to him: Therefore the Court then commands, when the Writ is made: And therefore the Entry upon the Roll, *præceptum eſt Vic.* is an Entry that there is ſuch a Command, which this Writ, on which this Trial was had, cannot be, becauſe it bears *Teſte* after. But this is only by the by: For however taking the Entry as an Award of the Writ, yet the Writ muſt be taken out as the Court awards it, and when the Court awards it; or elſe it is without Warrant, and void. Indeed if it ſhould in Fact be made at a ſubſequent Day, and not actually wrote and ſealed the ſame Day it is awarded, yet if it bear *Teſte* upon that Day, your Lordſhip will not enquire into that Matter: But finding ſuch a Writ was awarded, and that it appears by the *Teſte* to iſſue the ſame Day; will preſume it did really iſſue that Day, and that it is right. But the Writ being here awarded the 23d, and bearing *Teſte* the 24th; if it did not iſſue the 23d Day, to alter the *Teſte*, ſo as to make it appear to iſſue that Day, were to make it contrary to the Truth.

This we take to have ſome Reſemblance to the late Caſe of the Warden of the *Fleet*; where your Lordſhip was againſt altering the Day of bringing in the Record, when the Alteration would have been againſt the Truth of the Fact. And to make the Amendment here deſired, would be to make the Writ appear to have iſſued the 23d of *October*; when the Writ itſelf imports it was the 24th; and this was the Truth of the Fact.

Mr. *Whitaker.* My Lord, I beg the Favour of a Word or two on the ſame Side: After ſo much has been ſaid for the Defendant, I ſhall only mention a Caſe or two, to ſhew that ſuch an Amendment as this has not been allow'd by the Statute of 8 *Henry* VI. *Cap.* 12. in any Civil Action between Party and Party.

28 *Hen.* VI. 3. There was an Action of Debt, and the Parties were at Iſſue. The *Venire* was return'd; upon which the Plaintiff had a *Habeas Corpora* with a *Niſi Prius:* And inſtead of ſaying in the *Habeas Corpora, in Placito Debiti*, it was made *in Placito Compoti*, &c. on Motion in Arreſt of Judgment. The Counſel for the Plaintiff deſir'd to amend this, after Verdict for the Plaintiff: The Court did indeed not give any Rule, as appears by that Book, only that they would conſider of it; but nothing was done further, as appears by that Book juſt after.

In the Caſe 34 *Hen.* VI. 20. In an Action of Debt brought by the Prior of St. *Bartholomew*'s, the Parties were at Iſſue, and a *Venire* return'd; and on the Return of the *Venire*, there were twenty four Perſons return'd: But in making out the *Habeas Corpora*, the Clerk omits one of the Names of the twenty four. This appear'd to be the Miſpriſion of the Clerk. He had the *Venire* and the Return before him; as the Clerk had here in the Caſe now before your Lordſhip. He had the Roll and the *Venire*; but this was held not to be amendable: And this was in few Years after the Statute of *Henry* VI.

I ſhall mention another Caſe in 2 *Siderfin* 7. 12. A Writ of *Capias ad faciend.* for a Debt, was made returnable a Day after the Term. It appeared to the Court, that the Attorney for the Plaintiff had given the Clerk that made the Writ, true, and right Directions to make it returnable the laſt Day of the Term; but though it was his Miſpriſion, yet the Court would not amend it: So it is adjudged in that Caſe.

I ſhall not mention any more Caſes; but anſwer the Caſe of *Plume*, in *Palmer* 480. cited by the Queen's Counſel. I have had particular Occaſion to look into that Caſe this Term, in a Cauſe which hath been in the Paper this Term. We did ſearch for that Rule expreſs'd in *Palmer*'s Reports, in order to amend an Outlawry after Judgment, in an Action of Debt in the *Common Pleas*; but on producing that Rule, the Court of *Common Pleas* did not take it as an Authority to amend our Outlawry, which wanted an Amendment in the Return of the Exigent.

L. C. J. Holt. What was that Amendment?

Mr. *Whitaker.* *Ad. Com. meum*, the Book ſays: "And upon this ſays, the "Book, they did grant a Rule to award a *Certiorari* to the Coroner." The Rule mention'd in *Palmer* was ſearch'd for; and, as I am inform'd my Client did produce it in the *Common Pleas*; and yet they would not let us amend our Outlawry: And my Client, for want of an Amendment of the Return of the Exigent, is likely to loſe an honeſt Debt by the Reverſal thereof.

The Counſel for the Queen have relied on the Statute of the 8th of *Henry* VI. that this Fault of the Clerk is amendable within that Statute. By the Books I have cited, the Miſpriſions of the Clerks, tho' in Civil Actions, have not been allow'd to be amendable. Above two hundred Years are paſt, before any Thing of this kind was done, to amend ſuch a Miſpriſion of a Clerk as this is, in Criminal Caſes.

How far the Queen's Counſel would go on with Amendments, I cannot tell: But in the Caſe cited by the Queen's Counſel, *Sampſon*'s Caſe, 1 *Rolls* 196. there was the ſame Miſtake of a Want of Continuance; as in this Caſe. No Man can believe the Clerk of Aſſize knew not what Days the Commiſſioners of *Oyer* and *Terminer*, and Gaol-Delivery did ſit, and continue their Seſſions on ſuch Commiſſions. And yet, on a Writ of Error to reverſe that Judgment (in *Sampſon*'s Caſe) being brought, the Court of *King*'s-*Bench* would not amend this apparent Miſpriſion of the Clerk of Aſſize's want of Adjournment from Day to Day.

This Matter of amending in criminal Proceedings ſuch a Miſpriſion of a Clerk as this is that is now deſired, has not been thought of ſince the Time of the 8th of *Henry* VI. until now. And if the Queen's Counſel can ſhew no Precedent in all this Time, wherein ſuch an Amendment, even in a civil Cauſe, by virtue of the 8th of *Hen.* VI. hath been, much leſs in a criminal Caſe, I humbly hope, your Lordſhips will not let them amend this Writ of *Diſtringas*.

SIR *T. Powis.* My Lord, having heard what has been ſaid on the other Side, I beg Leave to trouble you a little by way of Reply.

Mr. *Broderick* and Mr. *Mountague* make a Diſtinction which they think will govern this Caſe. They ſay, that the Crown has a great many Privileges, beyond what the Subject hath, where the Caſe concerns Civil Rights: But they will not allow the ſame Privileges to the Crown, where there is a criminal Proſecution. I know of no ſuch Diſtinction. For if this Privilege belongs to the Crown, in the Caſe of the Revenue; ſurely the reſtraining of Crimes is much more for the publick Benefit: And by Conſequence, the ſame Reaſon that gives the Crown a Privilege in a leſſer Matter, ought to carry it further in a greater Thing.

In the next Place, they do admit, that all the Acts of the Court may be amended; as being in the Breaſt of the Court, during the ſame Term. And they deny not, but that the Judgment of the Court, which is the higheſt Act of the Court, may be revers'd, or any way alter'd or chang'd in the ſame Term, without any Danger of building Clock-Houſes. And can any one ſay, that if theſe higheſt Acts of the Court may be alter'd, that the Acts of their Clerks may not be alter'd? That the greater Things may be done, but not the inferior, when there is a pure Miſtake?

No Man can but think it ſtrange, that a Miſtake of a Clerk may not be alter'd; but a Miſtake even in the Judgment of the Court may.

We come next to another Diſtinction. They ſay, an original Writ may be amended in the Caſe of the Crown; as in the *Quare impedit*, in *Blackmore*'s Caſe. For which they aſſign two Reaſons; Firſt, It was a Writ of the Crown, for Recovery of a civil Right; for it was a *Quare impedit*: And ſecondly, The Judges obſerving the Fault in the Writ, did (as it ſeems) carry it to the Court of *Chancery*, and there it was amended. From whence they would infer, as if it were a new Writ. But that cannot be ſuppoſed; for it was agreed, that it was the ſame Writ amended, and not a new Writ.

Now ſee if that will not come to our Caſe. For if the Court of *Chancery* could amend a *Quare impedit*, as coming from thence; cannot this Court amend a Writ that comes from hence? Here we are in the Caſe of a judicial Writ that comes from hence; and therefore it may be amended here, as well as that could be amended in the Court of *Chancery*.

But the great Matters endeavour'd to be avoided, are the two Acts of Parliament of *Edw.* III. and *Hen.* VI. for the Caſes cited: I will not go over them again. And I do believe it is very true what theſe Gentlemen inſiſt on: That it has been the common Opinion, that theſe Acts, or other Acts of Amendments, do not extend to Caſes of the Crown. And, generally ſpeaking, it is right; becauſe all the later Acts of Amendments except Proſecutions on Penal Laws: And the Statute of *Henry* VI. has ſo many Exceptions in criminal Matters, that a Miſtake might from thence ariſe, That all are excepted.

It is certainly true what my Lord Chief Juſtice *Vaughan* ſays, *fol.* 169, 170, 419. That upon doubtful Words of an Act of Parliament, that are dark and dubious, an ancient Interpretation, ſubmitted to for a long Time, is fit and reaſonable to be relied on in a doubtful Caſe. But a thouſand Reſolutions, againſt a plain Act of Parliament, cannot prevail. Tho' it would be good Reaſon, well to conſider ſuch a Law, and to weigh it well; but no ſuch Reſolutions can alter the Act.

Here are two Acts of Parliament: That of *Edward* III. is in general Words of All: And how can any one ſay then, that it ſhall mean and extend only to Some?

As to the Act in the 8th of *Henry* VI. to ſay that the Words ſhall not go to every Thing that is not excepted, is to overthrow all Rules of Conſtruction. They have offer'd nothing againſt that Statute; but that it has been thought it did not extend to theſe Caſes.

The Caſe of *Siderfin*, ſhews, that we do not advance a mere new Notion, with Reſpect to that Act. Therefore, I ſay, we have the Acts of Parliament on our Side; We have the Privilege of the Crown on our Side: The Award of the Roll is right, and with us; and the Error was purely the Miſtake of the Clerk: For no Man can think it otherwiſe.

We have this likewiſe on our Side, That we deſire it may be amended in the ſame Term. For as the Court can ſet right their own Judgment in the ſame Term, much more what is the Act and Miſtake of the Clerk.

Therefore we inſiſt upon it, That our Caſes we have cited, are of good Authority for us; and we hope we ſhall have an Amendment, if it be neceſſary.

Mr. *Att. Gen.* My Lord, we humbly hope, that notwithſtanding what theſe learned Gentlemen have urged, our Aſſertions by Law and Authority will prevail; and that this Miſtake is amendable.

What has been ſaid before by Mr. *Broderick* and Mr. *Mountague*, they have laid it down for a Rule, That there is a great Difference between the Privileges belonging to the Crown in Matters of a civil Nature upon the Statute, and criminal Proſecutions: And that all thoſe Favours for the Crown, were only for Matters relating to the Right of the Crown in civil Caſes, and not what belongs to the Crown in its politick Capacity. Tho' Mr. *Broderick* did not conſider: For ſure, by the Common Law, there was a greater Latitude for the Crown in criminal Proſecutions, than for the Subject.

In Caſes of Treaſon, they had no Benefit of Counſel; and that was far more to their Diſadvantage, than in civil Caſes. It's true, that Inconvenience has been regulated by the late Statute, That in the Caſes of Treaſon, the Party may have a Copy of the Pannel and Indictment. But you ſee what the Difficulties were formerly in Criminal Proſecutions for the People: All they had to do, was merely to plead Guilty or Not Guilty. I think that anſwers their Objection as to that.

Now there is in the next Place to be conſider'd, what Mr. *Mountague* ſays, That no Error in Proceſs was amendable by Common Law; and cites Lord *Coke* for it. He ſhould have gone on with that Citation; for it is certainly otherwiſe. 8 *Coke* 156, ſays, Their own Acts are amendable by the Common Law, in the ſame Term; but at the Common Law, the Miſpriſions of Clerks in another Term, were not amendable. But we are in the ſame Term; and ſure they are amendable before Judgment. And Lord *Coke* tells you, they are amendable in the ſame Term.

Now Mr. *Mountague* has gone a great Way. He agrees, if it were a Miſaward of the Roll, you would amend it, but not the Writ. Now for that, the Law is contrary: If you are wrong in the Roll, you cannot ſet it right; but if it be in the Writ or Proceſs, you may amend it by the Roll. Now here the Roll is right; and we deſire the Writ may be amended by it.

If it had been in the Roll, I cannot tell whether we ſhould have applied to amend that. For if you have any Thing amiſs, you cannot amend it, but by ſomething to amend it by. But it may be amended in caſe of the Crown, better than in that of the Subject. And tho' Mr. *Mountague* ſays, you may make uſe of them in Civil Caſes, but not in Criminal; yet we make uſe of this Argument, That the Crown has a Privilege more than the People. We rely on that; tho' Mr. *Mountague* ſays, That is not to be relied on.

In the next Place, Mr. *Mountague* ſays, This is within none of the Statutes of Amendments, either of *Edward* III. or of *Henry* VI. And that my Lord *Coke* ſays, *fol.* 157. *b.* That the Statute of *Edw.* III. does not extend to the Pleas of the Crown. And therefore Mr. *Mountague*'s Opinion is, To go quite through, and exclude this Caſe from all the Statutes of Amendments.

Now I can give an Argument why it ſhould not be amended by the Statute of *Hen.* VI. tho' by the Statute of *Edw.* III. it is amendable. But why is it not amendable by the Statute of *Henry* VI. *Cap.* 12, and 15. which go further than the Statute of 14 *Edw.* III. does?

I do agree, there is an Objection againſt the Statute of *Edw.* III. For there is the Word *Party*, which ſeems to imply civil Caſes only. But even by that Statute, ſo ſoon as the Slip appears by Challenge, or any other Way, it ſhall be amended. The Lord *Coke* might well, on theſe Words, make a Doubt, whether the 14th of *Edw.* III. did extend to amend Caſes relating to the Crown: But the Opinion of *Coke* in the Statute of 14 *Edw.* III. is abſolute; but the other of 8 *Hen.* VI. is with a Reaſon. And why is it? Becauſe it is excepted. Now they ſhould have ſhewn us ſome Reaſon why the Statute of *Henry* VI. *Cap.* 12. ſhould not extend to Amendments in Caſes of the Crown.

And there is not that Objection to the Statute of *Hen.* VI. *Cap.* 15. For it follows the Words of the Statute of *Edw.* III. and ſays, *That no Man ſhall have*, &c.

Now Mr. *Mountague* ſays, the Exception was put in *ex abundanti*; and it may be intended they were but Inſtances of like Caſes. Now I have hardly ever heard, that Inſtances of Treaſon and Felony ſhould extend to other Caſes of an inferior Nature: There is no Reaſon to carry it further than what is expreſs'd. So that we think theſe Statutes ſtand for us; and are applicable to all Records, as well for the Crown, as any elſe.

Mr. *Mountague* ſays, They have the Opinion of all Ages againſt it. But, my Lord, I deny that; becauſe there were Exceptions in many Statutes before and after the Statutes of *Jeofails*, that were not conſider'd: But when they come to be conſider'd, this muſt be determined by conſidering the Words of the Statute; and not by general Opinions, taken up without Conſideration.

There was in *Cro. Car.* 25. a Caſe on the Statute 32 *Hen.* VIII. where the Queſtion was, If Aſſignees of Copyhold Lands were within that Statute? And till a little before the *Revolution*, it was a received Opinion, that the Aſſignee of a Copyholder was not within the Statute of *Henry* VIII. And there is a Caſe in *Yelverton*, 223, wherein it was ſo reſolved: But when that Statute came afterwards to be conſidered, it was ſettled here, and has prevail'd ever ſince, that the Statute did extend to it; tho' before it was the prevailing Opinion that it did not. And accordingly the Practice has ſince been. So that Opinions that paſs *ſub Silentio*, that is, without Conſideration, may be alter'd when they come to be ſtated and conſider'd. And therefore I hope this Point will not prevail.

My Lord, I agree that this Thing is of very great Conſequence: For if their Plea be allow'd, it will follow, that Criminals will eſcape for little Slips in all Caſes. And I know that even in Perjury, and other Crimes, few that have been convicted, but have got off, by Reaſon of Errors in the Proceedings, tho' I have ſeen a great many convicted thereof. This is a great Inconvenience and Miſchief: And ſure Criminals are not to be the Favourites of the Law.

But as to theſe Proſecutions, there is another Conſideration: That it is more for the Honour of Juſtice to have the Advantage to lay aſide this Slip, than to ſuffer a Criminal to eſcape. But however, every one muſt have Juſtice: And if we rely on the Statute of *Henry* VI. no Conſtruction can avoid it.

Then Mr. *Broderick* cites the Caſe of——— Where it is ſaid, that the Statutes of *Jeofails* do not extend to Caſes of the Crown. Now ſure that is not a Reaſon: It is contrary to all the Reaſons of Statutes. Where Statutes are to promote Juſtice, the Crown is bound as well as the Subject; it is for the Public Good. Now Mr. *Broderick* has cited a Caſe againſt that; and that is in *Styles*, *fol.* 107. (*Vid.* Fol. 307.) the Caſe of *Theobalds* and *Newton*. There that Caſe was on the Statutes of 18 *Eliz.* and of 21 *Jac.* Now 'tis plain they had no Conſideration of any Thing elſe: And why? Becauſe in Proſecutions on Penal Statutes, the Court often rely on Exceptions: But however the Authority goes no farther, but they rely on the Exceptions. Now if they had ſaid it was excepted by the Statute of *Henry* VI. and that all the Books go on it as excepted by that Statute; if they ſay it is excepted by the Statute of *Hen.* VI. would that be taken as an Objection to the Statutes of 18 *Eliz.* and 21 *Jac.*? No; it is a Miſtake.

He has alſo cited *Yelverton*, *fol.* 60. *Brigg*'s and *Thompſon*'s Caſe. Now there was an Information on the Statute of 21 *Hen.* VIII. againſt a Clergyman, for farming Lands; and a *Venire* was awarded returnable *ubicunque*: But the *Venire* itſelf, and the *Diſtringas* were made returnable *coram nobis*, &c. which was ſaid to be erroneous. An Exception was taken, and *per Cur'* Let it ſtay. But it appears not that it was conſidered.

Theſe Authorities are no Authorities: The firſt is not within either of thoſe Statutes we are now upon: And the other was never determined by any Thing, as appears in the Caſe. And there is a great Difference between the Statutes on which they were founded, and our Caſe.

Mr. *Mountague* has gone a new Way. He would have this to be not a Miſpriſion of the Clerk; becauſe he is afraid that a Miſpriſion is amendable: For the Clerk had enquired, whether the Writ ſhould be *Teſted* the 24th of *October*; ſo that he ſays it is a Forgetfulneſs, or Negligence, but not a Miſpriſion.

Now I would fain know what he means by that? Whether all Forgetfulneſs of the Clerks is not a Miſpriſion of the Clerk? That is, any Negligence, whatever it be, it is the Miſpriſion of the Clerk. *Coke* ſays, It is a Miſpriſion of the Clerk, under the Word *Negligence*: And Negligence and Miſpriſion are by him frequently put for the ſame Thing. See 8 *Co.* 159. *b.* 160. *b.*

So upon one Part of it: That is, ſuppoſe the Clerk ſteal it away; he ſays, that it is under the Word *Miſpriſion*; and an involuntary Negligence of the Clerk is a Miſpriſion. So this Clerk's Negligence is a Miſpriſion, becauſe he did not look on the Almanack and the Roll. Theſe are Miſpriſions by the Statute of *Henry* VI.

As to the Caſes that have been cited, Mr. *Mountague* has anſwered but ſome of them.

As to that of *Percival* and *Godfrey*, *Siderfin*, *fol.* 43. he ſays that was not ſuch an Amendment, but a Suggeſtion of the Roll. But if the Roll could amend that which is a ſtronger Amendment, to preſent a Verdict; the rectifying of that makes it ſtronger for us, than it would be otherwiſe.

He ſays, as to *Harvey*'s Caſe, he denies it to be Law: But I believe the Authority of the Judges is to be preferr'd before his Opinion.

And then for the next Caſe, *Parker* and *Curſon*, he queſtions that Opinion, becauſe not taken Notice of by *Hughes*. Now, I believe, the Judges that reported it, did underſtand it better than he that abridg'd it. But whether he underſtood it or no, it alters not the Caſe.

And then for *Tufton*'s Caſe, he ſays it is a Civil Caſe. But, my Lord, it is a Criminal Caſe. A *Quo Warranto* is brought: They muſt plead Not Guilty to the Uſurpation. So that theſe Caſes are under the ſame Conſideration as this is.

Then there is the Caſe of *King* and *Glover*: That was, where a Coroner was to amend an Inquiſition of Murder: But it was not proved that he did murder himſelf, &c.

Mr. *Mountague* admits, the Jury may amend Matters of Form: But in that Caſe, when it is brought into Court, it is not the ſame Verdict as before.

He cited the Caſe of —— and *Harvey*: But your Lordſhip gave him another Reaſon for that Caſe.

And for the Caſe of *Paul Tracey*, that Point was never determined.

L. C. J. Holt. The *Venire Facias* never mentions the Time of, &c.

Mr. *Att. Gen.* Now that is not within the Statute of *Henry* VI. So that we have nothing to do with it.

And as to the Caſe of *Dyer*, *fol.*——that does not concern the Statutes of *Jeofails*. And in *Fitzherbert*'s Caſe, the Court was of Opinion, they could not amend, by Reaſon of the Exception. Whereby they ſhew plainly, they thought the Statutes would have extended to that Caſe, had it not been particularly excepted.

I do not obſerve any other Matter, but that of the *Niſi Prius*. If the Writ muſt be made out in the Preſence of the Parties; they ſay, that immediately when the Perſons appear, the Writ is to be iſſued. But that is impoſſible, and contrary to Reaſon and Authority.

We think, on theſe Reaſons we have troubled you with, we have the Law on our Side. Only one Thing I muſt beg Leave to anſwer to what Mr. *Broderick* ſays as to *Percival*'s Caſe: It was a crying Thing, and it might be an extraordinary Judgment. Where Judgments are given, they are to go according to the Courſe of Law: Juſtice is to be done to all. And as no extraordinary Method is to be made uſe of againſt a Criminal, ſo none is to be uſed to ſave him.

My Lord, we think the Statute of *Henry* VI. does allow ſuch an Amendment as we deſire; and that no ſtatute does reſtrain it: And therefore, I hope we ſhall be allowed to amend this Error.

There is one Matter more. Lord *Coke*, in his 8th Report, 163. *a.* ſays, The Statutes of *Henry* VIII. and that of 41 *Eliz.* do not extend to Pleas of the Crown; becauſe they are excepted in the Act *Eliz.* and that of *Henry* VIII. does not extend to 'em.

We agree with the Lord *Coke* in every Thing, that the King can't amend by that of *Henry* VIII. tho' there is no Exception: And the Reaſon is, becauſe it ſpeaks only of Suits between Party and Party. And the other Statute of 18 *Eliz.* is not large enough, extending only to Treaſon or Felony, becauſe they only are excepted.

My Lord, we think we have my Lord *Coke*'s Authority with us, and even the very Words of the Act of 8 *Hen.* VI. And tho' this Caſe has not been ſo fully conſider'd before; yet we hope it will be conſider'd now; and that we ſhall be allow'd this Amendment.

Mr. *Broderick.* I thought not to have ſaid any Thing more: But becauſe I have been named two or three Times by Mr. *Attorney*, I deſire ——

Mr. *Att. Gen.* The Reply is ours.

Mr. *Broderick.* My Lord, I beg Leave to explain myſelf in ſomething that has been miſunderſtood. I think I did not ſay what I am charged with. Mr. *Attorney* tells you I ſaid, That none of the Queen's Prerogatives extend to Criminal Proſecutions.

Mr. *Att. Gen.* I ſay, you ſaid, There is great Difference between civil and criminal Caſes: And that the Queen's Prerogative is intended only of Amendments in civil Caſes, but not applicable to criminal Proſecutions.

L. C. J. Holt. Mr. *Broderick* ſaid, It did extend to Amendments in Civil Caſes, but not in Criminal.

Mr. *Broderick.* And I do make a Difference between 'em. For in Criminal Proſecutions by the Crown, an Amendment can't be: But in the Caſe of a *Quare impeait*, which is a Civil Caſe, there it might.

Mr. *Att. Gen.* The Reply is ours; and they ought not to break in upon us.

L. C. J. Holt.

L. C. J. Holt. If you will ſay any thing as to what has been miſtaken, you may. The Caſe of *Sherret* and *Talbot* is not to the Point: That was an Amendment, not in Behalf of the Crown, but of the Subject; and in a Civil Caſe. 'Twas in a *Quo Warranto*; wherein if the Subject take a limited Diſclaimer, and the Officer on the Roll enter a general Diſclaimer without Limitation, God forbid but that ſhould be amended. But then, even on the King's Side, if the original Indictment be right, and the Plea Roll be miſtaken; ſure the Plea Roll ſhall be rectified by the Indictment; and the Plea is to be made according to that.

The Caſes of *Tufton* and *Harris* are ſtrong Caſes. In that of *Harris* there was an actual Trial; and yet no Iſſue joined. He was indeed indicted as Criminal, and the Iſſue was enter'd; *& de hoc ponit ſe ſuper Patriam*, but without any Joinder thereupon, and ſo no compleat Iſſue. 'Tis true, in capital Caſes, they are free to join Iſſue or not: But in other Criminal Caſes 'tis otherwiſe; there muſt be a Joinder. And as to the Caſe of *Tufton*, that was an Amendment that went very far. That was an Information for Recuſancy againſt the Huſband and Wife for Recuſancy of the Wife. The Wife comes in, and ſhe alone (whereas it ſhould have been the Huſband and Wife) pleads Not Guilty; and Iſſue join'd thereon: And it was mended by the Docket: for that was right. It has been held, that the Statute of *Hen.* VI. did not extend to Criminal Matters; as Lord *Coke* (in *Blackmore*'s Caſe) is expreſly.

Mr. *Att. Gen.* But, my Lord, he gives the Reaſon of that Exception.

L. C. J. Holt. Now the 8th of *Henry* VI. has this Exception: And in *Stiles*, 304. no mention is made of the Statute of *Hen.* VI. but that was by reaſon they thought it would not help them. And then the Query is, Whether this Caſe be within that Exception, and (as in Civil Caſes) may be amended? But this is a Caſe of a different Nature; and I will not ſay any thing now in the Point of this Caſe, becauſe of the Conſequence: Though I ſuppoſe it is not excepted by the Statutes: And I believe you don't deſire our preſent Opinion.

Mr. *Att. Gen.* Yes, my Lord, I deſire the Opinion of the Court in this Caſe; and I think it is of great Conſequence to us to have it now.

L. C. J. Holt. If you inſiſt on it, I muſt ſee if I can form an Opinion; but I would willingly defer it.

Mr. *Att. Gen.* My Lord, I lay it before you with Submiſſion.

Mr. J. *Powel.* It is a new Thing, and taken up againſt the current Opinion. Perhaps they might take it on Lord *Coke*'s Opinion; and did not examine it, as they ſhould had done.

Mr. *Att. Gen.* My Lord *Coke* does not ſay ſo himſelf.

Mr. J. *Powel.* No: But becauſe he ſays it is excepted, they gave Credit to his Words, and did not examine into the Buſineſs: And I believe that was the Foundation of this Opinion. But if you think it is amendable in the ſame Term, becauſe the Court may amend their own Judgments the ſame Term; you muſt ſpeak to that Point.

I do not know that they can amend their own Judgment in this Term: Though indeed, if it be amendable at all, it is amendable this Term. Beſides, I ſhould make no Difficulty but that it is a Miſpriſion of the Clerk; and it was his Negligence not to do it by the Warrant. And if this were in a Civil Proceſs, I believe it might be amended in any other Term: But this being in a Criminal Matter; and the current Opinion being That none of the Statutes did extend to Criminal Matters, it ought to be well conſider'd; for the current Opinion is a great Thing.

Mr. *Att. Gen.* There is no doubt of it, it ought to be conſider'd; but it is fit for me to deſire your Opinion.

Mr. J. *Powis.* I believe theſe Statutes were never ſo ſcann'd before; and I believe this Matter has been more ſearch'd into now, than ever it has been before. But it has been the general Opinion, That none of the Statutes of *Jeofails* did extend to Criminal Caſes: That may ariſe, becauſe all the Statutes take in ſo large a Compaſs. All Indictments and Informations, and no doubt the latter Statutes, do not extend to ſuch Caſes. And the Opinion might ariſe from that.

But now this Statute of the 8th of *Hen.* VI. has Exception of Felonies and Treaſons, and none elſe; and you cannot extend the Exception further. It is a Caſe of Difficulty, but it ariſes from the common Opinion; otherwiſe we might give our Opinion now without Difficulty: For the Words are as clear as may be; and it is againſt Reaſon, to except Things that that Statute did not except. But being a Thing that is not ſo particularly confin'd to this Term (for the Statute mentions nothing of Terms) if it be amendable, it may be amended in another Term.

But indeed, for Matter of Judgment, becauſe the Judgment muſt be in the ſame Term, in the Caſe of the Amendment, we may as well do it in this Term: And we may take ſome Time to conſider of it, and tell you what our Opinion is.

Mr. J. *Gould.* I ſhall not now ſay any thing in this Caſe, but reſerve myſelf entirely till the Court give their Opinion.

But as to that Caſe you were citing; *Perry*'s Caſe: (The Caſe was *Perry* and *Munday*; for I was of Counſel in the Caſe.) There was an Information againſt *Perry* and *Munday* for forging a Bond: They laid their Forgery at *Sherborn*. The Publication was at *Dorcheſter*; and the *Venire* was *Dorcheſter*. The Verdict was for the King. They brought an Arreſt of Judgment afterwards; and the Queſtion was debated, on the Statute of 16 and 17 of K. *Charles* II. Whether this were not within the Statute? Now they are agreed, that that Information, becauſe at Common Law, was without the Purview of the Statute.

L. C. J. Holt. That was an Information upon a Penal Law. They queſtion'd whether it was within the Purview of the Statute; and they thought it was not help'd by any Statute. That ſhews the Opinion of the Lawyers: They thought it not within any of the Statutes of *Jeofails*; and the Verdict was ſet aſide.

Mr. *Broderick.* Yes, my Lord; and the Court awarded a new *Venire Facias.*

L. C. J. Holt. There is a great Regard to be had to Practice. There were great Men at the Bar at that Time; and they did not think at that Time that it was within the Statute.

As to what you ſay of Copyholds, it has indeed been held, that the Statute did not extend to an Aſſignee of Copyhold Lands, or to a Covenant on the Alienation of the Copyhold by Leaſe.

Mr. *Att. Gen.* It was here argued that ———

L. C. J. Holt. It was my Opinion, that all Statutes extend to Copyholds, if it be for the Benefit of the Copyholder, and not one Jot to the Prejudice of the Owner: And therefore the Reſolution of *Jobbin*'s Caſe was that we went on. You muſt ſtay till the laſt Day of the Term.

Mr. *Att. Gen.* My Lord, I think we have ſhewn that it is amendable by the Statutes; and if not ſo, by the Common Law. And we have all Points with us.

Sir *T. Powis.* My Lord, I doubt it will be inſiſted on, that in another Term it cannot be amended.

L. C. J. Holt. Move us the laſt Day of the Term. It is certainly the Miſpriſion of the Clerk.

November 28. i. e. *The laſt Day of* Michaelmas Term.

Sir *T. Powis.* My Lord, we come in the Caſe of the Queen and Mr. *Tutchin*, if your Lordſhip be ready to give your Opinion.

Mr. *Att. Gen.* Call Mr. *Tutchin.* (*Who appeared.*)

L. C. J. Holt. I muſt deſire you to ſtay in this Matter till the firſt Day of the next Term.

Mr. *Att. Gen.* My Lord, we did expect your Lordſhip would have given your Opinion now.

L. C. J. Holt. For my Part, I ſhould rather deſire Time till the next Term: But if you are not willing to ſtay till then, you muſt take ſuch an Opinion as we can give.

Mr. *Att. Gen.* I ſubmit to what your Lordſhip ſhall determine.

L. C. J. Holt. It may be, I may be then of the ſame Opinion I am now; but then I may defend my Opinion better. I would only put it off to the firſt Day of the next Term.

Mr. *Att. Gen.* My Lord, I have laid the Matter before you; and I acquieſce in what you ſhall think fit.

Sir *T. Powis.* Upon the Obſervation of *Blackmore*'s Caſe, where Lord *Coke* ſays, the Court cannot amend Miſpriſions of Clerks in Proceſs in another Term; if we have not Judgment this Term, we ſhall loſe that Advantage.

Mr. *Att. Gen.* There are two Points in this Caſe: One is, that it is amendable by Common Law; the other, that it is not excepted by the Statute of *Henry* VI.

Now my Lord *Coke* ſays, Error in Proceſs is amendable in another Term. But we ſubmit to the Court; I preſs nothing.

Mr. J. *Powel.* *Coke* ſay ſo! But I believe no Man will ſay, that ever a miſtaken Writ was amended in another Term. Therefore he muſt intend the ſubſequent Proceedings, or Proceſs: It may be the Proceedings of the original Entry on their Award, that may be amended in another Term; and *Coke* muſt mean that. There have been Entries of Awards amended in another Term; but the Miſtake of a Writ was never amended in another Term, that I can find.

L. C. J. Holt. If we put it off to the next Term, and our Opinion ſhould be againſt the Amendment, he can be try'd in that Term.

Mr. *Att. Gen.* My Lord, I ſubmit it to you.

Mr. J. *Powel.* We cannot now give ſo full Reaſons; yet I have enter'd my Opinion in the Caſe.

Mr. J. *Gould.* I was ſometime of Opinion, that it was amendable by the Statute; but really looking on the Caſes that have been cited, that is, the Caſes that are in Pleas of the Crown, it is not amendable by the Statute of *Henry* VI. I ſay, I formerly thought it might be amended by Virtue of the Statute: But upon Peruſal of *Blackmore*'s Caſe, *&c.* it ſeems to alter my Judgment. But notwithſtanding, I hold, that at Common Law it may be amended. For what means all the Caſes that are now extant; the Caſes of Informations, as the Caſe of Sir *Humphry Bond*, &c.?

The Caſe cited by *Yelverton*, in 2 *Bulſtrode* 35. is very ſtrong. There were two indicted for Felony, and found guilty. The Judge ſaw that it was in the ſingular Number, and ſtay'd Judgment: And they moved afterwards in another Term; and there, by the Judgment of nine or ten Judges, it was amended; and the Men were both hang'd.

Why now, it muſt be by the Statute Law, or by the Common Law, that it was amended in that Caſe. By the Common Law, I ſay, it is amendable.

There is a Caſe in *Raymond*'s Reports, 440. It is an Indictment on a Certificate of a Juſtice of Peace, That *Inglefield*, being a reputed Papiſt, had refuſed to take the Oath of Supremacy, *&c.* Upon Not Guilty pleaded, the Jury found the Commiſſion *in hæc verba*, &c.

It was objected, That the Certificate was not found under Seal of the Juſtices, but only *in hæc verba*: And they did amend it.

This is the ſame Caſe. And I take it, that ſuch a Fault, as does not alter the Iſſue, nor the Trial, or Crime, is a Thing that is amendable.

Now there is Sir *John Curſon*'s Caſe, in 2 *Cro.* It is a ſtrong Caſe. There is an Information againſt him and his Wife for Recuſancy. The Wife only pleaded Not Guilty. The Queſtion was, Whether this were right? And whether they ſhould amend it? And it was reſolved, that it ſhould be amended.

The Caſe in *Siderfin*, that is (1 *Siderfin*, 243.) the Caſe of *Percival* and *Godfrey*, I do not doubt, for my Part, but it is amendable; and take it as ſtrong as this is. They were indicted for a Riot: A *Venire Facias* iſſued *Vicecomitibus Canterburiæ*; and it was return'd by one Sheriff. They examin'd into the Truth of the Caſe, and they found there was but one Sheriff: And the Queſtion was, Whether this was amendable? And it was reſolved it ſhould be amended; and alſo that it was amendable at Common Law.

I muſt confeſs, I do not ſee that there is any Reaſon in the World againſt it. There is but only one Caſe that ſeems to be againſt it; that is the Caſe of *Theobald* and *Newton*, *Styles* 307. There indeed, by *Rolls* Opinion, it was not amendable, *&c.* But that is only a ſingle Opinion.

And as to the Caſe between the King, and *Read* and *Dawſon* (it ſhould have been two Caſes) there 'twas held, That the Statute of *Jeofails* does not extend to Informations of Intruſions; and yet it was ruled, that it ſhould be amended.

Indeed, my Lord *Hales*, in *Keble*, 191, 215. [He means *Twiſden*; *Vid. Keble*, 191, 198, 215.] did hold, that it was amendable within the Statute; and that the Amendment would ſtand in need of it: But it was ruled *contra*; and that it needed not the Help of the Statute of *Jeofails*. And I muſt needs ſay, if the Caſe of *Bradley* and *Banks*, in 2 *Croke*, 283. and in *Yelverton*, 204. were not in the way, I think the Writ had been good enough; for it is a Continuance from Day to Day, though the *Teſte* is the 24th, and the Award the 23d.

Now, in my Mind, an Award the 23d, of a Writ, the 24th, is a perfect Continuance. And the Caſe of *Bradley*, &c. as it is in 2 *Croke*, 283. does not contradict this; tho' indeed that Caſe of *Bradley*, as it is in *Yelverton*, is contrary; but that ſeems miſtaken. So that I do think, on the whole Matter, it is amendable at Common Law.

> *Note*, Powis *accorded with* Gould, *that it was amendable*; *but* Powel *argued* contra, *that it was not.*

L. C. J. Holt. I ſhould have been glad to have had Time till next Term, to conſider of this Matter: For tho' I am ſatisfied in my Opinion, yet perhaps I may not give others that Satisfaction concerning it, as I might have done if I had had a longer Time.

I am of Opinion, That this is not amendable neither by the Common Law, nor by the Statutes.

Firſt, It muſt be admitted, that this is a Fault in the Writ, in a Point that is material: That is, The *Teſte*, which ſhould have been *Die Lunæ*, the 23d of *October*, and it is the 24th: For the 23d is the Day that the Defendant has in Court on the Return: and that being the Day he has in Court, the *Teſte* of the Writ to continue the Proceſs ſhould have been that very Day.

Now I do not underſtand what my Brother *Powis* ſays, That there is no Interval between one Day and another. I would fain know, if a Day be appointed for a Man to appear on; and then he has another Day given him, when he appears not: As, if a Man appears the 23d of *October*, and there is a Day given, the 24th; will not this be a Diſcontinuance? No queſtion but it is: Becauſe he being in Court the 23d, and having no Direction the 23d when to come again, he is out of Court. Then ſhall you give another Day behind his Back? That cannot be in Reaſon. His Day in Court is the 23d of *October*; and that Day he ſhould have another Day appointed. He has a Day in the Roll, but not in the Writ: That is iſſued behind his Back, the 24th; at which Time he is not in Court. Then if this be ſo, here is a Writ iſſued behind the Defendant's Back, and without any Award of the Court: For the Award is, *Die Lunæ prox. poſt tres Septimanas Sancti Michaelis*, which is the 23d of *October*; then there is a *Præceptum eſt* that Day. Now when this Writ iſſues the 24th; is this Writ warranted by the Roll? No, it is not; but another Sort of Writ, different from that which the Court awarded: Therefore being another Writ than what was awarded; where is there any Authority for it? Or how can the Jury be diſtrain'd upon it?

The Writ that iſſued the 24th, is another Writ: For there is a material varying between the Writ that iſſues, and the Award of the Roll; one is the 23d, the other is the 24th.

The Day of the Writ is material: And when it bears *Teſte*, it is in the Judgment of the Law a Writ of that very Day; as it was adjudged in the Caſe of *Owen verſ. Baily*, 17 *Ch.* 2. in a Trover and Converſion.

A Defendant, that is condemn'd in Debt and Damages, ſells his Goods *bona fide*, between the laſt Day of *Trinity Term* and the firſt of *Auguſt*. After he had ſold his Goods, the Plaintiff takes out a *Fieri Facias*, *Teſte'd* the firſt Day of *Trinity Term*; which was before the Sale, tho' taken out after; ſetting forth, That the 4th or 5th of *July*, he had ſeized theſe Goods in the Hand of the Vendee; Tho' the Writ was not taken out actually in *Trinity Term*, yet bearing Date then, and the firſt of *Auguſt* the Goods were ſold; yet the Writ being *Teſte'd* the firſt Day of *Trinity Term*, 'twas held not amendable; and that the Hands of the Vendee were bound by it.

Now this Writ here is, in the Judgment of the Law, iſſuing out of this Court the 24th of *October*. If we ſhould amend this, what Alteration ſhould we make? We muſt make it another Writ: For a Writ that iſſues out of this Court the 24th, cannot be a Writ that iſſues out the 23d; and if we amend it, we make it as different as poſſibly can be.

Now why ſhould we amend it? As we now take it, by the Statute of *Henry* VI. the Writ is good in itſelf; but it is not, as the Court awarded it. The Meaning of the Statute was not to amend miſtaken Writs, but Miſtakes in Writs: The Statutes meant nothing but that. Not that you ſhould amend a Writ that was good in itſelf, and fit it to your particular Purpoſe.

Now here is a Writ executed in the ſame Term: Yet to make this Trial to be good, what muſt you do by this Amendment? You muſt make it to be another Writ: For you muſt make the Writ, even contrary to Truth, to be the 23d, which was the 24th: And therefore it cannot be made good; nor can the Trial be made good. You would make it the 23d, where it is indeed the 24th; and ſo you would change the Nature and Subſtance of the Writ. Is not this a material Variance, and different from the Award of the Court?

Before the Statute of *Jeofails*, if it had been in a Civil Caſe, it is help'd by the Statute of the 8th of *Henry* VI. becauſe it is a Diſcontinuance of Proceſs it is help'd by that Statute; but that Statute extends not to this Caſe. I would fain know, whether there has been any Amendment, in any Caſe of this Nature, ſince the Statute of *Henry* the VIth? It's true, *Teſte*'s of Writs have been often amended; but that was, where it was a void *Teſte*; as on a *Sunday*, or out of Term; or where it is impoſſible, as after the Return, *&c.* That is a void *Teſte*, if it bear Date on a *Sunday*, or in the Vacation.

In Civil Caſes it is amendable; becauſe it is the Fault of the Clerk by miſtaking a Day; as in making it on a *Sunday*, or in a Vacation-Time: There may be Reaſon for it; and it may be amended by the Statute of *Henry* VI. becauſe plainly a miſtake of the Clerk. And on this Reaſon is that Caſe in *Yelverton*, 64. and the Caſe of *Bradley* and *Banks*, 204. There was a *Venire* returnable one Day; and the *Teſte* of the *Diſtringas* was of the ſame Date, and the ſame Day with the *Teſte* of the *Venire*; and that was held amendable, becauſe it is impoſſible you ſhall diſtrain before the Return of the *Venire*; and the *Diſtringas* bore *Teſte* the ſame Day with the *Venire*: So that the *Teſte* was repugnant to the Writ itſelf; and therefore the Writ is naught in itſelf, becauſe it was to diſtrain a Jury that was not ſummon'd. But the Law has always been, That if upon the Return of one Writ, there is to be another Writ awarded; that other Writ muſt be *Teſte'd* on the very Day upon which it was awarded, and the Return of the former.

And that Caſe of *Bradley* and *Banks*, in 2 *Cro.* and *Yelv.* is very ſtrong to this Purpoſe. There the Perſon came in on the Exigent, and pray'd *Oyer* of the Writ and all Meſne Proceſs: And therein appeared a Gap, the firſt Proceſs being returnable *Decimo ſexto Octobris*, and the Appeal being returnable *Quindena Sancti Michaelis*, that is, the 16th of *October*, were well. But the *alias Capias* goes out *Teſte'd* the 23d of *October*, which being ſeven Days after the Return of the former, that was wrong; for it ſhould have borne *Teſte* the 16th of *October*, then it had been right; but being the 23d, there was a Gap; and therefore it was held a Diſcontinuance.

And this is the Practice of the *Common Pleas*, tho' not ſo much obſerved here in this Court, in Writs of Enquiry of Damages: But enquire of them in the *Common Pleas*, and they will tell you, the ſubſequent Proceſs ought always to bear *Teſte* the Day of the Return of the former Writ. If you go to a *Capias*, either in Outlawry, or to diſtrain a Man; the ſecond *Diſtringas* is always *Teſte'd* the Day of the Return of the firſt; and the third is always *Teſte'd* the Day of the Return of the Second: And if it bear *Teſte* the next Day, all Proceſs is diſcontinued.

Ay, but you ſay, it is a Miſtake of the Clerk. It is ſo: But we are to judge of the Thing itſelf, whether it is by way of Negligence, or for want of Skill. For aught I know, it may be for want of Skill, that it is *Teſte'd* another Day: But every Clerk does not know this. Nay, ſome have pretended to know that it need not bear Date the Day of the precedent Writ's Return. Why then might it not be an Error in Skill? If he thinks it a right Writ, and ſays it muſt be *Teſte'd* the 24th, this is want of Skill; and then it is not amendable. And then this being a wrong Writ, the *Teſte* is material; and its being *Teſte'd* the 24th, is a Miſtake ſo material, that if it had been a civil Caſe, I ſhould have been againſt the Amendment; and therefore much more in this Caſe, I think, it ought to be quaſh'd, and a new *Venire* awarded.

Mr. *Att. Gen.* If the Court decide it, I cannot tell what to ſay.

Mr. J. *Powis.* What have you to ſay?

Mr. *Att. Gen.* The Court is divided, and there it hangs.

L. C. J. Holt. I would not be underſtood otherwiſe than thus: I do not ſay, this Caſe is within the Statute; but I look on it to be ſo material a Variance, that it is not amendable.

Mr. *Att. Gen.* The Court being divided in their Opinion, I know not any Rule to ſtop Judgment.

Mr. J. *Powis.* I know not how far it may go in criminal Caſes. That which ſway'd with me, was, to ſee ſo many bold Amendments in many Caſes; that went with me very far; and which were ſaid to be done by Common Law.

What I ſaid as to coming the next Day, I did not rely on it: Tho' it did ſeem to alleviate the Thing. But I was ſo tender in the Caſe, that I did think it might be better to have a new Trial. I have held, in my Opinion, with my Lord Chief Juſtice *Holt* and Mr. Juſtice *Powel* a great deal. I was tender before in the Point: And I do join with my Lord Chief Juſtice *Holt* and Mr. Juſtice *Powel*, that there ought to be a new Trial, and a new *Diſtringas*.

Mr. *Att. Gen.* With a Rule, I ſubmit; but without a Rule, I would have ſigned Judgment.

Mr. *Mountague.* My Lord, We move to ſet aſide this Trial, becauſe it is irregular.

Mr. *Att. Gen.* If you make a Rule, we need not diſpute it.

Mr. J. *Powel.* Judgment goes of courſe, unleſs you ſtop it.

Mr. *Att. Gen.* There is no Rule to ſtop it: And then I can ſign my Judgment.

Mr. *Mountague.* My Lord, tho' the Court can make no Rule for an Amendment, becauſe the Judges are divided about that Point; yet I humbly conceive, your Lordſhip, and the reſt of the Judges do agree, that the Writ, as it now is, is naught; and therefore I hope you will let us have a Rule to ſtay Judgment.

L. C. J. Holt. Mr. *Attorney*, They have been moving to have a new Trial.

Mr. *Att. Gen.* 'Twould be a Breach of Duty in me, not to ſign my Judgment, if you don't make a Rule while it is under Conſideration.

L. C. J. Holt. Here was Leave given to move in Arreſt of Judgment; and there is no Rule for ſigning Judgment.

Mr. *Att. Gen.* There is no Rule to ſtop it.

Mr. *Mountague.* What is the Rule that was made upon my firſt Motion?

Clerk reads, *Die Martis proximo*, &c.

Mr. *Mountague.* We take it, that tho' the Court be divided about the Amendment; yet ſince there can be no Amendment, the Writ being naught, we ought to go to a new Trial.

Mr. J. *Powel.* By all Means, go to a new Trial.

Mr. J. *Powis.* It is in a Caſe that was never ſo much look'd into before.

Mr. *Att. Gen.* If we muſt have a new Trial in this Caſe, we are in a worſe Caſe than I thought we were; for we are to begin Proceſs again. But if a Rule be made, we muſt ſubmit.

Mr. *Mountague.* There was a Rule made at the Side Bar, upon my Motion there, That all Things ſhould ſtay.

Mr. *Att. Gen.* That was not a Place to move for a Rule.

L. C. J. Holt. That is to ſtay *in ſtatu quo* they were then. There is no Rule for Judgment to ſtay.

Mr. *Att. Gen.* If on Motion to arreſt Judgment, the Judges of the Court are divided, I have heard it ſaid, that Judgment may be enter'd.

Mr. J. *Powis.* I ſaid at the Beginning, I was inclinable to have a new Trial.

L. C. J. Holt. I know not what you mean. You ſaid, you were inclinable to have it amended: I would have it amended, if I had followed my Fancy.

Mr. J. *Powel.* If my Brother has changed his Opinion, he may: For we have been arguing, that we may change our Judgments.

L. C. J. Holt. You have any Time To-day to move it again. Put us in mind of it: I may change my Mind too, it may be.

Mr. J. *Powis.* I judge not how it may go in criminal Matters: But all are of Opinion, that it ſhould not ſtand as it does.

L. C. J. Holt. The Court is divided that it ſhould be amended; but not that it is well as it is: And that is Mr. *Attorney*'s Motion, to alter what is to be amended.

Mr. J. *Powel.* Mr. *Attorney* makes no Motion for a Rule; but would have it ſtay as it does.——*L. C. J. Holt.* That it may remain *in ſtatu quo*.

Mr. *Att. Gen.* If you cannot agree in your Judgment, I ſubmit it to you, whether I may not enter Judgment for the Queen, tho' it be not amended.

Mr. *Mountague.* We hope Mr. *Attorney* ſhall not be permitted to ſign Judgment in this Caſe: for tho' 'tis true, that there can be no Amendment, becauſe the Court is divided; yet I do not apprehend that it is right as it is.

Mr. *Att. Gen.* If the Court be divided, no Rule can be made.

Mr. J. *Powis.* Let there be a new Trial.

Mr. *Mountague.* Mr. *Attorney*, the Court would have a new Trial: And I think you had better do ſo.

Mr. *Att. Gen.* I want none of your Directions.

Mr. *Mountague.* I may take Notice of what the Judges ſay.

L. C. J. Holt. And he will make uſe of what we ſay, as far as is convenient for him.

Mr. *Att. Gen.* But Mr. *Mountague* muſt not pretend to give Directions what I am to do.

Mr. *Mountague.* I don't give you Directions; but I hope I may take Notice of what the Court ſays.

L. C. J. Holt. Mr. *Attorney*, we believe you don't want their Advice.

Mr. *Att. Gen.* But they are very ready to give it.

Mr. *Mountague.* I only took Notice to Mr. *Attorney*, how far the Court was agreed: And only moved that the Rule, which I did conceive was pronounced by the Court, might be taken.

Mr. *Att. Gen.* You moved to no Purpoſe.

Mr. *Mountague.* I take it, that Mr. Juſtice *Powis* is for a new Trial.

Mr. J. *Powis.* Yes, I am ſo. It is a nice Caſe, and has never been conſider'd fully before.

Mr. *Mountague.* I hope now we have done.

Mr. *Att. Gen.* If I hear what Rule the Court makes, I ſhall ſubmit.

Mr. *Mountague.* I hear the Pleaſure of the Court is, That the Rule ſhall be for a new Trial.

L. C. J. Holt. You muſt have a new *Venire Facias.*

Mr. *Att. Gen.* That cannot be, with Submiſſion: A new *Venire* we cannot have.

L. C. J. Holt. You muſt have a new Trial. The Jury have given their Verdict; whereas they appeared to a wrong Writ, and ſo the former Trial is not warranted.

Mr. *Att. Gen.* I think they are warranted to appear by the Return of the *Venire*; and that we muſt go back but where the Fault is, which is only but where the *Diſtringas* is made out: So that a *Diſtringas de novo* is to be for the ſame Jury. But I will meddle no more in it, without particular Order.

L. C. J. Holt. Do what you will; we will give you no Direction. We quaſh this Trial.

Sir *T. Powis.* My Lord, if you quaſh this Trial, then we are to begin again.

Mr. *Att. Gen.* If the Court is of Opinion that there ought only to be a new *Diſtringas* iſſued, and we can go back no further, I am afraid we ſhall never come right.

Mr. J. *Powel.* The Difficulty is in right awarding the *Diſtringas*, becauſe it does not bear Date with the Return of the *Venire.* But then conſider where you are: If you bring him on a new Trial, he can challenge any one that has given a Verdict before.

L. C. J. Holt. It is a *Diſtringas* to ſummon that Jury, but it is without *Teſte*: And that Jury having given their Verdict, they are not to ſerve again.

Mr. *Att. Gen.* I am ſure, according to Authorities, they muſt begin where the Fault was.

L. C. J. Holt. I ſhould have thought the *Venire de novo* had been proper: For this *Diſtringas* bearing *Teſte* out of Time, and that being erroneouſly executed, there ought to be a new *Diſtringas*, which is to be founded on a new *Venire.*

Mr. *Att. Gen.* If you do quaſh this Trial, I ſuppoſe your Lordſhip will make ſome Award for a new one.

L. C. J. Holt. We leave it to you ——Mr. *Att. Gen.* I cannot enter it.

Mr. J. *Powel.* We muſt grant a *Venire de novo*; which we cannot do without quaſhing this Verdict; and that is the Way to try him again.

Mr. *Att. Gen.* My Lord, I am far from thinking I can alter your Rule; but I can't tell how to follow it.

L. C. J. Holt. What we do is *ex abundanti*, more than we are bound to. We can leave you to do what you can: The taking out the *Venire* and *Diſtringas* are Things of courſe.

Mr. *Att. Gen.* I think there is a Neceſſity to explain my Meaning. I don't pretend to direct what you muſt do; but you muſt direct what is to be done: I cannot award a *Venire.*

L. C. J. Holt. It is taken out of Courſe. You may award that as well as the firſt, if it may be done.

Mr. *Att. Gen.* How can that be done, ſeeing you quaſh the *Diſtringas?*

Mr. J. *Powel.* That is the Award of the Court, and does not hinder you from taking out a new *Venire.*

Mr. *Att. Gen.* I cannot do it without the Court. When you quaſh this, you muſt award another.——*L. C. J. Holt* We do award it.

Mr. *Att. Gen.* I remember in the Caſe of *Fitzwalter*, when they quaſh'd the Trial, they order'd a new one ſhould be had, *&c.*

L. C. J. Holt. If we make an Award, and you don't like it, you will not comply with it: Therefore we leave you to take it out as you will.

Mr. *Att. Gen.* You muſt order a new *Venire*; I cannot award a new one elſe.

L. C. J. Holt. You muſt have a *Venire Facias.*

Mr. *Att. Gen.* That muſt be the Judgment of the Court then. For if I award it, it muſt be by Order of Court.

Mr. J. *Gould.* You had better declare *de novo.*

Mr. *Att. Gen.* I am fearful of what I do. I hope the Court will diſcharge me.

L. C. J. Holt. When a Trial is quaſh'd and ſet aſide for any Irregularity of the Trial, that Jury is diſcharged: All the Pannel is diſcharged, and there muſt be a new Pannel.——Mr. *Att. Gen.* How will that appear?

L. C. J. Holt. If it appear that the *Diſtringas* did not iſſue as it ought, every Thing ſhall be enter'd at large on the Rule: That the *Diſtringas* did not iſſue till the 24th of *October*; therefore they will conſider, that the Verdict ſhall be ſet aſide.

Mr. *Att. Gen.* And that we ſhall have Leave to go to a new Trial.

L. C. J. Holt. *Preſumptum eſt.*

Mr. *Att. Gen.* If you pleaſe to make the Rule then, I ſubmit.

L. C. J. Holt. We will adviſe how to make the Rule.

It was never afterwards thought proper to try him again.

CLXXXI. *The Trial of Captain* THOMAS GREEN, *and his Crew, at the High Court of* Admiralty *of* Scotland, *for* Piracy, March 14, 1704-5. 4 Ann.

* *Examination before-hand.*

THE Lords of Her Majeſty's Privy Council having taken * Precognition of the Grounds of the Information againſt *Thomas Green*, and others of his Crew, they thought fit, and order'd, That the ſaid Captain *Thomas*, &c. ſhould be put to a Trial upon the Crimes informed, before the Judge of the High Court of *Admiralty*. As alſo, the Lords of the Privy Council thought fit at the ſame Time to appoint Aſſiſtants to the *Procurator Fiſcal* of the High Court of *Admiralty*, for the better ordering and carrying on of the ſaid Trial, according to the Tenor of their Act following.

† *about.* ‡ *Preſent.* ‖ *Treaſurer.*

AT Edinburgh, *the Thirteenth Day of* February, 1705 *Years. Committee* † *anent Captain* Green *and his Crew*, ‡ Sederunt *Lord* Chancellor, *Marquis of* Anandale, *Earls of* Haddington, Leven, Ruglen, *Lords* Yeſter, Belhaven, Advocat, ‖ Theſaurer-Deput. Anſtruther, *Sir* John Home, *and* Ormiſtoun, *Younger. It's the Opinion of the Committee, That my Lord Chancellor ſhould write to Court for Remiſſions to* Charles May, *Chyrurgeon:* Antonio Ferdinando, *Cook's Mate*; Antonio Franciſco, *Captain's Man*; George Haines, *Stewart*; George Glen, *Quarter-Maſter*; Alexander Taylor, *Fore-Maſt-Man: And that the Trial againſt Captain* Green *and his Crew, ſhould be purſued before the* Admiral Court; *and that Aſſeſſors ſhould be named to the Judges, and Aſſiſtants to the Procurator-Fiſcal.* Sic ſubſcribitur,

TWEEDALE, *Cancel.* J. P. C.

§ *Theſe.* * *Same.* † *Approved.* ‡ *Trial.* ‖ *Treaſury.*

The above Report of the Committee, anent Captain Green, *Commander of the Ship the* Worceſter, *being upon the Day and Date of* § *thir Preſents, read in Preſence of the Lords of Her Majeſty's Privy Council, and the* * *ſamen was Voted and* † *Approven. And the ſaid Lords did thereby Nominat and Appoint Sir* James Stuart, *Her Majeſty's Advocat, Sir* David Dalrimple, *and Mr.* Wiliam Carmichael, *Her Majeſty's Sollicitors*; *Sir* Patrick Home, *Sir* Gilbert Eliot, *Mr.* Alexander Mackleod, *and Mr.* Francis Grant, *to be Aſſiſtants to Mr.* Alexander Higgins, *Procurator-Fiſcal to the High Court of* Admiralty, *in proſecuting the Libel and Indictment to be given at his Inſtance, againſt the ſaid Captain* Green *and his Crew, before the ſaid Court, to the final End and Deciſion thereof. And the ſaid Lords declared, That they would next Council-Day name five of their own Number, to be Aſſeſſors to the Judges of* Admiralty, *during the Dependence of the aforeſaid* ‡ *Proceſs: And recommended to the Lords of* ‖ *Theſaury, to pay the Lawyers that are employ'd to be Aſſiſtants accordingly.* *Extracted by me,*

GILB. ELIOT, Cls. Sti. Concilii.

Whereupon the Judge of the High Court of *Admiralty* did preſent to the Lords of Council a Petition; "That ſince the Trial was order'd to be "made before him, of the foreſaid Crimes informed againſt Captain *Green* "and his Crew; and that the Matter appear'd to be of great Importance; "he might have, according to Cuſtom in the like Caſes, Aſſeſſors ap-"pointed and joined with him, by the Authority of Council, for his Aſ-"ſiſtance in the ſaid Trial." Whereupon the Lords of Her Majeſty's moſt Honourable Privy Council did Nominate and Appoint the Earl of *Loudoun*, Lord *Belhaven*, Lord *Arniſtoun*, Sir *John Home* of *Blackadder*, and *John Cockburn*, Younger, of *Ormiſtoun*, to be Aſſeſſors to the foreſaid Judge; and aſſiſt and vote with him in the Trial, at the *Procurator-Fiſcal*'s Inſtance, againſt Captain *Thomas Green*, Commander of the Ship the *Worceſter*, and others of his Ship's Crew, before the ſaid High Court of *Admiralty*; for their being guilty of *Piracy, and other Crimes*; and that to the final End and Deciſion thereof; as an Act extracted and ſigned by the Clerk of Council, extant in the Records of the ſaid High Court, bears.

Follows the Court of Juſticiary of the High Court of *Admiralty*, with the whole Trial, as it proceeded before the Judge of *Admiralty*, and the Aſſeſſors above appointed.

CURIA JUSTICIARIA *ſupremæ Curiæ Admiralitatis tenta in Prætorio, vel nova Seſſionis Domo Burgi de* Edinburgh, *quinto die Menſis Martii,* 1705. *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros,* Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arniſtoun, Joannem Home *de* Blackadder, *&* Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia legitime affirmata.

The ſaid Day, the ſaid Earl of *Loudoun*, Lord *Belhaven*, &c. produced the Act of her Majeſty's Privy Council above-mentioned, appointing them to be the Aſſeſſors to the ſaid Judge.

Thereafter the ſaid Aſſeſſors took the Oath of Allegiance and ſigned the ſame, with the Aſſurance, and took the Oath *de fideli adminiſtratione*, and were thereupon admitted and received.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour.

Capt. *John Madder*, chief Mate of the ſaid Ship.
John Reynolds, ſecond Mate of the ſaid Ship.
Thomas Linſtead, Aſſiſtant to the deceaſed *Supercargo* of the ſaid Ship.
James Burn, Boatſwain of the ſaid Ship the *Worceſter*.
James Sympſon, Gunner.
Andrew Robertſon, Gunner's Mate.
John Brucklie, Seaman.
George Kitchen, Seaman.
Henry Keigle, Carpenter.
Samuel Urlines, his Mate.
George Haines, Steward of the ſaid Ship.
Daniel Stringman, Cook.
Samuel Wilcocks, Chyrurgeon's Mate.
George Glen, Seaman there.
Henry Barnes, Seaman there.
Alexander Taylor, Seaman there.
And *John Bannantyne*, Seaman there.

All of them indicted and accuſed at the Inſtance of Mr. *Alexander Higgins*, Advocate Procurator-Fiſcal to the High-Court of Admiralty, for the Crimes of *Piracy*, *Robbery*, and *Murder*, in Manner mentioned in the two ſeveral Indictments raiſed againſt them * thereanent, and whereof † the Tenor follows: Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour, Captain *John Madder* chief Mate of the ſaid Ship, *John Reynolds* ſecond Mate of the ſaid Ship, *Thomas Linſtead* Aſſiſtant to the deceas'd *Supercargo* of the ſaid Ship, *James Burn* Boatſwain of the ſaid Ship, *James Sympſon* Gunner of the ſaid Ship, *Andrew Robertſon* Gunner's Mate, *John Brucklie* Seaman there, and *George Kitchen* Seaman there, all Priſoners; You, and * ilk one of you, are accuſed and indicted at the Inſtance of Mr. *Alexander Higgins*, Advocate Procurator-Fiſcal to the High Court of Admiralty, of the Crimes of *Piracy*, *Robbery*, and *Murder*, in Manner after-mentioned, *viz.* That by the Law of God, the Laws of Nations, of this, and of all well-governed Realms, the Crimes of *Piracy*, *Robbery*, and *Murder*, are prohibited, under all higheſt Pains; and that by the Laws of this Realm, the ſaid Crimes are prohibit under Pain of Death, and † Eſcheat of Moveables. *Nevertheleſs* it is of Verity, that Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour, and his Crew, are guilty, * Art and Part of the ſaid Crimes, or one or other of the ſame, in ſo far as the ſaid Captain *Thomas*, or his ſaid Crew, having ſailed from *England* in the ſaid Veſſel the *Worceſter*, upon Pretence of Merchandizing towards the *Eaſt-Indies*; the foreſaid Captain and his ſaid Crew, belonging to the ſaid Veſſel, did, upon one or other of the Days of the Months of *February*, *March*, *April*, or *May*, in the Year 1703, rencounter, or meet with another Ship or Veſſel, ſailed by its own Men or Crew, upon the Coaſt of *Malabar*, near *Calecute*; and the ſaid Veſſel bearing a red Flag, and having *Engliſh* or *Scots* aboard, at leaſt ſuch as ſpoke the *Engliſh* Language; the ſaid Captain *Thomas Green* and his Crew, after ſome * Intercommuning with them, did, without any lawful Warrant or a juſt Cauſe, attack the ſaid other Veſſel, or Ship, while expecting no ſuch Treatment; and invading her firſt by their Sloup, which they had manned with Guns and other Arms for that Purpoſe, they fell upon the ſaid other Veſſel in an hoſtile Manner, by ſhooting of Guns and otherways; and after ſome Time ſpent in Fighting againſt her by their Sloup, and partly by the approaching of the ſaid *Thomas Green*'s Ship the *Worceſter*, they overcame, and boarded the ſaid other Veſſel, and having ſeized their Men, they killed them, and threw them overboard, and then carried, or cauſed to carry away the Goods that were aboard the ſaid other Veſſel, to their ſaid Ship the *Worceſter*; and then diſpoſed upon the ſaid Ship, by ſelling her aſhore on the ſaid Coaſt. Which Crime, being a wicked Piracy committed by Surprize in Parts ſo remote, and probably with all the Caution the Committers could uſe for concealing thereof, and for preventing Diſcoveries, comes now to be diſcovered in the ſeveral Parts and Circumſtances of the Action, and by ſuch as were preſent thereat; which being all conjoyn'd, does make up and infer the foreſaid Crime objected, and are as follows, *viz.* That the foreſaid Rencounter and Fight betwixt Capt. *Green* and his Crew, and the ſaid Veſſel the *Worceſter*, and the foreſaid other Veſſel taken by her, happen'd on the ſaid Coaſt as above: *Likeas*, at the ſame Time, one or more of the ſaid Ship the *Worceſter*, her Crew being on Shore, and at ſome Diſtance from the Sea, heard the ſaid Shooting, which brought the ſaid Perſons to the Shore, where they, at leaſt the Chyrurgeon of the ſaid Ship the *Worceſter*, one of them, ſaw her riding at a good Diſtance from the Shore upon her Birth (as they ſpeak) and having the other Ship at the Stern, as it were tied or towed to her, as being the Veſſel they had maſter'd or overcome, as ſaid is. *Likeas*, the ſaid Chyrurgeon did ſee the Boat belonging to the ſaid Ship the *Worceſter* coming aſhore from her, and the Chyrurgeon † demanding at ſuch of the Crew as were in her, what had brought them aſhore: They anſwered, that they had been *Buſking* (a Sea-Term uſed for fitting and trimming a Ship for fighting) and they had drunk, ſpilt, or ſtaved all their Water, and they were come for a new Supply: And when a little Time thereafter the ſaid Chyrurgeon went aboard the ſaid Ship the *Worceſter*, he perceived the Deck thereof lumber'd and cover'd, and in a confuſed Manner, with Balls, Boxes, and Goods; whereof when he aſked the Reaſon, *John Madder*, one of the * Pannels, and a principal Actor in the Engagement, anſwered, *Damn you, what have you to do to enquire? Meddle with your Plaiſter-Box.* And when the Chyrurgeon went down to his Station and Cheſt, he called for one of the Blacks *Antonio Ferdinando*, and one *Duncan Mckay* now dead, and another, in order to dreſs them; but when he aſked what Way they came by their Wounds, they declined to anſwer; whereupon the Chyrurgeon refuſing to dreſs them, if they would not tell him how they got their Wounds, the ſaid *John Madder* came to the Chyrurgeon in a Paſſion, and aſked what was his Buſineſs to aſk ſo many Queſtions, when he did ſee the Wounds ſo plain before him, calling him a Blockhead for not dreſſing them; and at length the Conteſt was ſo warm betwixt the ſaid *Madder* and Chyrurgeon, that *Madder* charged him to aſk no more Queſtions, and he charged the Men wounded not to anſwer a Word: And further ordered him back to the Shore, which the Chyrurgeon was forced to comply with; where the Chyrurgeon meeting with *Franciſco de Olivera* the † Linguiſter, aſked him, whether he ſaw any of the *Worceſter*'s Men, that had carried the foreſaid Ship ſo taken into *Keilon* River? And the Linguiſter anſwered, that he had not, but that they were ſome of the *Worceſter*'s Company, who, as ſoon as they had brought her in and made her faſt, took their Boat, and went directly on board: The Ship being taken and carried into *Keilon* River as ſaid is, where ſhe was left with her Yards and Topmaſts down, all unrigged: And the ſaid Linguiſter told the Chyrurgeon further, that one *Coge Commodo* complained he had bought the ſaid Ship taken too dear; whereby it appears that the ſaid Ship taken by Violence, was ſold in Manner aforeſaid. *Likeas*, for further Evidence of the ſaid Piracy, ſince the Time that *John Reynolds*, one of the Pannels, was ſeized with the reſt, for his Acceſſion thereto, there was found a Letter wrote to him by one *Sarah Newlands*, bearing Date *January* the 6th, wherein ſhe tells him, *That tho' he had been baſely wicked; yet ſhe ſhould be ſorry to hear he were guilty of any thing that might bring him to the Gallows; and therefore adviſes him to confeſs; adding, that in his own Letter, which ſhe had ſeen, he ſays, that ſome of their Men had baſely confeſſed, which* (ſays he) *implies that they were guilty.* And when *Reynolds* was queſtioned upon his Letter, he acknowledged that he had wrote a Letter to his Wife, the ſaid *Sarah*'s Siſter, which had occaſioned her writing the ſaid Letter to him; and thereupon he produced the Copy of the ſaid Letter to his Wife, which agrees with what *Sarah* ſays, as the ſaid Copy and *Sarah*'s Letter, both put in the Clerk of the Admiralty's Hands, to be ſeen by the Pannels, bear. *And further*, *George Haines*, one of the Crew of the ſaid *Worceſter*, ſince his coming to *Scotland*, and when at *Bruntiſland*, being aſked by one *James Wilkie*, Taylor, † Burgeſs of *Edinburgh*, ſome Day in *October* laſt, about his Brother, *Andrew Wilkie*, who went Chyrurgeon in Captain *Drummond*'s Ship, if ever the ſaid *Haines* had ſeen the ſaid *Andrew Wilkie* in his Voyage, he flew in a Paſſion, and ſaid, *What Devil was his Concern with Captain* Drummond? Upon which *James Wilkie* forbearing a little till he ſhould be calmer, aſked the ſaid *Haines*, whether he had heard or ſeen any *Scots* Ship coming to or from the *Eaſt-Indies* during their Voyage? *Haines* anſwered, that when they were upon the Coaſt of *Malabar*, a *Dutch* Ship informed them, that one Capt. *Drummond*, commanding a *Scots* Ship, and having a Sloop in Company, was turned Pirate. Upon which *Haines* and they manned their Ship to be in Readineſs, but ſaw him not; only a little thereafter *Haines* added, that he had in his Cuſtody, the Time the ſaid Ship the *Worceſter* was ſeized, which he would not have fallen into the Seizer's Hands for twice the Value of the Ship, but that he had thrown it over-board; adding further, that there was ſtill in the Ship what would never be found by the Seizers, unleſs they pulled her Board from Board, tho' he knew where the Thing lay. *Likeas*, when after the ſaid *James Wilkie* departed, one *Anna Seaton* in *Bruntiſland*, did at his Deſire further enquire at *Haines* about Captain *Drummond*'s Ship; he anſwered, that he ſaw they had a Deſign to pump him, but that they ſhould not be the wiſer of him: At all which Paſſages, *Kenneth Mackenzie*, * Indweller in *Cannongate*, was a preſent Witneſs. And the ſaid *Anna Seaton* did further tell the ſaid *Kenneth Mackenzie*, that when ſhe expoſtulate with *Haines* for his being in Paſſion, as ſaid is; he anſwered, that he knew more of Captain *Drummond* than he would tell at that Time; and that if the ſaid *Andrew Wilkie* was with Captain *Drummond*, he would not be ſeen again. *And further*, the ſaid *Anna Seaton* heard the ſaid *Haines* own and declare their ſaid Wickedneſs; and ſhe and *William Wood*, one of the Gunners of her Majeſty's Artillery, with one *John Henderſon*, † Writer in *Edinburgh*, being in *September* laſt, in *Anna Seaton*'s Mother's Houſe, after having drunk one Health or two, the ſaid *Haines*, who was there preſent, fell in a melancholy Fit, and expreſſed himſelf, *That it's a Wonder, that ſince we did not ſink at Sea, God doth not make the Ground to ſwallow us up for the Wickedneſs that has been committed during the laſt Voyage, on board of that* Old Bitch Beſs, pointing to Captain *Green*'s Ship. And further, the ſaid *Haines* ſaid, That if what the ſaid *John Madder* had done in the ſaid Voyage were well known, he deſerved as much as his Uncle *Madder* met with at *Amſterdam*, who was there burnt in Oil, for attempting to burn their Ships. And when at another Time, the ſaid *Anna Seaton* told *Haines*, that ſhe had an old Sweetheart, who went away with Captain *Drummond*, and would gladly hear ſome Tidings, whether he was dead or alive; the ſaid *Haines*, who was then a * Suitor to *Anna Seaton*, aſſured her ſhe would never ſee him again, if he was in *Drummond*'s Ship, and for a further Confirmation of the Truth of the ſaid Piracy, when a Committee of Council was ſent to *Bruntiſland*, to cauſe Search and unload the ſaid Veſſel, it was found by the Skippers and Seamen employed, that the Goods aboard her were not ſtowed as Merchant Goods uſed to be, but were found in the Hold in ſuch Confuſion, as if taken by Piracy, and no otherways. *Likeas*, when the ſaid Ship the *Worceſter* was ſeized, the ſaid *John Madder* being queſtioned about Captain *Drummond*'s Ship, he took out of his Pocket, or at leaſt ſhewed in his Hand, the Seal of the *African* Company, which he could never lawfully have got. By all which, they being joined and connected together (as a Diſcovery of ſuch a Wickedneſs, practiſed in ſuch remote Parts, and ſo induſtriouſly and obſtinately endeavoured to be concealed, deſerves to be) the ſame in all the Points and Circumſtances thereof, at leaſt ſuch, and ſo many of them as are † relevant, and are offered to be proven by a cumulative Probation, do plainly amount to ſuch a plenary Evidence, as may fully convince all impartial Men, that the aforeſaid Captain *Green* and his ſaid Crew, are all and each of them guilty, Art and Part, of the foreſaid Crimes of *Piracy*, *Robbery*, and *Murder*, or one or other of them above charg'd; which being found by a Verdict of an † Aſſize before the Judge of the Admiralty, and the Lords Aſſeſſors appointed by the Lords of the Privy-Council, the forenamed Perſons, and each of them, ought to be puniſhed by Sentence of the ſaid Court with the Pain of Death, and Confiſcation of their Moveables, to the Example and Terror of others, to do or commit the like in Time coming.

* *Concerning the ſame.*
† *Contents.*
* *Every one.*
† *Forfeiture.*
* *Of contriving and acting.*
* *Diſcourſe.*
† *Aſking.*
* *Perſons indicted.*
† *Interpreter.*
† *Citizen.*
* *Inhabitant.*
* *Clerk for Law-Buſineſs.*
* *Sweetheart, or Wooer.*
† *Sufficient to bear an Indictment.*
† *Jury.*

Additional Concluſion to the Indictment, at the Inſtance of Mr. Alexander Higgins, *Procurator-Fiſcal to the Court of Admiralty, againſt Captain* Green, *&c.*

Viz. THAT the Concluſion of the ſaid Indictment given on *Saturday* the ſeventeenth Inſtant, bearing the Pain of Death, and of Eſcheat

and Confiſcation of Moveables, ſhould extend to the Eſcheat and Confiſcation of the ſaid Ship and Cargo, by reaſon of the foreſaid Crime and Piracy; and that the ſaid Captain *Thomas Green*, &c. ſhould anſwer to the foreſaid Concluſion, as thus explained, and extended to the Confiſcation
of the ſaid Ship and Cargo, as in Caſe of Piracy, the 5th of
* *Appearance.* *March*, which is the Day of * Compearance aſſigned to the
ſaid Pannels, or at leaſt upon the 6, 7, 8, or 9 Days of *March*
thereafter, as the true Import, or at leaſt a clear Conſequent of the foreſaid
Crime and Indictment given thereupon: The Liſt of Wit-
† *Jurors.* neſſes and † Aſſizers remaining the ſame, as ſubjoined to the
foreſaid principal Indictment. *Sic ſubſcribitur*

ALEXANDER HIGGINS.

HEnry *Keigle*, Carpenter in the Ship called *Worceſter*, now in *Bruntiſland* Harbour, *Samuel Urlines* his Mate, *George Haines* Steward of the ſaid Ship, *Daniel Stringman* Cook of the ſaid Ship; *Samuel Wilcocks* Chyrurgeon's Mate, *George Glenn* Seaman there, *Henry Barnes* Seaman there, *Alex. Taylor* Seaman there, and *John Bannantine* Seaman there; all of Captain *Thomas Green* Commander of the ſaid Ship his Crew: You, and ilk one of you are accuſed and indicted at the Inſtance of Mr. *Alex. Higgins* Advocate, Procurator-Fiſcal to the High Court of Admiralty, of the Crimes of *Piracy*, *Robbery* and *Murder*, in Manner after-mention'd, *viz.* That by the Law of God, the Laws of Nations, of this, and of all other well-govern'd Realms, the Crimes of *Piracy*, *Robbery*, and *Murder*, are prohibite under all higheſt Pains: And that by the Laws of this Realm, the ſaid Crimes are prohibite, under Pain of Death, and Eſcheat of Moveables. *Nevertheleſs*, it is of Verity, that Captain *Thomas Green* Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour, and his Crew, are guilty, Art and Part, of the ſaid Crimes, or one or other of the Seamen, in ſo far as the ſaid Captain *Thomas*, or his ſaid Crew, having ſailed from *England* in the ſaid Veſſel the *Worceſter*, upon Pretence of Merchandizing towards the *Eaſt-Indies*, the foreſaid Captain and his ſaid Crew belonging to the ſaid Veſſel, did upon one or other of the Days of the Months of *February*, *March*, *April* or *May*, in the Year 1703, rencounter and meet with another Ship or Veſſel, ſailed by its own Men or Crew, upon the Coaſt of *Malabar* near *Calecute*; and the ſaid Veſſel bearing a red Flag, and having *Engliſh* or *Scots* aboard, at leaſt ſuch as ſpoke the *Engliſh* Language, the ſaid Captain *Thomas Green* and his Crew, after ſome intercommuning with them, did without any lawful Warrant, or juſt Cauſe, attack the ſaid other Veſſel or Ship, while expecting no ſuch Treatment; and invading her firſt by their Sloop, which they had manned, and furniſhed with Guns and other Arms for that Purpoſe, they fell upon the ſaid other Veſſel in an hoſtile Manner, by ſhooting of Guns and otherways; and after ſome Time ſpent in fighting againſt her by their Sloop, and partly by the approaching of the ſaid *Thomas Green*'s Ship the *Worceſter*, they overcame, and boarded the ſaid other Veſſel, and having ſeized their Men, they killed them, and threw them over-board, and then carried, or cauſed to carry away the Goods that were aboard of the ſaid other Veſſel to their ſaid Ship the *Worceſter*, and then diſpoſed upon the ſaid Ship, by ſelling her aſhore on the ſaid Coaſt. Which Crime being a wicked Piracy, committed by Surprize in Parts ſo remote, and probably with all the Caution the Committers could uſe for concealing thereof, and for preventing Diſcoveries, comes now to be diſcovered in the ſeveral Parts and Circumſtances of the Action, and by ſuch as were preſent thereat: Which being all conjoined, does make up and infer the foreſaid Crime objected, and are as follows, *viz.* That the foreſaid Rencounter and Fight between Captain *Green* and his Crew, and the ſaid Veſſel the *Worceſter*, and the foreſaid other Veſſel taken by her, happen'd on the ſaid Coaſt as above: *Likeas*, at the ſame Time, one or more of the ſaid Ship the *Worceſter*, her Crew being on Shore, and at ſome Diſtance from the Sea, heard the ſaid ſhooting, which brought the ſaid Perſons to the Shore, where they, at leaſt the Chyrurgeon of the ſaid Ship the *Worceſter* one of them, ſaw her riding at a good Diſtance from the Shore upon her Birth (as they ſpeak) and having the other Ship at her Stern, as it were tied or towed to her, as being the Veſſel they had maſter'd or overcame, as ſaid is. *Likeas*, the ſaid Chyrurgeon did ſee the Boat belonging to the ſaid Ship the *Worceſter* coming aſhore from her, and the Chyrurgeon demanding, at ſuch of the Crew as were in her, what had brought them aſhore? They anſwered, that they had been *Buſking* (a Sea-Term, uſed for fitting and trimming a Ship for fighting) and that they had drunk, ſpilt, or ſtaved all their Water, and they were come for a new Supply; and when a little Time thereafter the ſaid Chyrurgeon went aboard the ſaid Ship the *Worceſter*, he perceived the Deck thereof lumber'd and cover'd, and in a confuſed Manner, with Balls, Boxes and Goods; whereof when he aſk'd the Reaſon, *John Madder*, one of the Pannels, and a principal Actor in the Engagement, anſwer'd—*Damn you, what have you to do to enquire? Meddle with your Plaiſter-Box.* And when the Chyrurgeon went down to his Station and Cheſt, he called for one of the Blacks *Antonio Ferdinando*, and one *Duncan Mackay* now dead, and another, in order to dreſs them; but when he aſked what way they came by their Wounds, they declined to anſwer: Whereupon the Chyrurgeon refuſing to dreſs them, if they would not tell him how they got their Wounds, the ſaid *John Madder* came to the Chyrurgeon in a Paſſion, and aſked what was his Buſineſs to aſk ſo many Queſtions, when he did ſee the Wounds ſo plain before him? Calling him a Blockhead for not dreſſing them. And at length the Conteſt was ſo warm betwixt the ſaid *Madder* and Chyrurgeon, that *Madder* charged him to aſk no more Queſtions, and he charged the Men wounded not to anſwer a Word: And further, order'd him back to the Shore, which the Chyrurgeon was forced to comply with. Where the Chyrurgeon meeting with *Franciſco de Olivera* their Linguiſter, aſked him, Whether he ſaw any of the *Worceſter*'s Men, that had carried the foreſaid Ship ſo taken, into *Keilon* River? And the Linguiſter anſwered, that he had not; but that they were ſome of the *Worceſter*'s Company, who, as ſoon as they had brought her in, and made her faſt, took their Boat, and went directly on board: The Ship taken being carried into *Keilon* River, as ſaid is, where ſhe was left, with her Yards and Top-Maſts down, all unrigged. And the ſaid Linguiſter told the Chyrurgeon further, That one *Cogo Commodo* complained he had bought the ſaid taken Ship too dear; whereby it appears, that the ſaid Ship taken by Violence, was ſold in Manner foreſaid.

Likeas, for further Evidence of the ſaid Piracy, ſince the Time that *John Reynolds*, one of the Pannels, was ſeized with the reſt, for his Acceſſion thereto; there was found a Letter wrote to him by one *Sarah Newlands*, bearing Date the 6th of *January*; wherein ſhe tells him, That though he had been baſely wicked, yet ſhe ſhould be ſorry to hear he were guilty of any thing that might bring him to the Gallows: And therefore adviſes him to confeſs; adding, That in his own Letter, which he had ſeen, he ſays, that ſome of their Men had baſely confeſſed; which, ſays ſhe, implies, that they were guilty. And when *Reynolds* was queſtioned upon his Letter, he acknowledged that he had wrote a Letter to his Wife, the ſaid *Sarah*'s Siſter, which had occaſioned her writing the ſaid Letter to him: And thereupon he produced the Copy of the ſaid Letter to his Wife, which agrees with what *Sarah* ſays; as the ſaid Copy, and *Sarah*'s Letter (both put in the Clerk of the *Admiralty*'s Hands, to be ſeen by the Pannels) bear.

And further: George Haines, one of the Crew of the ſaid *Worceſter*, ſince his coming to *Scotland*, and when at *Bruntiſland*, being aſked by one *James Wilkie*, Taylor, Burgeſs of *Edinburgh*, ſome Day in *October* laſt, about his Brother *Andrew Wilkie*, who went Chyrurgeon in Captain *Drummond*'s Ship; if ever the ſaid *Haines* had ſeen the ſaid *Andrew Wilkie* in his Voyage? He flew in a Paſſion, and ſaid, *What Devil was his Concern with Captain* Drummond? Upon which, *James Wilkie* forbearing a little, till he ſhould be calmer, aſk'd the ſaid *Haines* again, Whether he had heard or ſeen any *Scots* Ships, coming to or from the *Eaſt-Indies*, during their Voyage? *Haines* anſwered, That when they were upon the Coaſt of *Malabar*, a *Dutch* Ship inform'd them, That one Captain *Drummond*, commanding a *Scots* Ship, and having a Sloop in Company, was turn'd Pyrate: Upon which *Haines* ſaid, they mann'd their Sloop to be in Readineſs, but ſaw him not: Only a little thereafter, *Haines* added, That he had in his Cuſtody the Time the ſaid Ship the *Worceſter* was ſeized, which he would not have fallen into the Seizer's Hands for twice the value of the Ship; but that he had thrown it overboard: Adding further, That there was ſtill in the Ship what would never be found by the Seizers, unleſs they pull'd her Board from Board, tho' he knew where the Thing lay.

Likeas, when after the ſaid *James Wilkie*'s Departure, one *Anna Seaton* did, at his Deſire, further enquire at *Haines* about Captain *Drummond*'s Ship; he anſwered, That they had a Deſign to pump him, but that they ſhould not be the wiſer of him. At all which Paſſages, *Kenneth Mackenzie*, an Indweller in *Cannongate*, was a preſent Witneſs. And the ſaid *Anna Seaton* did further tell the ſaid *Kenneth Mackenzie*, That when ſhe expoſtulate with *Haines* for his being in a Paſſion, as ſaid is; he anſwered, That he knew more of Captain *Drummond* than he would tell at that Time: And that if the ſaid *Andrew Wilkie* was with Captain *Drummond*, he would not be ſeen again.

And further, The ſaid *Anna Seaton* heard the ſaid *Haines* own and declare their ſaid Wickedneſs. And ſhe, and *William Wood*, one of the Gunners of Her Majeſty's Artillery, with one *John Henderſon* Writer in *Edinburgh*, being in *September* laſt at *Anna Seaton*'s Mother's Houſe; after having drank a Health or two, the ſaid *Haines*, who was there preſent, fell in a melancholy Fit; and expreſs'd himſelf, *That it's a wonder that ſince we did not ſink at Sea, God doth not make the Ground to ſwallow us up, for the Wickedneſs that has been committed during the laſt Voyage on Board of that* Old Bitch *Beſs*; pointing to Captain *Green*'s Ship. And further, the ſaid *Haines* ſaid, That if what the ſaid *John Madder* had done in the ſaid Voyage were well known, he deſerved as much as his Uncle *Madder* met with at *Amſterdam*; who was there burnt in Oil, for attempting to burn their Ships. And when, at another Time, the ſaid *Anna Seaton* told *Haines*, That ſhe had an old Sweetheart who went away with Captain *Drummond*, and would gladly hear ſome Tidings whether he was dead or alive; the ſaid *Haines*, who was then a Suitor of *Anna Seaton*'s, aſſured her, ſhe would never ſee him again, if he was in *Drummond*'s Ship.

And for a further Confirmation of the Truth of the ſaid Piracy, when a Committee of Council was ſent to *Bruntiſland*, to cauſe Search and unload the ſaid Veſſel; it was found, by the Skippers and Seamen employ'd, that the Goods aboard her were not ſtowed as Merchant Goods uſed to be; but were found in the Hold in ſuch Confuſion, as if taken by Piracy, and no otherways. *Likeas*, when the ſaid Ship the *Worceſter* was ſeized, the ſaid *John Madder* being queſtion'd about Captain *Drummond*'s Ship; he took out of his Pocket, or at leaſt ſhewed in his Hand, the Seal of the *African* Company; which he could never have lawfully got.

By all which, they being joined and connected together (as a Diſcovery of ſuch a Wickedneſs practiſed in ſuch remote Parts, and ſo induſtriouſly and obſtinately endeavour'd to be concealed, deſerves to be) the ſamen, in all the Points and Circumſtances thereof; at leaſt ſuch, and ſo many of them as are relevant, and are offer'd to be proven by a cumulative Probation; do plainly amount to ſuch a plenary Evidence, as may fully convince all impartial Men, that the foreſaid Captain *Green* and his ſaid Crew, are all and each of them guilty, Art and Part, of the foreſaid Crimes of *Piracy*, *Robbery*, and *Murder*, or one or other of them above charged. Which being found by a Verdict of an Aſſize before the Judge of the *Admiralty*, and the Lords Aſſeſſors appointed by the Lords of Privy Council; the forenamed Perſons, and each of them, ought to be puniſh'd by Sentence of the ſaid Court, with the Pain of Death, and Confiſcation of their Moveables; to the Examples and Terror of others, to do or commit the like in Time coming.

Additional Concluſion of the Indictment, at the Inſtance of Mr. Alexander Higgins, *Procurator-Fiſcal to the Court of* Admiralty, *againſt Captain* Thomas Green, *&c.*

Viz. THAT the Concluſion of the ſaid Indictment given on *Saturday*, the Seventeenth Inſtant, bearing the Pain of Death, and of Eſcheat and Confiſcation of Moveables, ſhould extend to the Eſcheat and Confiſcation of the ſaid Ship and Cargo, by reaſon of the foreſaid Crime of Piracy: And that the ſaid Captain *Thomas Green*, &c. ſhould anſwer to the foreſaid Concluſion, as thus explained, and extended to the Confiſcation of the ſaid Ship and Cargo, as in the Caſe of Piracy,
the foreſaid Fifth of *March*, which is the Day of * Com- * *Appearance.*
pearance aſſigned to the ſaid Pannels, or at leaſt upon the 6th,
7th, 8th, or 9th Days of *March* thereafter; as the true Import, or at leaſt a clear Conſequent of the foreſaid Crime and Indictment given thereupon: The Liſt of Witneſſes and Aſſizers remaining the ſame, as ſubjoined to the foreſaid principal Indictment. *Sic ſubſcribitur*,

ALEXANDER HIGGINS.

PURSUERS.

PURSUERS.

Mr. *Alexander Higgins*, Procurator Fiſcal.
Sir *James Stuart*, her Majeſty's Advocat.
Sir *David Dalrymple*, and Mr. *William Carmichael*, her Majeſty's Sollicitors.
Sir *Patrick Home*.
Sir *Gilbert Eliot*.
Mr. *Francis Grant*.
Advocats.

Procurators in DEFENCE.

Sir *David Cunningham*.
Sir *David Thoirs*.
Sir *Walter Pringle*.
Mr. *David Forbes*.
Mr. *George Alexander*.
Mr. *John Spotſwood*.
Mr. *John Elphinſton*.
Advocats.

The *Procurator-Fiſcal* declared judicially, he * paſſed from *Samuel Urlines*, Carpenter's-Mate of the Ship the *Worceſter*, *Henry Barnes* Seaman, and *Daniel Stringman* Cook of the ſaid Ship; whereupon they were diſmiſſed from the Bar.

Alexander Higgins.

* *had nothing againſt.*

Her Majeſty's Advocat for the Purſuers craved, that the † Dyet againſt Captain *Thomas Green* and others, contained in that Indictment with him, might be continued.

† *Time of Proſecution.*

It was objected by the Pannel's Procurators, that the Dyet could not be continued againſt them; being contrair to the Act of Parliament *for preventing wrongus Impriſonment*, and contrair to an expreſs Clauſe therein.

It was replied for the Purſuers, that the Act of Parliament is opponed; which only requires the Dyet of the Trial to be fixed within ſixty Days after Intimation, which was done; but then allows to the Purſuers to inſiſt, and to the Judge to determine by a final Sentence, within forty Days, if before the Lords of Juſticiary, and thirty Days, if before any other Judge.

*Which Objection, with the Anſwers and Replies made thereto, being conſidered by the Judge and Aſſeſſors, they * repelled the Objection, and continued the Dyet againſt the ſaid Captain* Green *and others, contained in the Indictment againſt him, till* Wedneſday *next at Nine of the Clock; and ordained the Pannels to be carried back to Priſon.*

JAMES GRAHAM, *I. P. A.*

* *rejected, or over-ruled.*

It was alledg'd by the Procurators for the Pannels, that the Crime † libelled being alledg'd to be committed upon the Coaſt of *Malabar*, and by *Engliſhmen*; they ought to be remitted to be tried in *England*; and cannot be judged by the Judge of the High Court of *Admiralty* and Aſſeſſors, who are not Judges competent.

† *indicted.*

The Procurator Fiſcal and Purſuers Procurators anſwer'd, That they opponed the Act of Parliament, 1681, which founds the Admiral's Juriſdiction in the Caſe libelled: Declaring expreſly, *That the High Admiral hath the ſole Privilege and Juriſdiction in all Maritime and Sea-faring Cauſes, Foreign and Domeſtick, whether Civil or Criminal whatſoever, within this Realm; and over all Perſons, as they are concerned in the ſame: And that he is his Majeſty's Lieutenant and Juſtice General upon the Seas*, &c.

*Which Alledgeance * and Anſwer, with the other Replies and † Duplices, being conſidered by the Judge and Aſſeſſors; they repelled the Alledgeance in reſpect of the Anſwer; and found that the Judge Admiral and Aſſeſſors are competent and proper Judges, to ‡ Cognoſce and determine in the Caſe and Crimes libelled.*

JAMES GRAHAM, *I. P. A.*

* *Allegation.*
† *further Anſwer.*
‡ *enquire into.*

THE Grounds of the Indictment, at the Inſtance of the Procurator Fiſcal, againſt *Henry Keigle*, *George Haines*, *Samuel Wylcocks*, *George Glen*, *Alexander Taylor*, and *John Bannantyne* here preſent, being fully debated *vivâ voce*: The Judge of the High Court of *Admiralty* and Aſſeſſors continue the Dyet, at the ſaid Mr. *Alexander Higgins*'s Inſtance, againſt the ſaid *Henry Keigle*, and other Pannels abovenamed, till *Tueſday* the 13th Inſtant, at Nine a-Clock in the Forenoon; and ordain both Parties to give in their * Informations betwixt and that Time; the Purſuer to give in his betwixt and *Thurſday* next at Twelve a-Clock of the Day; and the Pannels to give in theirs betwixt and *Saturday* next, at Twelve Afternoon thereafter; in order to be recorded in the Court-Books: And ordains the Aſſizes and Witneſſes to attend then, and at the other Dyet upon *Wedneſday* next, againſt Captain *Green* and others, † ilk Perſon under the Pain of one hundred *Merks*; and the Pannels to be carried back to the reſpective Priſons.

JAMES GRAHAM, I. P. A.

* *Pleas, or Briefs.*
† *every.*

CURIA JUSTICIARIA, *Supremæ Curiæ Admiralitatis tenta in Prætorio, vel nova Domo Seſſionis Burgi de* Edinburgh, *ſeptimo Die Menſis* Martii, 1705, *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arneſtoun, Joannem Home *de* Blackadder, & Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia Legitimè Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour.
Captain *John Madder*, Chief Mate of the ſaid Ship.
John Reynolds, Second Mate of the ſaid Ship.
Thomas Linſteed, Aſſiſtant to the deceas'd *Supercargo* of the ſaid Ship.
James Burn, Boatſwain of the ſaid Ship.
James Simpſon, Gunner.
Andrew Robertſon, Gunner's Mate.
John Bruckley, Seaman.
George Kitchen, Seaman.

All of them indicted and accuſed at the Inſtance of Mr. *Alexander Higgins*, Advocat; Procurator Fiſcal to the High Court of *Admiralty*; for the Crimes of *Piracy*, *Robbery*, and *Murder*, in Manner mentioned in the Indictment raiſed againſt them thereanent, before inſert in the Court holden the Fifth of *March* inſtant.

PURSUERS.

Mr. *Alexander Higgins*, Procurator Fiſcal.
Sir *James Stuart*, her Majeſty's Advocat.
Sir *David Dalrymple*, and Mr. *William Carmichael*, her Majeſty's Sollicitors.
Sir *Patrick Home*.
Sir *Gilbert Eliot*.
Mr. *Alexander Mackleod*.
Mr. *Francis Grant*.
Advocats.

Procurators in DEFENCE.

Sir *David Thoirs*.
Sir *Walter Pringle*.
Mr. *David Forbes*.
Mr. *George Alexander*.
Mr. *John Elphinſton*.
Mr. *John Spotſwood*.
Advocats.

The Grounds of the Indictment at the Inſtance of the Procurator Fiſcal, againſt Captain *Green* and other Pannels here preſent, and the Reaſons why *John Reynolds*, one of the Pannels, who is a Witneſs cited in the † Exculpation, at the Inſtance of the other Pannels, ſhould be tried firſt upon the Libel, to the Effect, that if ‡ aſſoilzied, he may be adduced as a Witneſs for the ſaid other Pannels in the foreſaid Exculpation, being debated *vivâ voce*; the Judge of the High Court of *Admiralty*, and Aſſeſſors, continue the Dyet at the ſaid Mr. *Alexander Higgins*'s Inſtance againſt the ſaids hail Pannels, till *Tueſday* the thirteenth Inſtant, at Nine a-Clock in the Forenoon: And ordains both Parties to give in their Informations betwixt and that Time; the Purſuer to give in his betwixt and To-morrow; and the Pannels to give in theirs betwixt and *Saturday* thereafter, in order to be recorded in the Court Books: And ordains the Aſſizers and Witneſſes to attend with ilk Perſon, under the Pain of two hundred Merks; and the Pannels to be carried back to Priſon.

JA. GRAHAM, I. P. A.

† *Plea of Defence.*
‡ *abſolv'd, or acquitted.*

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* I N F O R M A T I O N

* *Plea, or Brief.*

For Mr. *Alexander Higgins*, Procurator Fiſcal of the High Court of *Admiralty*:

AGAINST

Captain *Thomas Green*, Commander of the *Worceſter*, and his Crew and Complices.

THERE being two * Libels raiſed before the High Court of *Admiralty*, and the Lords Aſſeſſors appointed by the Lords of Privy Council, both at the Inſtance of the ſaid Mr. *Alexander Higgins*; but the firſt againſt *Henry Keigle*, Carpenter in the Ship called the *Worceſter*, now in *Bruntiſland* Harbour; *Samuel Urline*, his Mate; *George Haines*, Stewart of the ſaid Ship; *Daniel Stringman*, Cook in the ſaid Ship; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, Seaman there; *Henry Barnes*, Seaman there; *Alexander Taylor*, Seaman there; and *John Ballantyne*, Seaman there: And the ſecond againſt the ſaid Captain *Thomas Green*, Commander of the ſaid Ship the *Worceſter*; Captain *John Madder*, Chief Mate of the ſaid Ship; *John Reynolds*, Second Mate of the ſaid Ship; *Thomas Linſtead*, Aſſiſtant to the deceas'd Supercargo of the ſaid Ship; *James Burn*, Boatſwain of the ſaid Ship; *James Simpſon*, Gunner of the ſaid Ship; *Andrew Robertſon*, Gunner's Mate; *John Brucklie*, Seaman there; and *George Kitchen*, Seaman there; all Priſoners.

* *Indictment.*

Both the Libels being the ſame, the Tenor thereof prefixt to the Information is *verbatim* conform to the Indictments on the preceding Pages, in the Court holden the Fifth of *March*, 1705, and whereto this refers.

When the * haill foreſaids Pannels were brought to the Bar, and the ſaid Libels read againſt them; the Procurator Fiſcal declared, That he inſiſted firſt upon the firſt Libel, *viz.* againſt the ſaids *Henry Keigle*, Carpenter; *Samuel Urlane*, *George Haines*, *Daniel Stringman*, *Samuel Wilcocks*, *George Glen*, *Henry Barnes*, *Alexander Taylor*, and *John Ballantyne*; and after ſome Debate moved by the Pannels Procurators, that the Pannels having uſed the Method preſcribed by the Act of Parliament, to bring themſelves to a Trial within ſixty Days, they ought now all of them to be inſiſted againſt; and it being anſwered, That all that the Act of Parliament required was, That a Day ſhould be fix'd for the Trial within ſixty Days after the Charge given for that Effect; the ſame was done, and alſo the whole Pannels ſo far inſiſted againſt, that their Libels were read, which fully ſatisfies that Part of the Act; and that as to further inſiſting, proſecuting and concluding, the Act of Parliament allowed fourty Days further before the Commiſſion of Juſticiary, and thirty Days before any other inferior Judicature: So that the Procurator Fiſcal might very well proceed againſt theſe contained in the firſt Libel this Day, and continue theſe contained in the ſecond Libel till the next Court-Day. The Lord High Admiral repelled the foreſaid Alledgeance made for all the Pannels, and allowed the Procurator Fiſcal to inſiſt againſt theſe in the firſt Libel, the foreſaid 5th of *March*, and continued the Dyet againſt theſe in the ſecond Libel, till the 7th of the ſaid Month.

* *whole.*

It was then alledged for theſe in the firſt Libel, No Proceſs; in regard the Crimes charged were libelled to have been done in the *Eaſt Indies* in *Malabar*, far without the *Scottiſh* Seas, nor was there any Accuſer either of the Owners of the Ship and Goods, or of the neareſt of Kin of the Perſons alledged, Murder'd; ſo that the Admiral was incompetent to this Trial; For the *competentia fori (Competency of the Court)* † in Criminals, being founded either in the *locus delicti (the Place where the Crime was committed)* or in the *locus domicilii (the Place of Habitation* of the Pannels) or in the *locus originis (Place of Birth)* neither of theſe could be ſubſumed upon in this Caſe: The Pannels *Engliſhmen* and Strangers,

† *Criminal Caſes.*

and the Crimes libelled to have been committed in the *Eaſt-Indies*, as ſaid is. And * *eſto*, that the Crime of Piracy may be tried any where, where the Pirates are found, yet that is only where the accuſed are notoriouſly ſuch. And farther, tho' the Pannels could be accuſed here in *Scotland*, yet they could be only accuſed before the † Commiſſion of Juſticiary, and not before the High Admiral, whoſe Juriſdiction extends no further than the Seas within the Compaſs of her Majeſty's Sovereignty.

* *allowing.*

† *Court for Criminal Caſes.*

To all which it is anſwer'd by the Purſuer. 1. That though the Competency of the Judge in Criminals be ordinarily ſaid, to be found either *in loco delicti* (the Place where Crime was committed) or *in loco domicilii* (Place of Habitation of the Delinquents) or *in loco originis* (the Place of their Birth) yet there is a ſuperior Conſideration, and that is the *locus deprehenſionis* (Place where they were taken) where the Criminal is found and deprehended, which doth ſo over-rule in this Matter, that neither the *locus domicilii* (Place of Habitation) nor the *locus originis* (Place of Birth) doth ‡ found the Judges Competency, *niſi ibi reus deprehendatur* (except the Criminal be apprehended there). And ſo it is that here the Pannels were and are deprehended, which happening in the Cauſe of Piracy, a Crime againſt the Law of Nations, and which all Mankind have an Intereſt to purſue, wherever the Pirates can be found: The Procurator-Fiſcal's Intereſt to purſue is thereby manifeſt, and the Pannels being here deprehended, cannot decline the Admiral's Juriſdiction as incompetent. 2. As to what is alledged, that the Pannels are not libelled to be habitual and notorious Pirates, but on the contrary, had and do produce a Commiſſion, which frees them of that Suſpicion.

‡ *Juſtify or make good.*

It's anſwer'd, That Piracy being † libelled, as to the Particular charged, even habitual Piracy is thence preſumed; but a ſingle Act of Piracy libelled, doth both give the Purſuer a ſufficient Title and Intereſt, and likeways founds the Admiral's Juriſdiction, in reſpect the Pannels charged for Piracy are here found. And 3. The Lord High Admiral is moſt proper for this Cognition and Trial, becauſe by the Act of Parliament, 1681, he is declared to be ‖ Juſtice-General upon the Seas, which albeit it be limited inwardly towards the Land, yet outwardly is not limited; ſo that the Lord High-Admiral is there declared to have the ſole Juriſdiction in all Maritime and Sea-faring Cauſes, Foreign and Domeſtick, whether Civil or Criminal, within this Realm, and over all Perſons, as they are concerned in the ſame, which as to the Seas and all Maritime Crimes whatſoever, makes the High Admiral Juſtice-General, as ſaid is, without Limitation; and therefore it is in vain for the Pannels to pretend, that if their Cauſe be cognoſcible here, it muſt at leaſt be tried before the Commiſſion of Juſticiary, ſince the Lord High-Admiral is in this Caſe fully veſted with the Juſtice-General's Power; and as for what may be the Cuſtom of *England*, it doth not concern, nor can be any Rule for us.

† *mentioned in the Indictment.*

‖ *Lord Chief Juſtice.*

And the Lord High-Admiral and Aſſeſſors having * adviſed the Debates, they repelled the Declinator †, and found the Court competent.

* *conſidered.*

† *declining the Juriſdiction of the Court.*

Thereafter it was alledged for theſe in the firſt Libel, That they were conveened §, as having been of Captain *Green*'s Crew, and his Complices in the Crimes libelled; ſo that he being their Commander and Captain, they could not be put to anſwer, unleſs the Captain himſelf was inſiſted againſt; ſeeing firſt, it was obvious, that he being their Commander and Captain, ought firſt to be anſwerable. And ſecond, That they being under his Command, could not be charged for any thing alledged done by them as his Crew, unleſs he were firſt tried, ſeeing that he might have Defences both for himſelf and them, which probably they could not make for themſelves.

§ *Summoned or brought to the Bar.*

To which it was anſwered by the Purſuer, That the Captain and his Crew were not * conveened for any thing alledged acted by him as their Captain, and by them as his Crew, but were all conveened as Complices and *ſocii* (i. e. *Fellow-Criminals)* and Partakers of the foreſaid wicked Crimes of Piracy, Robbery and Murder; which Crimes as they could be warranted by no Commiſſion or Character the Captain did or could pretend, ſo could they be as little warranted by their Condition of being ſubject to him as his Crew; for here the Saying holds, That they were all *hic ſocii & facinus quos inquinat æquat*, (i. e. *they were Fellows in this Caſe, and being defiled with the ſaid Crime, were in that Reſpect equal.)* As alſo the other Maxim, That § Wrong has no Warrant; and therefore, ſeeing that neither the Captain's Character, nor their Condition as his Crew, could be pretended as a Defence either to him or them; and that the Libel of the foreſaid Crimes did charge them all, as being *Socii*, and together involved therein; and that without Queſtion, in the Caſe of ſuch an Accuſation for ſuch horrid Crimes, every one muſt anſwer for himſelf; the Alledgeance could not be * reſpected. Beſides that it was evident, that if Captain *Green*, and theſe in the ſecond Libel, were all confeſſing and pardon'd; yet the firſt Libel againſt theſe of his Crew therein contained, would ſtill lawfully proceed; and Captain *Green* himſelf, and thoſe joined with him in his Libel, might be made uſe of as Witneſſes againſt theſe contained in the firſt Libel. By all which it was evident, That the Trial ought to proceed againſt theſe in the firſt Libel, without reſpect to the foreſaid dilatory Defence.

* *brought before the Court.*

§ *Injuſtice.*

* *regarded.*

This being the dilatory Defence objected againſt the firſt Libel, and anſwered above; and the * peremptory Defences againſt both Libels being common and coincident, for the more clear Method; the dilatory Defence proponed alſo for theſe contained in the ſecond Libel, with the Anſwers thereto, are hereunto ſubjoined.

* *poſitive.*

The Dilatory then propoſed for Captain *Green*, and others (in the ſecond Libel) was, The foreſaid *John Reynolds* was conveened and † impannelled with him; whereas it was acknowledged by the Purſuer, that *Reynolds* was aſhore the Time of the Piracy, and other Crimes libelled to have been committed by Captain *Green*, and the reſt of his Complices; whereby *Reynolds* appeared, even by the Purſuer's Acknowledgment, to be innocent. Like as Captain *Green* and the other Pannels, had raiſed an * Exculpation, and therein had cited *Reynolds* for a Witneſs: So that according to the Method practiſed in Criminals, Captain *Green* and the other Pannels had good Ground to demand, that *Reynolds* might be firſt tried, and ſo purged from being *Socius Criminis, (a Fellow-Criminal)* and put in ‡ Caſe to be a Witneſs, for the Captain and the other Pannels, to prove their Grounds of Exculpation. For there could be nothing more reaſonable, as it was alſo ordinary, than that when a Purſuer did raiſe a Libel againſt ſeveral Perſons (whereof ſome were innocent, and might be Witneſſes for the other Criminals and Pannels), theſe other Pannels might juſtly crave, that ſuch as they alledged to be innocent might be firſt tried and purged, and ſo made capable to be Witneſſes; ſince otherways any malicious Purſuer might include both the Defenders and all their Witneſſes in one Libel: And thus by making the Witneſſes *Socii Criminis (Fellow-Criminals)* in the Libel, prejudge the Defenders of all their Evidences and Defences.

† *indicted.*

* *a Form of Law for vindicating any Perſon.*

‡ *Condition.*

To which it was anſwer'd for the Purſuer, That he acknowledged, that when ſuch a Courſe was taken, to include both Actors and Witneſſes in one Libel, with a Deſign to make the Witneſſes (which the Actors were to uſe *Socii Criminis (Fellow-Criminals)* and ſo to deprive the Actors of their Defence, and the Probation thereof; theſe Actors might, and were allowed to * condeſcend upon thoſe whom they intended to uſe as Witneſſes, and at the ſame Time to propoſe a Ground of Exculpation for them; and ſo crave that they might be firſt tried upon the foreſaid Ground, to the effect that if thereupon acquit, they might be in Caſe to be Witneſſes. But this could never be pretended to by any of the Pannels: For an antecedent Trial of ſuch of their *Socii* as they alledged were innocent, and to be their Witneſſes, unleſs at the ſame Time the Pannels did condeſcend upon the Ground of their Innocence, or upon the Ground of their Exculpation, whereupon they deſired them to be firſt tried: For otherways there could be nothing more groundleſs, and (in effect) manifeſtly tending to elude all Criminal Proceeding againſt Complices of the ſame Crime, than to allow any of them at Random to crave others to be firſt tried; and ſo the Trial to proceed of one ſingle Perſon after another, until all ſhould be § aſſoilzied. Whereas the true and plain Method was, and is, That the Purſuer inſiſts againſt ſuch as he pleaſes, either ſingly or jointly; and unleſs ſome ‖ Speciality be alledged, why the Trial of one ſhould proceed before the Trial of another, it never was, nor could be left to the Arbitriment of the Pannels. And thus it was practiſed in all the Inſtances alledged by the Pannels, of trying ſuch as were impannelled for *Socii Criminis (Fellow-Criminals)* to be firſt purged, in order to be Witneſſes, *viz.* That the ſame was never allowed, unleſs ſome Ground of Exculpation was poſitively alledged for clearing of their Innocence. And therefore, unleſs Captain *Green*, and the other Pannels, will poſitively offer to prove, that *Reynolds* (whom they would have firſt tried) was *alibi (elſewhere)* and not preſent in the Action; their arbitrary Demand of having him tried in the firſt Place, without any Reaſon aſſigned, cannot be regarded. Which Debate being heard, the Lord High-Admiral and Aſſeſſors † ſuperſeded to give Anſwer, until the Defenders ſhould give in their other Defences, and all ſhould be informed upon together.

* *name.*

§ *acquitted.*

‖ *Special Cauſe.*

† *delay'd.*

Theſe being the Preliminary Defences, ſeparately proponed by the Perſons conveened in the firſt and ſecond Libels; the following Defences were proponed in common by the Defenders in both Libels.

And 1. That the Libel was informal and inſufficient, as being too general and indefinit. And 2. That it did not * condeſcend upon Day and Place. And 3. That the Qualifications whereupon the Relevancy appeared to be founded, were wholly † irrelevant. And 4. That the additional Concluſion was groundleſs and unwarrantable.

* *name.*

† *inſufficient, or not to be ſuſtain'd.*

And as to the firſt of theſe Defences, it was alledged, That the Libel was informal and inſufficient, as being too general and indefinit; not condeſcending upon the Name and Deſignation of the Ship ‡ wrongouſly attacked, nor upon the Perſons and Deſignations of theſe alledged to be murdered, nor upon the Quantity and Quality of the Goods alledged to be robbed and ſpoiled: All which ought to be done, ſeeing that Criminal Libels ought to be certain, and not general and indefinit; whereby alſo the Defenders might be prejudged of Defences, that might ariſe to them upon a particular Condeſcendance. As for Example; if the Name and Deſignation of the Ship were condeſcended on, they might prove the ſame Ship to be yet exiſting: And ſo of the Perſons alledged murdered, they might prove them to be yet alive: As alſo, that the Goods alledged robb'd, were yet extant, and lawfully diſpoſed on by their Owner.

‡ *wrongfully.*

To which it was anſwered by the Purſuer, That he opponed his Libel, which was libelled as definitly as the Thing would allow: For it being libelled, that the Pannels did, without any lawful Cauſe or Warrand, attacque a Ship ſailed by her own Crew, and having her own Cargo aboard, and that they over-maſter'd the ſaid Ship in hoſtile Manner, and murder'd the Men, and robb'd their Goods. Theſe were certainly Crimes manifeſt in themſelves; and if the Pannels had acted them in ſuch Manner, as to deſtroy the Ship and the Men, and embezled the Cargo, ſo as no farder Knowledge could be had thereof, it was only an Aggravation of their Villany and Wickedneſs, but could never hinder the Accuſation to proceed; ſeeing that whatever the Ship, or Men, or Goods were, it was certainly Piracy, Robbery and Murder, to attacque a Ship * hoſtilely, and to deſtroy the Men, and rob the Goods. And further, A Condeſcendance was not at all in this Caſe neceſſary, ſeeing that any ſuch Condeſcendance could be no Ground of Exculpation. For whether the Ship was of ſuch a Name and Deſignation, or of another; or whatever the Men and the Goods were, yet the Crime was ſtill the ſame; *viz.* To attack and invade a free Ship, without any Cauſe or Warrant, and to kill her Men, and rob her Goods.

* *In hoſtile Manner.*

And furder; It's very well known in our Criminal Practice, that Robberies and Depredations are ſuſtained, albeit neither the Quality of the Goods nor their Owners be condeſcended on: And, in effect, the Pannels their Defence of Indefinitneſs upon the Ground foreſaid is ſuch, that if even in the Road of *Leith*, before Hundreds of Spectators from both Coaſts, one Ship ſhould attack another, and hoſtilely invading her, ſhould deſtroy her Men, ſeize her Goods, and ſink the Veſſel, without ſuffering either Veſſel, Men, or Goods to be known; there could be no criminal Libel upon it; becauſe, forſooth, tho' Hundreds ſee the whole Action, yet it could not be more definitly libelled; ſave that the Commander and Crew of the one Ship attacked the other hoſtilely, and deſtroyed her Men, and ſeized her Goods, and ſunk her without further Condeſcendance; which were moſt abſurd. And therefore the Libel, as it's libelled, both as to Ship, Men, and Goods, attack'd, murder'd, and robb'd, without any juſt Cauſe or Provocation, is both ſufficiently definit and moſt relevant.

And whereas the Defenders alledged, this Indefinit libelled ſhould the rather be rejected, becauſe that the Pannels were clothed with Commiſſion; which tho' they did not plead to exculpat the particular Charge brought againſt them, yet was always a Ground of Preſumption that they acted lawfully; unleſs the contrair were made appear, by a particular Condeſcendance.

It was anſwered, That nothing did charge the Pannels more home than the pleading of this Commiſſion, in ſo far as firſt, They neither could nor durſt plead it, to exculpat the Piracy, Murder, and Robbery charged. 2. It did not ſo much as make any Preſumption for the Pannels; becauſe the very Tenor of the Commiſſion obliged them to keep a particular Journal of whatſoever Veſſel they ſhould attack hoſtilely; and their Journals were produced by themſelves, and no ſuch Thing appeared in their Journals. And therefore it was manifeſt, that their Pretence of a Commiſſion is only the more wickedly to cover their Villany; ſince they can alledge nothing acted ſuitably to their Commiſſion, but that their own Journals † redargues them.

The ſecond Defence alledged by the Pannels in both Libels, was, That the Libel was ſtill defective and imperfect, wanting Day and Place; in ſo far as the Place was generally deſigned the Coaſt of *Malabar*, which is of a long and vaſt Tract, and the Day was one or other of the Days of *February*, *March*, *April*, *May*, which is indefinit, and as good as no Day. And Day and Place were not only required to be condeſcended on by our old Law, † *Quon. attach*, but the Condeſcendance is alſo neceſſary for the Defender's Exculpation; ſeeing that if Day and Place were condeſcended on, he might then prove himſelf *alibi* (*elſewhere*) and ſo elude the Libel, which now he cannot do.

To which it was anſwered, That the Condeſcendance in the Libel, as to Day and Place is ſufficient; becauſe the Facts objected are thereby declared.

2. Day and Place are never eſſential to a Libel, except where either the Nature of the Crime, or its particular Specification requires it; for then indeed, it muſt be diſtinctly and poſitively libelled. As if a Man either charge another, or aggravate his Crime, by its being a Breach of the LORD's Day; then the LORD's Day muſt be condeſcended on. Or if a Man libel another for beating, or drawing his Sword within the King's Palace, where the Place is alſo eſſential. But as to other Crimes, which of their own Nature are Crimes at all Times; for what can the mention of Day or Place ſignify in ſuch Crimes, as at all Times, and in every Place, are Crimes without Exception. And ſuch are the Crimes libelled. But,

3. If it be ſaid, that the condeſcending on Day and Place is neceſſary to afford the Defender his juſt Exculpation of *alibi* (*being elſewhere*:) It's anſwer'd, That in that Caſe, the Defender may put the Purſuer to condeſcend on Day and Place for proving his Exception of *alibi (being elſewhere)* as ſaid is. But then, in common Senſe and Law, it muſt be upon this Condition; that the Defender acknowledge the Crime charged to have been committed; and only endeavours to exculpat himſelf, by offering to prove *alibi (being elſewhere)*, and that more pregnantly than the Purſuer offers to prove his Indictment. For what Senſe or Reaſon is there, that the Purſuer ſhould be put to condeſcend poſitively on Day and Place, in Crimes that are Crimes at all Times, and every where; unleſs it be for this very Reaſon, that the Defender acknowledging the Crime offers to purge himſelf by the Exception of *alibi* (*being elſewhere*)? And therefore, ſince Day and Place are libelled in ſuch a juſt Latitude, as may declare the Facts and Crimes charged; and that the Defender, on the other Hand, doth not acknowlege the Facts and Crimes themſelves, and offer to clear themſelves by the Exception of *alibi* (*being elſewhere*), there needs no further Condeſcendance. And this is the conſtant Opinion of Lawyers, and the perpetual Cuſtom of our Practique.

The third Defence proponed for the Pannels, was, as to the Qualifications of the Libel, That they were no ways relevant, nor could be regarded to infer the Concluſion of the Libel, in as much as, 1. There was here no *Corpus delicti*, viſible Effect or Subject of the Crime, offered to be proven, which is always neceſſary, and principally where the Crime is offered to be proven *per Preſumptiones & Indicia*, by Preſumptions and Tokens: For there *cum conſtat de Corpore delicti*, when the Subject of the Crime is viſible, this ſuſtains the Preſumptions, and gives the *Indicia*, Tokens or Signs, their juſt Weight.

To which it was anſwered, That the Pannels Procurators appear to be in a Miſtake, either as to what is a *Corpus delicti*, the Subject of the Crime, or as to what is meaned by it: And for clearing of this Point it is to be conſidered, the Crimes are of two Natures, ſome *cum Effectu permanente*, with permanent Effects, as the killing of a Man or the burning of a Houſe; in which Caſes the dead Body, and the Rubbiſh, are permanent Effects: But other Crimes have no ſuch permanent Effects, as treaſonable Plottings, Falſhoods, Blaſphemies, and the like, where indeed there is no ſuch *Corpus delicti*, Subject of the Crime as in the former Crimes; but here all the Crime conſiſts *in Facto & Animo*, in the Fact and Way of doing it; and the Fact, tho' tranſient, yet if *doloſe*, unjuſtly done, makes the Crime. And therefore, according to this Diſtinction, the *Corpus delicti*, Subject of the Crime, is never requiſite to be proven, but in the aforeſaid Crimes that leave permanent Effects; and neither then alſo, unleſs the Crimes be libelled with theſe Effects: For, if it ſhould be libelled, for Example, that a Murderer not only killed, but burned the Body to Aſhes, or drowned it in the Sea, there would be no farther need to prove this *Corpus delicti*, Subject of the Crime, but only to prove the Fact of killing, and killing *doloſe*, unjuſtly, in which indeed the Eſſence of the Crime conſiſts. And thus in Confeſſions, as well as in Libels; if a Man confeſs a Murder, and yet the Body murdered no where appears; then the Confeſſion is not raſhly to be laid hold upon, becauſe it may proceed from Deſign or Melancholy! But yet, even in this Caſe, that the Confeſſion ſhould bear not only the Murder but the deſtroying of the Body murdered, by Fire or Water, as ſaid is, then all the Enquiry would be, whether the Fact of Murder be proven or not? Which Things, if applied to our preſent Caſe, where it is expreſly libelled, not only that the Pannels invaded the Ship by Piracy, but that they threw the Men murdered over-board into the Sea, and alſo ſold the Ship; all the Enquiry that remains is, whether this Fact was ſo done or not? And the Libel is moſt relevant, tho' neither Ship or Men appear. And yet farther, if the Pannels Procurators will ſtill be ſo † graffier as to require a *Corpus delicti*, Subject of the Crime, when it's expreſly libelled, that the Effect of the Delict, was deſtroyed and put out of the Way, they may ſatisfy themſelves, that the Goods robbed are ſtill extant, and were found on board of Captain *Green*'s Ship! And therefore 'tis plain, that in this Caſe, and to ſuſtain the *Indicia*, Tokens and Qualifications libelled on, there needs no farder either Condeſcendance or Proof, of the *Corpus delicti*, Subject of the Crime, which was induſtriouſly deſtroy'd.

But, ſecondly, it was objected, that all the Qualifications are inſufficient and remote, and at beſt but probable: Whereas the known Rule is, that Crimes muſt be proven either per *Teſtes*, by Witneſſes above Exception, or *per Documenta clariſſima*, very clear Proofs, or *per Indicia indubitata*, undoubted Tokens: None of which hold in this Caſe; for as for the *Indicia*, Tokens, there is not one of them but take the ſame ſingly, as the Hearing of Shooting on the Shore, the ſeeing the Ship *Worceſter* having another lying at her Stern, the Boats coming aſhore for Water, and the Crew ſaying, *they had been a buſking*, *& ſic de cæteris*, and ſo of the reſt; but take them ſingly, and they may all have a good and innocent Conſtruction. Nor can it be ſaid, that jointly they become ſtronger and fortify one another, as ſingle Arrows eaſily broken when apart, yet cannot be broken in a Sheaf, becauſe that all the Qualifications, and *Indicia*, Tokens in the Libel, with the foreſaid Conſtructions, may be put upon them, the Conſtructions will ſtill take off the Face; beſides that, it's well known, that there are ſome *Indicia* only *probabilia*, ſome Tokens only probable, and that the Law requires *Indicia indubitata*, undoubted Signs, it being ſtill the ſafer Side to ſpare doubtful Innocents, than to condemn only preſumed and probable Guilt. To all which is to be added, That's the common Opinion of Doctors, that Preſumptions can ſcarce ever conclude *ad Pœnam ordinariam*, to ordinary Puniſhment, but at the moſt only *ad Pœnam abitrariam*, to Puniſhment at Pleaſure of the Judge: And *Mackenzie*, in his † *Criminals*, ſays, "Preſumptions are only "founded on *may be's*, which may not be; and to allow "Crimes to be proven by Preſumptions, would leave Judges to be arbi-"trary." So that the common Opinion runs againſt Preſumptions. But,

To all this it's anſwered, That yet it is clear Law, that Crimes may be proven *per Indicia indubitata*, by undoubted Tokens, which in Law are no more than violent Preſumptions, *quæ Fidem extorquent*, that force a Belief: But the Truth is, That in this Caſe, the Purſuer hath not only *Indicia indubitata*, undoubted Tokens, but likewiſe poſitive Witneſſes, and alſo Documents in Writing; which, all being conjoyned, do make a ſatisfying Evidence, and fix a clear Conviction; which is the utmoſt Deſign of Probation. But, ſecondly, it's moſt certain, both in Law and † Pratique, that many Crimes are only diſcover'd and proven *per Preſumptiones & Indicia*, by Preſumptions and Tokens; and that the Doctors in ſeveral Crimes, eſpecially theſe more atrocious, as Treaſon, Piracy, Forgery, and the like, where Wickedneſs endeavours moſt induſtriouſly to hide itſelf, do allow and approve Probation *per Indicia*, by Tokens, as moſt neceſſary for the puniſhing of theſe Crimes. It were needleſs to multiply the Citations, both from the Law and Doctors, that might be adduced in this Caſe, as *l.* 3. § 2. *D. de Teſtib.* where the Reſcript bears, *Quæ Argumenta ad quem Modum probandæ, cuique Rei ſufficiant nullo certo Modo ſatis definire poteſt*: "The Arguments to be uſed, and the Manner of proving every Thing ſufficiently, can't certainly be defined, and ſo forth: and ſo concludes, *Non utiq; ad unam Probationis Speciem Cognitionem ſtatim alligari debere, ſed ex Sententia Animi tui, te æſtimare opportere, quid aut credas aut parum probatum tibi opinaris. Item. l.* 22. *cod. ad legam Corneliam de falſis, ubi falſi Examen inciderit, tunc acerrima fiat indago, Argumentis, Teſtibus, Scripturarum Collatione, alliiſque Veſtigiis Veritatis, &c.* "You are not to be tied in taking "Cognizance of a Matter to one Method of Probation, but you muſt act "according to your own Judgment, and conſider what you are to be-"lieve, and what you think not fully proved. *Item*, &c. when the "Falſhood of a Thing is to be enquired into, then a moſt ſtrict Search is "to be made, by Arguments, Witneſſes, comparing of Hands, and "other Signs of Truth, *&c.*" By which Law it's plain, that *Indicia & Preſumptiones*, Tokens and Preſumptions, have Place, and may make full Faith; and how can it be otherwiſe, ſince firſt, it is certainly the Intereſt of Mankind that Crimes be puniſh'd. 2. It's no leſs certain, that Crimes endeavour to cover themſelves. 3. That Proof or Probation is only to make an Evidence for Diſcovery. 4. That the End and Standard of this Diſcovery, and of all Probation, is the ſatisfying Conviction of the Judge that has Power to puniſh. Now if moſt Crimes be committed without Witneſſes, and yet do otherways appear certainly to be committed; and if this Certainty ariſe from Preſumptions, and be withal ſatisfying, it is juſt the ſame as if the Crime was proven by many Witneſſes. And thus *Matheus de Criminibus*, *Tit. de Probationib. cap.* 6. *per totum*, and *Gail. lib.* 2. *Obſ.* 149. *Numb.* 9. where he reaſons moſt juſtly upon Probation by Preſumptions, where there is a Difficulty by Reaſon of the Want of Witneſſes; and ſtill brings the Matter to this true Period, That whatever Way Faith be fully made to the Judge, either *per Teſtes*, or *per Indicia*, or *per Preſumptiones*, either by Witneſſes, Tokens, or Preſumptions, the End of Probation is attained, and ſo the Evidence ſufficient.

The Procurators for the Pannels alledged, That this were to make Judges too arbitrary; but tho' it hath indeed been the Care of all Lawyers to prevent Arbitrarineſs, yet it's moſt certain, that where Evidence doth only riſe as Providence offers, and Circumſtances concur, the Arbitriment of the Judge muſt take Place, and the Safety of Mankind doth preciſely lie here in the Integrity and Diſcretion of the Judge, helped indeed by ſome Rules of Law, but no ways bounded or fixed to preciſe Rules, which the Matter will not bear. And therefore we ſee, that even in the moſt

† *Refutes.*

† *A Book ſo called.*

† *dull or unreaſonable.*

† *A Book ſo called.*

† *Practice.*

moſt certain Manner of Probation, *viz.* by Witneſſes, and the higheſt Law of it, *that in the Mouth of two or three Witneſſes ſhall every Thing be eſtabliſhed*, there is ſtill an Arbitriment inſinuate as to the Diſcretion of the Judge, or otherways the Law would not have ſaid, two or three, but would have fixed the Number preciſely; whence it is moſt certain, that in all Probation there is an Arbitriment of Diſcretion, and that tho' this Arbitriment may be bounded by ſome Rules, yet the ultimate and true Standard of all Probation, is the ſatisfying Conviction of the Judge, according to his beſt diſcerning.

Theſe things then premiſed, *viz.* That a Proof may be ſufficient, *per Indicia & Preſumptiones*, by Tokens and Preſumptions, the Application to the preſent Caſe is plain; for where the Procurators for the Pannels would take off the Qualifications, as ſeparately inconcludent, and at beſt probable, it is clearly captious; it being certain that many *Indicia*, Tokens, conjoined and connected, as in this Caſe, may make a ſufficient Evidence, and that here *quæ non proſunt ſingula multa juvant*, i.e. "Thoſe Things which taken ſingly, are of no Effect, yet many of 'em together are." And thus, if firſt the Probation that ſhall be offered, of the hoſtile invading the other Ship by the Pannels, be laid down, and thereto added the Surgeon's Declaration of other Circumſtances, with all the other Qualifications in the Libel, they will certainly force a Faith and full Perſuaſion upon all rational Men, tho' ſeparately they cannot have that Weight; one Witneſs proves not, yet two prove, and in ſome Caſes two are ſcarce ſufficient, but three are beyond Exception. If then even in Witneſſes there be a mutual and fortifying Concurrence, the ſame muſt alſo be admitted in Preſumptions *& Indicia*. So that upon the whole, the Purſer craves no more, than that every Man that hears this Libel, and ſhall hear its Proof, lay himſelf fairly open, without any Prejudice to the Light ariſing naturally from the Matter itſelf, and its Circumſtances, and the Proofs and Confirmations thereof, as they are ſet down in the Libel; and if he do not wilfully reſiſt, he will certainly be ſatisfied to a full Conviction. There are indeed hidden Crimes, and ſuch as are ſaid to be of * difficil Probation, and the moſt atrocious, as Treaſon, Aſſaſſinations, Piracy, Forgery, are ordinarily moſt hid; and Doctors ſay with Reaſon, that their Preſumptions ought to be examined, *acerrima indagine*, with the Stricteſt Scrutiny; but all this ſhould be far from impreſſing any with the Prejudice, as if a ſatisfying Evidence may not be found in theſe Caſes. And therefore ſince all pleaded by the Purſuer, is, that firſt his complex Probation *per Teſtes & Indicia*, by Witneſſes and Tokens, may be fairly received. 2. That concurring and coming together, they may be allowed their juſt Weight. And 3. That if that juſt Weight, and the Evidence that attends it, be ſatisfying, it may be held as concludent. It's clear as the Sun-Light, that no Stretch is intended, but Juſtice fairly proſecuted: And tho' in this Caſe of ſuch an extraordinary Crime, and where ſo much Evidence appears, the Purſuer might even, according to the Claim of Right, preſs the Supplement of Torture, yet he contents himſelf to inſinuate, that tho' this may be both juſt and neceſſary, yet he is hopeful, the Force of his Evidence may otherways prevail.

* *Difficult.*

The fourth Particular is the additional Concluſion; but as to that Concluſion, it is ſo natural in itſelf, and ſo well fortified by the Authority of Doctors, and ſo certain, not only in the Caſe of Counterband, but even of other forbidden Good, that nothing needs be added; for ſince every Pirate is preſumed to have the Ship and all in it at his Command, as his own; and ſince the Ship is certainly the Inſtrument, as well as the Goods are preſumed to be the Effect of Piracy, it follows naturally, that the Confiſcation of both Ship and Goods ſhould be a Part of the Pains concluded.

In reſpect whereof, &c.

Here follows the Laws, and ſome other Quotations uſed in the Debate, where they are alſo *Engliſh'd* in their proper Places.

L. 2. § 2. *Ejuſdem quoq; Principis extat reſcriptum ad Valerium verum de excutienda fide teſtium, in hæc verba: Quæ argumenta ad quem modum probandæ cuique rei ſufficiant, nullo certo modo ſatis definiri poteſt, ſicut non ſemper, ita ſæpe ſine publicis monumentis cujuſque rei veritas deprehenditur, alias numerus teſtium alias dignitas & auctoritas, alias veluti conſentiens fama confirmat rei de qua quæritur fidem, hoc ergo ſolum tibi reſcriberi poſſum ſummatim, non utique ad unam probationis ſpeciem cognitionem ſtatim alligari debere, ſed ex ſententia animi tui, te æſtimare oportere, quid aut credas aut parum probatum tibi opinaris.*——"The true Reſcript of that Prince to *Valerius*, about enquiring into the Credibility of Witneſſes, is alſo extant, as follows. What Arguments are ſufficient to prove any thing, cannot certainly be determined; for tho' not always, yet it many times happens, that the Truth of a Matter is found out without publick Monuments. Sometimes the Number, ſometimes the Dignity and Authority of the Witneſſes, and at other times common Fame confirms the Truth of the Thing in Queſtion. I can only therefore enjoin you, in ſhort, that in your Enquiry, or Examination into a Matter, you are not to be tied to any one Sort of Proof; but you muſt judge according to your own Conſcience, what you think to be proved, or not proved to you."

L. 22. C. ad Legem *Cornelium* de falſis. *Ubi falſi examen inciderit, tunc acerrima fiat indago argumentis, teſtibus, ſcripturarum collatione, aliiſque veſtigiis veritatis: Nec accuſatori tantum queſtio incumbat, nec probationis ei tota neceſſitas indicatur; ſed inter utramque perſonam ſit Judex medius: Nec ulla interlocutione divulget quæ ſentiat; ſed tanquam ad imitationem relationis, quæ ſolum* audiendi *mandat officium, præbeat notionem: Poſtrema ſententia, quid ſibi liqueat proditurus:*——"When you are to enquire into the Falſhood of Evidence, you muſt make the ſtricteſt Inquiſition that's poſſible, by Arguments, Witneſſes, comparing of Hands, and other Signs of Truth. Neither muſt the Accuſer only be queſtion'd, or the whole Charge of the Proof be laid upon him: But the Judge muſt act an indifferent Part betwixt the Plaintiff and Defendant; and by no means divulge his Opinion, but give both Parties the Hearing, and at laſt pronounce according to his own Judgment."

Mathæus de Criminibus, *Lib.* 48. *Dig*, *Tit.* 15. de Probationibus, *Pag.* 675. *Itaque ſi cum uno illo Teſte nulla concurrant argumenta, nequaquam audiendus erit: ſed cum* Paulo *dicendum in Lege* duo 30 *d. de Teſtam. tut. non Jus deficit, ſed Probatio. At ſi argumenta alia concurrant, audiendus: Non enim neceſſe eſt unum Crimen, uno & eo Probationis, genere oſtendi, veluti teſtibus tantum vel tabulis, vel argumentis. Poſſunt & diverſa genera ita conjungi, ut quæ ſingula non nocerent, ea univerſa tanquam grando reum opprimant.* L. Sect. 3. ejuſdem d. de Teſtib. *Hoc eſt, quod aliis verbis dicitur plures Probationes imperfectus poſſe conjungi.*——"Therefore if with that one Witneſs there be no concurring Arguments, he is not at all to be regarded: But we muſt ſay with *Paulus, in Lege duo 30 d. de Teſtam. tut.* The Law is not defective, but the Proof. But if other Arguments concur, he is to be regarded: For it is not neceſſary that one Crime be made evident by one manner of Proof only: as by Witneſſes, by Writing, or by Arguments only: For ſeveral Sorts of Proof may be ſo conjoined, that thoſe which taken alone, would not affect the Criminal, yet being put all together, come upon him, and overwhelm him like a Storm of Hail." *L.* 3. Sect. 3. *of the ſame D. concerning Witneſſes*; "That is, as it is expreſſed in other Words, ſeveral imperfect Proofs may be join'd together."

Gail. Obſ. 66. Num. 12. P. 416. *Et regulariter Teſtes ſingulares plenam Fidem faciunt, quando aliquid ingenere probandum eſt: puta* Titium *eſſe infamem aut furioſum, quo licet ſingulares ſint reſpectu actuum, tamen ſi ratione finis conveniant, integrè probant.*——"And regularly ſingle Witneſſes make full Proof, when any thing is to be proven in general; for inſtance, that *Titius* is an infamous Perſon, or a Madman: For tho' the Witneſſes be ſingle in reſpect of the Acts, yet if they agree in the End, the Proof is full."

It may be eaſily granted, that *regulariter Indicia debent eſſe indubitata, ad condemnandum reum*: "That regularly Preſumptions ought to be uncontrovertible, when a Criminal is to be condemn'd upon them." But at that ſame time it muſt always be owned, that there are Crimes excepted from the Rule, by the general Opinion of the Doctors; ſuch as *Crimen Læſæ Majeſtatis, & Crimen Aſſaſſinii*, Treaſon and Aſſaſſination; of which laſt Sort, the Crime of Piracy is the moſt atrocious. And therefore *Giurba, in Concil.* 22. *Num.* 5. ſaith, *Sed Aſſaſſinii qualitas homicidio adjecta, novam conſtituit Delicti Speciem*:————The Quality of Aſſaſſination added to Murder, forms a new Sort of Crime. *Num.* 17. *In Aſſaſſinio omnia procedant quæ in Criminibus exceptis*:——In Aſſaſſination, all things are to proceed as in excepted Crimes. And *Num.* 18. *Aſſaſſinii Crimen, ob illius Atrocitatem æquiparator Crimini Læſæ Majeſtatis*:——The Crime of Aſſaſſination, becauſe of its Atrociouſneſs and Enormity, is made equal to Treaſon. And then *Num.* 22. he concludes, That *in Probatione Aſſaſſinii, probabilia ſufficiunt Argumenta*:———In the Proof of Aſſaſſination, probable Arguments are ſufficient. And *Maſcard, de Probationibus, Concluſ.* 1228, *Num.* 77. *In Crimine Aſſaſſinii probabilibus Argumentis probari poteſt*: Aſſaſſination may be proved by probable Arguments. And *Num.* 78, 79, 80, and 83. he names the other atrocious Crimes, where the like Probation is ſufficient; and in that ſame Concluſion, *Num.* 51. *Quod ex multis Indiciis ſimul junctis, reſultat plena Probatio etiam ad quem criminaliter condemnandum*:———Many Preſumptions joined together, make full Proof to condemn any Man in a Criminal Caſe. And *Queſt.* 8. *Num.* 8. *Probatio per Evidentiam omnibus eſt potentior, & inter omnes ejus generis major eſt illa, quæ ſit per Teſtes de viſu*:——Proof by Evidence is the ſtrongeſt of all Proof, and eſpecially by Eye-Witneſſes. And *Concluſ.* 831. *Num.* 4. *Probatio per Conjecturas & Indicia, in his quæ difficilia ſunt probata, & clandeſtinè committuntur, habentur pro evidenti & clara Probatione*:——Probation by Conjectures and Preſumptions, in Things hard to be proven, and clandeſtinely committed, are held to be good and evident Proof.

Carpzovius, Queſt. 223. Num. 57. *Secus tamen Res ſe habet, ſi plura Indicia concurrant & conjunctim reum aggravent, quorum unumquodque per teſtem ſingularem probetur; nam una Preſumptio aliam juvat, plurimaque Indicia conjuncta fidem faciunt*:——But the Matter is otherwiſe, if many Preſumptions concur, and load the Defendant; of which any one may be proved by a ſingle Witneſs: For one Preſumption ſtrengthens another; and many of them joined together, make Proof.

And in the Trial of *John Swintown* for murdering of his Wife, there was no direct Proof by Witneſſes; but the Libel being qualified, the Proof was by a young Girl of 14 or 15 Years, who left *John Swintown* and his Wife alone in the Houſe, and went to the Smith's Shop to enquire for Letters; but returning, found the Door ſhut, and therefore went away for a little Space; and then coming back and knocking, her Maſter opened, and ſhe perceived ſome Red, like Blood, upon his Shoes. And when ſhe came in, ſhe found her Miſtreſs dead in the † Spence; which was all ſhe could ſay. And then another Man declared, that he ſaw *John Swintown* go from his Houſe to a ‡ Stank, and there waſh his Shoes. Which *Indicia*, Preſumptions being joined with the Proofs of their ill Agreement, and frequent Quarrellings before, did determine the † Aſſize. And tho' it was ſtrictly objected, that *in the Mouth of two or three Witneſſes, every thing ſhould be eſtabliſhed*; and that in the aforeſaid Caſe there was no direct Witneſs at all, far leſs two or three; and that even the aforeſaid Circumſtances were only proven by ſingle Witneſſes; yet the Aſſize found that Evidence in the Preſumptions and * *Indicia* laid together, that they brought in their Verdict *proven*; and *Swintown* thereafter confeſſed, and was executed.

† *Buttery.*

‡ *Ditch.*

† *Jury.*

* *Tokens.*

And in effect, unleſs that *Indicia* and Preſumptions be ſuſtained, and even ſingle Witneſſes for proving theſe ſeveral Preſumptions and *Indicia*; which is called a *Cumulative Probation*, when all the Witneſſes and Teſtimonies concur *in idem Crimen, & ad eundem Finem*, in the ſame Crime, and to the ſame End, Crimes, and theſe the moſt atrocious, would eſcape unpuniſhed.

And therefore, upon the whole, it is moſt certain, when Preſumptions, Qualifications, and *Indicia* concur, and make a full perſuaſive Evidence; the Probation ſhould be held for as fully ſufficient, as the moſt direct Witneſſes; ſince all that the Witneſſes can do, is only to make full Faith in the Matter, which may be otherwiſe ſupplied, as ſaid is.

As to the additional Concluſion, it may be ‡ noticed, that *Molloy, de Jure Maritimo, Lib.* 1. Cap. 3. *Sect.* 19. *Pag.* 60. ſaith, That when a Merchant procures Letters of Mart or Reprize, and then delivers the Commiſſion to Perſons to endeavour a Satisfaction; if ſuch Perſons commit Piracy, the Veſſel is forfeited without Controverſy.

‡ *obſerved.*

INFORMATION

For Captain THOMAS GREEN, *Commander of the* Worceſter, *Captain* JOHN MADDER, *his Chief Mate, and others*;

AGAINST

Mr. ALEXANDER HIGGINS, *Advocate, Procurator Fiſcal of the High Court of* Admiralty.

THE ſaid Captain *Thomas Green*, Captain *John Madder*, and others belonging to the Ship called the *Worceſter*, being purſued at the Inſtance of the ſaid Mr. *Higgins*, Procurator Fiſcal, before the High Court of *Admiralty*, and the Lords Aſſeſſors appointed by the Privy Council; for the Crimes of Piracy, Robbery, and Murder, conform to two Criminal Indictments, raiſed at the Inſtance of the Fiſcal. The Caſe being fully pleaded before the Honourable Judges of *Admiralty*, and the Lords Aſſeſſors; both the Accuſer and Accuſed were ordained ſeverally to inform, as Uſe is in ſuch Caſes.

The Criminal Indictments being holden as repeated, which † coincide both as to the Concluſion, and *Media concludendi*, Way of concluding, and denied; it is needleſs to repeat ſome preliminary Defences that were proponed, ſeeing it ſeemed juſt to the Honourable Court to repel the ſame: And therefore the Pannels proceed to their Defences, whereupon they were ordained to inform. Theſe are of two Sorts; Firſt, * Dilator; and Secondly, ‡ Peremptor.

† *are the ſame.*
* *for putting off, or delay.*
‡ *Poſitive.*

And firſt, it was proponed for *Henry Keigle*, Carpenter, and others of the Pannels in the ſame Indictment with him, That they could not be put to anſwer, unleſs the Captain himſelf were firſt inſiſted againſt; becauſe they being his Crew, and under his Command, they could not be charged with any Thing done by them, unleſs he were firſt tried.

It was anſwer'd for the Purſuer, that they were not * convened for any Thing alledged acted by their Captain, and by them as his Crew; but that they were convened as *Socii*, Fellow-Criminals, and Partakers of the Crimes libelled: which could be warranted by no Commiſſion nor Character the Captain did, or could pretend to: And that they were all charged as being *Socii*, Fellows, and involved together in one Crime; and ſo every one muſt anſwer for himſelf.

* *called to the Bar.*

It was replied for the ſaid *Henry Keigle*, and the other Pannels with him, that the Pannels are libell'd againſt as the Crew of the *Worceſter*, under the Command of Captain *Thomas Green*; and that under his Command they did attack a Ship, *&c.* So that they are here libelled only as Complices and Acceſſaries to the Crime alledged; and therefore, according to the Principles of Law, the principal Delinquent ought to be firſt try'd; eſpecially where the Captain was in Cuſtody, and might be brought to his Trial; and that by the Commiſſion produced under the Great Seal of *England*, ſuperſcribed by King *William*, the ſaid *Thomas Green* was cloathed with a Power, authorizing him to attack and ſuppreſs Pirates, which is a Military Power, and conſequently implies an Authority and Command over the Crew of the Ship, to give ready Obedience in all theſe Matters: So that the poor Pannels, who are of the Crew, have all Reaſon in the World to contend, That the Captain, whoſe Actings in theſe Matters they could hardly well debate, ſhould firſt paſs the Trial upon the Crimes alledged; who might, by Virtue of his Commiſſion, and otherways, † exculpate and defend himſelf againſt the Crimes libelled; and conſequently, all the Crew that were in Subjection under him.

† *vindicate.*

This Defence the Pannel might perhaps plead to a further Extent, to abſolve them entirely; but at preſent they conceive, it can hardly be denied, the Captain ſhould firſt undergo the Trial. And there is a great Difference betwixt *Socii Criminis*, Fellow-Criminals, which are either independent upon one another, or if aſſociate under one Head, as *Banditti* and Pirates uſually are (which is illegal and unwarrantable Authority taken up) and Perſons accuſed as *Socii Criminis*, Fellow-Criminals, who by Legal Authority are ſubjected to the Command of others: In which Caſe, if the Perſon truſted with the Authority, has tranſgreſſed or abuſed it; if it does not plead an abſolute Exemption from the Puniſhment of the Tranſgreſſion, at leaſt it ſhould have this Effect, That the Head and Chieftain ſhould be obliged firſt to his Defence; which it is hoped the Honourable Judges will find juſt and reaſonable.

The other dilatory Defence, propoſed for the Captain and others, in the ſecond Libel, was, That whereas *John Reynolds*, ſecond Mate, was convened and pannelled with him, as alſo ſome others, as *Socii Criminis*, Fellow-Criminals, whom the Captain and other Pannels had cited as Witneſſes in their † Exculpation; it was both ordinary and abſolutely neceſſary, that theſe Perſons ſo cited for Exculpation, ſhould be firſt tried; to the End, that being purged of the Imputation of any Crimes, they might be capable to be Witneſſes, for proving the Defences of Exculpation, that the Captain and other Pannels did propoſe and inſiſt upon, for the Vindication of their Innocency.

† *Defence.*

It was anſwer'd for the Fiſcal, That he owned, when both † Actors and Witneſſes were included in one § Libel, of Deſign to deprive the Actors of their Defences; the Actors might, and were allowed to condeſcend upon thoſe whom they intended to uſe as Witneſſes: But then at the ſame Time, they were obliged to propoſe a Ground of Exculpation for them, and ſo crave that they might be firſt tried upon the foreſaid Ground; otherways they could not, without ſuch a ſpecial Condeſcendance, * intervert the Form of Trial. And there could be nothing more groundleſs, tending to elude all Criminal Proceedings againſt Complices of the ſame Crimes, than to allow any of them at random to crave others to be firſt tried; and ſo the Trial to proceed of one ſingle Perſon after another: Whereas the true and plain Method were, that the Purſuer inſiſt againſt ſuch as he pleaſes, either ſingly or jointly. And unleſs ſome § Specialty be alledged, why the Trial of one ſhould proceed before the Trial of another; it never was, nor could be left to the Arbitriment of the Pannels. And therefore unleſs the Captain will offer to prove, that *Reynolds*, and others whom they would have firſt tried, were *alibi*, elſewhere; their arbitrary Demand of having them tried in the firſt Place, without any Reaſon, cannot be regarded.

† *Actors.*
§ *Indictment.*
* *alter.*
§ *Special Cauſe.*

It was anſwered for the Captain, and the other Pannels, That their Demand upon this Point was moſt conſonant to Reaſon, Law, and Form, in Criminal Procedures: That Exculpation, which tends to the Proof of Innocence, and Freedom from Guilt, was moſt favourable; becauſe it is ſtill preſumed, till the Crime be proved. And therefore it is, that Witneſſes who are not regularly admitted for proving of a Crime, becauſe of ſome Exception, will be allowed to prove the Defender's Innocence. And upon this Account it is, that ſeveral Things in Form are remitted in Exculpation: And there is nothing more material for Defence of Perſons accuſed, againſt the Proſecutor (who ordinarily is prejudged and prepoſſeſſed) to guard them againſt all the indirect Methods that may be taken by the Purſuer; to preclude the Accuſed from the uſual Means of proving of their Defences, than what is now demanded. And ſince none can be more proper Witneſſes for proving a Pannel's Defence (as for Inſtance, *Moderamen inculpatæ Tutelæ*, *i. e.* the Rule of blameleſs Self-Defence, as Perſons ſaid to be preſent) therefore a violent Purſuer might, in ſuch a Caſe of Deſign to preclude the Pannel from his Defence, cite thoſe preſent as acceſſary. Upon which Account it is, that both Reaſon and Law provides, that if the Pannel does offer to prove a relevant Defence, by the *Socii Criminis*, Partakers of the Crime accuſed with him; the Purſuer muſt neceſſarily firſt proceed to the Trial of theſe *Socii*, Partakers, who otherways would have been led as * habile Witneſſes; to the End that being purged, they may be yet habile. This is ſo plain in Reaſon, and has been look'd upon as the conſtant Practice in all Criminal Procedures in the Juſticiary Courts of *Scotland*, that it is admired the Fiſcal ſhould make any Oppoſition to it.

* *Legal, or good.*

He ſo far owns in his Pleading, that it is Form and juſt upon the Matter; but would ſhift it in this particular Caſe, unleſs the Pannels would alledge and † found upon a particular Ground of Exculpation, and offer to prove and inſtruct the ſame, as that their *Socii*, Companions, cited as Witneſſes, were *alibi*, elſewhere; but this is altogether without Foundation. For in all criminal Proſecutions, the Accuſed are not put to prove their Defences, becauſe the denying of the Libel is a Defence ſufficient of itſelf; and if the Libel be not proved, the Pannel goes free by the Rule *Actore non probante abſolvitur reus*, the Plaintiff failing in his Proof, the Defendant is abſolved; ſo that when there are Perſons accuſed as *Socii Criminis*, Fellow-Criminals, who might be very habile Witneſſes for exculpating the reſt, if they did not lie under the Imputation, when their Trial is firſt required, that they may be purged of the Imputation, there is no Neceſſity to propone for them any ſpecial Defence, ‡ eliding the Libel; ſeeing the very Denial of the Libel is enough, and their Innocence is preſumed, except Guilt be proved. And if the Fiſcal will have the Captain, and the other Pannels, to condeſcend upon what Ground their other *Socii*, Companions cited as Witneſſes, ſhould be acquit; they need ſay no more, but that they ought to be acquit, becauſe the Libel is not true. And is there not the ſame Reaſon to acquit Pannels, becauſe the Libel is not proved; and conſequently, to render them habile Witneſſes for other Perſons accuſed, as if the ſaid Perſons were acquit upon a Defence proponed, elideing the Libel; whereby it plainly appears, the Anſwer given is ſtrained, and does mightily increaſe the Suſpicion againſt the Fiſcal, that he has indicted the Witneſſes cited by the Captain, and the other Perſons, in their Exculpation, of Purpoſe to preclude them from their Means of Defence; and the rather, that the Pannels appeal to the Honourable Judges, if it was not owned by the Purſuer in the Debate, that Mr. *Reynolds* was aſhore at the Time of the pretended Attack; beſides that, the Libel bears the Chyrurgeon, and others of the Crew, were aſhore the Time of the pretended Action, which frees the Pannels of all Calumny. There can be innumerable Inſtances given before the High Court of Juſticiary in Criminal Matters, that where there are ſeveral Complices indicted, if any of them have Grounds of Exculpation, which they can prove by others of the Pannels, their Trial proceeds firſt. This is plainly aſſerted as uncontеſted by Sir *George Mackenzie*, in his Book of the Laws and Cuſtoms of *Scotland*, in Matters Criminal, *Tit. Excul. Par.* 9. nor does he make any Diſtinction, or requires that any ſpecial Defence ſhould be condeſcended upon for purging *Socii Criminis*, the Fellow-Criminals, to render them habile Witneſſes. The Rule is plain in the Proſecution of * Delicts, before Civil Courts, in order to repair Damages, that if more Perſons be cited, as *Co-rei ejuſdem delicti*, guilty of the ſame Crime, and that ſome of them are neceſſary Witneſſes for proving the Defences proponed for others; the Proof muſt firſt proceed againſt theſe. And ſo it was found by the Lords of Seſſion the 24th of *February*, 1662. *Mackartney* againſt *Irving*, much more ought it to be in Criminal Caſes, as lately in the Caſe of *Roſs*, of *Auchnacloich*, againſt Captain *Monre*, before the Lords Juſticiary. Nor is there any Inconvenience from what is alledged, that this ſhould tend to elude all Criminal Proceeding againſt Complices, and occaſion the lengthning out of the Trial, to proceed to one ſingle Perſon after another; for as no Time is to be grudged in the Enquiry of ſuch Matters, which concern the Life of Man, ſo the Pannels do not propone this preliminary Defence to protract or delay the Trial, and therefore are ſatisfied, that not only *Reynolds*, but their other *Socii*, Companions, indicted, who are likewiſe cited in their Exculpation, go to the Trial at one and the ſame Time. The Captain, and other Pannels with him, do plainly argue thus; Either *Reynolds*, and the other Perſons cited in the Exculpation, are guilty or not; if they be guilty, it ought to be found ſo, for till that be, they are preſumed innocent; if not guilty, what Law or Reaſon is there to preclude them from being Witneſſes for the Captain, and the other Pannels Defence? or what Law is there that can oblige them to condeſcend upon, and propone a particular Defence elideing the Libel, when the Libel is not owned to be true, and that the Pannels have all denied the ſame? So it is hoped the honourable Judges, and the Lords Aſſeſſors, will not preclude them from the ordinary Privilege, which, hitherto, has not been denied to any Pannel.

† *inſiſt upon.*
‡ *Making void the Indictment.*
* *Crimes.*

For if this was allowed, a violent Purſuer might prevent Probation, and render it impracticable. For, ſuppoſe one Man kill another in Self-Defence, two Gentlemen walking can teſtify this; but to prevent the Probation of *inculpata tutela*, unblameable Self-Defence, they are cited as Parties; and they can prove by other two Perſons, at a greater Diſtance, their *alibi*, being elſewhere, which when the Purſuer gets notice of, they are made Parties alſo; and ſo *in infinitum*. So that the ſaid violent Purſuer might prevent all Probation, if the Defender were obliged to alledge *alibi*, being elſewhere, for the Witneſſes of his Exculpation.

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*The * Peremptory* DEFENCES *proponed for the whole Pannels in both Libels, as totally excluding the ſame as † Irrelevant, are as follows.*

* *Poſitive.* † *Not good or ſufficient in Law.*

1. THAT the Libel was irrelevant, as being general and indefinite, not condeſcending upon the Name, Deſignation, or any other Sign or Evidence, by which the Ship alledged to be ſeized might be particularly diſtinguiſh'd, nor yet the Perſons Names alledged to be murdered, or to whom the Ship and Goods robbed did belong; which ſeemed to be abſolutely neceſſary in all ſuch criminal Indictments, not only as a Requiſite in Form, but in Equity and Reaſon; without which, Perſons accuſed ſhould be in great Hazard from general and indefinite Libels, and precluded from their Means of Defence, which otherways are obvious, when the Accuſation is certain, ſpecial, and pointed.

It was anſwered by the Purſuer, That he had libelled as definitely and cloſely, as the thing would allow; for it being libelled, that the Pannels did, without any lawful Cauſe of Warrant, attack a Ship, ſailed by her own Crew, and having her own Cargo aboard, and that they over-maſter'd the Ship, in a hoſtile Manner, and robb'd the Goods: Theſe were certain Crimes manifeſt in themſelves, and if the Pannels acted them in ſuch a Manner, as to deſtroy the Ship and the Men, and imbezzled the Cargo, ſo as no further Knowledge could be had thereof; it was only an Aggravation of the Crime, and could not hinder the Accuſation to proceed; nor was any † Condeſcendance here neceſſary for Exculpation; for of whatever Deſignation the Ship was, and whatever the Men and Goods were, yet the Crime was ſtill the ſame; and that it was known in our Practice, Robberies and Depredations are ſuſtained, albeit neither the Quality of the Goods nor Owners be condeſcended upon; and in effect, the Pannels Defence of Indefinitneſs is ſuch, that if in the Road of *Leith*, before hundreds of Spectators, one Ship ſhould invade another, deſtroy her Men, ſeize her Goods, and ſink the Veſſel, whereby none of all theſe could be condeſcended upon, there could be no criminal Libel upon it, becauſe of the Defence of Indefinitneſs; which were moſt abſurd.

† *Particular Inſtance.*

It was replied for the Pannels, That what was ſaid, did not take off the Objection of the Indefinitneſs of the Libel, which by our Form and Law can be the Ground of no criminal Accuſation; for in all ſuch Procedures, *debet conſtare de corpore delicti*, the viſible Effect or Matter of the Crime ought to appear; that is, that ſuch a Ship is taken by Piracy, ſuch Men murdered, and the like. It is inconſiſtent with the Nature of a criminal Accuſation, that Men ſhould be alledged to be murdered, Ships ſeized, and theſe not condeſcended upon, and by our conſtant Practice it is ſo required: Nor can it be inſtanced, that ever any ſuch indefinit Libel was ſuſtained. There are no Queſtions whatſoever that are more nice than theſe concerning the Life of Man, and therefore the *Engliſhman Coke*, 7 *Rep. Calvin*'s Caſe, obſerves, that an Indictment ſhould be moſt curiouſly and certainly penn'd; and the ‖ *Old Books of the Majeſty*, requires ſeveral Things to be ſpecially expreſſed, as the Name of the Parties, Day, Year, Place, Cauſe of Complaint, and Damage; and as it is neceſſary in Form, ſo this Form has been founded upon juſt Reaſon, for otherways theſe Inconveniencies ſhould plainly follow from general and indefinit Libels.

‖ *A Law Book ſo called.*

Firſt, A Perſon indefinitly accuſed of a Crime, as for Example of Murder, without expreſſing the Perſon alledged to be murdered, can never be ſafe from an Abſolution or Acquitment in Courts; for how can he oppone his † Sentence Abſolviture to a ſpecial Accuſation that afterwards may be raiſed, ſeeing he cannot make the one meet the other. And if Captain *Green*, and the other Pannels, ſhall be now * Aſſoilzied, this ſhould not be a good Defence to them, neither in *Scotland* nor *England*, if they ſhould be afterwards criminally purſued, for attacking a Ship, and murdering of Men, ſpecially condeſcended upon, becauſe it is not clear, that the preſent Indictment, as drawn, did concern theſe ſpecial Accuſations; and therefore Accuſations of that Nature ſhould be ſo ſpecial, as that afterwards the Accuſed be not brought to any further Diſturbance. 2. The Reaſon why ſuch Accuſations ſhould be ſpecial and definit, is, That the Pannels be not precluded from the obvious Defences, that tend to elide the Libel; as here in this Caſe, if the Libel were ſpecial and circumſtantiate, and ſome Deſignation given of the Ship and Crew, it might be in their Power to prove the obvious Defence, that ſuch a Ship was, at the Time libelled, in ſuch another Part of the World; that ſuch a Ship was either caſt away by Storm, or taken by Pirates in ſuch a Place; or that the Ship is yet extant, and the Crew alive: From all which, the Pannels are precluded by a general and indefinit Libel; and therefore Law has fixed the Forms in theſe Caſes, that ſuch Accuſations be not vagrant and looſe.

† *His being acquitted by the Court.*

* *Abſolved.*

It will not be denied, but that the Time and Place muſt be expreſſed: The ſame Parity of Reaſon obliges to a ſpecial Condeſcendance of the Party injured, Damage ſuſtained, as relating to ſuch particular Perſons. And the above-cited Sir *George Mackenzie*, in his Title of Libels, and the Forms thereof, does ſet down, that if the Defender crave the Purſuer to expreſs the Day, becauſe he offers to prove *alibi*, being elſewhere; then the Judge ſhould force the Purſuer to expreſs the Day, or elſe the Defender would be precluded from proving his Innocence. The ſame Reaſon is, that the Purſuer here ſhould be particular, as to the Ship alledged to be ſeiz'd, *&c.* becauſe the Pannel might offer to prove that that Ship was *alibi*, elſewhere, at the time: And many more Defences ariſe from the condeſcending upon the *Corpus delicti*, the viſible Effect of the Crime, than from the Circumſtance of either Time or Place. And this is not laid down conditionally, that theſe are not the Requiſites of a Criminal Indictment; except firſt the accuſed propone their Defence, *verbi gratia*, *alibi*, for Inſtance, elſewhere: But it is laid down as a Rule, That theſe are the Requiſites of all Criminal Libels; and the Reaſon given is, That the Pannels be not precluded from their Defences: So that it is not more † noticed, whether in this or that particular Caſe this Defect is prejudicial, becauſe Neceſſity has firſt induced the Form; and then this Form turns to be a Law in all ſuch Caſes. And the forecited Sir *George Mackenzie*, in the ſame Paragraph, thinks it ſo far a Requiſite of a Criminal Libel that the Crime ſhould be particular † ſubſumed, that he brings it as an Argument why it ſhould be ſo, that it is declared by the 148th *Act Parl.* 12 K. *James* VI. That a Libel bearing common Regrating, or Foreſtalling, in the general, ſhall be relevant, without condeſcending on the Time or Way of committing the ſame; and therefore concludes, that ſeeing this was an Act diſpenſing with the regular way; *Exceptio firmat Regulam in non exceptis*, an Exception confirms the Rule in Things not excepted. And hence it is not a good Argument, that the Purſuer has libelled as definitely and cloſely as he could in the preſent Matter: For better an Inconvenience ſhould be ſuffered in a particular Caſe, than that a dangerous Preparative be laid down, of admitting indefinite and general Criminal Libels, whereby poor Pannels may be precluded from their Means of Defence. And this will ſerve to obviate the Argument drawn from a very infeazible Chance, ſuppoſed to fall out in the Road of *Leith*; which as proponed, will likewiſe be otherwiſe circumſtantiate as to a poſitive Probation, and not founded upon Conjectures and Preſumptions, as this Caſe is.

† *obſerved.*

† *inſtanced, or argued from.*

Nor can the Fiſcal altogether excuſe his indefinite Libel, ſeeing the Means was not wanting of his coming to the Knowledge of the Ship, if it be true what is libelled; ſeeing the Ship was not ſunk, but ſold to a particular Perſon; and by ſome Evidence of the Ship, the Crew might likewiſe have been known.

3. As Law and Form require ſuch Libels to be definite and ſpecial, ſo more eſpecially in this Caſe; becauſe Captain *Green* was clothed with a Commiſſion under the Broad Seal of *England*, which empower'd him to act in Hoſtility againſt all Pirates: And therefore a general and indefinite Libel, upon attacking and ſeizing a Ship in his Caſe, would ſeem very improper: For the Preſumption muſt run in his Favours, That if any Acts of Hoſtility were done by him, they muſt be preſumed in Proſecution of his Commiſſion. This is not pleaded as a ſeparate Defence to elide the Libel; nor is it pleaded to have given him full Liberty to have ranged *impune*, with Impunity, but as a Specialty in this Caſe; that as it is a Defect in all Criminal Libels to be general and indefinite, ſo much more in this Libel, he being clothed with a Commiſſion, and having Power to * aſſail. And therefore the Preſumption runs in his Favours; except the particular Ship were condeſcended upon, known to be a Merchant and Trading Ship, and conſequently he out of his Duty in attacking the ſame. And therefore it is frivolous to object, that the Commiſſion obliged him to keep a particular Journal of whatſoever Veſſel he ſhould attack hoſtilely; ſeeing the attacking of any Veſſel whatſoever is denied, and the Argument from the Commiſſion only preſſed to this End, That no indefinite Libel of attacking Ships, is relevant againſt a Perſon clothed with a Power to attack in certain Caſes; and which the Accuſer was ſo far convinced of, that for ſupplying that Defect in his Libel, he in his Pleading and Information, is pleaſed to condeſcend upon this ſpecial Qualification, and Mark of the Ship attacked, that ſhe was a free Ship; which therefore he is obliged to prove.

* *attack.*

The Purſuer was at the Pains to defend his Libels from an Objection, as if they had wanted Time and Place. The Pannels did indeed conjoin this with the other; That as the determining the Time and Place ſeem to be abſolutely requiſite; ſo likewiſe the Condeſcendance upon the particular Names, and Deſignations of the Ship and Perſon, both being equally and neceſſarily required, that Pannels be not precluded from their juſt Defences. And the Time libelled comprehending the Space of four Months, being too indefinite; it is likewiſe reaſonable in ſuch a Caſe, that the Accuſer ſhould be more ſpecial; which the Pannels humbly remit to the Honourable Admirals, and Lords Aſſeſſors.

The Second Peremptory Defence proponed for the Pannels, was, That this being a Libel founded upon ſeveral Qualifications and Preſumptions, the ſame was no way relevant, to infer the Concluſion of the Libel. A Proof of Crimes from Preſumptions, is very hazardous: And hence it is, that ſome foreign Nations do not condemn to Death upon *Indicia*, Tokens, but make them only Ground to ‡ put to the Queſtion. And many Lawyers are of Opinion, that the ordinary Pain of Death is not to be inflicted upon a Proof ariſing from *Indicia*, Tokens, tho' never ſo pregnant. Of this Opinion is *Pharinacius*, a great Criminaliſt, and many others; and ſo is *Brunemanus*, *ad L. ult. Cod. de Prob.*

‡ *Torture.*

But in the next place, whatever the Diverſities of Opinions and Practices of Nations may be in this Point, yet it is certain, where *Indicia*, Tokens, are taken as a Proof, in order to Puniſhment by Death, they muſt be ſuch as amount to a full Proof, and leave no Room for any Scruple or Doubt. This cannot be better expreſs'd, than in the Words of that Excellent Conſtitution of *Theodoſius* the Emperor, *L. ult. Cod. de Prob. Sciant cuncti accuſatores eam ſe rem deferre in publicam notitiam debere, quæ munita ſibi idoneis teſtibus, vel inſtructa apertiſſimis documentis, vel Indiciis ad Probationem indubitatis, & luce clarioribus expedita:*——Let all Purſuers take notice, that when they bring a Matter into Publick Judgment, it ought to be ſupported by proper Witneſſes, or plain Proofs, or undoubted Signs and Tokens, as clear as the Sun at Noon. And it will plainly appear from the Libel, that the Qualifications therein narrated, are not ſuch *Indicia*, Tokens, as that excellent Conſtitution requires; *indubitata*, undoubted, *apertiſſima luce clariora*, moſt evident, clearer than Sunſhine. There muſt always Difference be made: Some have a probable Shew, and incline the Mind of the Judge; and yet cannot go the Length of a full Proof. *L.* 5. *in Principio Pand. de Pœnis* ——*Sed nec de Suſpicionibus debere aliquem damnare*; *ſatius enim eſt impunitum relinqui facinus nocentis, quam innocentem damnare:* Nor ought any Man to be condemned upon Suſpicion; for it is better that a guilty Man paſs unpuniſh'd, than that an innocent Man ſhould be condemned. *Indicia & Præſumptiones*, Tokens and Preſumptions have much eaſier Place, where *conſtat de Corpore delicti*, where the Subject of the Crime is viſible; becauſe this helps to ſuſtain the Preſumption, and gives indeed the *Indicia*, Tokens, their juſt Weight. But theſe, in ſuch a Caſe as this, *ubi non conſtat de Corpore delicti*, where the Subject of the Crime is not certain, are hardly receivable, ſeeing they want to be applied to a particular Crime.

This ſo neceſſary a Qualification of a Criminal Libel, *ut conſtet de Corpore delicti*, that the Subject of the Crime ſhould be viſible, the Purſuer endeavoured to evade, by diſtinguiſhing betwixt Crimes that are *cum effectu permanente*, have permanent Effects, and ſuch as have no permanent Effects. In the firſt, the *Corpus delicti*, viſible Effect of the Crime, was neceſſary, not in the latter; and therefore * ſubſumes that in the Caſes libelled, there could be no permanent Effects; becauſe all are libelled to be deſtroyed, and put out of Reach: But plainly this Diſtinction is againſt the Purſuer; becauſe certainly Piracy, Robbery, and Murder, are ſuch Crimes as have permanent Effects.

* *argues.*

By the *Corpus delicti*, Subject of the Crime, is not meant, that the Subject of the Crime muſt be ſo extent, as to fall under the Senſes; but that the Loſs ſuſtained is felt and known. As for Example: In the Crime of Murder, though the Body cannot be reached, yet the particular Loſs is known: It is notorious the Queen wants a Subject; Friends want a Relation, whom they can point out: In Piracy and Robbery, Merchants want their Ships and Goods: So that the Loſs is felt and known, though (*de facto*) the Subject cannot be pointed out. Whereas in this Caſe, no ſuch particular Evidences can be given: None can complain of any particular Loſs, either Queen or Subject. And this is the true Meaning of what is *Corpus delicti*, a Subject of the Crime. And whatever be the Import of the Objection againſt the Libel, yet it is certain, to alledge Qualifications as the Proof of a Crime, *ubi non conſtat de Corpore delicti*, where the Subject of the Crime does not appear, is moſt incongruous. And granting, as the Purſuer does further contend, that he has libelled a *Corpus delicti*, a Subject of the Crime; in ſo far as he has libelled a Criminal Fact, and Deed of Piracy, Robbery and Murder; which ſtill being general, is not that *Corpus delicti*, Subject of the Crime, that Law requires. Yet it was never heard, nor can there be any Lawyer whatſomever adduced, that owns the *Corpus delicti*, Subject of the Crime, can be made out of Preſumptions and Qualifications. When once it is known that a Crime is committed, it may be owned that *Indicia indubitata*, undoubted Tokens, ſuch as Law requires, may be a Ground to fix the Guilt upon particular Perſons; becauſe there the Certainty of a Crime committed, does negatively inforce and give Weight to the Preſumptions adduced: But when it is not known that a Crime is committed, and that this is firſt to be made out; it is poſitively contended, this cannot be but by a poſitive Probation of concurring † habile Witneſſes: For Preſumptions may be apt to fix a Guilt, *quando conſtat de Corpore delicti*, when the Subject of the Crime appears, or that the Fact was done, but not before.

† *legal.*

In the third Place, the Preſumptions libelled are very far from being of that Nature, as to be concluding to a Conviction; and of that Certainty and Clearneſs as Law requires. All Probations in Criminal Caſes ſhould be infallible and certain; and if there be any Meaning put upon Preſumptions founded upon for proving a Crime, other than to infer a Crime; that is to be laid hold upon, according to the manifeſt Principles of Law and Humanity.

Now the Qualifications libelled, are either ſuch as not only can bear an obvious Senſe, different from what is impoſed, but even a probable one; or are ſuch as are vagrant Expreſſions and Hear-ſays, importing little or nothing, and cannot be applied to the Crimes libelled.

1. The Chyrurgeon his having heard Shooting at a Diſtance, while in the mean time he ſaw no Engagement; can eaſily be applied either to Shooting from other Ships, or Shooting upon Salutation, *&c.*

2. That he did ſee the *Worceſter* riding in her Birth, and another Ship (as it were) towed to her Stern. 1. It is only Conjecture, being at ſuch a Diſtance. 2. It is improbable, becauſe it is not the ordinary way; and hazards the Ship falling foul of one another, in ſuch common Roads; which might be a Ground to the Chyrurgeon's Miſtake at ſuch a Diſtance.

3. That he did ſee the Goods lying lumber'd upon the Deck when he came aboard. 1. It is uſual in Coaſt-Trading, that the Goods are brought by Sloops, and ſo laid upon the Deck till they be ſtowed. 2. This might be occaſioned by the Ship's drawing Water. And to what concerns the Word Buſking, and bringing Water from the Shore, it is taken notice of in the Exculpation.

4. That when the Doctor enquired what was the Occaſion of the Goods lying in Confuſion, Captain *Madder* ſhould have anſwered, *Damn you*, &c. might proceed from the ſaid Captain *Madder*'s being in a Paſſion, and concerned for the Goods being damaged, and a Tarpauling-Temper, very uſual among Seamen.

5. That the Chyrurgeon did dreſs two wounded Men; firſt, one is dead, another is not named in the Libel; and the *Black* as the two other alſo, might have got their Wounds by fighting among themſelves, which is not unuſual; and the rather, that they appeared unwilling to tell the Chyrurgeon, of purpoſe to conceal their Quarrel from the Captain.

6. As to what is alledged to have occurred betwixt the Doctor and the Linguiſter, *Firſt*, It is only Hear-ſay; in the *ſecond* Place, there might be a Ship ſold to *Coge Commodo*, but not taken by Captain *Green*, and it is improbable he would have bought any Ship taken by Piracy upon that Coaſt.

7. What is libelled about *Reynolds* and his Siſter, their miſſive Letters, is far from being any Qualification: For, *Firſt*, *Reynolds*'s Letter is only a † Double. It is ſtrained to put ſuch a Gloſs upon the Expreſſion (*baſely confeſs*) to imply a Guilt, and a Guilt confeſſed; ſeeing the Words may eaſily bear the Meaning of a falſe Accuſation, and is explained by a ſubſequent Expreſſion, That he would rather die innocent, than accuſe any Man falſly; and in the Beginning of the Letter, declares, he knew nothing of the Matter.

‡ *Copy.*

8. What relates to *Haines* his Intercourſe with *Anna Seaton*, and others, are nothing but general and ambiguous Expreſſions, from which nothing can be gathered of the Crimes libelled, and infers no more, than that he was uſing ſome Stratagems to gain his Miſtreſs.

And as to the Expreſſion of the Wickedneſs committed aboard their Ship, it may eaſily relate to other Crimes, which are but too frequent in ſuch Voyages; as alſo, as to what was done aboard after the Ship was in the Harbour; and as to the libelled Expreſſion uſed by *Haines* againſt Captain *Madder*, as the ſame is general and indefinite, relating to no particular Crime, ſo this might ariſe from ſome particular Pique and Prejudice againſt Captain *Madder*: As to what follows * anent the Condition of the Cargo, when the Committee of the Counſel unloaded the Ship, it is ſufficiently taken off in the Exculpation.

* *about.*

Laſtly, As to what is libelled anent the *African* Company's Seal: *Firſt*, It will not be pretended, that the Company were in uſe to give their Seal to any Ship whatſomever trading by their Commiſſion. 2. If any had caſually gotten the Seal, there are an hundred Ways whereby the ſame might have come to the *Worceſter*'s Crew without Piracy. And 3. The Seal found aboard, and which is lying in the Clerk's Hands, which has a Ship for its Creſt, might have given Occaſion to this Miſtake.

It being plain, that the Qualifications libelled, are not of that Import to give a full Conviction; the Purſuer's Argument adduced from the End of Probation, which is to find out the Guilt, and convince of the Truth, may be plainly taken off; that there is no ſuch convincing Proof, as can fully and certainly determine any Judge, but, at moſt, reſolves in a conjectural Proof, never to be admitted to take away the Life of Man.

The Purſuer allows, that if every one of the Circumſtances ſhould be taken ſeparately, they would not be ſufficient; but being taken jointly, and according to the Series of the Thing, they amount to a full Proof and Conviction; and this is the Nature of all cumulative Probations; which is not to be disjoined, *Quæ non proſunt ſingula multa juvant*: The Purſuer does likewiſe adduce Arguments and Authorities for a cumulative Probation to be of this nature, that there needs not two concurring Witneſſes for every Circumſtance. In anſwer to which, the Pannels do ſtill plead, there is a great Difference to be made betwixt Caſes where previouſly, *conſtat de corpore delicti*, the Subject of the Crime appears, and that Preſumptions are only fixed upon to find out the Guilty; and theſe Caſes, where in general a Crime is libelled, altho' Preſumptions may be admitted in the firſt, yet never in the other, as is already obſerved. 2. In all Caſes, Preſumptions muſt be ſuch as leave no room to doubt, and muſt not only have a Probability with them, but a concluding Certainty, which does not give Ground to Suſpicion, but plainly and firmly convinces; which certainly cannot be inferred from the Qualifications libelled; all which either can bear a different Conſtruction, or are ſuch vagrant Hear-ſays, and indefinite Expreſſions, as amount to no certain and ſpecial Crime. 3. Such Preſumptions cannot be conjoyned, which particularly taken, are either of ſmall Weight, or amount to very little, or that they can probably bear another Senſe and Meaning, as has been demonſtrated. And, 4. As to the Conjunction of a cumulative Probation, there is a Difference to be made betwixt Crimes that are continued, and where the Proof may be had from the Reiteration of the Acts, and thoſe other Crimes which conſiſt only in Fact or Deed.

In the firſt, a cumulative Probation may be admitted; as in a Libel of Bribery, one Witneſs may be admitted for one Fact, another for another, and ſo a third, which may conjoyn, although there be not two concurring for every particular Fact, if there be other concurring Evidences and Arguments: But where there is one poſitive Fact libelled, this does not ſo eaſily admit of a cumulative Probation, eſpecially which is always to be taken along, where the Crime is not ſpecified and determined, as in this Caſe, and that the *ipſum corpus delicti*, the Subject of the Crime itſelf, is ſtill to be made out: So that the Texts of the Law, and Authorities made uſe of by the Purſuer, may be eaſily cleared, that either they relate to Civil Caſes, as *l.* 3. *par.* 2. *digeſt. de teſtibus*, where there muſt be a Preference of a Civil Right of the one to the other: Or if the Texts and Authorities relate to Crimes, the *Indicia*, Tokens, allowed by them, muſt be *indubitata & luce clariora*, undoubted, and clearer than Sunſhine; and preſuppoſes a Crime committed, *& corpus delicti*, the Subject of the Crime, and tends only to fix the Guilt. And it is poſitively denied, that there is any Law, or Lawyers, allowing any cumulative Probation to prove a Crime in general, *ubi non conſtat de corpore delicti*, where the Subject of the Crime does not appear; and this is a Speciality in the Caſe of the preſent Pannels; and the Honourable Judges, and Lords Aſſeſſors, are earneſtly intreated to conſider it; which does really diſtinguiſh them from the other Caſe mentioned by Lawyers; all which relates to * Delicts actually committed, and that the Preſumptions deduced, tend only to fix the Guilt: But when a Crime is alledged in general to be committed, and no ſpecial Condeſcendance upon what Subject, upon whom, and againſt whom, Preſumptions there are not ſufficient, without concurring habile Teſtimonies; even ſuppoſing ſuch a general indefinit Libel could be relevant, againſt which there are abundance of Arguments already given; for unleſs a Fact be proved, even Confeſſion is not ſufficient to fix a Guilt, as muſt be acknowledged by all; much leſs Preſumptions, except the Fact be once known.

* *Crimes.*

The Grounds of Exculpation.

As the Pannels are confident, the Lords Judges will not find the Libels ſo general and ſo qualified, relevant to infer the Pains of Death: So for further clearing their Innocence, they offer the Grounds of Exculpation following, which are either inſtantly inſtructed, or offered to be proved.

And this may be laid down, which cannot be denied, that *Preſumptio non delicti excludit preſumptiones delicti*, the Preſumption of a Crime not committed excludes the Preſumption of a Crime; to which Purpoſe, *Carpz. Part* 3. *Q.* 123. *Num* 69. and in the ſame Place, in *dubio ſemper in mitiorem partem eſt preſumendum.* In a doubtful Caſe we muſt always take the more charitable Side; where he cites Multitudes of Lawyers.

1. There is no Reaſon to ſuſpect the Pannels of the Crimes libelled, being Perſons of entire Fame, without any Imputation as to their antecedent Life.

2. That they were under a Charter-Party, commiſſioned to a Trading Voyage, and Inſurance made upon Ship and Cargo, which does remove all Suſpicion of Piracy, ſeeing ſuch do ordinarily aſſociate, and out-rig themſelves for that End.

3. A ſtrong Argument of the Pannels Innocence as to Piracy, is, That they were upon their Voyage homeward, to make Account to their Fraughters and Owners of their outward Cargo and Returns; of all which they have exact Journals and Accompts, and upon their coming to *Frazenburgh* gave Advice to their Owners of their Arrival, which was inſerted in the Public Prints from *London*, as is uſual, and likewiſe ſent a Packet over Land from *Frazenburgh* to the *African* Company in *Scotland*, from Mr. *Innes*,

their Correſpondent in the *Eaſt-Indies*, which is not to be ſuppoſed a Pirate would be intruſted with: Whereas, when ſuch turn Pirates, it is uſually for their own Profit, and ſo not only rob others, but begin firſt with their Owners, and are not found to return to make any ſuch Accounts; which is a ſtronger Proof of the Pannels Innocence, than any Circumſtance libelled to the contrary.

4. *Menocheus de Preſumptionibus, lib.* 5. *Priſ.* 59. treating of the Preſumptions of Innocence, lays down two very pregnant. Firſt, That if the guilty Perſon could flee and did not, that very Preſumption waſhes away the Guilt; and gives Account of a Caſe out of *Lucian de Amicitia*, that *Antiphilus* and *Demetrius* being accuſed of Sacrilege, were diſmiſſed by the *Prætor*, becauſe when they could have fled, they did not. A ſecond, when the accuſed Party offers himſelf to the Judge, it is a ſtrong Preſumption of his Innocence, ſince the Innocent fear nothing, and the Guilty have always the Puniſhment before their Eyes: Both theſe favour the preſent Pannels; for the Rumour was ſpread, and came to their Ears ſome Weeks before they were impriſoned, and yet none of them offered to flee; and one *Ballantine*, being at full Liberty amongſt his Friends the Time of the † Incarceration of the reſt, did of his own Accord offer himſelf to Priſon.

† *Impriſonment.*

5. That the alledged Confeſſion made by the Chyrurgeon muſt certainly labour under ſome Miſtake, becauſe, altho' he mentions the Attack to have been at *Calecut*, and that he heard the Ship was ſold at *Keilon*, which are at leaſt fifty Leagues diſtant: And altho' he was aboard all the Time, yet he makes no mention how the Ship was brought along, or any thing relating to it.

6. It is offered to be proven, that the *Black* who is alledged to be wounded in the Action, was not aboard forty-eight Hours before the *Worceſter* ſailed from the Coaſt of *Malabar*. And further, that the *Black* declared when he came aboard, that he got the Wound in his Arm by the Bite of a Snake. And further it can be inſtructed by Chyrurgeons, that the Wound, as it well appears, is more probable to have been got that Way than by Gun-ſhot.

7. Whereas it is libelled, That the Ship was attacked by the *Worceſter*'s Sloop upon the one Side, and her coming up upon the other:

It is impoſſible a Piracy of that Nature could have been committed upon the Coaſt of *Malabar*, and not certainly known in *England* long before the Arrival of the Ship, ſuch is the exact Correſpondence, eſpecially as to ſuch Matters; nor could the Captain either have traded upon the Coaſt, or been received by the Factories and Governors there, if he had committed any ſuch Piracy; whereas it is offered to be proven, that after the Time libelled, he was aſhore kindly entertained, exchanging Letters with the Governor of *Anjango*, and had Inſtructions, and Recommendation from thence to the Governor of *Fort William* upon the Coaſt of *Bengal*, whither he was obliged to go for refitting his Ship, and ſtopping the Leak, which he could not conveniently do at *Malabar*, becauſe of the Want of Timber, Cordage and Money to be taken up upon Bottomry.

8. It was aſſerted by the Fiſcal in the Time of the Trial, that the Action laſted two Days and a half, which is a moſt improbable Story; for either the Night would have ſeparated them, or the Ship attacked might rather have run aſhore, than fall into the Hands of the Pirates.

9. That the Word *Buſking*, libelled as a Term ſignifying a Ship preparing to fight, has a quite different Conſtruction in the ordinary Acceptation among Seamen, and ſignifies bearing cloſe upon the Wind by a preſs Sail.

10. It is offered to be proven, that their Water was ſtaved on the Coaſt of *Malabar* in a Storm, and not by *Buſking*, as it is libelled.

11. And to † redargue the Circumſtance libelled, that the Goods were not right ſtowed; it's acknowledged that the Ship was ſix Months in a Harbour at *Bengal*, after the libelled Engagement, and there loaded and unloaded: So that they had all Opportunity to ſtow the Goods as they thought fit, and certainly they were ſtowed as ſuch Goods uſually are, which cannot be preſs'd without Damage.

† *Refute.*

12. That the whole inward Loading does not amount to a Value beyond what might be reaſonably expected from the outward Cargo in a Trading-Voyage to theſe Places.

And *laſtly*, That in *January* preceding the Time of the alledged Action, there was a Proteſt taken by the Pannels againſt the Governor of *Cochin*, for not allowing the Ship *Worceſter* to be refitted there, which ſhe extremely needed before ſhe could return to *Europe*, and ſo was in no Capacity, either to fight or take a Ship, as is libelled, in the Months of *February*, *March*, *April*, or *May* thereafter; and was a Ship ſheathed with Lead, and therefore altogether unfit for ſuch Action; as alſo a ſlow Sailer, and has not the leaſt Mark of any Gun-ſhot upon her.

So that upon the whole Matter, The Qualifications libelled being ſo weak and conjectural, and the Preſumptions of Innocency ſo ſtrong upon the other Hand; it is confidently expected that the Honourable Judges and Lords Aſſeſſors, will reject the Libel, and let the Pannels go free; which they expect from the Juſtice of the Nation, and the † Humanity with which they are in uſe to treat all Strangers.

† *Courteſy.*

An ANSWER *to the Fiſcal's Citations. With the Counter-Citations for the Pannels.*

THO' the Doctors differ about the Force of Preſumptions, and the Effect of Probation, *ab Indiciis & Argumentis*, from Preſumptions and Arguments; yet they all agree, that Parallels drawn from Civil Cauſes to Criminal ones, are not univerſally to be admitted. Now the Fiſcal cites *L.* 3. § 2. *de Teſtibus*, for evincing that Preſumptions, *Indicia & Argumenta*, Tokens and Arguments are to be received.

This Law is taken out of the Fourth Book *de Cognitionibus*, written by *Calliſtratus*; the which Book only treats of Civil Caſes, as is manifeſt from the Title of that Book, diſpers'd in the *ff.* and † congeſted by *Labittus*, to which I refer. Wherefore this being a Reſcript of the Emperor *Hadrian* in a Civil Cauſe, can never be applied in a Criminal one.

† *collected.*

The next Citation is, *L.* 22. *C. ad l. Cor. de falſis*, which is a Reſcript of the Emperor *Conſtantine* to the Governor of *Rome*, about a forged Writ. Now as the Law ſays, ſuch Forgeries can only be diſcover'd by † Collation of Writs, Arguments inferred from thence, and Witneſſes. And it is well known, that in our Law we have two Ways of † Improbation; the Direct, and the Indirect. Now to apply that to the Crime of Robbery or Murder, which muſt be proven * *liquidiſſime*, and not by ‡ Writs, ſeems very ‖ anomalous. Beſides, Crimes, according to their different Nature, muſt be diverſly proven; ſome by Ear-Witneſſes, as Blaſphemy, Hereſy, Curſing of Parents, &c.; others by Eye-Witneſſes, as Robbery, Murder, &c. And the Witneſſes competent for proving the one Crime, are not ſo in the other.

† *Comparing of Hands.*

† *Diſproving.*
* *moſt clear.*
‡ *Writing.*
‖ *irregular.*

The third Citation is out of *Antonius Mathæus de Criminibus, ad Lib. ff.* 48. *Tit.* 15. *C.* 3. *N.* 4. The Fiſcal cites the latter End of this Section; but omits to ſet down what the Author refers to in the *C.* 6. of that Title; the doing whereof will ſerve for an Anſwer. The Poſition is, *Unus Teſtis non eſt audiendus; at ſi Argumenta alia concurrant, audiendus eſt:* One Witneſs is not to be regarded; but if other Arguments concur, he is to be regarded. Now theſe *Argumenta* muſt be taken out of the *C.* 6. of that Title. *Argumentum nihil eſt aliud, quam Ratio quæ Rei dubiæ facit Fidem; & eſt vel neceſſarium, vel contingens. Neceſſarium, cujus Conſequentia neceſſaria eſt; veluti coiviſſe eam quæ peperit, Furtum feciſſe, qui Rem furtivam efferens deprehenſus eſt. Contingens, cujus Conſequentia probabilis eſt; veluti, Cædem feciſſe, qui cruentatus eſt:* “ An Argument is only a Reaſon which proves “ a doubtful Thing; and is either neceſſary, or contingent. That is a “ neceſſary Argument, whoſe Conſequence is neceſſary: As for Inſtance, “ That ſhe who has brought forth a Child, has certainly known a Man; “ or that he who is taken in the Fact carrying off ſtolen Goods, has cer- “ tainly committed Theft. A contingent Argument is that whoſe Con- “ ſequence is only probable: As for Inſtance, that the Man who is “ bloody has committed Slaughter.” The neceſſary Argument obtains in Criminal as well as in Civil Caſes; but the contingent one, which the Lawyers call a Preſumption, is not of ſuch Force. However, our Author is of Opinion, that *Contingentia Argumenta quanquam ſingula Fidem non faciant, plura tamen conjuncta Crimen manifeſtare poſſunt. Rem uno atque altero Exemplo declarabimus. Occiſus eſt Calendis* Mævius: Titius *perempti Inimicus fuit; eidem ſæpius non ſolum interminatus, ſed & inſidiatus eſt: Cum deprehenderetur iiſdem Calendis in Loca Cædis, cruentatus, cum Gladio cruento, ad Menſuram Vulneris facto, toto Vultu expalluit; interrogatus, nihil reſpondit, trepide fugit. Hic ſingula quidem Argumenta infirmiora ſunt, univerſa tamen Cædis Autorem* Titium *evidenter deſignant. Simile eſt aliud,* Clodius *cum* Pompeia: *Nudus cum nuda reperti ſunt in eodem Cubili; preteriit id Momentum quo Turpitudo perfici potuit. Jam olim ille Mulierem deperibat, ad Stuprum per Literas ſollicitaverat. Quis dubitet utrumque Adulterii damnare?* “ Tho' contingent Arguments ſingly by themſelves make no “ Proof; yet ſeveral of them join'd together may make the Crime evident. “ We ſhall make it plain by an Inſtance or two. *Mevius* was killed on “ the firſt Day of the Month: *Titius* was an Enemy to the Perſon kill'd, “ and not only frequently threaten'd him, but waylaid him. And when “ he was found on that ſame Day of the Month in the Place of Slaughter, “ bloody, with a bloody Sword, anſwerable to the Dimenſions of the “ Wound, he look'd as pale as Death: Being examin'd, gave no Anſwer, “ but run away in a Fright. In this Caſe, indeed, the Arguments ſingly “ conſidered don't ſay much; but taken all together, they plainly prove “ *Titius* to have been the Author of the Murder. What follows is ſuch “ another Inſtance. *Clodius* and *Pompeia* were found naked in the ſame “ Bed, but not in the Act; the Time for that was paſt: But he had long “ courted the Woman, and ſollicited her to Lewdneſs by Letters: “ Then who can make any Doubt to charge them both with Adultery?” Now there being in the preſent Caſe no ſuch Preſumptions as theſe are; the Rules laid down by this Lawyer *Mathæus*, ſhew the Circumſtances libelled are not † relevant.

† *ſufficient.*

The fourth Citation is from *Gail. L.* 2. *Obſ.* 66. *N.* 12. The ſetting down of the Title of the Obſervation, which is *Jus venandi an Servitus ſit realis vel perſonalis*, Whether Hunting be a real or perſonal Service; and alſo the Apoſtle of the Section, which is, *In Materia Decimarum, Teſtes ſingulares probant*; In Matter of Tythes, ſingle Witneſſes are good; does ſhew, that the Matter there treated is Civil and not Criminal. And many Things are allowed in Civil Caſes, which are not in Criminal. *A. Mathæus ad Lib. ff.* 48. *Tit.* 15. *de Probationibus, Cap.* 2. *Num.* 1. *Quicunque Teſtes in Cauſis civilibus eſſe non poſſunt, iis nec in Criminalibus Teſtimonii dictio eſt. At non contra; quicunque in Cauſis civilibus audiuntur, ii etiam in criminalibus audiendi ſunt. Graviora enim criminalia Judicia civilibus ſunt, ideoque & Teſtium major delectus adhibendus eſt.* “ Whoſoever cannot be Witneſſes in Civil Cauſes, are not to be ad- “ mitted in Criminal Cauſes. But the contrary does not hold, *viz.* “ That whoever may be Witneſſes in Civil Cauſes, may alſo be ad- “ mitted in Criminal Cauſes: For Criminal Cauſes are of more Weight “ than Civil Cauſes; and therefore in Criminal Cauſes we ought to be “ more nice in the Choice of Witneſſes.” And the Author illuſtrates this Doctrine, by Examples ſet down in that Chapter.

What has been ſaid will ſerve to anſwer what is cited out of *Giurba* and *Maſcardus*.

The Citation from *Carpzovius*'s Criminal Practicks, *Q.* 123. *N.* 57. is imperfectly excepted: For I ſhall give no other Anſwer than what is in the ſame Place, from *N.* 55. to *N.* 59. *Probantur etiam Indicia ad Torturam per unicum Teſtem, in Caſu quo plura Indicia ſimul concurrunt, ſuper quibus Teſtes examinati diverſimode deponunt; ac unus de uno, alter de alio, tertius etiam de alio teſtificatur: Tum enim omnium Teſtificatio ſimul juncta, veriſimiliter facit de Reo, qui propterea ſub Tormentis interrogari poteſt. Etſi enim hac de Re non omni ex Parte Interpp. conveniant, nec deſint qui Aſſertionem hanc ſimpliciter rejiciant: Teſteſque hoſce, ut ſingulares conjungendos non eſſe autument, eo quod ſinguli Teſtes haudquaquam Fidem faciant. Veriſſimum tamen eſt, plures imperfectas Probationes in Cauſis capitalibus conjungendas eſſe ad plenam Probationem faciendam, quoad effectum torquendi: Quod communiter Dd. placuiſſe, licet namque unicum Indicium ab uno Teſte probatum, ſemiplenam Probationem & Fidem, ad Quæſtionem de Reo habendam non faciat: Secus tamen Res ſe habet, ſi plura Indicia concurrant, & conjunctim reum aggravent, quorum unumquodque per Teſtem ſingularem probetur. Nam una Præſumptio aliam adjuvat; plurimaque Indicia conjuncta Fidem faciunt. Quod ipſum tamen non aliter accipi velim, quam hiſce tribus concurrentibus. Primo, Ut Teſtes ſint omni Exceptione majores & idonei, ac Vitæ probatæ. Secundo, Ut deponant ſuper Indiciis proximis delicto, non etiam ſuper valde* *remotis Indiciis. Tertio, Indicia ſuper quibus Teſtes iſti ſingulares deponunt ſunt plura, & talia quæ reddunt animum Judicis quaſi certum quod Reus deliquerit: Quorunt alterutrum ſi deficiat, nullum in Jure habeant Effectum.* “Preſumptions make Torture lawful, when there is but one Witneſs, in a Caſe where ſeveral Preſumptions concur, upon which Witneſs being examined, ſwear in a different Manner, and one Witneſs as to one Preſumption, another as to another, and a third concerning a third. Then all their Evidence being joined together, makes the Charge againſt the Perſon probable, who therefore may be examin'd by Torture. For tho' Interpreters don't all agree in this Point, and that ſome of them do abſolutely reject this Opinion, and think theſe Teſtimonies are not to be joined, becauſe ſingle Witneſſes don't make Proof; yet it is a certain Truth, that in Capital Caſes ſeveral imperfect Proofs are to be joined together, in order to make a full Proof as to the Effect of Torture: This is the common Opinion of the Doctors; for tho' one Preſumption prov'd by one Witneſs, does not make half Proof in order to examine the Priſoner by Torture; yet the Matter is otherwiſe, if ſeveral Preſumptions concur jointly to charge the Priſoner, of which any one may be proved by a ſingle Witneſs; for one Preſumption ſtrengthens another, and many of them joined together make up a Proof. But I would not have this to be underſtood to be ſo, except when thoſe three Things concur: 1. That the Witneſſes be above all Exception, proper in the Caſe, and of a good Life. 2. That they ſwear as to Circumſtances immediately relating to the Crime, and not as to thoſe which are very remote. 3. That the Preſumptions upon which thoſe ſingle Witneſſes ſwear, be ſeveral and ſuch as in a Manner may ſatisfy the Judge, that the Priſoner is guilty of the Crime. But if any of thoſe Things be wanting, they can have no Effect in Law.”

The Preſumptions in *Swintown*'s Caſe were not in the Indictment, but in the Probation, and ſeem to have been very pregnant and near, whereas theſe libelled againſt Captain *Green* are moſt remote.

But to put this Matter in its true Light, the Honourable Judge and Aſſeſſors are deſired to remember, That Preſumptions never reſpect the Delict, or the *Corpus delicti*, but the Delinquent, and the Perſon of the Accuſed: For as *Menoch. de Preſumpt. L.* 1. *Q.* 8. *N.* 2. very well ſays, *Præſumptio verſatur circa id quod geſtum eſt, ſed ignoratur qualiter geſtum*; a Preſumption relates to the Thing done, but not to the Manner of doing it. Now, in the Opinion of all Lawyers, *Delictum debet eſſe manifeſtum*, a Crime ought to be manifeſt. *Julius Clarus, Sententiarum Lib.* 5. *Q.* 4. *Sciendum eſt autem quod in omnem Caſum nunquam debet Judex procedere ad aliquem actum, niſi prius illi conſtet Delictum ipſum fuiſſe commiſſum.* “But you muſt know, that a Judge in no Caſe ought to proceed to any Act of Court, except it appear to him before hand that the Crime was committed.” And in that Place, illuſtrates this Doctrine by Examples, and the Authority of other Lawyers, to which I refer. His Sentiment in the End of that Queſtion being, *Et ubi conſtet Scelus non interveniſſe, ſilebit Proceſſus:* And where it appears that no Crime has been committed, Proceedings muſt ſtop.

So that *ubi conſtat de delicto*, where the Crime is certain, the Doubt and Controverſy ariſes about the Delinquent, ſo as it is uncertain who is the Perſon guilty, or the Committer of this Crime, whether it be Robbery, Piracy, or Murder. Thoſe who admit of Probation, *per Indicia & Argumenta*, by Preſumptions and Arguments, diſtinguiſh theſe into *Proxima & Remota*, near and remote; and to each of them give a different Effect in Law. *Capr. Q.* 120. *N.* 6. *Indicium definitur argumentum delicti perpetrati demonſtrativum, ſeu Indicativum. Idem, Q.* 121. *N.* 1. *Indicia propinqua ac certa, quorum unumquodque per ſe ſufficit ad Torturam. Hujus generis Indicia non veriſimilia ac probabilia ſed certa, non levia aut perfunctoria ſed urgentia; non dubia aut æquivoca, quæ multipliciter interpretari queunt, ſed concludentia, & ad Delictum inferentia ſunt, & Crimini quaſi inhærent, ita ut iis apparentibus, nihil ni ſi Rei Confeſſio deeſſe videatur.* And *N.* 14. *& ſeqq. ut Indicium ſemiplenæ Probationis per ſe ſolum ſufficiens & Idoneum ſit ad Torturam, tria requiruntur,* 1. *Ut Teſtis ille unicus ſit omni exceptione major.* 2. *Ut hic Teſtis deponat de actu immediato, quod fieri intelligitur, ſi Teſtis ſuæ aſſertionis rationem per ſenſum corporeum rei convenientem reddat, quod nempe ipſemet Delictum ab accuſato perpetrari viderit vel preſens interfuerit. Quare, Si Teſtis non de ipſo crimine deponat, ſed de aliquo actu ad delictum proxime accedente, Indicium ſufficiens non facit. Sicuti nec illius Teſtimonium idoneum ac ſufficiens eſt, qui deponit de Delicto quod in oculos cadit, & rationem reddit de alio ſenſu.* 3. *Ut Teſtis verbis dilucidis & indubitatis de Crimine teſtificetur.* “A Preſumption is defined to be a demonſtrative or declarative Argument of a Crime committed. *Q.* 121. *N.* 1. Near and certain Preſumptions, of which every one is ſufficient of itſelf to juſtify Torture. Preſumptions of this kind, ought not to be likely or probable, but certain; not ſlight or trifling, but urgent; not doubtful or equivocal, that may admit of many Interpretations, but concluding, really inferring the Crime, and ſo inſeparable from it, that thoſe Preſumptions appearing, there ſeems to be nothing wanting but the Confeſſion of the Criminal, & *N.* 14. and following. To make the Preſumption of half-full Proof ſufficient to juſtify Torture, there are three Things required. 1. That that one Witneſs be beyond all Exception. 2. That the Witneſs ſwear as to the immediate Act, which muſt be underſtood, that the Witneſs give for the Reaſon of his Aſſertion, ſome bodily Senſe proper to the Thing; as for Inſtance, that he ſaw the Crime committed by the Priſoner, or was preſent at the Time: Therefore if the Witneſs don't ſwear concerning the Crime itſelf, but concerning ſome Act that comes next the Crime, it is not a ſufficient Preſumption. So neither is his Evidence proper and ſufficient, who ſwears concerning a Crime that is the Object of Sight, and gives an Account of it from ſome other Senſe. 3. That the Evidence concerning the Crime be in clear, and not doubtful Expreſſions.” After which our Author gives Examples; and it is to be obſerved, That theſe *Indicia*, Preſumptions, are requir'd in order to torture; for they are not, in this Author's Opinion, ſufficient to condemn, unleſs they be *Certiſſima, Indubitatiſſima, & Luce Meridiana Clariora*, moſt certain, undoubted, and as clear as the Sun at Noon, in which Caſe they have the Effect of a compleat Probation.

The *Indicia remota*, remote Preſumptions, which are alſo term'd, *Dubitata, Semiplæna, quæ rem veram eſſe arguunt, non ſemper ſed plerumque tantum, unde etiam non dicuntur ſimpliciter certa indicia, ſed veriſimilia & probabilia, ſeu veluti certa Indicia:* “Doubtful, half full, which don't always argue the Matter to be true, but almoſt always; whence it comes, that they are not ſimply called certain Preſumptions, but likely, probable, or almoſt certain Preſumptions.” And theſe cumulatively and in great Number concurring, may bring a Perſon to Torture, but never to Condemnation.

Now, by applying this general Doctrine to the Indictment, it is *Juris Incontraverſi*, uncontravertible Law, that the *Delictum*, Crime itſelf, cannot be proven *per Indicia & Preſumptiones*, by Tokens and Preſumptions. And as to the Pannels, tho' a Delict Crime were proven *per Teſtie omni exceptione majores*, by unexceptionable Witneſſes, yet it will appear, That the Circumſtances libelled, do not deſerve the Name of *Indicia*, Preſumptions; and tho' they ſhould be allowed that * Compellation, yet they are *Remotiſſima*, very remote, and by conſequence can have no Effect as to Condemnation.

* *Name.*

As to the additional Concluſion, that the Ship and Cargo ſhould be † eſcheated, the Fiſcal cites a wrong Place, and ſuppoſes the Caſe to be what it is not: But ſeeing he values Mr. *Molley*'s Authority ſo much, his Opinion in this Matter, as expreſs'd in the ſame Treatiſe, *C.* 4. §. 21, 22. is thus: By the Law *Marine*, if Goods are taken by a Pirate, and afterwards the Pirate attacks another Ship, but in the Attempt is conquered, the Prize becomes abſolutely the Captors, ſaving the Account to be render'd to the Admiral; and it is accounted in Law a juſt Caption of whatſoever may be got or taken from ſuch Beaſts of Prey, be the ſame in their own or in their Succeſſor's Poſſeſſion. But then an Account ought to be render'd to the Admiral, who may (if they happen to be the Goods of the Fellow Subject of the Captors, or of Nations in Amity with his own Sovereign) make Reſtitution to the Owner; the Coſts and Charges, and what other Things in Equity ſhall be decreed to the Captor, firſt conſidered and deducted.

† *forfeited.*

§. 22. By the Statute 27 *Edward* III. *cap.* 13. If a Merchant loſe his Goods at Sea, by Piracy or Tempeſt (not being wreck'd) and they afterwards come to Land, if he can make Proof they are his Goods, they ſhall be reſtored to him, in Places guildable, by the King's Officers and ſix Men of the Country.

This Law hath a very near Relation with that of the *Romans*, called *de Uſucaptione*, or the *Atinian* Law; for *Atinius* enacted, That the Plea of Preſcription or long Poſſeſſion, ſhould not avail in Things that had been ſtolen, but the Intereſt that the right Owner had, ſhould remain perpetual: The Words of the Law are theſe, *Quod ſurreptum eſt, ejus rei Æterna auctoritas eſſet.* Where by *Auctoritas*, Authority, is meaned *Jus Domini*; the Right of the Proprietor remains perpetual, tho' a Thing be ſtole.

CURIA JUSTICIARIA *Supremæ Curiæ Admiralitatis tenta in Prætorio, vel nova Domo Seſſionis Burgi de* Edinburgo, *decimo tertio Die Menſis* Martii, 1705, *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros,* Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arniſtoun, Joannem Home *de* Blackadder, *&* Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia Legitimè Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour.

Capt. *John Madder*, chief Mate of the ſaid Ship.
John Reynolds, ſecond Mate of the ſaid Ship.
Thomas Linſtead, Aſſiſtant to the deceaſed *Supercargo* of the ſaid Ship.
James Burn, Boatſwain of the ſaid Ship.
James Simpſon, Gunner.
Andrew Robertſon, Gunner's Mate.
John Bruckley, Seaman.
George Kitchen, Seaman.
Henry Keigle, Carpenter of the ſaid Ship.
George Haines, Steward of the ſaid Ship.
Samuel Wilcocks, Chyrurgeon's Mate.
George Glen, Seaman.
Alexander Taylor, Seaman.
And *John Bannantyne*, Seaman in the ſaid Ship.

All of them indicted and accuſed at the Inſtance of Mr. *Alexander Higgins*, Procurator-Fiſcal to the High Court of Admiralty, for the Crimes of *Piracy*, *Robbery*, and *Murder*, in Manner mentioned in the two ſeveral Indictments raiſed againſt them thereanent, before inſert in the Court holden the Fifth of *March* Inſtant.

PURSUERS.

Mr. *Alexander Higgins*, Procurator-Fiſcal.
Sir *James Stuart*, her Majeſty's Advocat.
Sir *David Dalrymple*, and Mr. *William Carmichael*, her Majeſty's Solicitors.
Sir *Patrick Home.*
Sir *Gilbert Eliot.*
Mr. *Alexander Mackleod.*
Mr. *Francis Grant.*——— Advocats.

Procurators in DEFENCE.

Sir *David Thoirs*,	Mr. *George Alexander*,
Sir *Walter Pringle*,	Mr. *John Elphinſton*,
Mr. *David Forbes*,	Mr. *John Spotſwood.*

Advocats.

The Libels and Informations for both Parties being read over in Preſence of the ſaid Judge and Aſſeſſors, and in Preſence of the Pannels and Aſſizers.

The Judge and Aſſeſſors having adviſed both the Indictments purſued by Mr. *Alexander Higgins*, Procurator-Fiſcal of the High Court of *Admiralty*, againſt Capt. *Thomas Green*, and the hail Pannels in both Indictments, with the foregoing Debate thereupon; they find, That *Keigle*, and the other Pannels in the firſt Indictment, cannot be delay'd in their Trial, on Pretence that Capt. *Green*, as their Commander, ought to be firſt diſcuſs'd; and therefore repel the firſt dilatory Defence: And find that *Reynolds* being libelled againſt as *Socius Criminis*, a Fellow-Criminal; and there being no Speciality, or particular Ground of Exculpation proponed, why he ſhould be previouſly tried; therefore * repel the ſecond dilatory Defence proponed for Capt. *Green*, and theſe in the Indictment with him; and repel the Objection again the † Generality of the Indictments, in regard of the Nature

* *reject.*

† *General Terms.*

of the Crimes; and find the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by clear and plain Evidence, * relevant to infer the Pains of Death, and Confiſcation of Moveable: Reſerving the Conſideration of the additional Concluſion of the Libels, until the Verdict of the Aſſize be returned; and repel the other Defences proponed for the Pannels; and remit the whole to the Knowledge of an Aſſize. *ROB. FORBES*, I. P. A.

* *ſufficient.*

The Judge of the High-Court of *Admiralty* and Aſſeſſors, continue the Dyet at the ſaid Mr. *Alexander Higgins*'s Inſtance, againſt the foreſaid † hail Pannels, till To-morrow, being the 14th Inſtant, at Eight a-Clock in the Morning; and ordains the Aſſizers and Witneſſes to attend then, § ilk Perſon under the Pain of 200 Merks; and the Pannels to be carried back to Priſon.

† *whole.*

§ *each.*

CURIA JUSTICIARIA *Supremæ Curiæ Admiralitatis tenta in Prætorio, vel nova Domo Seſſionis Burgi de* Edinburgo, *decimo quarto Die Menſis* Martii, 1705, *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arniſtoun, Joannem Home *de* Blackadder, *&* Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia Legitimè Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour.
Captain *John Madder*, Chief Mate of the ſaid Ship.
John Reynolds, Second Mate of the ſaid Ship.
Thomas Linſtead, Aſſiſtant to the deceas'd *Supercargo* of the ſaid Ship.
James Burn, Boatſwain of the ſaid Ship.
James Simpſon, Gunner.
Andrew Robertſon, Gunner's Mate.
John Bruckley, Seaman.
George Kitchen, Seaman.
Henry Keigle, Carpenter of the ſaid Ship.
George Haines, Steward of the ſaid Ship.
Samuel Wilcocks, Chyrurgeon's Mate.
George Glen, Seaman.
Alexander Taylor, Seaman.
And *John Bannantyne*, Seaman of the ſaid Ship.

PURSUERS.

Mr. *Alexander Higgins*, Procurator-Fiſcal.
Sir *James Stuart*, her Majeſty's Advocat.
Sir *David Dalrymple*, and Mr. *William Carmichael*, her Majeſty's Solicitors.
Sir *Patrick Home.*
Sir *Gilbert Eliot.*
Mr. *Alexander Macleod.*
Mr. *Francis Grant.*

Advocats.

Procurators in DEFENCE.

Sir *David Thoirs.*
Sir *Walter Pringle.*
Mr. *David Forbes.*
Mr. *George Alexander.*
Mr. *John Elphinſton.*
Mr. *John Spotſwood.*

Advocats.

* ASSIZE.

* *Jury.*

Archibald Drummond, * Skipper in *Leith.*
John Findlayſon, Skipper in *Borroſtounneſs.*
Mark Stark, Skipper there.
James Jeniſon, Skipper in *Queensferry.*
John Mathie, Skipper in *Preſtounpans.*
James Majoribanks, Merchant in *Edinburgh.*
Edward Majoribanks of † *Halyards.*
Sir *James Fleeming* of *Rathobyres.*
James Gordon, Senior.
Robert Forreſt,
Robert Innes,
Robert Walwood,
William Blockwood,
George Clark, and
William Neilſon, Merchants in *Edinburgh.*

The Aſſize lawfully ſworn, and no Objection of the Law in the contrary.

Mr. Alexander Higgins *the Purſuer, for Probation, adduced the Witneſſes after deponing*, viz.

* COmpeared *Antonio Ferdinando*, Cook's Mate of the Ship the *Worceſter*, which was commanded by Captain *Thomas Green*, aged twenty-four Years, or thereby, unmarried; with Captain *George Yeaman*, Merchant in *Dundee*, ſworn Interpreter: And the ſaid *Antonio Ferdinando* being ſolemnly ſworn, ‖ purged of partial Counſel, examined and interrogate upon the Libels, or Indictments. And being interrogate if he believed in GOD, and if he was a Chriſtian: Depones, That he believes in GOD, and that he was born of Chriſtian Parents, and is a Chriſtian himſelf. And being interrogate upon the Indictment, depones, That at *Callicoiloan*, upon the Coaſt of *Malabar*, the Deponent did come aboard the Sloop belonging to Captain *Green*'s Ship called the *Worceſter*; at which Time the Deponent did enter to the Service of Mr. *Loveday*, Purſer of the ſaid Ship; and the Deponent cannot be poſitive of the Time of his coming aboard, but believes it was about two Years and a half ſince; and went in the ſaid Sloop from *Callicoiloan* to *Keilon*, from thence to *Cocheene*, and from *Cocheene* to *Callicut*, and from that to *Tillicherry*: And depones, That upon the Coaſt of *Malabar* thereafter, he did ſee an Engagement betwixt the ſaid Sloop, the Ship the *Worceſter*, and another Ship ſailed by *White-Men*, ſpeaking *Engliſh*, and the ſaid Ship did bear *Engliſh* Colours. And being interrogate by the * Pannels, what were the Colours the ſaid Ship did bear: Depones, That they were of White, Red and Black, like to theſe that the ſaid Captain *Green*'s Ship did bear; and that firſt the ſaid Captain *Green*, the Merchant, and Mr. *Loveday*, went aboard the ſaid Strangers Ship, and ſtayed for about the Space of a Glaſs, and then returned aboard the *Worceſter*, and then did man the Sloop of the ſaid Ship the *Worceſter*, with about 20 Men, whereof were Captain *Green* himſelf, Mr. *Loveday*, and the Supercargo, the Carpenter and Gunner, and that the Gunner's Name was *James Simpſon*, whom the Deponent knows, and points to at the Bar; and that there were four Guns and two Patteroes aboard the ſaid Sloop; and thereafter Captain *Madder* came aboard of the Sloop, and that they did engage the ſaid other Ship for the firſt and ſecond Days, and upon the third Day the ſaid Ship was boarded by thoſe in the Sloop, who when they came aboard, did take up thoſe of the Crew of the ſaid Ship from under Deck, killed them with Hatchets, and threw them overboard, and that Captain *Green*, Captain *Madder*, and *James Simpſon* the Gunner, were three of theſe who went aboard and killed the Men: And depones, That the Ship the *Worceſter* came up during the ſaid Engagement, and did fire at the ſaid Ship, but theſe in the *Worceſter* did not board her: And the Deponent believes, that the Men who were killed and thrown overboard, as ſaid is, were about ten in Number; and depones, That there were but few Goods aboard the ſaid taken Ship, which were carried aboard the *Worceſter*, and amongſt the reſt he † minds of ſome *China* Root: And depones, That the ſaid Ship which was taken, was ſailed by ſome of the Crew of the *Worceſter*, and carried to *Callicoiloan*, and there ſold, and that the ſaid Ship was not tied with a Tow to the Ship *Worceſter*: And the Deponent knows not what Men were killed aboard the Sloop or *Worceſter*, or if any were killed, but the Deponent himſelf was wounded in the Arm, and which Wound he now ſhews to the View of all. Depones, That Captain *Madder* told the Deponent, that if ever he did tell any Perſon, either white or black, of the ſaid Engagement, that he the ſaid Captain would kill the Deponent, and heave him overboard. Depones, That the Upper Coat which the Deponent ‡ preſently wears, was found aboard of the ſaid taken Ship, and which the Deponent has kept ſince that Time. Depones, That during the ſaid Engagements, *Haines*, *Bannantyne*, *Bruckley*, *Wilcocks*, *Burn*, *Robertſon*, *Glen* and *Taylor*, eight of the Pannels, were aboard the Ship the *Worceſter*; and that *Keigle*, *Kitchen* and *Linſtead* were aboard the Sloop with Captain *Green*, *Madder* and *Simpſon*; and believes that *Reynolds* was then aſhore at *Callicoiloan*: And depones, That the ſaid Ship was ſold to a King in *Malabar*, and that the Man who bought the ſaid Ship bears a *Malabar* Name, whoſe Servant is called *Coge Commodo*: And depones, That the ſaid Engagement happened between *Tillicherry* and *Callicut*, upon the Coaſt of *Malabar*: And depones, That he cannot poſitively tell how many Guns the taken Ship did bear, but thinks they were about twenty, ſmall and great: And the Deponent believes, That the Engagement happen'd about a Month after the Deponent went aboard of Captain *Green*'s Sloop; and cannot be poſitive when the Ship the *Worceſter*, did engage the ſaid taken Ship, whether firſt, ſecond, or third Day. Depones, That the Engagement was by way of a running Fight. Depones, That he knows not who did ſail in the ſaid taken Ship to *Callicoiloan*. *Cauſa Scientiæ*, the way how he came to know this, the Deponent was aboard the ſaid Sloop during the Time of the ſaid Engagement, and ſaw and heard, as he has deponed; and this is the Truth, as he ſhall anſwer to GOD. Depones, He can write after the *Malabar* Character; and this Depoſition is alſo ſigned by the ſaid Captain *George Yeaman*, the ſworn Interpreter.

* *Appeared.*

* *Priſoners.*

† *remembers.*

‡ *now.*

Antonio Ferdinando. | *Geo. Yeaman.* | *ROB. FORBES.*

COmpeared *Charles May*, Chyrurgeon of the Ship the *Worceſter*, commanded by Captain *Green*, aged twenty-ſix Years, or thereby, unmarried; who being ſolemnly ſworn, purged of partial Counſel, examined and interrogate upon the Libel: Depones, That he was aboard of Captain *Green*'s Ship the *Worceſter*, and went from *England* with her; that when the ſaid Ship went to the Coaſt of *Malabar*, the Deponent was ſet aſhore at the *Ibeck*, which is the Landing-Place, and from thence went up ſome Miles to *Callicoiloan*; and ſome Time thereafter, about a Fortnight, the Deponent did hear the Firing of Guns as at Sea, and did meet with *Coge Commodo*, who was Merchant to the ſaid Ship, and bought ſome Things from them, with *Franciſco de Olivera*, the Linguiſter of the ſaid Ship, who had come that Day from the *Ibeck*, and that the Deponent aſked him what mean'd the Shooting; and that the ſaid *Coge Commodo*, and *Franciſco de Olivera*, anſwered the Deponent, *That the* Worceſter *had gone out, and was fighting at Sea with another Ship*: And depones, That the next Morning the Deponent came to the Shore, where he did ſee the Ship the *Worceſter* riding in her Birth, that is, much about the ſame Place where ſhe had lyen before, and that the ſaid Place was about four Miles from the Shore. Depones, That there was then another Veſſel riding with the *Worceſter* at her Stern. Depones, That about ſome Time thereafter, in the ſame Morning, the Deponent did ſee the Long-Boat of the *Worceſter* coming to the Shore in a great Haſte; and that when the Boat landed, the Deponent aſked the Men what was the Matter that brought them aſhore, it not being ordinary for Boats to come over the Bar, by reaſon of a great Sea: And the Men anſwered, That Captain *Madder* had ſent them aſhore for a *Pinguetta* (which is the Name of a certain kind of Boat) with Water, becauſe they had ſplit and ſtaved all their Water aboard, and that there had been Buſking all Night, which the Deponent underſtood meant, that they had been at ſore Labour and Fatigue, as if their Ship had been driven from her Anchor, and bearing up again. Depones, That he did not ſpeak at that Time with the Men in relation to any Fight, but that the ſaid Men told him, they had brought a Ship in with them; and that the Deponent made no ſtay at the Shore, but returned immediately to *Callicoiloan*, where his Patients were. Depones, That five or ſix Days thereafter, the Deponent went aboard the *Worceſter* for ſome Medicines which he wanted for the Uſe of his Patients; and that when he came aboard, the Deponent ſaw the Deck of the *Worceſter* lumber'd with Goods, and five or ſix Cheſts alſo, and ſome Bales of Goods; and that the Deponent did then ſay to Mr. *Madder* Senior, What have you got there? You are full of Buſineſs. And that Mr. *Madder* did then curſe him, and bid him go mind his Plaiſter-Box. And depones, That the Deponent was afterwards informed, that the Ship which was riding at Stern of the *Worceſter*, was ſold to *Coge Commodo*, the Ship's Merchant at *Keilon* River; and the ſaid Ship was brought there by a Part of the *Worceſter*'s Crew, who immediately left her ſo ſoon as they had brought her to an Anchor, or otherways fixed her. Depones, That the * Linguiſter, likewiſe told the Deponent, That *Coge Commodo* complained, he had bought the Ship too dear; and that he ſaid he had bought one the Year before cheaper, tho' four Times the Value. Depones, That ſome Time thereafter, the Sloop came down the Coaſt; and that *Antonio Ferdinando* was ſent aſhore to the Deponent at the *Iceck*; and that the ſaid *Antonio Ferdinando*, the *Black*, was wounded in the Arm: And that the Deponent did take off the † Dreſſing of the ſaid Wound, and found it to be a Fracture; and that it look'd as if the Wound had been occaſioned by a Gun-ſhot. And that the Deponent aſked the ſaid *Antonio Ferdinando*, the *Black*, who had dreſſed the Wound, or ſet his Arm? And that the ſaid *Black* did tell the Deponent, That he was ſet aſhore at *Cochin*, and there dreſſed by a *Dutch* Chyrurgeon. And depones, That ſome Time thereafter, he went aboard the *Worceſter*, and called for the ſaid *Black*, and any other Perſons that were ill; and there came to him to his Cheſt, *Duncan Mackay*, and another (which the Deponent thinks was *Edward Cuming*, but cannot be poſitive) and that theſe Perſons were alſo wounded; and that the ſaid *Black* was likeways there. And depones, That he did aſk his ſaid Patients how they came by their Wounds? And that Mr. *Madder* hearing the Deponent aſk Queſtions, he came to the Deponent, and bid him aſk no Queſtions; and likewiſe charged the Patients to anſwer the Deponent any Queſtions upon their Peril. And the Deponent then ſaid to Mr. *Madder*, that he had no command over him; and that Mr. *Madder* anſwered, That he would go to one who had Command over the Deponent: And that the ſaid *Madder* went up accordingly; and thereafter returned, and ordered the Deponent immediately aſhore; and the Deponent was accordingly carried aſhore in the *Pinguetta*, that was lying by the Ship's Side. Depones, That all this which the Deponent has before deponed upon, did fall out about the Months of *January* or *February*, 1703 Years. Depones, That while the Ship the *Worceſter* was going up the Coaſt of *Malabar*, Mr. *Linſteed*, one of the Crew, was left at *Keilon*, which was near ſeven Leagues, or about twenty-one Miles from *Callicoiloan*; and that the ſaid *Linſteed* was left there with with one *Hammond*, to take Care of ſome Part of the Cargo which was to be put aboard of the Ship. Depones, That he did not ſee the ſaid Mr. *Linſteed*, at *Keilon*; but only heard that he was left there, and remained there, as the Deponent heard, till the Ship came back. And Depones, That the Shooting which the Deponent heard, was before the Ship came back, as he has already deponed. And Depones, That thereafter, during the Voyage, he never heard the Crew, or any of them, talk of their taking a Ship. Depones, That whilſt the Deponent heard the ſaid Shooting, Mr. *Loveday* and Mr. *Otlay* were aſhore at *Callicoiloan*: And depones, That when the *Worceſter* ſailed from *England*, the Crew was about 35 or 36 in Number. Depones, That while the Deponent was aboard, the Ship went no further up than *Calecut*: And depones, That the Reaſon how he knows Mr. *Hammond* and Mr. *Linſteed* were aſhore at *Keilon*, was, that he heard the *Supercargo* deſire the ſaid Perſons to go aſhore, and take care of ſome part of the Cargo. And depones, That he was but two or three Hours aboard after he heard the *Supercargo* give the ſaid Order; and ſaw not the ſaid two Perſons (*Hammond* and *Linſteed*) go aſhore. And depones, That it was in the Ship the *Worceſter*'s going up the Coaſt of *Malabar*, that the Deponent heard the Shooting. Depones, That upon that Coaſt the Ship ſprung a Leak, and did from thence ſail to *Bengal*, in order to have the ſame helped: And depones, That he knows not how many Leagues there was betwixt the Place where the Leak ſprung, and *Bengal*; but that it was about five Weeks ſailing. Depones, That he knows not the Reaſon why the Ship was not brought into ſome Place on the Coaſt of *Malabar*, for being refitted. Depones, That when the Deponent came aboard at *Callicoiloan*, that the Ship weighed Anchor, and ſailed to *Cochin*, and from that to *Calecüt*, and thereafter came back the ſame Way. Depones, That there were ſome Goods put aboard the Ship from *Callicut*, but none at *Cochin*, as the Deponent remembers. And further depones, That when the Deponent returned, he found Mr. *Hammond* and Mr. *Linſteed* aſhore at *Keilon*. *Cauſa Scientiæ patet.* The Way how he comes to know this is evident. And this is the Truth, as he ſhall anſwer to GOD.

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* *Maſter of a Ship.* † Of, *before a Place, in the* Scots *Dialect, denotes the Place to be the Eſtate of the Perſon nam'd.* ‖ i. e. *Solemnly ſworn, that he would tell the Truth, and nothing but the Truth; that he had no Prejudice or ill Will againſt any of the Priſoners at the Bar; that he got no good Deed, or Promiſe of good Deed, for giving Evidence againſt them; nor was ſuborned, or adviſed, or directed how to ſwear, or what he ſhall ſay in this Trial.*

* *Interpreter.*

† *Plaiſter.*

Charles May.
ROBERT FORBES.

COmpeared *Antonio Franciſco*, Servant to Captain *Thomas Green*, Commander of the Ship the *Worceſter*, aged 22 Years, or thereby, unmarried; with Captain *George Yeaman*, Merchant, in *Dundee*, his Interpreter: And the ſaid *Antonio Franciſco* being ſolemnly ſworn, purged of partial Counſel, examined and interrogat upon the Libel purſued by the Procurator-Fiſcal, againſt the ſaid Captain *Green*, and the other Pannels; depones, That the Deponent believes there is a GOD; and his Miſtreſs at *Pegu*, cauſed baptize him a Chriſtian; and he owns the Chriſtian Religion: And he came to the Service of Captain *Green*, at *Delagoa*. Depones, That upon the Coaſt of *Malabar*, while the Deponent was aboard of the *Worceſter*, he heard ſome Shooting of Guns from aboard the *Worceſter*, to the Number of Six, or thereby: And that the Deponent, in the mean Time, was chained and nailed to the Floor of the Fore-caſtle in the ſaid Ship; and he heard no other Shooting from any other Ship. Depones, That two Days after the Deponent heard the ſaid Shooting, he ſaw ſome Goods brought aboard the ſaid Ship the *Worceſter*; and which *Antonio Ferdinando*, the other *Black*, told the Deponent, were brought from another Ship which they had taken: And likewiſe the ſaid *Black* told the Deponent, that at the ſame Time Captain *Madder* had given ſome Rack, *id eſt* Brandy, to the Men. And at the ſame Time, the other *Black* told the Deponent likeways, That there were ten Men of the Crew of the taken Ship kill'd, when ſhe was taken. And that the ſaid *Black* did let the Deponent ſee a Plaiſter on his Arm, upon which he ſaid he had got a Wound by a Shot, while in the Sloop taking the other Ship: And that he told the Deponent, that the ſaid Ship was taken by the Sloop belonging to the *Worceſter*: And that the Deponent neither heard of, nor did ſee any other wounded Men. Depones, That he does not know where they were ſailing, after he heard the Shooting; but he was told by the other *Black*, that they were ſailing to *Callicoiloan*: And the ſaid other *Black* did forbid the Deponent to tell any Perſon whatſomever of the ſaid Engagement. And the Deponent does not remember how long it is ſince he heard the ſaid ſhooting of Guns. And depones, That *Antonio Ferdinando*, the other *Black*, told the Deponent all theſe Matters upon the Coaſt of *Malabar*: And that the ſaid *Antonio* came aboard the Ship the *Worceſter*, when they were going to *Bengal*. And depones, That while he was chained to the Fore-caſtle, he knows not who were aboard, or who were aſhore: And that he was ſo chained for the Space of two Months; and that he was ſo chained to the Fore-caſtle about ten Days before he heard the ſaid Shooting: *Cauſa Scientiæ patet.* Depones, he cannot write.

This Oath ſigned by the ſaid Captain *George Yeaman*, the Deponent's Interpreter.

George Yeaman.
ROBERT FORBES.

COmpeared *James Wilkie*, Taylor, Burgeſs of *Edinburgh*, aged twenty-five Years, or thereby; married: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat upon the Libel purſued by the Procurator-Fiſcal, againſt Captain *Green*, and the other Pannels; depones, That in *October* laſt, after Captain *Green*'s Ship was brought into *Bruntiſland*, the Deponent went over to *Bruntiſland* with his Mother, with a Deſign to learn ſome News, or to get ſome Notice of a Brother of his, *Andrew Wilkie*, who had gone along with Captain *Drummond* to the *Eaſt Indies*: Depones, That after the Deponent and his Mother came to *Bruntiſland*, they went to Mrs. *Seaton*'s Houſe; where the Deponent fell in Company with *George Haines*, whom the Deponent preſently * points in the Pannel; and after ſome Diſcourſe, the Deponent aſked the ſaid *George Haines*, Whether or not, in his Voyage, he had ſeen Captain *Drummond*? At which the ſaid *Haines* fell in a Paſſion, and ſaid, *D—n me, what have I to do with Captain* Drummond? Depones, That the Deponent ſeeing *Haines* in ſuch a bad Humour, forbore for ſome Time to ſpeak about his Brother, or Captain *Drummond*: But after that they had taken ſome Cups about, and that the Deponent thought *Haines* in a better Mood, the Deponent aſked the ſaid *Haines*, If he had not heard of, or ſeen any *Scots* Ship coming to or from the *Eaſt Indies*? Depones, That *Haines* then ſaid, *That while their Ship was upon the Coaſt of* Malabar, *(where they had taken in a* Black, *whom* Haines *pointed to, and had by him at the Time) a* Dutch *Ship informed them, That one Captain* Drummond, *commanding a* Scots *Ship, was turned Pirate; and that thereupon they manned their Sloop, and made themſelves ready, in caſe they ſhould have been attack'd.* But *Haines* added, *That they did not ſee the ſaid Captain* Drummond. Depones, That the ſaid *Haines* did likewiſe ſay, *That he had in his Cuſtody, at the Time the Ship the* Worceſter *was ſeized in the Road of* Leith, *that which he would not have fallen in the Seizers Hands for twice the Value of the Ship.* And depones, That the ſaid *Haines* likeways added, *That he threw it overboard after the Ship was ſeized*; ſaying, *Let them ſeek it now in the Bottom of the Sea.* Depones, That while the Deponent was diſcourſing with the ſaid *Haines* about the Worth of the Ship, the ſaid *Haines* ſaid to the Deponent, That it would not be found to be ſo rich as it was expected: But that there was ſtill in the Ship that which would never be found by the Seizers, unleſs they pulled her Board from Board: And that the ſaid *Haines* ſaid, He knew very well where that Thing lay. Depones, That his Mother having gone to the other Room to Mrs. *Seaton*, the Miſtreſs of the Houſe; ſhe deſired the ſaid Mrs. *Seaton* to enquire of *Haines* concerning her Son, the Deponent's Brother; and that Mrs. *Seaton* ſaid, That *Haines* was a † Suitor of *Anne Seaton*, her Daughter, who would be more proper to enquire that of *Haines*: And that the next Morning *Anne Seaton* declared, in Preſence of *Kenneth Mackenzie*, that *Haines* had ſaid to her, *He found they had a Deſign to pump him; but that they ſhould not be the wiſer of him: Tho' what he had ſaid, he had ſaid*; but would ſay no more at that Time. *Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

* *now ſhews at the Bar.*

† *courted.*

James Wilkie.
ROBERT FORBES.

COmpeared *Kenneth Mackenzie*, † Indweller in *Cannongate*, aged twenty-ſeven Years, or thereby; married: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat *ut ſupra*: Depones, That in the Month of *October* laſt, when the Ship the *Worceſter* was lying in *Bruntiſland* Harbour, the Deponent was in Widow *Seaton*'s Houſe with *George Haines* (whom he now points to in the Pannel) and *James Wilkie*, and heard the ſaid *James Wilkie* aſk the ſaid *Haines* about Captain *Thomas Drummond*'s Ship; at which the ſaid *Haines* fell in a Paſſion; but the Deponent going out of the Room, heard no more what paſſed. And depones, That the ſame Night the Deponent heard Mrs. *Wilkie* intreat the ſaid Widow *Seaton*, to endeavour to get an Account from any of Captain *Green*'s Crew, of her Son, who had gone Doctor aboard of the ſaid Captain *Drummond*'s Ship: And having returned next Morning, the Deponent heard *Anne Seaton*, Daughter to the ſaid Widow *Seaton*, tell, That *Haines* had ſaid to her, that they had a Deſign to pump him; but what he had ſaid, he had ſaid. And that he the ſaid *Haines* told the ſaid *Anne Seaton*, when aſked by her, Why he fell in a Paſſion at the mentioning of Captain *Drummond*? that he anſwered, That he knew more of the ſaid Captain *Drummond* than he would tell. *Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

† *Inhabitant.*

Kenneth Mackenzie.
ROBERT FORBES.

COmpeared *William Wood*, one of the Gunners of her Majeſty's Artillery, aged fifty-three Years, or thereby; married: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat *ut ſupra*; depones, That the Deponent was in Company with *George Haines*, at *Bruntiſland*; and that one *John Henderſon*, * Writer, in *Edinburgh*, was likeways preſent. Depones, That the ſaid *George Haines*, and the reſt in Company with the Deponent, hav-

* *Clerk for Law-Buſineſs.*

ing drunk pretty warmly, the ſaid *George Haines* fell in a melancholy Fit; and *John Henderſon* having aſk'd the Reaſon, the ſaid *Haines* expreſſed himſelf thus: *It is a Wonder that ſince we did not ſink at Sea, that God does not make the Ground open and ſwallow us up when we are come aſhore, for the Wickedneſs that has been committed during this laſt Voyage, on board of that old Bitch* Beſs; pointing to Captain *Green*'s Ship. And depones, That thereafter he went a walking with the ſaid *George Haines* in the * Links of *Bruntiſland*; and the Deponent happening to tell the ſaid *Haines*, that Captain *Madder*'s Uncle was burnt in Oil, for attempting to burn the *Dutch* Ships at *Amſterdam*; the ſaid *George Haines* did thereupon tell the Deponent, *That if what Captain* Madder *had done, during his laſt Voyage, were as well known, he deſerved as much as his Uncle had met with. Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

* *Sands.*

William Wood.
ROBERT FORBES.

COmpeared *John Henderſon*, Writer in *Edinburgh*, aged twenty Years, or thereby; unmarried: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat *ut ſupra*: Depones, ‡ *conformis precedenti*, (viz. *William Wood*) *in omnibus*; except as to what happen'd betwixt the ſaid *William Wood* and *George Haines* in the Links of *Bruntiſland*, in relation to Captain *Madder* and his Uncle. *Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

‡ *as* William Wood *in every Thing.*

John Henderſon.
ROBERT FORBES.

COmpeared *Anne Seaton*, Indweller in *Bruntiſland*, aged nineteen Years, or thereby; unmarried: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat *ut ſupra*, depones, That ſhe was preſent with *George Haines*, one of Captain *Green*'s Crew (whom ſhe points at the Bar) in *Bruntiſland*, at the Time when Mrs. *Wilkie* and her Son were there: That Mrs. *Wilkie* deſired the Deponent to endeavour to learn if *George Haines* knew any thing of Captain *Drummond*, becauſe the ſaid Mrs. *Wilkie* had a Son that went along with him. Depones, that ſhe the Deponent did accordingly enquire at *Haines*'s, but he denied that ever he ſaw the ſaid Ship, or knew any thing of her. Depones, That ſhe was likewiſe preſent with *George Haines*, when *William Wood*, one of her Majeſty's Artillery, and *John Henderſon*, were in Company with him, and that at that time, *George Haines*, in a melancholy Fit, expreſſed himſelf thus: *It's a wonder, that ſince we did not ſink at Sea, that we are not ſwallowed up with the Ground aſhore, for the Sins committed on board of Captain* Green's *Ship.* And depones, That he likewiſe added, *during the laſt Voyage.* And depones, That *Haines* ſaid to the Deponent, *That he knew more of Captain* Drummond *than what he would expreſs at that time*: Depones, That the ſaid *George Haines* told the Deponent, *That when the Ship was ſeized in* Leith *Road, he had aboard with him that which he would not have had to fall in the Seizers Hands for twice the Value of the Ship, but that he threw the ſame overboard.* Depones, That ſhe never talked with *Haines* about an old Sweetheart that ſhe had aboard of Captain *Drummond*'s Ship, nor did the ſaid *Haines* ſay to the Deponent, *That ſhe would never ſee him again.* And depones, That ſhe never heard *Haines* ſay, *That there was yet aboard of the ſaid Ship what would not be found unleſs ſhe were pulled Board from Board.* And depones, That when the Deponent was enquiring of *Haines* about Mrs. *Wilkie*'s Son, that he ſaid, *That ſhe deſigned to pump him as Mr.* Mackenzie *had done before. Cauſa Scientiæ patet.* And this is the Truth, as ſhe ſhall anſwer to GOD.

Anne Seaton.
ROBERT FORBES.

COmpeared Captain *John Brown*, Skipper, in *Leith*, aged 40 Years, or thereby; married: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogate *ut ſupra: Depones*, That he went aboard the Ship the *Worceſter* when the Goods were unloaded, by Order of the Lords of the Committee of Privy-Council, and ſaw the Hatches, which were faſt and ſealed, opened: Depones, That on the Larboard-ſide of the Ship, the Goods were much damaged, and that few or none of the pack'd Goods were numbered or marked, which is cuſtomary; and the Deponent himſelf never received any Goods but what were marked, that he might know to whom they belonged. Depones, That the Goods aboard the ſaid Ship, were regularly enough ſtowed: And being interrogate * for the Priſoners, whether or not it be cuſtomary that Goods be marked or numbered where there is a *Supercargo* aboard: Depones, That it is always Cuſtomary, whether they belong to ten, or one Man: And being interrogate for the Pannels, whether or not the Reaſon why the Goods wanted Mark or Number, might be, becauſe that the Goods were much damaged, and the Pepper ſpoiled and heated: Depones, That where the Goods or Pepper were ſpoiled, the Bales were all rotten to Pieces, but where the Pepper and other Goods were intire, there were Bales and Packs which wanted both Numbers and Marks: And being likewiſe interrogate by the Pannels, whether or not there were ſome Packs and Bales that had a common Ship-mark, and ſome who had only the Veſtige ‡ thereof, being near worn out. Depones, That there were a great many who had a common Mark, and that it was plain and obvious, and that there were others who had no Mark at all, and that the moſt Part wanted Marks altogether, and that there were two or three Bales which had the Veſtige of a Mark. *Cauſa Scientiæ.* The Deponent * witneſſed the unloading of the ſaid Ship, at the Deſire of the Lords of the Committee of Privy-Council, and ſaw, and knows as he has deponed. And this is the Truth, as he ſhall anſwer to GOD.

* *On behalf of the Priſoners.*

‡ *Sign*,

* *was Witneſs to.*

John Brown.
ROBERT FORBES.

COmpeared *Archibald Hodge*, Skipper, in *Leith*, aged 40 Years, or thereby; married: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogate *ut ſupra*. Depones, That he was aboard the Ship the *Worceſter* in *Bruntiſland* Harbour, when the Committee of Privy-Council came to rummage her, and ſaw Goods unloaded from aboard. Depones, That the moſt Part of the Goods wanted both Number and Marks, which is no wiſe common or regular in any Ship that ever the Deponent has ſeen: but the Deponent did never ſee any *Eaſt-India* Ship unloaded before. *Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

Archibald Hodge.
ROBERT FORBES.

COmpeared *John Glen*, Goldſmith, Indweller in *Leith*, aged 43 Years, or thereby; married: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogate *ut ſupra*. Depones, That the ſecond Day after the Ship the *Worceſter* came to *Leith* Road in Summer laſt, the Deponent went aboard the ſaid Ship, and about twelve o'Clock of the Day, the Deponent was in the Cabin with Captain *Madder* and one *Hammond*, now in *England*, as the Deponent is informed; at which Time the ſaid Captain *John Madder* took a Seal out of his Pocket, and aſked the Deponent, what he thought of the *Scots African* and *Indian* Companies Arms, and at the ſame time gave the Deponent the ſaid Seal in his Hand, to which the Deponent did look, and found thereon the St. *Andrew*'s Croſs, a Dromedary, a Camel with a Caſtle on the Back of it, and a Ship with a Riſing-Sun above the Helmet, and two wild Men as Supporters; and that the ſaid Seal, to the beſt of the Deponent's Memory, was near the Bigneſs of an *Engliſh* Half-Crown, and had an Handle of *Lignum vitæ*. And being interrogate if aboard the ſaid Ship he did ſee the Impreſſion of the ſaid Seal upon any Paper: Depones negative. And further depones, That the Seal now exhibited in Court was not the ſame, which Captain *Madder* did ſhew to the Deponent; and whereupon he has deponed as above, *Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

John Glen.
ROBERT FORBES.

The Probation being ended as above, and the ‡ Aſſize ordained to encloſe, ſome of the Aſſizers moved, that that Part of the Judges and Aſſeſſors ‖ Interloquitor, whereby they find the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by clear and plain Evidence, § relevant, *&c.* to be explained as to theſe Words, *being proven clear and plain by Evidence*, if the ſame did require, that the ſaid Crimes of Piracy, or Robbery, or Murder, ſhould be proven by two or three Witneſſes, directly proving the foreſaid Crimes: Or, if it were only required, that the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by a clear and plain Evidence, as to the cumulative and concurring Preſumptions, whereby the ſame were alledged to be inferred, altho' two concurring Witneſſes ſhould not be found as to every ſeveral Preſumption, were ſufficient: The ſaid Judge and Aſſeſſors declared their Meaning to be in the Terms of Law, *viz.* That tho' there were not a direct Probation of the Crimes libelled, *per idoneos Teſtes, vel inſtructa apertiſſimis documentis*, by proper Witneſſes, or made good by plain Proofs; yet if the Crimes did appear by the Qualifications and Circumſtances, as they were libelled, to be made out *per indicia ad probationem indubitata & luce clariora*, by undoubted Preſumptions as clear as Sun-ſhine, albeit every Circumſtance and Qualification were not proven by two direct Witneſſes, the ſame ſhould be held for a clear and plain Evidence.

‡ *Jury order'd to withdraw.*

‖ *Sentence or Opinion.*

§ *Sufficient to bear a Trial.*

Thereafter, according to the Cuſtom obſerved in Criminal Courts and Proceſſes, That the Advocates for the Purſuer, and for the Pannels are allowed † *hinc inde* to ſpeech the Aſſize, and reſume and lay before the Aſſizers, the Libel, with the Interloquitor paſt thereon, and apply the Probation led for proving thereof on the one Part, and on the other to reſume the Defences for the Pannels, and to take off, as much as poſſible, the Weight of the Probation for their Defence and Exculpation; Sir *David Dalrymple*, her Majeſty's Sollicitor, one of the Aſſiſtants to the Procurator-Fiſcal in this Criminal Purſuit, ſpoke to the † Aſſize in manner following.

† *On both ſides, in their Turns to ſpeak to the Jury.*

† *Jury.*

Gentlemen of the INQUEST.

YOU have before you Indictments againſt the Pannels upon very atrocious Crimes, and theſe Indictments have been ſuſtained relevant, as libelled by the honourable Judge-Admiral, to be proven by clear and plain Evidence. But for your further Satisfaction, at the Deſire of ſome of your own Number, made openly in Court, the Judges have declared, That by theſe Words, *Plain and clear Evidence*, they do not confine the Aſſize to two concurring Witneſſes, but have left to you what Evidence is neceſſary to make Faith, according to the Nature of the Crime, to your Conviction.

Your Buſineſs then, *Gentlemen*, is to apply or compare the Probation with the Indictment, and to return your Verdict diſtinct, concerning what you think proven or not.

It is a Happineſs that this Truſt is in the Hands of Perſons ſo diſcerning and faithful, and therefore the leſs needs be ſaid, either for clearing the Nature of the Crime, the Manner of the Diſcovery, or for ſumming up the Evidences: But to comply with the Cuſtom of ſuch Trials in this Kingdom, and for preventing the Miſtakes into which the Lawyers on the other Part ſeem to lead you: Forgive me if after a * Sederunt of twelve Hours ſpent in † leading of the Probation, I detain you a little longer in Recapitulating what has paſt, with ſome few Obſervations, I hope not improper, before ye ‖ encloſe.

* *Hearing.*

† *Giving in the Evidence.*

‖ *withdraw.*

As to the Crimes contained in the Indictment, it is obvious how heinous they are, and how hateful they render the Perſons who are truly guilty in the Eye of the Law: A Pirate is in a perpetual War with every Individual, and every State, Chriſtian or Infidel. Pirates properly have no Country, but by the Nature of their Guilt, ſeparate themſelves, and renounce on the Matter, the Benefit of all lawful Societies: They are worſe than ravenous Beaſts, in as far as their fatal Reaſon gives them a greater Faculty and Skill to do Evil: And whereas ſuch Creatures follow the Bent of their Natures, and that promiſcuouſly Pirates extinguiſh Humanity in themſelves, and prey upon Men only, eſpecially upon Traders, who are the moſt innocent. The Crime of Piracy is complex, and is made up of Oppreſſion, Robbery, and Murder, committed in Places far remote and ſolitary. And indeed if GOD had not, in a moſt wonderful way, brought the Crimes whereof the Pannels ſtand accuſed, to Light, they might have eſcaped unpuniſhed in this World, to their own eternal Deſtruction, and to the great Loſs of ſuch who may be amended, or prevented by the Example of their Puniſhment. But altho' the Abuſes now complained of, happened in the vaſt Ocean, and at no leſs Diſtance than the *Eaſt-Indies*, and that the Actors were tied by obvious Reaſon to Secrecy on their own Account, and were bound by a * regulous Command, not to reveal or anſwer Queſtions: And beſides all theſe, it is moſt probable there was a moſt impious Oath interpoſed, as uſes to be in ſuch Caſes, and which has more Force to reſtrain Men of ſuch deſperate Principles and Practices, than all the Ties of Religion or Nature: Yet GOD, in his Providence, has let in Light upon theſe dark and cruel Crimes, as it were by mere Accident: For I preſume, you are not ignorant, that the firſt Notices of this Matter proceeded from Words which were dropt in Paſſion, or expreſſed by the Weight of Guilt, concerning the Wickedneſſes which have been done aboard the *Worceſter* during the laſt Voyage. Theſe, and ſome other Grounds of Suſpicion which appeared upon better Enquiry, were the Occaſion of the Information given to the Government, and how cautious the Lords of Her Majeſty's moſt Honourable Privy-Council, have been in examining the Matter before any Proſecution was appointed, I perſuade myſelf that you and the whole Nation know, and are ſatisfied. And now that the Probation has been ſolemnly led in Preſence of the Court, and of the great Number of all Qualities who have been preſent; I doubt not it will appear to you and all Men, who will ſuffer their Reaſon to act freely, that theſe Informations have been too well founded.

† *Arbitrary Command of their Captain.*

The Indictment, as it concerns the Facts libelled, conſiſts chiefly of two Parts. The firſt concerns a Murder and Piracy happening upon the Coaſt of *Malabar*. The ſecond concerns Circumſtances which help to give Light to that Piracy, and which Circumſtances have happened ſince the Arriving of the *Worceſter* into this Country.

As to the firſt, *Gentlemen*, You have a Teſtimony of the firſt Witneſs *Antonio Ferdinando*, who depones, *He came aboard of the* Worceſter *upon the Coaſt of* Malabar, *and that about a Month after, he ſaw an Engagement betwixt a Sloop belonging to the* Worceſter, *and another Ship ſailed by* White Men, *ſpeaking* Engliſh, *and bearing ſuch Colours as Captain* Green's *Ship did bear; and that the Captain and ſome others of the* Worceſter's *Crew, went aboard the Stranger's Ship, and ſtayed about the Space of a Glaſs; that upon their Return to the* Worceſter, *the Sloop was mann'd out with twenty Men, of which Number were the Captain himſelf, with* Madder, Simpſon, Keigle, Kitchen, *and others; that the Sloop was mounted with 4 Guns and 2 Patteraroes; that the Sloop engaged the Stranger's Ship, and that there was a running Fight for 3 Days, during which Time the* Worceſter *came up and fired at the ſaid Ship, and that upon the third Day, the ſaid unfortunate Ship was taken* (and what is fearful even to repeat) *the Crew being about Ten, were murdered and thrown over-board; that the Goods were brought aboard of the* Worceſter, *and the taken Ship was ſailed with a Part of the* Worceſter's *Crew to* Callicoiloan, *and there ſold to* Coge Commodo; *that the Deponent himſelf was wounded, the Scar of which Wound was ſhewn to you,* Gentlemen, *and the Court; and that he was commanded to keep Secrecy under the higheſt Peril, and that the very Upper-Coat which he wears* (and in my Judgment, appears to be *Scots* † Rugg) *was a Part of the Spoil.*

† *Coarſe Cloth.*

As to this Teſtimony, *Gentlemen*, there are ſeveral Things very obſervable, ſuch as the ‡ Stayedneſs, Simplicity and Conſtancy of this Witneſs, who, in many Examinations before the Council, and Committee of Council, has uniformly given the ſame Account which he has now deponed before this Honourable Court; not in the ſame Form of conceived Words, but materially the ſame, though the ‖ Interrogators have been changed: And I think, it adds to the Weight of his Teſtimony, that ye are Witneſſes how it was * emitted, while he was under heavy Sickneſs, and forced to lie down at the End of the Table.

‡ *Solidity.*

‖ *Queſtions.*

* *Given.*

2. It is obſervable, that this Witneſs *Antonio Ferdinando* had no Acceſſion to the diſcovering of this Matter, nor was at all an Informer: But the Matter being enquired into, he did plainly and honeſtly acknowledge from the Beginning, as he has now deponed: Neither was the Story firſt told at *Leith*, nor ſince the Pannels arriving in our Harbours: But it appears by the Teſtimony of *Antonio Franciſco* the other *Black* (who ſhews a great Inclination to favour Captain *Green* and the Pannels) that *Ferdinando* gave him the ſame Account in Subſtance upon the Coaſt of *Malabar:* And this is further confirmed by *Stringman* the Cook, who told in ſeveral Examinations before the Council, that ſhortly after the ſaid *Stringman* came aboard on the Coaſt of *Bengal*, *Ferdinando* who was his Mate, gave him the like Account of the Story: So that it is morally evident, that this Account of the Crime was not invented with any View of a Trial againſt the Captain and his Crew.

3. It is worthy your Notice, that Captain *Green* had been aboard of the unfortunate Ship taken, as a Friend, and had Opportunity to ſpy, that the Crew being but about ten, were too weak to man or defend a Ship of 20 Guns, which, no doubt, emboldned him to undertake the Wickedneſs complained of.

It is obſervable, That the ſeveral Parts of *Ferdinando*'s Teſtimony are fortified by concurring Proofs. As firſt, by the Books found aboard, it appears, that the Sloop was furniſhed with Arms in the Month of *February* libelled, and that the Arms were ſuch as the Teſtimony mentions. 2. He ſhews you the Scar of his Wound upon his Arm; and as he depones, that he got it in the Engagement, ſo the Chyrurgeon depones, *That he not only ſaw it, but that ſhortly after the hearing of the Shooting, he had taken the † Dreſſing from off the Wound, and found it a Fracture, and that it look'd like a Gun-ſhot, and that the* Black *came to his Cheſt a few Days thereafter to have it dreſt aboard.* 3. The Teſtimony of *Ferdinando* is alſo confirmed by the Depoſitions of *Franciſco* and Mr. *May*, as to two very notable Articles, *viz. The bringing of the Goods aboard about that Time:* And by the Teſtimony of the ſaid Mr. *May*, as to the Ship taken, riding at the Stern of the *Worceſter*. 4. Captain *Madder*'s ſevere Commands for obſerving of Secrecy, is not only deponed upon by *Ferdinando* the firſt Witneſs, but alſo by *May* the Chyrurgeon, very circumſtantially: When Mr. *May* aſked an innocent Queſtion, as one ſhould think, upon ſeeing the Deck lumber'd with Goods, Mr. *Madder* anſwers, curſing him, and bids him mind his Plaiſter-Box. When *May* goes to his Cheſt, there came three Men to be dreſſed of their Wounds, of which the *Black* was one. *May* aſks them how they came to be wounded, but *Madder* had followed, and commands Silence on their Peril; but Mr. *May* perſiſting in his Enquiry, *Madder* goes to the Commander, and brings a poſitive Order to anſwer no Queſtions: Thus *Ferdinando* and *May* concur as to the command of Silence. Now, I put it to your Conſciences, *Gentlemen*, if ye think this Myſtery was uſed to cover a common Accident; or if, rather you are not ſatisfied, that, joining the Teſtimony of *Ferdinando* with the Wounds, and the Silence ſo rigorouſly impoſed, the Goods brought aboard, the riding of the taken Ship at the Stern of the *Worceſter*, they do not evince the Certainty of the Piracy and Murder libelled, as far as the Nature of the thing can admit.

† *Plaiſter.*

To theſe, *Gentlemen*, ye would be pleaſed to join in your Obſervation, That it is owned and demonſtrated, from the Books taken aboard of the *Worceſter*, that there ſprung a Leak in the ſaid Ship on the Coaſt of *Malabar*; and that it had been moſt natural for the Pannels to have carried their Ship to *Goa*, or to *Surat*, which was within Ten Degrees Sailing, or thereabouts; yet the Pannels did chuſe, rather than continue on that Coaſt, to run along in a leaky Veſſel, a dangerous Courſe, round the *Peninſula*, and the Iſland *Keilon*, to the Bottom of the Bay of *Bengal*, a Courſe of about Seven or Eight hundred Leagues. But that Fatigue and Riſque was ſmall, when compared with the Danger of repairing their Ship on a Coaſt, where their Crimes might be more eaſily diſcovered. 2. It is remarkable, that the Books found aboard, and now lying before you, contain the full Inſtructions given to Captain *Green* and his Company, from their alledged Owners, which have ſomething myſterious from the very Beginning. I have had little † Occaſion to peruſe them, having ſeen them this Morning for the firſt Time. But one Thing I could not but ‖ notice, That in the Inſtructions, one Article contains a Cypher, in which the Captain or Supercargo was to correſpond with their Owners. And altho' the Cypher ſeems to be nice, and well enough deviſed at firſt to cover the Correſpondence from any ordinary Curioſity; yet ſo great Anxiety has been ſhewn concerning this Cypher, that the Freighters ſend a Letter after the Ship; adding an Inſtruction, That beſides the Character to be uſed, there ſhould be this further Diſguiſe added, that the laſt Letter of the preceding Word ſhould be always repeated before the firſt Letter of the next Word; of which, for Illuſtration, the Letter contains an Example, giving Direction how Letters ſhould be addreſſed to the Writer himſelf. But neither was this Caution ſufficient: For next Day another Letter is written, relating ſtill to the Cypher; and wherein the Writer expreſly adviſes, that the Letters from the Ship ſhould not be directed to himſelf, but to a Scrivener living in —— *Street*, *London*; and that they ſhould not be ſubſcribed. Why all this Myſtery? The Correſpondence muſt be in Cypher; and this Cypher exquiſite and refin'd: And yet the Letters to be addreſſed to a Third Perſon, obſcure, for what I know. They were not to contain any Addreſs or Subſcription, which ſhould either diſcover the Writer, or the Perſon to whom he writes. Fair Trading requires no ſuch Affectation.

† *Opportunity.*

‖ *Obſerve.*

But further, you will be pleaſed to take notice, That the outward Cargo for a Ship of 200 Tons, and 20 Guns mounted, ſailed with 36 Men, was in Value but 999*l.* 17*s.* 2*d.* Sterling; which appears by the * Document produced by themſelves, for inſtructing their Entry at the *Cuſtom-Houſe*; and that too, for the moſt Part, Arms. I have not ſo much Experience in Matters of Trade; but to me it ſeems very ſtrange, that a Voyage ſo exceedingly hazardous and expenſive, ſhould have been undertaken with ſo ſmall † Means. And theſe Things, in the very undertaking of the Voyage being joined with the ſhrewd Evidences of the Crimes, whereof theſe Pannels ſtand accuſed, ſeem to be of very great Weight: And where ſuch § Fineneſe occurs in the Entry, and the Effects are ſo tragical, in ſuch an Enquiry; I hope I ſhall be forgiven by every body, having laid them before you with as much Tenderneſs to the Freighters (with whom I have nothing to do) as poſſible.

* *Voucher.*

† *Stock.*

§ *Cunning.*

As to the Second Part of the Libel, I mean theſe Circumſtances which concur to give Light to the Crimes chiefly libelled; there is alſo ſufficient Evidence. The firſt of theſe Circumſtances is what concerns Mr. *Reynolds*, one of the Pannels. The Indictment bears, That there was a Letter found, writ to him by his Wife's Siſter, in Return to one of his writ to his Wife; wherein his ſaid Siſter adviſes him to confeſs; adding, That in his own Letter, which ſhe had ſeen, he ſays, *That ſome of their Men had baſely confeſs'd*; which implied, that they were guilty. And *Reynolds* being queſtioned upon this Letter, produced the Copy of his Letter to his Wife, which occaſioned his Siſter's writing to him, agreeing with this Letter. Theſe you have before you.

I am not ignorant, that *Ferdinando* (the firſt Witneſs) ſays, *He believes* Reynolds *was aſhore:* But the Teſtimony as to that is not poſitive; neither is it, in my Judgment, ſufficient to take off the Acceſſion of the Crime, or * Art and Part libelled; ſince the ſaid *Reynolds* was of the ſame Crew, and did not ſeparate himſelf from them; and it is moſt preſumable, had his own Share of the Booty. Beſides, it's plain from the Letters, he was conſcious to the Truth, which (he ſays) *was baſely confeſs'd:* And it is of little Weight, what has been offer'd as a Gloſs; *viz. baſely confeſs'd*, is as much as if he had ſaid, *falſely told Stories.* For in the ordinary way of ſpeaking, to *confeſs*, is to *tell true*; and the Adverb *baſely* implies no more than if he had ſaid, that they had ungenerouſly confeſſed; tho' it be indeed rather a Duty, whatever Mr. *Reynolds* thinks.

* *Contriving and Acting.*

The next obſervable Circumſtance is what concerns *George Haines:* As to whom, by laying together the Teſtimonies of *James Wilkie*, *Kenneth Mackenzie*, *William Wood*, *John Henderſon*, and *Anne Seaton*, you will find it proven, That upon aſking a Queſtion about *Drummond*'s Ship, *Haines* fell in Paſſion; by the Depoſitions of *Wilkie* and *Kenneth Mackenzie*. 2. That *Haines* ſaid, *That when the Ship the* Worceſter *was ſeized in the Road of* Leith, *he had that in his Cuſtody, which he would not have fallen in the Seizer's Hands for twice the Value of the Ship; and that he threw it over-board*; is proven by the Teſtimonies of *James Wilkie* and

Anne Seaton. 3. *That James Wilkie*'s Mother employ'd *Anne Seaton* to enquire of *Haines* concerning her Son, who had gone Doctor to *Drummond*'s Ship is proven by the Teſtimonies of *Wilkie* and *Seaton.* And *Kenneth Mackenzie* depones, That he was preſent when the ſaid *Anne Seaton* gave an Account of what had paſs'd betwixt her and *Haines*; and that ſhe told, that *Haines*, ſaid, *They had a deſign to pump him:* And that being aſk'd why he fell in a Paſſion at the mentioning of Captain *Drummond?* He anſwered, *That he knew more of Captain* Drummond *than he would tell.* And *Anne Seaton* concurs with *Mackenzie* as to theſe particulars. 4. That *Haines*, in a melancholy Fit ‖ burſt forth in theſe, or like Words, *It's a wonder that ſince we did not ſink at Sea, God does not open the Earth, to ſwallow us up at Shore, for the Wickedneſs committed during the laſt Voyage, in that old Bitch* Beſs (pointing to Captain *Green*'s Ship) is proven by the concurring Teſtimonies of *William Wood*, *John Henderſon*, and *Anne Seaton.* And, 5. That *Haines* ſaid, *If what Captain* Madder *did during the laſt Voyage, were as well known as what his Uncle undertook at* Amſterdam, *he deſerved as much as his Uncle met with; which was, to be boiled in Oil*; is only atteſted by *William Wood.* Nor does every minute Circumſtance need a concurring Probation.

‖ *broke out.*

Having thus laid before you the Indictment and Probation, conjoining theſe Proofs, which I am confident, to all impartial Men, will appear clear and plain Evidence of the Crimes of which theſe Pannels are accuſed; I ſhall take Liberty, in the next Place, to precaution you againſt certain Inſinuations, which the Pannel's Lawyers have diſcover'd when the ‖ Probation was a leading.

‖ *Evidence was giving in.*

I need be at little Pains to convince you, that the firſt Witneſs, tho' a *Black*, is a legal Witneſs; ſeeing that, upon full Debate, has been already determined by the Honourable Judges. And indeed, beſides that he is not only a Man, but a Chriſtian, and adduced for proving a Crime covered, committed at Sea, which is more ſolitary than any Deſart at Land. His Teſtimony had ſuch a diſtinguiſhable Air of Truth and Sincerity, as made him not only a legal Witneſs, but a very material and probative one. But the Pannel's Lawyers would fain have obſerved ſome Inconſiſtency in his Teſtimony, and betwixt it and that of Mr. *May*'s: *For*, ſay they, Ferdinando *depones, That he came aboard two Years and a half ago; and that the Action happen'd about a Month after he came aboard*; ſo that it muſt have been in the Month of *November*, 1702, and not in the Months of *February*, *March*, &c. 1703. But ye were Witneſſes, that the *Black* did not depone poſitively as to the Time of his coming aboard, but ſaid it was about two Years and a half ago; and that the Engagement was about a Month after. Both theſe Deſignations of the Time admit a Latitude: And he was ſo cautious, that he ſtopt again before he ſigned his Oath; until it was told him, that it could not be otherways underſtood.

But then they urge, that he depones, That the Engagement happen'd betwixt *Tillichery* and *Callicut*, upon the Coaſt of *Malabar*; yet Mr. *May* depones, That he heard the Shooting at *Callicoiloan*; which, ſay they, being at ſuch a vaſt Diſtance from *Tillichery*, was impoſſible.

But theſe Gentlemen do not obſerve, That the Engagement continued for three Days; and that it is expreſly deponed, There was a running Fight during that Time: So that tho' the Beginning of the Attack might have been betwixt *Tillicherry* and *Callicut*, yet it might have continued along the Coaſt.

Neither is it of more Moment what theſe Gentlemen obſerve, That the Stranger's Ship attacked might have in three Days got off: Becauſe it appears, ſhe was attacked and purſued by the Sloop, which was a light Veſſel; and the Ship itſelf attack'd was weakly mann'd, having but about ten Men aboard, and a Ship of 20 Guns.

But it may poſſibly be further urged, That the *Black* deponed, That Mr. *Loveday* and Mr. *Linſteed* were aboard the Sloop; whereas Mr. *May* depones, That Mr. *Linſteed* was left at *Keilon*; and that he heard him order'd to go ſhore before, and ſaw him taken into the Ship ſome Time afterwards.

But neither is there any Inconſiſtency in this Particular, betwixt theſe two Oaths: For Mr. *May* depones, That when the Ship came upon the Coaſt of *Malabar*, he himſelf was put aſhore: And altho' before he was put aſhore he heard *Linſteed* and *Hammond* ordered a-ſhore, yet he did not ſee them go; ſo that *Linſteed* might have continued in the Ship notwithſtanding. Or, in the next Place, let us ſuppoſe that *Linſteed* had once gone aſhore; does it from thence neceſſarily follow, that he did not come aboard again, till the Doctor ſaw him taken up? Certainly it does not; for Mr. *May* continued a very long Time a-ſhore. But now granting what theſe Gentlemen ſo earneſtly deſire, that *Ferdinando* had been miſtaken as to ſome ſuch Circumſtance; can that overturn his Teſtimony? The Thing happening upwards of two Years ago: The Subject was an Engagement at Sea; perhaps the firſt Fighting ever he was Witneſs to: And the Confuſion which, for the moſt part, is incident to the firmeſt Spirits in their firſt Adventures, might excuſe this Witneſs, if in a † minute Circumſtance he had miſtaken; ſeeing his Oath, as to what is material and eſſential, is moſt pregnantly ‖ aſtructed, as has been already ſaid.

† *ſmall,*

‖ *ſupported.*

It may be likeways obſerved, That it was very much urged for the Pannels, that *Ferdinando* came aboard the Ship at *Anjango* only two Days before the Ship parted from the Coaſt of *Malabar:* But tho' that were true, it would be little to the Purpoſe: For it is evident by his own Depoſition, that at firſt he enter'd to the Service of Mr. *Loveday*, the Purſer; and that he came aboard of the Sloop at *Callicoiloan* with *Loveday*; and the Sloop was the chief Inſtrument made uſe of in the Piracy libelled.

It is not unlikely, that the Lawyers on the other ſide will amuſe you with Obſerves upon Mr. *May*'s Teſtimony; as that he is but a Witneſs † *de auditu*, not having been preſent at the Action: But in this they are again miſtaken; for, as I take it, a Witneſs *de auditu* is ſuch an one, who repeats at ſecond-hand: As if Mr. *May* had deponed, That another Perſon had told him he had heard Shooting. But ſince our Hearing is as much to be depended on as our Seeing, in what concerns the proper Object of the Ear, Mr. *May's* Teſtimony, which chiefly conſiſts of what he heard and ſaw himſelf, is not in the Senſe of Law *de auditu.* Mr. *May* depones he heard the Shooting; and the next Day that he came down, he ſaw the *Worceſter* riding, with another Ship at her Stern; and that he ſaw ſome of the Crew come a-ſhore in a Boat; and that they told him that they had brought in a Ship; and that *Coge Commodo*, or the *Linguiſter*, told him he had bought the Ship. He ſaw and handled the *Black*'s Wounds: He was Eye and Earwitneſs to *Madder*'s Threatning, and impoſing a rigorous Silence. In all this there is nothing properly *de auditu*; for that the Seamen told him they had brought in a Ship, did not depend barely upon their telling, but upon theſe Circumſtances, that they were the Perſons brought it in? and that the Ship was riding under his Eye at the Stern of the *Worceſter.* And juſt ſo what he heard from *Coge Commodo*, and the *Linguiſter*, being upon the Place, and ſeeing the Ship under his Eye, is not to depone only *de auditu*, but has as much Evidence as is neceſſary to create a full Certainty in the Mind of any reaſonal and indifferent Perſon.

† *By Hear-ſay.*

As for the other Circumſtances, I beg Liberty to forewarn you, *Gentlemen*, That every Thing material is proven; and that even as to the leaſt Circumſtance, there is ſome Evidence. That the Goods were not regularly marked, as is ordinary in fair Trade, is proven by the Oaths of * Skippers: That the Seal of the *African Company* was ſeen in the Hand of Captain *Madder*; is deponed by *Glen*, a Seal-Cutter, who could not well be miſtaken in a Matter of that kind. And in like Manner, that there was ſomething aboard of the *Worceſter*, which would not be found, tho' they ſhould tear her Board from Board, is deponed by *James Wilkie.* None of theſe Circumſtances are abſolutely without Evidence: And the reſt of the Libel, both what is eſſential, and even as to leſſer Circumſtances, is diſtinctly and plainly proven.

* *Maſters of Ships.*

To conclude, *Gentlemen*, As, on the one Hand you are to be very tender of admitting that for a Proof, in a Caſe of Life and Death, which ought not to be admitted; ſo you muſt be careful not to reject ſuch Evidence, as muſt convince the whole World, that theſe unhappy Criminals are guilty of the cruel and atrocious Crimes libelled. Take the Matter in its whole *Series*: The affected Darkneſs in the Entry to the Undertaking, a Correſpondence in Cypher, wherein the Parties were neither to be mentioned on the Cover, nor in the Letters, nor were they to Subſcribe. That the Cargo was inconſiderable, and chiefly compoſed of Arms, not to the Value of a Thouſand Pounds Sterling. And it ſeems almoſt ridiculous, that a Ship of 200 Tuns, with 20 Guns mounted, ſailed by 36 Men, ſhould be ſent to the *Eaſt-Indies* upon an ordinary Adventure, with ſo invaluable a Cargo: And join with that the Evidence of the Murder and Robberies, mentioned in the Indictment. Conſider how much Light the Providence of GOD has diſcover'd in ſo dark a Crime committed in a Place ſo diſtant and ſolitary; and I am confident, you will conclude with me, That the Murder and Piracy is proven.

The Advocates for the Pannels did alſo on their Part † ſpeech the Aſſize, by reſuming the Defences for the Pannels, and for taking off the Weight of the Probation led againſt them, and by alledging what could be further ſaid for their Exculpation and Defence. But theſe Speeches having been made * *extempore, & viva voce*, albeit the Advocates for the Pannels were deſired at the printing of this † Proceſs, to give in to be printed a full Copy of what they had ſaid in Defence to the Aſſize; yet they declined to do the ſame.

† *ſpeak to the Jury.*

* *Off-hand by word of mouth.*

† *Trial.*

The Judge of the High Court of Admiralty and Aſſeſſors ordain the † Aſſize preſently to incloſe, and to return their Verdict upon *Friday* next, being the Sixteenth of *March* Inſtant, at ten o'Clock in the Forenoon; and the ‡ hail Fifteen Aſſizers to be preſent, each under the Pain of Three Hundred Merks, and continue the Dyet till that Time: and ordain the Pannels to be carried back to the reſpective Priſons.

† *Jury to withdraw.*

‡ *whole.*

ROBERT FORBES, I. P. A.

CURIA JUSTICIARIA *ſupremæ Curiæ Admiralitatis tenta in in Prætorio, vel novæ Domo Seſſiones Burgi de* Edinburgo, *decimo ſexto die Menſis* Martii, 1705, *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arniſtoun, Joannem Home *de* Blackadder, & Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia legitimè Affirmata.

The ſaid Day, the Perſons who paſs'd upon the Aſſize of Captain *Thomas Green*, Commander of the Ship the *Worceſter*; Captain *John Madder*, Chief Mate of the ſaid Ship; *John Reynolds*, Second Mate; *Thomas Linſteed*, Aſſiſtant Supercargo; *James Burn*, Boatſwain; *James Simpſon*, Gunner; *Andrew Robertſon*, Gunner's Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter; *George Haines*, Steward; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen* and *Alexander Taylor*, Seamen; *John Bannantyne*, Seaman; returned their Verdict in Preſence of the ſaid Judge and Aſſeſſors; whereof the Tenor follows.

Edinburgh, the 14th of *March*, 1705, The * Aſſize having incloſed, did chuſe Sir *James Fleming*, of *Rathobyres*, to be their ‖ Chancellor; and *William Neilſon*, Merchant in *Edinburgh*, to be their Clerk: and having conſider'd the Two Indictments purſued at the Inſtance of Mr. *Alexander Higgins*, Procurator-Fiſcal of the High-Court of *Admiralty*, againſt Captain *Thomas Green*, Commander of the Ship the *Worceſter*; Captain *John Madder*, Chief Mate of the ſaid Ship; *John Reynolds*, Second Mate; *Thomas Linſteed*, Aſſiſtant Supercargo; *James Burn*, Boatſwain there; *James Simpſon*, Gunner; *Andrew Robertſon*, Gunner's Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter; *George Haines*, Steward; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, and *Alexander Taylor*, Seamen; *John Bannantyne*, Seaman; with the Debate upon the ſaid Indictments; and the Judge of *Admiralty* and Aſſeſſors, their Interloquitor, and Explanation thereupon, with the Depoſition of Witneſſes adduced by the Purſuer * thereintil: *They by Plurality of Votes, find, that there is one clear Witneſs as to the Piracy, Robbery, and Murder libelled; and that there are accumulative and concurring Preſumptions proven, for the Piracy and Robbery ſo libelled: But find, that* John Reynolds, *Second Mate of the ſaid Ship, was aſhore at the time of the Action libelled:*

* *Jury having withdrawn.*

‖ *Foreman.*

* *In the Cauſe.*

Sic ſubſcribitur,

Ja. Fleming, * Chancellor.
Will. Neilſon, Clerk.

* *Foreman.*

Thereafter Mr. *David Forbes*, Advocate, produced a † Procuratory from the Company of *Scotland* trading to *Africa* and the *Indies* to him the ſaid Mr. *David Forbes*. In the Terms whereof the ſaid Mr. *David Forbes* Proteſted, and took Inſtruments. The Tenor of both Procuratory and Proteſt is as follows, *viz.* The *COURT* of *DIRECTORS* of the *Company of Scotland*, trading to *Africa* and the *Indies*, Conſidering, That the Ship *Worceſter* and her Cargo is by Sentence of the High Court of Admiralty, found liable by way of Repriſal to the ſaid Company, for Reparation of the Damages ſuſtained by them, thro' the wrongous Seizure of the Ship the *Annandale*, and the Delay and Denial of Juſtice in *England* concerning the ſame, Conform to the ſame Company's * Proceſs of Declarator of Reprizal, bearing a Concluſion of † Roup and Sale of the ſaid Ship the *Worceſter* and her Cargo for Reparation of the Company's ſaid Damages, as the Judge Admiral's ſaid Sentence, dated the third of *March* inſtant, bears. And conſidering likewiſe, that the additional Concluſion of the Criminal Indictment, raiſed at the Inſtance of Mr. *Alexander Higgins* Procurator-Fiſcal of the ſaid High Court of Admiralty, againſt Captain *Thomas Green*, late Commander of the ſaid Ship the *Worceſter* and his Crew, for Piracy, Robbery, and Murder, bears over and above the Confiſcation of their Eſcheat, Moveables in general, That the ſaid Ship and Cargo in Special ſhould be likewiſe confiſcated to her Majeſty's Uſe: The ſaid Court of Directors do therefore by theſe Preſents, give full Power, Warrant and Authority to Mr. *David Forbes* Advocate, to appear for them, and in their Name and Behalf, and in Behalf likewiſe of Mr. *Roderick Mackenzie*, their Factor in the ſaid Proceſs of Repriſal to the * Behoof of the ſaid Company, to proteſt againſt the ſaid additional Concluſion of the ſaid Criminal Indictment, with all that has followed, or may follow thereupon, that the ſame may not in the leaſt Prejudge the ſaid Company of the Benefit of their Right and Intereſt in the ſaid Ship the *Worceſter*, and her Cargo, as ſhould accord. In Teſtimony whereof, theſe Preſents are by Warrant of the ſaid Court of Directors, ſigned by their Preſident for the Time, and counter-ſigned by the ſaid Company's Secretary at *Edinburgh*, the twelfth Day of *March*, 1705 Years.

† *Power.*
* *Trial.*
† *Selling to the higheſt Bidder.*
* *Uſe.*

Sic ſubſcribitur,
FRANCIS SCOTT, P. C. D.
By Order of the ſaid Court,
ROD. MACKENZIE,
Secretary to the ſaid Company.

Follows the PROTEST.

EDINBURGH, 16 March, 1705.

I *The above Mr.* David Forbes, *do hereby proteſt in the Terms of the above Mandate, and thereupon I take Judicial Inſtruments in the Hands of Mr.* Daniel Hamilton, *Clerk of Court, and require the Members of Court as Witneſſes.*

Sic ſubſcribitur,
DAVID FORBES.

Her Majeſty's Advocate Proteſted * *in the contrair.*

* *On the contrary.*

Which Proteſtations, the Judge of the High Court of Admiralty, *&c.* admitted and allowed them to be recorded.

The Judge of the High Court of Admiralty and Aſſeſſors, continues the † Dyet till *Wedneſday* the twenty-firſt of *March* Inſtant, at Ten a-Clock in the Forenoon: And ordains the Pannels to be carried back to their reſpective Priſons.

† *Time of Trial.*

CURIA JUSTICIARIA, *Supremæ Curiæ Admiralitatis tenta in Prætorio, vel nova Domo Seſſionis, Burgi de* Edinburgo, *vigeſimo primo Die Menſis* Martii, 1705, *per Judicem dicta Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arniſtoun, Joannem Home *de* Blackadder, & Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia Legitimè Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*.
Captain *John Madder*, Chief Mate of the ſaid Ship.
John Reynolds, ſecond Mate of the ſaid Ship.
Thomas Linſteed, Aſſiſtant to the deceaſed *Super-Cargo* of the ſaid Ship.
James Burn, *Boatſwain* of the ſaid Ship.
James Simpſon, Gunner.
Andrew Robertſon, Gunner's Mate.
John Bruckley, Seaman.
George Kitchen, Seaman.
Henry Keigle, Carpenter of the ſaid Ship.
George Haines, Steward of the ſaid Ship.
Samuel Wilcocks, Chyrurgeon's Mate.
George Glenn, Seaman.
Alexander Taylor, Seaman: And
John Bannantyne, Seaman in the ſaid Ship.

The Judge of the High Court of Admiralty, and Aſſeſſors, having conſidered the Verdict of * Aſſize returned againſt Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour; Captain *John Madder*, chief Mate of the ſaid Ship; *John Reynolds*, ſecond Mate of the ſaid Ship; *Thomas Linſteed*, Aſſiſtant to the deceaſed *Supercargo* of the ſaid Ship; *James Burn*, Boatſwain of the ſaid Ship; *James Simpſon*, Gunner; *Andrew Robertſon*, Gunner's Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter of the ſaid Ship; *George Haines*, Steward of the ſaid Ship; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, Seaman; *Alexander Taylor*, Seamen; and *John Bannantyne*, Seaman in the ſaid Ship; upon the 16th Day of *March* inſtant; whereby it is found proven, that there is one clear Witneſs as to the Piracy, Robbery and Murder libelled; and that there are accumulative and concurring Preſumptions proven from the Piracy, and Robbery ſo libelled: And that *John Reynolds*, ſecond Mate of the ſaid Ship, was a-ſhore at the Time of the Action libelled; they, in reſpect thereof, by the Mouth of *John Park* † Demſtper, * *Decern* and *Adjudge* the ſaid Captain *Thomas Green*, *John Madder*, *James Simpſon*, *Henry Keigle*, and *George Haines*, to be taken to the Sands of *Leith*, within the Flood-mark, upon the firſt *Wedneſday* in *April* next, being the fourth Day of the ſaid Month, betwixt the Hours of Eleven a-Clock in the Forenoon and Four a-Clock in the Afternoon, and there to be hanged upon a Gibbet till they be dead. And * ſicklike, *Decern* and *Adjudge* the ſaid *George Glen*, *Alexander Taylor*, *Andrew Robertſon*, and *George Kitchin*, to be taken to the Sands of *Leith*, within the Flood-mark, upon the ſecond *Wedneſday* of *April* next being the Eleventh Day of the ſaid Month, betwixt the Hours of Seven and Twelve a-Clock in the Forenoon, and there to be hanged upon a Gibbet till they be dead. And alſo *Decern* and *Adjudge* the ſaid *James Burn*, *John Bruckley*, *Samuel Wilcocks*, *John Bannantyne*, and *Thomas Linſteed*, to be taken to the Sands of *Leith*, within the Flood-mark, upon the third *Wedneſday* of *April* next, being the Eighteenth Day of the ſaid Month, betwixt the Hours of Eleven a-Clock in the Forenoon and Four a-Clock in the Afternoon, and there to be hanged upon a Gibbet till they be dead: And ordain all their Moveables, Goods and * Geer, and particularly the Ship *Worceſter* and Cargo to be † Eſcheat, and in-brought to her Majeſty's Uſe; reſerving to all Perſons pretending Right to the ſaid Cargo, or any Part thereof, their reſpective Claims and Pretenſions to be inſiſted in and diſcuſs'd before the High Court of Admiralty as accords, which is pronounced for † Doom, and * Aſſolzie the ſaid *John Reynolds*.

* *Jury.*
† *One that pronounces Doom.*
* *Decree.*
* *In like Manner.*
* *Eſtate.*
† *Forfeited.*
* *Sentence.*
† *Abſolve.*

JAMES GRAHAM, *J. P. A.*

The Judge of the High Court of Admiralty and Aſſeſſors recommend to the Lords of Her Majeſty's Privy-Council, to give a Reprieve to *Thomas Linſteed* Aſſiſtant Supercargo of the Ship *Worceſter*; and deſire that their Lordſhips would recommend him to her Majeſty for her gracious Pardon.

JAMES GRAHAM. *In Preſentia Aſſeſſorum.*
In Preſence of the Aſſeſſors.

Captain Green *was afterwards executed according to his Sentence.*

Here follow ſome Confeſſions and Declarations emitted by ſome of Captain Green's *Crew, which are here ſet down according to their Dates, and as they were freely made in the Preſence of the Perſons therein mentioned, and are only here ſubjoined, not as any Part of the* * *Proceſs, but for the further Satisfaction of all that ſhall be pleaſed to read the Premiſſes.*

† Trial.

Edinburgh, 16*th March*, 1705.

DECLARATION *by* Thomas Linſteed, *emitted in Preſence of Sir* James Stewart, *Her Majeſty's Advocate, hereto ſubſcribing with the ſaid* Linſteed.

THomas Linſteed declares, That being in the Ship the *Worceſter* as Aſſiſtant to the *Supercargo*, when the Veſſel came to *Callicoiloan*, upon the Coaſt of *Malabar*, which was about the Beginning of the Year 1703, Mr. *Hammond* and he were ſent aſhore to look after the Goods they had ſold, and the Returns they expected at *Callicoiloan* and *Keilon*; That the Ship the *Worceſter* left *Callicoiloan* with her Sloop, in *January* 1703, for to go to *Callecut*, and other Places up that Coaſt; but within five or ſix Days after the Ships parting, there came in Fiſher-Boats to *Callicoiloan*, who told them that their Ship the *Worceſter* had had an Engagement at Sea, and that it was the Sloop that firſt attacked the Veſſel, and that they fought until they were out of Sight of the Fiſherman, who could give no further Account of it. But thereupon the Declarant and Mr. *Hammond* wrote, and ſent a Meſſenger either to *Cochin* or *Callecut*, to know what was become of the *Worceſter*; and that they got a Return after ſome Days, that they ſhould mind their Buſineſs, and not concern themſelves with any Thing that *Callant* the *Supercargo* did aboard. That ſome Days thereafter, the Declarant met with *Coge Commodo* in the *Ibeck* of *Keilon*, who told him that he had bought a Ship, and he took the Declarant aboard; that the Veſſel was about 100 Tons, and did bear about twelve or thirteen Guns, and that ſhe appeared to be of the Country Build. And *Coge Commodo* ſaid, he had bought her from the Pirates of *Cota* or *Burgara*, which are two little Pirating Towns on either Side of a River on the Coaſt of *Malabar*; but when the Declarant came to *Keilon*, the *Dutch* and *Portugueſe* there told him, that that Veſſel which *Coge Commodo* had bought was brought in in the Night Seaſon by ſome of the Crew of the *Worceſter*, and that her Topmaſt was taken down, and her Sails taken off, and the Yards lower'd; and that the *Dutch* and *Portugueſe* made no more reckoning of it, becauſe 'tis what is ordinary on that Coaſt. That the Declarant, and Mr. *Hammond* ſtayed, for two or three Months after their parting from the Ship, at *Callicoiloan* and thereabouts, until the Ship the *Worceſter* came back to the Road of *Callicoiloan*, and that there he went aboard: That when he went aboard, he told them what he had heard, but they gave him no Account of the Action; nor could he learn more of it. That the Doctor was aſhore at *Ibeck*, while the Ship was at Anchor at *Callicoiloan*, and that at that Time the Declarant was gone up to *Callicoiloan*, and knows no more of the Doctor's being aſhore: That the Sloop with Mr. *Loveday* and others aboard did firſt come back to *Callicoiloan*, and advertiſed the Declarant and Mr. *Hammond* to be in Readineſs, for the Ship was coming back; and that when ſhe came back, they went aboard, and the Declarant went aboard at *Anjango*, from whence they ſailed to *Bengal*. And this the Declarant declares to be a Truth. *Cauſa Scientiæ patet.* *T. Linſteed.*

JA. STEWART.

Edinburgh, 27 *March*, 1705.

IN the Preſence of Mr. *James Graham*, Judge of the High Court of Admiralty, *George Haines*, one of the Crew of the *Worceſter*, being deſirous to make a Confeſſion of what he knew in relation to the Crimes for which he and the reſt of the Crew are purſued; *Declared*, That when the Ship the *Worceſter* was in the Downs, the Declarant received a Letter from a Friend in *London*, telling him, that it was ſurmiſed in *London*, that their Ship was going out upon ſome ill Deſign; and that he had likeways another Letter from his Father to the ſame Purpoſe, and heard the Gunner, *James Simpſon*, ſay, he had alſo another of the ſame Nature. The Declarant *declares*, that thereafter he uſed all his Endeavours to get aſhore, and accordingly he having got Leeve to ſee ſome Friends aboard the *Fleet Frigat* that was then riding in the *Downs*, he got into her Long Boat that was then going aſhore, but ſome of the Frigat's Crew having got Notice where the Declarant was, after he went aſhore, they came to him, and having drunk with him to ſome Pitch, perſuaded him to go aboard of his own Ship again; and the Declarant was accordingly carried aboard, in one of the Boats belonging to the Town of *Deal*. And ſome Time thereafter the Declarant deſigned likewiſe to have got into a Man of War, riding hard by their Ship; but Mr. *Callant, the* Supercargo, came after him, and brought him back: And the Declarant believes the Name of the Man of War was the *Saliſbury*. That the Ship *Worceſter* ſailed from the *Downs* the 8th of *March*, 1702, in the Morning. That in the Month of *June* or *July* thereafter, the Ship arrived at *Delagoa*, where their Sloop was built of Timber, and other Materials which they had brought from *England* aboard the Ship. That having ſailed from *Delagoa*, ſome few Days before they came upon the Coaſt of *Malabar*, he heard ſome of the Crew, and particularly *John Bruckley*, the Cooper, talk of turning Pirates, and perſuading others of the Crew to go in with them. That when they came upon the Coaſt of *Malabar*, and had been there about a Month, they endeavoured to take a large Country Boat; and for that End, the Sloop endeavour'd to get betwixt the ſaid Boat and the Shore, that ſo the Ship might come up with the ſaid Boat; but there being ſeveral Hands aboard, and the Boat having Fifty Oars, out-ſailed both Ship and Sloop, and got off. *Declares*, That *Coge Commodo* was aboard the Ship the Time of the aforeſaid Chaſe; and that he drew his *Sabre*, and encouraged the Crew of the *Worceſter*. *Declares*, That hereafter the Ship and Sloop ſailed for *Cochin*, with a Deſign to have cleaned both at that Place; (the Sloop being much ſpoil'd with Worms) but the Governor would not allow them to be cleaned there; and therefore they went up to *Callecut*, where the Sloop was cleaned and refitted, and mann'd with about Eight Men, and two Guns, Two Patteraroes, and other Small Arms and Ammunition put aboard; and then the Sloop alone ſailed up towards *Tillicherry*, and ſtayed away from the Ship about Eight Days. *Declares*, That the Sloop took no Goods along with her when ſhe went out; but when ſhe returned, ſhe had aboard Eight Hogſheads of *Rack*, and knows not how ſhe came by them. But *John Roberts*, one of the Crew who had been with the Sloop at that Time, was very melancholy after his Return; and the Declarant having a *Coco-nut* full of *Rack* in his Hand, deſired *Roberts* to take a Part; but he would not, and went down to his Hammock mightily concern'd: And afterwards told the Declarant, that the Reaſon of his Concern and Melancholy was, That he was acceſſary to the cutting off of ſome Mens Heads at *Sacrifice Rock*, betwixt *Tillicherry* and *Callecut*. *Declares*, That the Sloop did ſail by herſelf from *Callecut* thereafter; and the Ship followed down to *Callicoiloan*, and did there meet with the Sloop: and having diſcover'd a Ship coming as from the *Southward*, the Sloop was under Sail, and made to get in betwixt the ſaid Ship and the Offing, that ſo ſhe might not get to Sea: And the Ship coming nearer to the *Worceſter*, in which the Declarant was at the Time; the *Worceſter* ſlipt her Anchors, and made towards the foreſaid Ship, and at length came up with her, and fired a ſharp Shot, to cauſe her to come to; which ſhe did accordingly, by breaking her Head-ſails back to the Maſts; and that thereafter ſhe was boarded. *Declares*, That the Ship was about Seventy Tuns Burden, and ſquare-ſterned, and painted in the Quarters with Red and Yellow; and that ſhe had a Main Deck, and Quarter Deck, and a little Fore-caſtle, and was of the *Indian* Build: And that there was in the Ship, when boarded, about Twelve or Fourteen Men, all white and ſickly, as the Declarant clearly perceived before the Ship was boarded. But when the Declarant was endeavouring to know of what Country the Men were, *Edward Carry*, one of the *Worceſter*'s Crew, knock'd him down with a Handſpike into the Midſhip Hatch: But he afterwards heard amongſt the Crew, that the Men of the taken Ship were *Britons*. *Declares*, That he knew not what became of the Men which were aboard of the taken Ship, not having been able to come above Deck, with the Stroke which he received from *Edward Carry*, and whereof he yet bears the Mark: But declares that the Sloop went off before he came above Deck, and ſtayed away for Three or Four Days; and that the Declarant thereafter heard the Men were put into the Sloop. And what was done with the ſaid Men of the taken Ship, he cannot tell; but doubts not they were murdered and made away, becauſe they could not be put aſhore at any Place at Hand on that Coaſt; there being *Engliſh* and *Dutch* Factories all along the Coaſt, very near each other. *Declares*, That theſe of the Crew who went with the Sloop from the Ship at that Time, were Mr. *Loveday*, *Thomas Calcate*, *Andrew Robertſon*, Gunner of the Sloop, *John Roberts*, *Edward Carry*, *Duncan Mackay*, *Alexander Taylor*, and *Antonio Ferdinando*, the *Black*; but cannot be poſitive who beſides were there. *Declares*, That the next Evening after the Action, the Ship which was taken the Day before, was carried in by ſome of the Crew to *Callicoiloan* and ſold to *Coge Commodo* for 1500 *Rupies*: and that the Goods of the ſaid taken Ship were ſome Bales and Matts of *China Roots*, and Four Cheſts of Copper; which Cheſts were ſold afterwards at *Bengal*, to a *Bannion* Merchant named *Tagodas*. *Declares*, That ſome Days after the Action, the Declarant was ſent aſhore with a Letter to the *Supercargo*; and that he then heard that *Coge Commodo* to whom the Ship was ſold, was a great Aſſiſter of all Pirates, and was very ſerviceable to *Kidd* and *Avery* when upon that Coaſt, and bought off their Goods, as the Declarant was credibly informed of the People on that Coaſt. And *declares*, That the Time the Declarant was on Shore, the *Supercargo*, Mr. *Linſteed*, *Reynolds*, *Hammond*, and the Doctor were aſhore. And the Declarant did likewiſe ſee *Antonio Ferdinando*, the *Black*, at the *Ibeck* of *Callicoiloan*, who complained of a Wound in his Arm. *Declares*, That after the Action, and before the Declarant went aſhore, the Doctor *Charles May*, came aboard from the *Ibeck* of *Callicoiloan*; and ſeeing the Cheſts which had come out of the taken Ship upon the Deck, he aſked Captain *Madder*, What did all that Lumber upon the Deck? And that *Madder* anſwer'd him with a Curſe, and told him to *mind his Plaiſter-Book, and aſk no Queſtions*. *Declares*, That while the Ship was upon the Coaſt of *Malabar*, ſhe ſprung a Leak in the Strake next the Keel, which made the Crew to pump conſtantly: However they went not into any Place upon the Coaſt of *Malabar* to refit her, but ſailed to *Bengal*, which was about Five Weeks ſailing; and there the Ship was refitted, not only of the Leak, but of an Hurt which the Ship got in the Action, in the *Plank*, betwixt the Midſhip's Crupper and the Cheſtree, and a new Plank put in, in the Larboard Side, where the Hurt was. *Declares*, That the Declarant did keep a Note, by way of Journal, during the Voyage, which contained the Subſtance of what he now declares in relation to the above Particulars; and that when the Ship was ſeized in the Road of *Leith*, he heaved the ſame over Board, leſt it ſhould have fallen in the Seizers Hands. *Declares*, That he would have emitted this Declaration and Confeſſion ſooner, but that he was always made believe by Captain *Green*'s Agents, that the Defences made for the Crew, would certainly bring them off: *And if they did all agree in one Mind, and keep cloſe Mouths, there would be no Fear; for nothing could be otherways proven that could do them Harm*. And *declares*, That *Wilcocks*, the Chyrurgeon's Mate, told the Declarant, that he ſaw a Letter from the Owners of the *Worceſter*, in *London*, to Captain *Green*; which bore, *That altho' the Crew were condemned in* Scotland, *they had Pardons ready to ſend down for them*. And this the Declarant was likeways informed of from the Carpenter's Wife.

George Haines.
JA. GRAHAM.

Edinburgh, 28 *March*, 1705.

IN Preſence of Sir *Robert Forbes*, Judge of the High Court of *Admiralty*, * compeared *George Haines*, one of the Crew of the Ship the *Worceſter*, and declared that he now adds to his former Declaration; That after the Ship therein mentioned was ſeized, he ſaw the Men which were therein killed and murdered with Pole-Axes and Cutlaces, and ſaw their dead Bodies put into the Sloop, and thereafter thrown over Board: And to the beſt of the Declarant's Knowledge, the ſaid Men ſo killed were *Scotſmen*; the Declarant having heard them ſpeak the *Scots* Language. And further *declares*, That the ſaid Ship then ſeized, was underſtood by the Crew of the *Worceſter* to have been Captain *Drummond* his Ship; and particularly he heard Captain *Madder*, *John Bruckley*, and the deceas'd *Edward Carry*, ſay ſo. And further adds, That he would have emitted what is above, before this Time, but was afraid leſt his mentioning the Ship ſo ſeized to belong to Captain *Drummond*, and the Men aboard of the ſame to have been murder'd, might have rendered the Government offended, and obliged them to deal hardly with the Declarant. And this he declares to be Truth, as he ſhall anſwer to GOD.

* *appeared.*

George Haines.
ROB. FORBES.

Edinburgh, 31 *March*, 1705.

IN Preſence of Mr. *James Graham*, Judge Admiral, *John Bruckley*, Cooper of the Ship *Worceſter*, being deſirous to make a Confeſſion of the Crimes whereupon he and the reſt of the Crew were purſu'd; *declares*, That ſome Time after the Ship the *Worceſter* came upon the Coaſt of *Malabar*, that ſhe and the Sloop gave Chaſe to a Country Boat, which eſcaped by Reaſon of her Oars. That afterwards the Ship and Sloop ſailed in Company to *Cochin*, where they were denied Acceſs to clean; and therefore they thereafter ſailed to *Callecut*, where the Sloop (which had been ſpoiled by the Worms) was hal'd upon the Shore, and clean'd, and thereafter was mann'd with about 10 Men, and 2 Guns, 2 Patteraroes, with other ſmall Arms put aboard. From *Callecut*, the Sloop was order'd to ſail towards *Tillicherry*, but there was no Goods ſent along; and in about ſix or eight Days thereafter, the Sloop came back in Chaſe of another Ship. *Declares*, That When the Ship the *Worceſter* ſaw the Sloop in Chaſe of the other Ship, ſhe ſlipt her Anchors, and made out to Sea to meet them. *Declares*, That he ſaw the Sloop board the ſaid Ship towards Night; and that the Long Boat was after order'd to be mann'd, and Captain *Madder* went along in the Long Boat. *Declares*, He does not know what became of the Men who were on Board the taken Ship; but that the Declarant did ſee they were white Men. And the Reaſon why he knows not what became of the Men, is, that the Declarant was never on Board the taken Ship; and that the Sloop which had boarded the Ship, was order'd away next Morning; and he doubts not but the Men were alongſt which were taken out of the Prize-Ship. *Declares*, That the Ship which was taken, was mann'd with ſome of the *Worceſter*'s Crew, and ſailed along with the *Worceſter* till they came to *Callicoiloan*, where they found the Sloop. *Declares*, That whilſt the *Worceſter*, with the other Ship, came in Sight of the Sloop, the Sloop weighed Anchor, and ſtood to the Offing; ſo that the taken Ship came into *Callocoiloan* betwixt the Sloop and the *Worceſter*; and all three came to an Anchor together. *Declares*, That after they came to an Anchor, the taken Ship rode under the Stern of the *Worceſter*, and was thereafter ſent into *Callicoiloan* River, and ſold to *Coge Commodo*, as the Declarant ſuppoſes. *Declares*, That thereafter the Declarant was ſent aſhore for Water to the *Ibeck* of *Callicoiloan*, where he met with Doctor *May*; and that he ſent on Board a *Pinguetta*, with Water, according to his Orders. *Declares*, That ſome Time after, they came to an Anchor before *Callicoiloan*; and before the Declarant was ſent aſhore for Water, as above, they ſaw a Ship at Sea, coming from the *Southward*; that the Sloop was under Sail at that Time, being a cruiſing about: That ſhe ſailed towards the Sea, and bore down the Ship towards the *Worceſter*. That the *Worceſter*, when the Ship came near, ſlipt from her Anchors, and made towards the Ship; which thereafter was boarded, firſt by the Sloop, and then by the *Worceſter*, about ten or eleven a Clock in the Forenoon. *Declares*, That there was both *Whites* and *Blacks* on Board that Ship, and moſt Part *Whites*; but the Declarant did not know what became of them; but that the Sloop went off in a few Hours after the Engagement, and did not return till after Two or Three Days. That the Declarant does not know what became of that Ship; but *declares*, That he was in a *Mooriſh* King's Houſe, with about ſix of the Crew: and that that King was *Cogo Commodo*'s Maſter, who had bargained for one of the taken Ships; the Declarant cannot be poſitive which: And that at the ſame Time, the Supercargo, who was along with them, preſented the King with a ſmall Fowling Piece. *Declares*, That the Declarant ſtayed a-ſhore trimming the Caſks, for about ſix Weeks thereafter: And does not remember at preſent any more of the Affair. And *declares*, he cannot ſign but by this Mark.

+

JAMES GRAHAM.

Edinburgh, 3. *April*, 1705.

IN Preſence of Sir *Robert Forbes*, Judge of the High-Court of *Admiralty*, compeared *John Bruckley*, one of the Crew of the Ship the *Worceſter*; and declares, That he adheres to his former Declaration, emitted before Mr. *James Graham*, Judge-Admiral, the thirty-firſt of *March*. And now adds, That the Men which were aboard the Ship, which was ſeized before *Callicoiloan*, were for the moſt part *White* Men; and the Declarant heard them ſpeak the *Engliſh* Tongue, being in Number about twelve or Fourteen. And declares, That Captain *Madder* was in the Sloop, and one of thoſe That boarded the ſaid Ship; and that the Men were put into the Sloop, and carried away to the *Northward* in the Sea; and the Declarant never heard any more of them. And that the Goods aboard the taken Ship were brought into the Ship the *Worceſter*, and conſiſted of *China Root*, and four Cheſts of Copper; which Cheſts were ſold at *Bengal* to a *Bannian* Merchant. And further adds, That the Men ſeized in the taken Ship were killed after they were put into the Sloop, and before they were carried to the Sea *Northward*. And further adds, That immediately after the Action was over, the Declarant did hear the Supercargo, *Callant*, Captain *Madder*, *John Roberts*, and *Edward Carry* ſay, *That the ſeiz'd Ship was Captain* Drummond's *Ship*, *belonging to the* Scots African *Company*. And adds, That when the *Worceſter* ſailed from the *Downs*, the Declarant did not know where the Ship was bound: but heard it frequently ſaid, they were going upon a Diſcovery. And declares this is the Truth, as he ſhall anſwer to GOD. And declares he cannot write, but by this Mark.

†

ROBERT FORBES.

APPENDIX.

THE foregoing Account of the Trial of Captain *Green* and his Crew, being taken * cloſely from the Records of Court; and the uſual form of the Court being to hear and diſcuſs Objections againſt the Witneſſes, before they be examined, *viva voce*, without any written Debate; it is therefore thought fit here to add the Objections that were made againſt the Witneſſes, and the Anſwers given thereto, with the Interloquitors paſs'd thereon; that there may be nothing wanting to the Reader's full Information.

* *exactly.*

And firſt, it was objected againſt *Antonio Ferdinando*, the Cook's Mate, That he could not be a Witneſs, becauſe of his Poverty; he not being worth (as the Stile of the Court is) the *Queen's* * *Unlaw*, that is, ten Pounds *Scots*, in caſe he ſhould tranſgreſs: And ſo, according to the Law of this Kingdom, was to be rejected. 2. That he was not a Chriſtian, and therefore could not be received as a Witneſs againſt Chriſtians, ſpecially in a Purſuit that reached their Lives and Fortunes. Nor could he indeed be ſuppoſed to have the juſt Knowledge of the Religion of an Oath.

* *Fine.*

To which it was anſwer'd, 1. That tho' the Standard of Ten Pounds *Scots*, ſettled by the Law and Cuſtom of this Kingdom, as to the Quality of Witneſſes, might well be refuſed in a Trial of Crimes of this Nature againſt the Law of Nations, and which were to be tried accordingly; yet the Matter of Fact was falſe; *Antonio Ferdinando*, being worth more than ten Pounds *Scots*, by the very Wages due to him; and which, by the Pannels own Books, were atteſted to be fifteen Shillings *per Menſem*, whereof, to this Hour, he hath got no Payment. 2. *Antonio Ferdinando* was a Chriſtian, as he himſelf owned from the Beginning; and that he was born of Chriſtian Parents: Like as it's known, that ſuch Names are only given to Chriſtians. Beſides, tho' his not being a Chriſtian might be a * Prejuge againſt him, yet it could be no juſt Exception againſt his Teſtimony as a Witneſs; ſince he both profeſs'd the Knowledge of GOD, and the Conſcience of an Oath, as he had often declared.

* *Objection.*

The Judge and Aſſeſſors having conſider'd the foreſaid Objections and Anſwers, they repel the Objections in reſpect to the Anſwers, and allow the Witneſs to be admitted.

2. It was objected againſt *Antonio Franciſco* That he was not worth ten Pounds *Scots*; and had indeed nothing; Beſides, that he was no Chriſtian, but a Servant or Slave to Captain *Green*; and alſo had no Religion.

To which it was anſwer'd, 1. That tho' ten Pounds *Scots* be the Rate of Witneſſes in our *Scots* Law; yet, as hath been ſaid, this Rule cannot * vie in the Caſe of the Crimes libelled, committed againſt the Law of Nations in remote Parts, & *in alto Mari*, in the deep Sea; which made the Crimes to be Crimes excepted. And it's known to be the Rule and Privilege, as to Crimes atrocious and * occult; and therefore excepted to exempt even the Witneſſes from the ordinary Qualifications. Nor was *Antonio Franciſco* to be reckon'd no Chriſtian; ſince, 1. He bears a Chriſtian Name; and next declares, that a Chriſtian Miſtreſs he had in *Pegu*, who gave him to Captain *Green*, did firſt procure him to be Baptiz'd and Chriſten'd. And 3. He profeſſes the Knowledge of the true GOD. Nor, being a Chriſtian, can he be reckoned any longer a Slave.

* *bear.*

* *hidden.*

But upon the whole, as to theſe Two, and the whole other Witneſſes; the Nature of the atrocious Crime againſt the Law of Nations, with the Manner of their having been committed, and the Endeavours uſed for their Concealment, ought principally to be remembered; ſince thereby, in the Opinion of all Lawyers, they become Crimes excepted: And that it is the known Privilege of Crimes excepted, to relax from the ordinary Rules, and to proceed on ſuch Evidence as the Matter doth afford, the Subſtance of the Probation being only obſerv'd.

The Judge and Aſſeſſors having conſidered the foreſaid Objections, and Anſwers, they repel the Objections, in reſpect of the Anſwers, and allow the Witneſs to be admitted.

3. It was objected againſt *Anne Seaton*, that ſhe could not be a Witneſs, becauſe a Woman.

To which it was anſwered, that in Crimes where the Probation proceeds not upon the *Teſtes requiſiti*, but ſuch as Providence offers, even Women are admitted. But 2. It's the general Opinion and Practice over all, that Crimes atrocious, occult and excepted, a Woman is never refuſed.

The Judge and Aſſeſſors having conſidered the foreſaid Objection and Anſwer, they repel the Objection in reſpect of the Anſwer, and allow the Witneſſes to be admitted.

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* EXCERPTS *out of the Inſtructions and Letters found in Captain* GREEN'S *Books, to which Sir* DAVID DALRYMPLE'S *Speech to the Jury relates.*

* *Extracts.*

IN the Inſtructions or Orders given by the Freighters of the *Worceſter*, Captain *Thomas Green* Commander, to Mr. *Robert Callant* Supercargo there occurs one Article in theſe Words,

We would have you write us by all Opportunities, eſpecially from Sinde, *by any Ships bound from thence to* Perſia; *and for the greater Secrecy, eſpecially of the Letter to be ſent to* Mauritius *for us, here under is an Alphabet for you to write us by; your Subſcription muſt be in common* Engliſh, *directing all ſuch Letters to Captain* Thomas Bowrey *in* Well-cloſe-Square, London.

(*Nota*, At this Place the whole Alphabet is inſert diſtinctly, and above each Letter a different Character is ſet down, to be uſed in Place of the Letters of the Alphabet.)

When your Cargo for England *is provided, or near compleated, then we would have you ſell the Sloop for what you can get, and inveſt the Produce in Goods for* England.

And lower amongſt the ſame Orders in another Article are theſe Words,

You muſt engage the Maſter of the Sloop not to let any letter from himſelf or any other be ſent to England, *but only our Letter, in which you may inſert the Names of any Dead; and for the Care and Secrecy of thoſe who go in the Sloop, in caſe no Letter or News comes to* England, *but our Letter concerning our Buſineſs, then we will on the return of the Ship give the Maſter and Crew one Month's Pay* gratis, *and they ſhall alſo have their Shares of the Benefit promiſed the Ship's Company for the* Whale *Fiſhing.*

By a Letter dated *London*, 3 *February*, 1701-2, from Captain *T. B—y* to Mr. *Callant*, the ſaid Captain adviſes him in theſe Words.

For the greater Security of our Affairs, when you write by the Alphabet in your Inſtructions, I would have you carry the laſt Letter of each Word to be in the room of the firſt Letter to the next Word, as for Example.

Captain Thomas Bowrey, Sir, we are all well.
Captai nthoma ſbowre yſi rwe ear eal lwell.

Make no Title (as is uſual) to begin your Letter, nor no Date, nor Compliment, no Name at laſt; But let all be comprehended in the Lines of your Letter, ſo as to make no diſtinction, and make but one Paragraph of all your Letter, and if any Men dead, ſet their Names immediately after your own Name ſubſcribed to the Letter, all in Characters before directed, and pleaſe to keep this as Directions therein.

By another Letter from the ſaid Captain *T. B—y* to the ſaid Mr. *Callant*, dated *London*, 16 *February* 1701-2, he adds concerning the foreſaid Cypher in theſe Words,

On further Conſideration, I think, I have committed an Error in my Letter to you Yeſterday, it being wrote in it as, viz.

Captai nthoma ſbowre yſi rwe ear eal lwell.

That is,

Captain Thomas Bowrey, Sir, we are all well.

Now, I doubt the naming any Name in the beginning, or making any Compliment there, may be a Means to find the Key of the Alphabet, therefore pray ſtrike out of the Letter I ſent you Yeſterday, as above done, and begin directly with your Buſineſs, following the Directions given you. And whereas you are ordered to direct your ſaid Letter to me, I would not have you mention my Name in the Subſcription, but direct the ſaid Letter to Mr. Nicholas Pope *Scrivener, in* Nicholas Lane, London, *to pay* 5 l. *to the Bearer as in your Inſtructions.*

CLXXXII. *The Trial of* ROBERT FIELDING, *Eſq*; *at the* Old-Bailey *for* Bigamy, *in marrying the Ducheſs of* Cleveland, *his former Wife being then living*, Dec. 4. 1706. 5 Ann.

On *Wedneſday* the 4th of *December*,

AT *the Seſſions Houſe in the* Old-Bailey, *This Day came on the Trial of* Robert Feilding, *Eſq*; *for Felony, in Marrying her Grace the Ducheſs of* Cleveland; Mary Wadſworth, *his firſt Wife, being then alive. The Court being ſat, proceed in this manner.*

Clerk of Arraignment. SET *Robert Feilding* to the Bar. (*which was done.*) *Robert Feilding*, hold up thy hand (*which he did*).

Cl. of Arr. Robert Feilding, *you ſtand indicted by the Name of* Robert Fielding, *late of the Pariſh of St.* James's *within the Liberty of* Weſtminſter, *in the County of* Middleſex, *For that you, on the ninth Day of* November, *in the*

the fourth Year of Her now Majeſty's Reign, at the Pariſh aforeſaid, in the County aforeſaid, took to Wife one Mary Wadſworth, *Spinſter, and the ſame* Mary Wadſworth *then and there had for your Wife; and that you the ſaid* Robert Feilding, *afterwards*, viz. *on the 25th of the ſame Month of* November, *in the Year aforeſaid, at the Pariſh of St.* Martin's in the Fields, *in the ſaid County, did feloniouſly take to Wife the moſt noble* Barbara *Ducheſs of* Cleveland, *(the ſaid* Mary Wadſworth, *his former Wife, being then living) againſt the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.*

How ſay'ſt thou, *Robert Feilding*, art thou Guilty of this Indictment, or not Guilty?

Feilding. Not Guilty.

Cl. of Arr. *Culprit*, how wilt thou be tried?

Feilding. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cl. of Arr. Call the Jury. Mr. *Feilding*, if you except to any of the Jury, you muſt do it before they are ſworn.

Feilding. I do not challenge any of them.

The Jury ſworn, *viz.*

Francis Chapman,
Thomas Moody,
Peter Levigne,
Hugh Merchant,
Joſeph Deveniſh,
Edward How,

Edward Boſwell,
John Mills,
Richard Hazzard,
Samuel Chace,
Thomas Yeomond,
John Johnſon.

Proclamation made, That if any can inform the Queen's Juſtices and the Queen's Counſel, of any the Matters the Priſoner ſtands charged with; let them come forth, and they ſhall be heard.

Mr. *Raymond.* My Lord, and you Gentlemen of the Jury, I am, in this Caſe, Counſel for the Queen. The Priſoner at the Bar, *Robert Fielding* ſtands indicted, That he on the ninth Day of *November*, in the 4th Year of her now Majeſty's Reign, &c. *(the Indictment repeated.)* To which Indictment he has pleaded not Guilty, and put himſelf on God and his Country, which Country you are. I hope, if we prove the Indictment, you will find him Guilty.

Sir *Ja. Mountague.* My Lord and Gentlemen of the Jury, I am of Counſel with the Queen againſt the Priſoner, Mr. *Robert Feilding*, who ſtands indicted, for taking to Wife *Barbara* Ducheſs of *Cleveland*, after he had before marry'd one *Mary Wadſworth*, who is ſtill alive: This is a Crime that amounts to Felony; and tho' the Law doth not take away from him that ſhall be convicted thereof, the Benefit of his Clergy; yet, ſince it is ſuch a Crime, as doth take away from the Priſoner the Aſſiſtance of Counſel, I ſhall only ſtate Matter of Fact, which is as followeth.

About a Year ago, or a little better, there was a young Lady left a Widow by Mr. *Deleau*, and reputed a great Fortune; Mr. *Feilding* thinking himſelf qualified for the greateſt Fortune, had a Deſign upon this Lady, and in *Auguſt* 1705, he applied himſelf to one Mrs. *Streights* to conſult with her, and contrive ſome Method how he might have Acceſs to court this Widow. This Mrs. *Streights* had no Acquaintance with the Widow herſelf, but knew Mrs. *Charlotte Villars* was acquainted with her, and uſed to cut her Hair; ſo the beſt Thing they could think of at that Time, was to make Mrs. *Villars*, their Friend, that by her Means he might have Admittance into the Lady's Company; for he did not queſtion if the Lady had but once a Sight of his very handſome Perſon, ſhe would have the ſame Affection for him, that he had met with from other Ladies, even on their firſt ſeeing of him. Mrs. *Villars* was promiſed 500*l.* to bring this Affair about; and tho' ſhe doubted with herſelf whether ſhe could ever accompliſh it, yet by theſe Means ſhe might perhaps make a Penny of it to herſelf: and thereupon ſhe promiſes Mrs. *Streights* to uſe her Endeavour to ſerve the Major-General, meaning Mr. *Feilding*, tho' Mrs. *Villars* could not be ſure ſuch an Overture would be well received by Mrs. *Deleau*: yet being well acquainted with one *Mary Wadſworth*, a young Woman, not much unlike in Perſon to Mrs. *Deleau*, ſhe imagined it would be no difficult Matter for her to ſet up the ſaid Mrs. *Wadſworth* to repreſent Mrs. *Deleau*; and accordingly it was done, and Mr. *Feilding* proved ſo intent upon the Matter, that he went in few Days to *Doctors-Commons*, to ſee for Mr. *Deleau*'s Will, (and found thereby that Mrs. *Deleau* was left very conſiderable). And that he might judge the better whether ſhe were truly the Fortune ſhe was repreſented to him, he took a Copy of the ſaid Will, and ſoon after went to Mrs. *Villars*, and told her, That what Mrs. *Streights* had ſaid concerning Mrs. *Deleau*'s Fortune was true: And being very well ſatisfied with her Fortune, he was reſolved to get a View of her. Soon after, Mr. *Feilding* went to *Tunbridge*, and after two or three Days Stay there, returned and called at *Waddon*, the Place where Mrs. *Deleau* reſided, with a Pretence to ſee the Houſe and Gardens, but in reality it was to ſee the Widow; he thought nothing elſe was then to be done, but to give the Lady a Sight of his handſome Perſon he deſigned to lay at her Feet; but it happened that the Lady would not be ſeen herſelf, but her Servants were permitted to ſhew him the Gardens, and he fancied himſelf that he had had a Sight of Mrs. *Deleau* too; for a Kinſwoman of Mrs. *Deleau*'s looking out into the Garden while he was there, gave him the Sight of a Woman at the Window, and he preſently concluded it could be nobody but Mrs. *Deleau* admiring Beau *Feilding*. About three Days after Mr. *Feilding*'s Return from *Tunbridge*, which was about a Fortnight after St. *Bartholomew-Tide* laſt was Twelve-month, he told Mrs. *Villars* of his calling at *Waddon*, and that he had acquainted the Ducheſs of *Cleveland* of the fine Gardens that were there, and he ſaid that her Grace had a great Deſire to ſee them, and therefore directed Mrs. *Villars* to go from her Grace to Mrs. *Deleau* to aſk the Favour of her to permit her Grace to ſee the Houſe and Gardens. Accordingly Mrs. *Villars* went down to *Waddon*; and Mrs. *Deleau* treated her very civilly, and told her whenever her Grace pleaſed, ſhe ſhould ſee her Houſe and Gardens; but as ſhe was a Widow ſhe could not attend upon her Grace: But tho' the Ducheſs was expected after this, yet ſhe did not go, for indeed ſhe did not know any thing of the Meſſage. So the next Time Mr. *Feilding* attempted to ſee her, was at a Horſe-Race at *Banſtead-Downs*, whither he went for that Purpoſe, but did not ſee her. After this, or ſome time before, he ſent a Letter to Mrs. *Deleau*'s Houſe, but the Servants, when they ſaw the Name to it, knowing the Character of Mr. *Feilding*, threw it into the Fire.——When Mrs. *Villars* found that the Ducheſs of *Cleveland* knew nothing of her being ſent to *Waddon*, and that it was only a Contrivance of Mr. *Feilding*'s to get an Opportunity of ſeeing Mrs. *Deleau*, and that in Truth he had never ſeen her, ſhe reſolved to play Trick for Trick with him, and thereupon propoſed the Matter to *Mary Wadſworth*, the Woman I before mentioned to be of her Acquaintance, but one that Mr. *Feilding* did not know, and one that would not worſt herſelf much by ſuch an Undertaking, whether it ſucceeded or not. Mrs. *Wadſworth* upon the firſt opening of it readily embraced the Offer; and thereupon Mrs. *Villars* went to Mr. *Feilding* and told him, ſhe had propoſed the Matter to the Lady (Mrs. *Deleau*) which ſhe at firſt rejected, but at laſt did give a favourable Ear to it; and that ſhe did not fear, but if Matters could be prudently managed, his Deſires might be accompliſhed.——A little before my Lord Mayor's Day laſt was Twelvemonth, ſhe told Mr. *Feilding* that ſhe had at length obtained of the Lady the Favour of a Promiſe of an Interview, and that ſhe was ſhortly to bring her to his Lodgings, but he muſt take Care not to let her know they were his Lodgings, or to give her the leaſt Cauſe to ſuſpect he had any thing to do there: Accordingly Mrs. *Villars*, the Evening of my Lord-Mayor's Day, brought Mrs. *Wadſworth* in a Mourning Coach and Widow's Dreſs to Mr. *Feilding*'s Lodgings: He was not within at the Time they came thither, but being ſent for came in ſoon after, and was extremely complaiſant for ſome Time; but at length tho' he had been cautioned not to let the Lady know they were his Lodgings, yet he could not forbear ſhewing her his fine Cloaths, and what Furniture he had, and in a little Time after ſent for Mrs. *Margaretta* to ſing to her; and pretended he was ſo extremely taken with her, that nothing would ſatisfy him but being married that Night; but ſhe, with a ſeeming Modeſty, check'd his forward Behaviour, and made a Shew of going away in Diſpleaſure; but before they parted, he prevailed upon her to promiſe not to put off their Marriage longer than *Wedneſday* Seven-Night. My Lord, Mr. *Feilding* rightly judged by this Converſation what an Intereſt he had fixed in the Lady, and looking upon himſelf to be ſure of her, he actually went to a Goldſmith, and beſpoke a Ring, and directed himſelf what Poſie ſhould be engrav'd. When the Day came which had been firſt agreed on, ſham Pretences were made, not to ſeem over haſty in ſo ſerious a Matter, and the Marriage was put off till the *Friday* following, being the 9th of *November* laſt was Twelve-month; at which Time Mrs. *Villars* and the Lady came again to Mr. *Feilding*'s Lodgings, where he received her with an extraordiary Tranſport of Joy, and the Marriage muſt immediately be proceeded on; but ſhe for ſome Time framed ſeveral Put-offs, and at length made an Offer to have gone away; but Mr. *Feilding* by no Means would permit her to go, without making her his own, which he was reſolved ſhould be done preſently; and to make all Things ſure, he ran out and lock'd the Chamber-Door to keep her and Mrs. *Villars* in, whilſt he went for a Prieſt; and taking Coach immediately drove to Count *Gallas*'s the Emperor's Envoy; when he came to his Gate, he enquired of the Porter for one *Franciſco Drian*, that was ſtiled, *The Father in Red*, upon Account of a red Habit he uſually wore; but he not being within, Mr. *Feilding* aſked for another Father; and one Father *Florence* was called to him, whom he acquainted with the Buſineſs he came about; but whilſt he was treating with Father *Florence*, the Father in Red luckily came in, and Mr. *Feilding* immediately took him away with him in the Hackney-Coach to his Lodgings. My Lord, and Gentlemen, we ſhall ſhew you, that this Father in Red ſtay'd there about an Hour, and then went away.———We ſhall ſhew your Lordſhip likewiſe, that Mr. *Feilding* and *Mary Wadſworth* ſupped together, and after Supper he was actually married to Mrs. *Wadſworth*. And that this Marriage was conſummate, we ſhall prove by ſeveral Particulars, *viz.* That clean Sheets were laid upon the Bed, and all Ceremonies performed that are uſual upon ſuch Occaſions; and they actually went to Bed together, and lay together all that Night; and the next Day the Lady and Mrs. *Villars* went away, and as Mr. *Feilding* ſuppoſed, to *Waddon*, the Widow *Deleau*'s Houſe, to which Place your Lordſhip and the Jury will find he directed his Letters to her afterwards, and in the Superſcriptions ſtiles her the Counteſs of *Feilding*. To corroborate this Evidence we ſhall likewiſe prove to your Lordſhip, that about a Week after he lay with her again at the very ſame Lodgings; and we can make it appear that he hath lain with her three ſeveral Times ſince this firſt Night, twice before, and once after his Marriage with the Ducheſs of *Cleveland*. My Lord, we ſhall ſhew you that he made her Preſents, furniſhed her with Money, and treated her as his Wife, until the Cheat was found out, which was not till *May* after; and then finding how he had been ſerved, that inſtead of marrying a Fortune of 60,000*l.* he had been impos'd upon, and marry'd one not worth ſo many Farthings, he diſcarded her in great Wrath.

My Lord, we will call our Witneſſes who will prove to your Lordſhip, ſtep by ſtep, how this Matter was brought about; and firſt we will begin with Mrs. *Villars*.

Mrs. *Villars ſworn.*

Mrs. *Villars.* My Lord, there came one Mrs. *Streights* to my Lodgings, and wanted to ſpeak with me, (it was *Bartholomew-tide* was Twelvemonth) but I was not at home; when I came home, they told me Mrs. *Streights* had been there, and left Word that I was always out of the Way when it was to do myſelf good; ſhe ſaid it would be five hundred Pounds out of my way if I did not come to her. I met with her and Mr. *Feilding*, and being acquainted with Mr. *Feilding*'s Deſign upon Mrs. *Deleau*, he aſked me whether I knew the Lady? I ſaid I had no particular Acquaintance with her, but I uſed to cut her Hair. He told me that he was in Love with her, and aſked me, whether I would aſſiſt him in his Courtſhip? And whether a Marriage might be brought about? I told him I could not tell, I did not know whether I had that Intereſt in the Lady as to be made ſerviceable in ſuch a Deſign. Mr. *Feilding* enquired very ſtrictly after her, and ſaid, he would try Means to come into her Company, that he might gain her Acquaintance: Upon which we parted at that Time.———And about three Days after Mrs.

Streights came to my Houſe again, and ſaid, Mr. *Fielding* would ſpeak with me. I went to him; and he told me, he found that the Lady was worth 60,000*l.* as he had been told before. He aſked me where it was ſhe liv'd? I told him, in *Copthal-Court*, near the *Change*. I told him likewiſe where her Country-Houſe was; That it was at *Waddon* in *Surrey*. Mr. *Fielding* told me, He would go to *Tunbridge*, and call by the Way to ſee the Gardens; and by that Means he might have an Opportunity of ſeeing Mrs. *Deleau*; which he did accordingly. I was ſent for again; and he told me he had ſeen the Gardens, and they were very fine: And that he ſaw the Lady through a Caſement; and that ſhe might have the more perfect View of him, he took divers Turns in the Garden, pull'd out his Watch, and ſet it by the Sun-Dial: And that he came round the Country, and almoſt murder'd his Horſes, to get a Sight of her. But he deſired to be in her Company, that he might have a full View of her. He deſired me to go to Mrs. *Deleau*, and tell her, that the Ducheſs of *Cleveland* had heard a great Character of her Gardens, and was very deſirous to ſee them.——I went and acquainted Mrs. *Deleau* with it: She ſaid, ſhe would not refuſe a Woman of her Quality; but would take it as a great Favour, to ſhew her any Thing that belong'd to her: but deſir'd that it might not be that Week, but the Week following; becauſe ſhe was to ſee a Race on *Banſtead Downs.* I told Mr. *Feilding* this; and he made Anſwer for the Ducheſs of *Cleveland*, and ſaid, The Ducheſs was not well; and could not go to ſee the Gardens. When I found that Mr. *Feilding* did not ſend me from the Ducheſs, but from himſelf, I was out of Countenance, that I ſhould innocently impoſe upon the Lady. Mr. *Feilding* told me, he would go and ſee the Race upon the *Downs*; and when he came back, he would ſend for me, and acquaint me whether he had ſeen the Lady. And when he came to Town again, he ſent Mrs. *Streights* to me, to come to him; and when I came to him, he told me he ſaw Mrs. *Deleau*, he believed, upon the *Downs*. Mr. *Feilding* made a Bow to them, and they to him. He ſaid, from thence he went to *Epſom*, and ſent a Letter to be deliver'd into Mrs. *Deleau*'s own Hands, by a Servant of his, not in a Livery. I think, it was accordingly deliver'd. Mr. *Feilding* told me, Mrs. *Deleau* read it, and ſaid it required no Anſwer: and ſaid no more. Mr. *Feilding* aſked me, whether I could not get a Letter to Mrs. *Deleau?* He ſaid, he was much in Love with her. I told him, I believ'd he was miſtaken: and that it was another whom he ſaw.——I perceiv'd that he had no Knowledge of Mrs. *Deleau*——I acquainted a young Woman (whom I ſuppoſed he might have ſeen) with his Inclination (Mrs. *Wadſworth*): She ſaid, ſhe did not expect to be ſo happy; but wiſh'd it might be ſo. I engag'd to Mr. *Feilding* to do what I could to bring it about.—There were divers Letters paſs'd between them till my Lord Mayor's Day. Divers Preſents were ſent from Mr. *Feilding*, by me, to the Lady. The firſt Preſent was a Gold Apron ſtruck with Green: That was the firſt Preſent Mr. *Feilding* ſent to Mrs. *Wadſworth*, whom he thought was Mrs. *Deleau* all the while; but it was Mrs. *Wadſworth.* I did not think Mrs. *Deleau*, who was a great Fortune, would agree to marry a Man of Mr. *Feilding*'s Character. Mr. *Feilding* kept ſending of Preſents and Letters from that Time, from the latter End of *Bartholomew-tide* to my Lord Mayor's Day. He ſent her a Suit of white Sattin Knots and Gloves, and other Things. He deſir'd I would bring her to his Lodgings on my Lord Mayor's Day, at Night; which I did, about nine a Clock, in a Mourning Coach. Mr. *Feilding* was not at Home, but came immediately. When he came in, he fell down upon his Knees, and kiſs'd her; and expreſs'd Abundance of fond Expreſſions. He aſked her, *why ſhe ſtayed ſo long? And whether ſhe loved ſinging?* He ſaid, He would ſend for *Margaretta* to come up. When ſhe came, Mr. *Feilding* bid her ſing the two Songs which he lov'd;—which ſhe did; the one was, *Charming Creature*; and the other was *Ianthe the Lovely.* After which, Mr. *Feilding* ſent for two Pints of Wine, and ſome Plumb-cakes. He urg'd very much to marry her; but ſhe declin'd it, and made him a Promiſe to come to him the *Wedneſday* following. In the *interim* ſhe ſent him a Letter, to acquaint him ſhe could not come, according to her Appointment; but ſhe would come to him on the *Friday* following, which was the 9th of *November*. Then he ſent her another Letter, to deſire her not to fail, but come to his Arms; and told her, That there wanted nothing but the Holy Father to join their Happineſs; for their Hearts were all one already. And when *Friday* came, Mrs. *Wadſworth* and I went to Mr. *Feilding*'s Lodgings again: He was not within; but came running into the Room in a little Time after, with a great deal of Joy, and took Mrs. *Wadſworth* into his Arms, and ſaid, *Nothing could eaſe his Mind, but a Promiſe to make him happy, in marrying him preſently.*—He ſaid, he would fetch the Prieſt; but Mrs. *Wadſworth* refuſed his Propoſal, and would have diſſuaded him from going then; and deſired him to put it off till another Time, and would have gone away. But he would not hear of it; and ſaid, She had diſappointed him before; and that he repented he had let her go away before; but now he was reſolved to make her his own, before ſhe went away. Mr. *Feilding* then went for the Prieſt, and lock'd the Chamber-door after him, and took the Key with him, for fear Mrs. *Wadſworth* ſhould go away; and order'd *Boucher* to let no Body into the Dining-Room till his Return. Mr. *Feilding* returned in a little Time, and brought a Prieſt with him, in a long Red Gown lin'd with Blue, and a long Beard, and a Fur Cap. Mr. *Feilding* told her, that this was the Holy Father that was to make them one. Mr. *Feilding* then order'd the Man to lay the Cloth, and fetch a Diſh of Pickles to Supper. —At Supper Mrs. *Wadſworth* ſeemed cautious; and for fear the Prieſt ſhould not be in Orders, ſaid, *How ſhall I know that this is a Prieſt in Orders?* Mr. *Feilding* queſtion'd him. Then the Prieſt pull'd a Picture out of his Pocket, about the Bigneſs of a Crown-Piece, and told them, *That none but Prieſts had ſuch Pictures.* And that ſhe might be ſtill further ſatisfied, ſhe deſired another Token.

After this, *Boucher*, and the reſt of the Servants were order'd down Stairs. Then the Prieſt call'd for Water, Salt, and Roſemary, to make Holy Water. *Boucher* brought up Water and Salt, but could get no Roſemary. Mr. *Feilding* and I received it at the Dining-Room Door. Then Mr. *Feilding* lock'd the Door, and took the Key in the inſide. Mr. *Feilding* aſk'd Mrs. *Wadſworth*, Whether it ſhould be done in the Bed-Chamber, or Dining-Room? Mrs. *Wadſworth* agreed it ſhould be in the Bed-Chamber. There were none preſent but Mr. *Feilding*, Mrs. *Wadſworth*, the Prieſt, and myſelf. The Prieſt made Holy Water, and bleſſed it: Then he ſet Mrs. *Wadſworth* at the right of Mr. *Feilding*: the Prieſt ſtood before them, and read the Ceremony in *Latin*, as I underſtood; and Mrs. *Wadſworth* ſaid, *She was not yet ſatisfied he was a Prieſt.* Then he laid down his Book, took from under his Gown a Piece of Silk like a Scarf, that was mark'd with a Croſs in the Middle; and ſaid, None but Prieſts us'd ſuch a Thing. Then Mrs. *Wadſworth* was well ſatisfied he was a Prieſt. Says Mr. *Feilding* to her, *Do you think, my Dear, that I would have any Body to do this Buſineſs, but the Holy Father?* Mrs. *Wadſworth* was well ſatisfied, till he came to that Part, *Wilt thou have this Woman to thy wedded Wife?* She deſir'd it might be ſpoke in *Engliſh* by him, as well as he could. He did ſo. He aſk'd Mr. *Feilding*, *Whether he would have this Gentlewoman to be his wedded Wife?* He ſaid, *Yes, with all my Heart.* He aſked the Lady then, *Whether ſhe would have this Gentleman for her Husband?* She ſaid, *Yes*, faintly: But ſays Mr. *Feilding*, You don't ſpeak it ſo earneſtly as I do: You muſt ſay, *With all my Heart and Soul*; which ſhe did. Then the Prieſt bleſſed the Ring, and gave it to Mr. *Feilding*, to put it on the Lady's Finger. He ſaid ſomething in *Latin*; but what it was I know not. Then we went into the Dining-Room. *Boucher* brought up Wine; and when all had drank, the Prieſt was diſcharg'd. Mrs. *Wadſworth* and I went into the Bed-Chamber, and I put her to Bed. Mr. *Feilding* called her his *Dear Wife, the Counteſs of* Feilding; and ſaid, He would make haſte and fly to her Arms. After I put her to Bed, he went to bed to her; and order'd me to come into the Room to ſee them in Bed; which I did. I roſe the next Morning, and came to Mr. *Feilding*'s Room, where *Boucher* came ſoon after to light a Fire: Then I ſaw Mrs. *Wadſworth* in naked Bed with Mr. *Feilding*. Mrs. *Wadſworth* put on her Cloaths as ſoon as ſhe could; and a Hackney Coach was call'd for her, and ſhe went away. At parting with Mr. *Feilding*, ſhe told him, ſhe did not know when ſhe could return; but about a Fortnight after, ſhe came again. There were Fires made in both Rooms, and Candles lighted up; clean Sheets upon the Bed, and every Thing prepared for her lying there. Mrs. *Wadſworth* went to Bed. Mr. *Feilding* did not come home till late that Night. I ſaw them that Night in Bed, and went into the Room the next Morning, and ſaw them in Bed again: She roſe, and went away as before. Mr. *Feilding* deſir'd her not to ſtay ſo long as ſhe had done before; for if ſhe did, he would come and fetch her. She promiſed him ſhe would return ſooner. Mr. *Feilding* kept ſending of Letters to her between Times, which was about fifteen or ſixteen Days, till ſhe came to him again. He deſired her to come to him, and he would be at Home to receive her. She accordingly came to him, after having given him Notice of her coming. He was not at Home when ſhe came; but ſhe went to Supper by herſelf. —She had for her Supper ſome toaſted Cheeſe, a Pint of Wine, and a Bottle of Oat Ale. When he came Home to her, he aſked her, *Why ſhe did not ſend for ſomething better for Supper?* They went to Bed again, as before; and I ſaw them in Bed together. Mrs. *Wadſworth* got up in the Morning; Mr. *Feilding* treated her; and away ſhe went as before. Then Mr. *Feilding* kept writing to her, [*which Letters are inſerted in their proper Places*] and deſir'd her to come to him again, as being the laſt Night ſhe ſhould lie with him at his Lodgings; for he was going to leave his Lodgings for altogether, and be with her Grace the Ducheſs of *Cleveland.* Mrs. *Wadſworth* came; but neither Mr. *Feilding* nor *Boucher* were at the Lodgings: But ſhe had not been there long, but *Boucher* came in, and ſaid, That he had brought his Maſter's Night-Gown and Slippers from the Ducheſs of *Cleveland*'s.

Counſel. Mrs. *Villars*, You ſay, moſt of the Service was in a Language you did not underſtand?

Mrs. *Villars.* It was, my Lord—But one Part of it was in *Engliſh.* I heard Mr. *Feilding* ſay, *He would take this Lady to be his wedded Wife.*

Counſel. Who is that Lady?

Mrs. *Villars.* That Lady Mrs. *Wadſworth*; pointing at her; *(ſhe being in Court.)*

Counſel. What did you hear Mrs. *Wadſworth* ſay?

Mrs. *Villars.* I heard her ſay, *That ſhe took Mr.* Feilding *to her wedded Husband.*

Counſel. What did you obſerve elſe that was remarkable?

Mrs. *Villars.* I ſaw the Ceremony of the Ring performed. I ſaw the Prieſt bleſs the Ring with Holy Water, and ſign himſelf with the Sign of the Croſs. The Prieſt held Mrs. *Wadſworth* by the lower Joint of the Finger, and put the Ring on.

Counſel. What is Mrs. *Wadſworth*'s Chriſtian Name?

Mrs. *Villars.* *Mary.*

Counſel. What did he ſay further, when he ſaid, *I take thee to be my wedded Wife?*

Mrs. *Villars.* He named no Name, *but I take this Lady*, &c.——The Prieſt aſk'd him, *Whether he took her with all his Heart and Soul?* He ſaid, *I take her with all my Heart, and Soul, and Blood, and every Thing elſe.*

Counſel. What Time was this?

Mrs. *Villars.* It was *Bartholomew-tide* was Twelve-month, as near as I can remember to the Time.

Counſel. Did Mr. *Feilding* tell you he had been at *Waddon?*

Mrs. *Villars.* Yes, he did; and ſaid, That he had ſeen the Lady thro' the Window, whence he fell in Love with her.

Counſel. Why was this Marriage kept private?

Mrs. *Villars.* Becauſe Mr. *Feilding* took the Lady to be Mrs. *Deleau.*

Juſtice Powel. How long was it before it was diſcover'd?

Mrs. *Villars.* It was not diſcover'd till the latter End of *May* laſt, or the Beginning of *June.*

Juſtice Powel. When was the Time Mr. *Feilding* was marry'd?

Mrs. *Villars.* It was the 9th of *November* was Twelve-month.

Counſel. What was the Reaſon why the Marriage was carry'd on ſo privately?

Mrs. *Villars.* The Reaſon was, becauſe Mrs. *Deleau* had a Father alive, who had in his Hands a Part of her Fortune; and for fear of diſobliging him, Mrs. *Wadſworth*, that went for Mrs. *Deleau*, was willing it ſhould be kept private.

Counſel. Can you tell the Reaſon of its being diſcovered?

Mrs. *Villars.* Mrs. *Wadſworth* ſent to Mr. *Feilding* for Money.——Then Mr. *Feilding* found he had not a Woman of that Fortune which he took her to be. When Mr. *Feilding* did find it out, he took Mrs. *Streights* into a Cloſet, at the Ducheſs of *Cleveland*'s, and ſent for me there: Then Mr. *Feilding* wanted to have the Preſents returned. Mr. *Feilding* then beat me, and aſked me whether that was a fit Wife for him? And then took a Thing made of Steel at one end, and a Hammer at the other end; and told me, if I would not unſay what I ſaid of his Marriage with *Wadſworth*, he would ſlit my Noſe off: And that he would get two Blacks; the one ſhould hold me upon his Back, and the other ſhould break my Bones.

Juſtice *Powel*. One would have thought you ſhould have been afraid to have ſeen Mr. *Feilding*.

Mrs. *Villars*. My Lord, It was not till then found out.

Sir *Ja. Mountague*. My Lord, I think ſhe hath clearly proved the Marriage; and that ſhe ſaw them three times in Bed together, in the Space of ſix Weeks after the Marriage.

Mr. *Feilding*. By what Name did Mrs. *Wadſworth* go?

Mrs. *Villars*. By no Name at all.

Mr. *Feilding*. Did I ever appear with her in Publick?

Mrs. *Villars*. No, never.

Mr. *Feilding*. What was the firſt Place I ſaw her in?

Mrs. *Villars*. The firſt Place you ſaw her, was at your Lodgings, laſt Lord Mayor's Day, was Twelve-month.

Mr. *Feilding*. My Lord, I deſire it may be aſked her, how ſhe came to think that I ſhould ſend ſuch mean Preſents as ſhe hath mentioned, to a Lady of Mrs. *Deleau*'s Fortune? They were not at all ſuitable to Mrs. *Deleau*.

Juſtice *Powel*. Ay, Mrs. *Villars*, What ſay you to that? Mr. *Feilding* thinks it a very ſtrange Thing, that he ſhould ſend ſuch Trifles to a Lady of Mrs. *Deleau*'s Quality.

Mrs. *Villars*. He did think, at that Time, that he made his Addreſſes to Mrs. *Deleau*; and I am ſure ſuch Preſents were ſent; and he was really marry'd to her, and marry'd her for Mrs. *Deleau*.

Juſtice *Powel*. Mrs. *Villars*, Mr. *Feilding* deſires this Queſtion ſhould be aſk'd you; When was the firſt Time you acquainted the Ducheſs of *Cleveland* with this Matter?

Mrs. *Villars*. I will tell your Lordſhip. Mrs. *Feilding*, that is now, told me, Mr. *Feilding* beat her at the Lodge at *Whitehall* (I did not ſee the beating) and ſaid, ſhe ſhould have Occaſion to bring me upon my Oath, to prove that Mr. *Feilding* was marry'd to her the ninth of *November*. I went with Mrs. *Feilding* to the Duke of *Grafton*, and told him, I was ſure he was marry'd the ninth of *November* before.

Juſtice *Powel*. How long was it after the beating, before you and Mrs. *Feilding* went to the Duke of *Grafton*?

Mrs. *Villars*. It was about three Weeks.

Juſtice *Powel*. Are you ſure it was before that Time that there was any Parting betwixt Mr. *Feilding* and the Ducheſs of *Cleveland*.

Mrs. *Villars*. Mrs. *Feilding* acquainted me with it herſelf, that the beating was before the Difference between the Ducheſs of *Cleveland* and Mr. *Feilding*.

Counſel. Although you did not ſee what paſs'd at *Whitehall*; Whether was this before the Difference between the Ducheſs and Mr. *Feilding*?

Mrs. *Villars*. I believe it was about a Fortnight or three Weeks.

Mr. *Feilding*. How came it to paſs that it was not diſcovered till now of late?

Mrs. *Villars* It was not diſcover'd till ſhe ſent to Mr. *Feilding* for Money, about *May*, after the Marriage.

Juſtice *Powel*. Why did you not apply yourſelf to Mr. *Feilding* for the Reward?

Mrs. *Villars*. I was to have no Reward.

Mr. *Feilding*. Mrs. *Villars*, What Reward did the Ducheſs of *Cleveland* promiſe you?

Mrs. *Villars*. I never ſaw the Ducheſs of *Cleveland*; and I was never promis'd any Reward.

Juſtice *Powel*. Was you not to have had a Reward for helping Mr. *Feilding* to Mrs. *Deleau*?

Mrs. *Villars*. Mrs. *Streights* left ſuch word at my Lodgings; but I had no Promiſe of it from Mr. *Feilding*.

Sir *Ja. Mountague*. My Lord, Mrs. *Villars* has given you ſo full an Account of every Thing I have open'd, that all that we have to do now, is to ſupport Mrs. *Villars*'s Evidence; and to make it appear to your Lordſhip, that ſhe is right in all theſe Particulars that ſhe tells you of. And the better to make ourſelves underſtood, we will go on, and give your Lordſhip an Account how theſe Things were carry'd on from Time to Time. But firſt we ſhall prove to your Lordſhip, How that after Mr. *Feilding* was thus marry'd to Mrs. *Wadſworth*, he did actually marry the Ducheſs of *Cleveland*.

Mr. *Feilding*. My Lord, I do not deny my Marriage to the Ducheſs of *Cleveland*.

Sir *Ja. Mountague*. Then, my Lord, we will not trouble you with any Proof of that Matter, but go on with making out the Circumſtances of his Marriage with Mrs. *Wadſworth*; and we ſhall verify, in every Particular, Mrs. *Villars*'s Evidence. And firſt we ſhall prove, that he actually took a Copy of Mr. *Deleau*'s Will. For that call Mr. *Searle*. (*Who was ſworn.*)

Sir *Ja. Mountague*. Mr. *Searle*, Give my Lord and the Jury an Account of what you know of Mr. *Feilding*'s coming to *Doctors Commons*, to ſee the Will of Mr. *Deleau*.

Mr. *Searle*. My Lord, I am a Servant to Mr. *Cottle*, Proctor to the *Prerogative Office*. Mr. *Feilding* came to *Doctors Commons* about the Beginning of *Michaelmas* Term, 1705, and deſired me to ſearch, and ſee whether Mr. *Deleau*'s Will was come into the Office, or no. I look'd in the Kalendar, and found it was come in; and ſpoke to the Clerk, in whoſe Poſſeſſion it was, and he read it over to him; and he deſired a Copy of it, which I wrote out. Mr. *Feilding* came in three Days after for it, but it was not done. I deſir'd him to come another Time; which he did, and had it.

Counſel. Who did he beſpeak it of?

Mr. *Searle*. He beſpoke it of me, and had the Copy of me.

Counſel. When was this?

Mr. *Searle*. It was about the Beginning of *Michaelmas* Term.

Sir *Ja. Mountague*. The next Thing we ſhall prove, is, that Mr. *Feilding* was actually at *Waddon*, Mrs. *Deleau*'s Houſe: And we ſhall prove that even by Mrs. *Deleau*. (*Who was ſworn.*)

Counſel. Pray, Madam, have you any Acquaintance with Mr. *Feilding*?

Mrs. *Deleau*. None at all.

Counſel. Do you remember he came to your Houſe in the Country?

Mrs. *Deleau*. He did about *Bartholomew-tide* was Twelve-month.

Counſel. When he was there, had he a ſight of you, Madam?

Mrs. *Deleau*. No, my Lord; he was not in the Houſe, but in the Garden.

Counſel. Do you know Mrs. *Villars*?

Mrs. *Deleau*. I do, my Lord.

Counſel. Did ſhe ever come to you upon ſuch a Meſſage, That my Lady Ducheſs of *Cleveland* and Mr. *Feilding* had a Deſire to ſee the Gardens?

Mrs. *Deleau*. She did ſo; and it was about the ſame Time Mr. *Feilding* had been there, or ſome little Time after, I believe.

Counſel. Did you go to the Race on *Banſtead Downs*?

Mrs. *Deleau*. No, my Lord.

Counſel. Did Mrs. *Villars* uſe to Cut your Hair?

Mrs. *Deleau*. No, my Lord—Her Miſtreſs did.

Counſel. Was there any Letter brought to your Houſe from Mr. *Feilding*?

Mrs. *Deleau*. I heard there was.

Counſel. Who receiv'd the Letter from Mr. *Feilding*?

Mrs. *Deleau*. Some of the Servants, but I receiv'd none; but ſome of the Servants receiv'd it. I was then at my Father's, and left Orders that they ſhould take in no Letters but ſuch as came from my Relations, which would come by themſelves.

Counſel. When had you Notice of Mr. *Feilding*'s being at your Houſe?

Mrs. *Deleau*. My own Butler came up, and acquainted me Mr. *Feilding* was below. He came to my Houſe with the Character of Major General *Villars*. I did not ſee him; but here's the Lady that ſaw him out of the Window; who, it ſeems, he took for myſelf.

(*That Lady ſworn.*)

Counſel. My Lord, we only bring this Lady to prove what the firſt Witneſs ſaid, That Mr. *Feilding* ſaw Mrs. *Deleau* thro' a Window——Madam, Do you remember Mr. *Feilding* was at *Waddon*, and when?

Lady. He was there about *Bartholomew-tide* was Twelve-month. I did ſee him thro' a Window, and inform'd my Couſin of it.

Counſel. Then call Mr. *Boucher*. (*Who was ſworn.*)

Counſel. Mr. *Boucher*, Pray, give my Lord and the Jury an Account of all you know of this Matter.

Mr. *Boucher*. My Lord, I went with Mr. *Feilding* to my Lord-Mayor's Show laſt Lord-Mayor's Day was Twelve-month. He went in his Chariot to Mr. *Feilding*'s a Linnen-Drapers at the *Three-Legs* in *Cheapſide*. I looked into the Balcony and ſaw Mrs *Villars* there——My Maſter came down again, and went to Sir *Baſil Firebraſs*'s; from thence I was order'd to go home, and meet my Maſter in *Bond-Steet*; which I did. He aſk'd me whether any body had been at his Lodgings to enquire for him? I ſaid, no, and went home again. Then I found the Lady and Mrs. *Villars* at Mr *Feilding*'s Lodgings. They had been there but a little time, but Mr. *Feilding* came in. Mr. *Feilding* complimented the Lady, and aſk'd her if ſhe lov'd Singing? Mrs. *Margaretta* was ſent for, and accommodated this Lady and Mrs. *Villars* with two Songs. Mr. *Feilding* treated them with a Bottle of Wine and a Plumb Cake——*Margaretta* went away; and ſoon after Mrs. *Villars* and this Lady went away. So, ſays Mrs. *Heath* afterwards to me, Do you know what Woman of Quality that is in the Coach? This Mrs. *Heath* is the Landlady where Mr. *Feilding* lodged. Mrs. *Villars* and the Lady went away in a Coach. She was in a Mourning-Dreſs, and the Coach was a Mourning Coach.

Counſel. What Time was this?

Mr. *Boucher*. It was my Lord-Mayor's Day was Twelve-month, on the Twenty-ninth of *October*.

Counſel. Well, go on, and tell what you know of the Marriage.

Mr. *Boucher*. Not long after this, my Maſter order'd me to be at home, to get clean Sheets for the Bed, Wax-Candles, and Sconces, and Fires in both the Rooms: He told me ſome Ladies would be there that Night; and order'd if he was not at home when they came, to tell them, that he would be there preſently. Accordingly they came, and he was not at home; but in a little Time he came and went up to them. Some time after that, he came down Stairs in great Haſte, and ſaid, *Boucher*, go and beſpeak a Diſh of Pickles. I did ſo; and brought over a Cloth, and the reſt of the Things, and left them in the Window. I ſtay'd by the Stairs till he came back in a Hackney-Coach, with a Prieſt along with him in a long Gown, and long Beard, and a Furr-Cap; I knew him to belong to the Emperor's Envoy; and I heard Mr. *Feilding* call him Reverend Father. Then I was order'd to ſet the Table and Glaſſes, and Wine, and Things of that kind, upon the Side-board. I waited at Table all the while. When Supper was over, Mr. *Feilding* order'd me to go down and fetch Water, Salt, and Roſemary, I went and got Water and Salt, but could get no Roſemary. Then I was order'd to go down, and they were lock'd in about three quarters of an Hour: He then call'd, *Boucher*, ſays he, Will you fill ſome Wine?——I did ſo, and perceiv'd upon the Thumb of this Lady, upon her Left Hand, a plain Gold Ring, which before Supper ſhe had not. When this was over, the Prieſt went away. Preſently after, ſays Mr. *Feilding*, Take the Sheets from my Bed, and lay them on the other Bed, for Mrs. *Villars*; and ſee that none lie there. I told my Maſter 'twas done. Mrs. *Villars*, in the mean time, put the Lady to Bed. When I came down to tell them of it, I ſaw the Lady's Clothes upon a Stool in the Chamber; and Mrs. *Villars* folding them up, and laying them in another Room. I then light Mrs. *Villars* to Bed, and then went to Bed myſelf. In the Morning I was call'd to make a Fire; I then perceiv'd Mr. *Feilding* and this Lady in Bed together. The Fire being made, I was order'd to get a Hackney-Coach. Mrs. *Villars* dreſſed the Lady haſtily, and ſhe was carried away in the Hackney-Coach. About a Fortnight after, Mr. *Feilding* order'd me to prepare the Lodgings again. This Lady came to my Maſter's Lodgings That Night, and had ſomething for Supper; my Maſter order'd me to get ready Mrs. *Villars*'s Bed: I did ſo. In the Morning was called down to make a Fire, which I did: the Curtains being open next the Fire, I perceiv'd them in Bed again. I was order'd to get a Hackney-Coach, which I did; and they went away again. This was about the Twenty-fifth of *November*. Soon after this, I underſtood by ſome of the Ducheſs of *Cleveland*'s Servants, that Mr. *Feilding* was marry'd to my Lady Ducheſs. At the ſame Time Mr. *Feilding* ordered me to go to Mrs. *Heath*'s to bring his Night-Gown, Cap and Slippers to the Ducheſs of *Cleveland*'s Houſe, and to attend the next Morning with clean Linnen, his Wig, *&c.* And about, or on the Fifth of *December*, ſays he, *Boucher*, get my Lodgings in Order again, for I expect Mrs. *Villars* and the Lady to be there; which accordingly I did. I was ſent from the Ducheſs of *Cleveland*'s with his Night-Gown, Cap and Slippers. Mrs. *Villars* and the Lady came accordingly that Night, and had a boil'd Chicken for Supper. Mr. *Feilding* and the Lady lay together that Night; and in the Morning I ſaw them in the Bed together; and when ſhe got up, ſhe went again in a Hackney-Coach. That was the laſt time I ſaw the Lady in Mr. *Feilding*'s Lodgings.

Counſel. Were you at *Epſom* with Mr. *Feilding?*

Mr. *Boucher.* I was there with him, and went to *Waddon* with him to Mrs. *Deleau*'s. Mr. *Feilding* went into the Gardens and walk'd in them.

Mr. *Feilding.* I would aſk you, *Boucher*, whether the Prieſt that came in a Red Gown lin'd with Blue, whether you did not ſometimes ſee him dine at the Ducheſs of *Cleveland*'s Houſe?

Mr. *Boucher.* I did ſee him there, I cannot ſay often; but once I am ſure I did.

Juſt. *Powel.* Was it not that Prieſt that was there that Night upon which Mr. *Feilding* was ſuppos'd to be married, at the Ducheſs of *Cleveland*'s?

Mr. *Boucher.* I ſaw him there once.

Juſt. *Powel.* Was it before or after that ſuppos'd Marriage?

Mr. *Boucher.* I cannot be poſitive whether it was before or after.

Mr. *Feilding.* Whoſe Servant are you at this time?

Mr. *Boucher.* I am now Cook to Col. *Webb*'s Regiment.

Mr. *Feilding.* How came you here?

Mr. *Boucher.* My Maſter deſir'd me to go to the Duke of *Grafton*'s Houſe, where his Grace told me I was to juſtify the Truth of what I knew of Mr. *Feilding*'s Marriage; that's all. I was ſent for to *England* by my Maſter.

Mr. *Feilding.* I deſire to know whether he did not only make Mrs. *Villars*'s Bed, but lie with her likewiſe?

Counſel. Call Mrs. *Martin.* *(Who was ſworn.)*

Sir *Ja. Mountague.* Mrs. *Martin*, Will you give my Lord and the Jury an Account of what you know of Mrs. *Villars?*

Mrs. *Martin.* I know Mrs. *Villars.*

Counſel. What do you know of her, and of any Body elſe coming to your Siſter's Houſe after Mr. *Feilding?*

Mrs. *Martin.* The next Day after the Lodgings were taken, Mrs. *Villars* came and aſk'd for the Major-General, and continued coming almoſt every Day as long as he was at our Houſe.

Counſel. What time did Mr. *Feilding* come firſt to your Houſe?

Mrs. *Martin.* It was the Beginning of *October* was Twelve-month.

Counſel. Did you ever ſee any other Gentlewoman come with her?

Mrs. *Martin.* My Lord, on my Lord-Mayor's Day, at Night, I ſaw Mrs. *Villars* come in, and another Gentlewoman with her.

Counſel. Did you ſee the Coach they came in?

Mrs. *Martin.* There are others that ſaw the Mourning-Coach.

Counſel. What time was this?

Mrs. *Martin.* It was my Lord-Mayor's Day, at Night.

Counſel. Where do you live?

Mrs. *Martin.* At Mrs. *Heath*'s, my Siſter's, in *Pall-Mall*, at that Time.

Counſel. Did Mrs. *Villars* and the Lady continue there all Night?

Mrs. *Martin.* No, they did not.

Counſel. Was there any Body came in afterwards?

Mrs. *Martin.* I did not ſee any Body.

Counſel. How long did they continue in your Siſter's Lodgings that Night?

Mrs. *Martin.* I cannot tell.

Counſel. Did you ſee them there again?

Mrs. *Martin.* The ſecond time was about *November.*

Counſel. Who came then?

Mrs. *Martin.* I did not ſee them come in; but Mrs. *Villars* came into the Parlour, and ſaid, that there was the ſame Lady that had been there the Night before.

Counſel. Did they ſtay then that Night?

Mrs. *Martin.* I believe they ſtay'd there that Night.

Counſel. Did you ſee them go away in the Morning?

Mrs. *Martin.* I did not ſee them in the Morning.

Counſel. Did you ever ſee any Body come at them whilſt they were there in an extraordinary Habit, Red Gown, *&c.?*

Mrs. *Martin.* There was a tall Man knock'd at the Door in a long Gown, Blew Facing, and Furr-Cap, with a long Beard. He was conducted to the Major-General's, up Stairs.

Counſel. Do you remember the Supper that Night?

Mrs. *Martin.* I remember a Diſh of Pickles.

Counſel. How long did the Gentleman in Red ſtay?

Mrs. *Martin.* I know not; I did not ſee him go away again.

Counſel. Do you remember that the Lady and Mrs. *Villars*, with a Gentleman in Red, and Mr. *Feilding* were together?

Mrs. *Martin.* I remember when they were together *Boucher* was ſent down.

Counſel. Do you remember any Bed got ready?

Mrs. *Martin.* I remember that Orders was given to his Servant to make ready a Bed, and to put on clean Sheets.

Juſt. *Powel.* Do you believe there was any Marriage that Night?

Mrs. *Martin.* I do not know any thing of the Marriage.

Counſel. Then call Mrs. *Heath.* *(Who was ſworn.)*

Sir *Ja. Mountague.* Mrs. *Heath*, give an Account what time Major-General *Feilding* came to take Lodgings at your Houſe.

Mrs. *Heath.* About the Beginning of *October* laſt was a Twelve-month.

Counſel. Do you remember that one Mrs. *Villars* came to ſee him there?

Mrs. *Heath.* Yes, frequently, my Lord, ſhe has been in my Parlour, and told me there frequently, that ſhe came from a Lady of Quality.

Counſel. Did you ever ſee this Lady?

Mrs. *Heath.* I never ſaw her, my Family being retired from Lodgers.

Counſel. What Diſcourſe did you hear from *Boucher?*

Mrs. *Heath.* He ſaid that a Woman of Quality was there, and that ſhe came there two or three Times with Mrs. *Villars.*

Counſel. What Time did you hear of that Lady's being there firſt?

Mrs. *Heath.* On my Lord-Mayor's Day; for I dined in the City, and when I came home, my family acquainted me with it. Mrs. *Villars* came down to me one Night, which was the Night the Man in Red was there, but I did not ſee him.

Sir *Ja. Mountague.* Do you know of their ſtaying there all Night?

Mrs. *Heath.* Mrs. *Villars* came to me, and ſaid that her Lady was a Perſon of Quality worth 80000*l.* ſhe ſhewed me a little Picture, which ſhe ſaid was her Lady's Picture: That Night ſhe came to me, and deſired that the Lady and ſhe might lie in a Room up two Pair of Stairs; for they had ſtay'd late, and did not care to go home. I diſputed it; but ſhe ſaid ſhe ſhould have no trouble, for *Boucher* ſhould make the Bed, and the General's Sheets ſhould ſerve them.

Counſel. Do you remember at any Time after that, that Mr. *Feilding* came to you, and rail'd againſt Mrs. *Villars?*

Mrs. *Heath.* He did come to my Houſe, after he had diſcharged my Lodgings, and he told me that Mrs. *Villars* was a very bad Woman; and that ſhe impoſed a Woman of the Town upon him for a Woman of Quality.

Counſel. What Time was it that Mr. *Feilding* told you ſo?

Mrs. *Heath.* It was two or three Months ago, but I don't well remember the Time; ſays he, *Damn her, I don't know how ſhe contrived it, but I ſaw her at a Woman of Quality's Houſe in the Country.* He ſaid this at that Time.

Counſel. Let's hear it again?

Mrs. *Heath.* Mr. *Feilding* told me, *That Mrs.* Villars *was a Bitch, and had impoſed a baſe Woman upon him inſtead of a Woman of Quality.* He ſaid likewiſe, *That he thought he ſaw the Lady look out of a Window of a Perſon of Quality's Houſe in the Country.*

Juſt. *Powel.* Mrs. *Heath*, Did you ever hear or believe that they were married?

Mrs. *Heath.* I did not believe it a Marriage, but a Converſion; becauſe his Man came down into the Parlour, and aſked for Salt and Water and Roſemary; which occaſioned theſe Words, *Lord*, ſaid I, *I fancy they are making a Convert of this Woman*; becauſe they ſaid it was a Prieſt above. And his Man at that Time ſaid, There was a Prieſt above.

Mr. *Feilding.* Did my Man, at that Time, tell you I was married to that Woman, or any Time elſe?

Mrs. *Heath.* Nothing, my Lord: Nobody told me Mr. *Feilding* was married at that Time.

Counſel. Then call Mrs. *Margaretta.* *(Who was ſworn.)*

Mrs. *Margaretta.* My Lord, I remember that Mr. *Feilding* ſent for me to his Lodgings in *Pall-Mall*; I was ſent for in the Evening, but I can't tell how long it was before he was married to my Lady Ducheſs.

Counſel. What Company was there in the Room at that Time?

Mrs. *Margaretta.* I cannot tell.

Counſel. What were the Songs you ſung?

Mrs. *Margaretta.* I ſung ſeveral *Italian* Songs, and one *Engliſh*, and that was *Ianthe the lovely.*

Counſel. Who was then in the Room?

Mrs. *Margaretta.* Nobody was there then, as I remember, but the Gentlewoman, Mr. *Feilding*, and I.

Counſel. What ſort of Woman was this you ſpeak of?

Mrs. *Margaretta.* She was in Mourning; ſhe had a Velvet-Scarf. I never heard her ſpeak, for he deſired me to ſing that Song, *Ianthe the lovely*; for he ſaid he had the Original of it, and had tranſlated it out of *Greek.*

Juſt. *Powel.* Were you then more than once at Mr. *Feilding*'s Lodgings?

Mrs. *Margaretta.* But once; and I ſaw no more there than the Gentlewoman that ſat by the Fire with her Back towards me. But I did not ſee her Face, nor hear her ſpeak.

Juſt. *Powel.* What Time was it?

Mrs. *Margaretta.* I cannot tell juſtly the Time; it was dirty Weather and dark: I believe it might be about Six a Clock; but am not ſure.

Mr. *Feilding.* My Lord, ſhe ſays there was but one Woman there: Mrs. *Villars* was not there.

Juſt. *Powel.* Name the Perſons that were there.

Mrs. *Margaretta.* There was that Gentlewoman in Mourning, whoſe Name I do not know, Mr. *Feilding*, and myſelf; there was Nobody elſe that I ſaw; and Nobody could be there but I muſt ſee them, for I was Miſtreſs of all the Doors.

Juſt. *Powel.* Did Mr. *Feilding* pretend it was to entertain his Wife?

Mrs. *Margaretta.* No; he deſired me to come to him, and left a Direction at my Lodgings, and ſaid there were ſome People of Quality there; and when I came I ſaw none but the Lady that ſat by the Fire.

Counſel. Then call Mrs. *Price.* *(Who was ſworn.)*

Counſel. Mrs. *Price*, do you live at Mrs. *Heath*'s Houſe?

Mrs. *Price.* I do.

Counſel. Give an Account to my Lord of the Mourning-Coach coming to Mr. *Feilding*'s Lodgings on Lord-Mayor's Day was Twelve-month.

Mrs. *Price.* I ſaw a Mourning-Coach come to Mr. *Feilding*'s Lodgings at Mrs. *Heath*'s Houſe, but did not ſee the Ladies come out of it; two Ladies were lighted into Mr. *Feilding*'s Lodgings, Mrs. *Villars* and another; and Mrs. *Villars* followed the other Lady up Stairs, and immediately Mrs. *Villars* came down, and aſk'd for the General: *Boucher* in the mean Time came in, and told them he would be there preſently. Accordingly he came. They continued ſome Time, and when they were gone, the Coach was gone.

Counſel. Was Mrs. *Margaretta* there?

Mrs. *Price.* I did not ſee her.

Counſel. Do you know of any other Time of their coming there?

Mrs. *Price.* Some time after my Lord-Mayor's Day, this Gentlewoman and Mrs. *Villars* came again; at the ſame Time Mrs. *Martin* told me ſhe let in a Gentleman in Red, in an *Armenian* Habit; but I cannot tell what he came there for; I think his Man *Boucher* ſaid he was a Prieſt.

Counſel. Whilſt the Prieſt was there, do you remember *Boucher*'s coming down for any remarkable Thing?

Mrs. *Price.* I remember *Boucher* came down, but do not remember what he came down for.

Counſel. How long did they ſtay the ſecond Time?

Mrs. *Price.* They ſtaid there all Night; there were clean Sheets put on the Bed, and Lodgings prepared for the Lady and Mrs. *Villars.*

Counſel. Do you know Mrs. *Villars?*

Mrs. *Price.* I did know Mrs. *Villars* by her coming to Mr. *Feilding.*

Juſtice *Powel.* Do you know what Reputation Mrs. *Villars* has?

Mrs. *Price.* I do not, my Lord.

Mrs. Heath *called again.*

Mrs. *Heath.* My Lord, I never had any Acquaintance with Mrs. *Villars*, no more than by her coming to the Major General. One Mrs. *Howard* came with her, and ſhe has told me that ſhe was a Woman of no Reputation, and that ſhe was a Singer too, my Lord.

Counſel. Then call *Thomas Sone.* (*Who was ſworn.*)

Counſel. What do you know of Mr. *Feilding*'s buying a Ring of you? Give us an Account of it.—Mr. *Sone.* I know Mr. *Feilding*, by Sight; he bought a Gold Ring of me, but I cannot remember the Time.

Counſel. How long ago do you think it is?

Mr. *Sone.* I believe it may be a Year ago.

Counſel. Was there any Poſy in it?

Mr. *Sone.* Yes, I grav'd a Poſy whilſt he took a turn in the Alley: The Poſy was by his Direction (*Tibi Soli*).

Counſel. Who did you deliver this Ring to?

Mr. *Sone.* I ſold it out of my Glaſs to Mr. *Feilding.*

Counſel. Swear Mr. *Wilkins.* (*He was ſworn.*)

Counſel. What do you know of Mr. *Feilding*'s buying a Ring of Mr. *Sone?* The Time when this Ring was bought?

Mr. *Wilkins.* It is about a Year and Two Months ago; I was by when the Gentleman gave Direction for it; and I ſaw him write down (*Tibi Soli*).

Counſel. Then ſwear the Regiſter of *Doctors-Commons.*

(*The Regiſter of* Doctors-Commons *ſworn.*)

Counſel. Shew the Regiſter the Ring.

Regiſter. My Lord, this Ring was brought by my Lady Ducheſs's Proctor with the Letters.

(*The Ring produced, and ſhewn to Mr.* Sone *the Goldſmith, who depoſed, That that was the Ring which he made for Mr.* Feilding; *and the Poſy the ſame which Mr.* Feilding *directed.*)

Counſel. How do you know it to be the ſame which you ſold to Mr. *Feilding?*—Mr. *Sone.* I know it to be the ſame by my Mark and Work.

Mr. Cooke, *Proctor, ſworn.*

Mr. *Cooke.* My Lord, there was a Ring brought, it is the ſame that was exhibited in Court, and the Ring was brought firſt of all by the Lady, Mrs. *Feilding*; it was afterwards in the Cuſtody of my Brother; my Brother brought it to me, and I delivered it to the Regiſter, and believe it to be the ſame Ring by the Poſy (*Tibi Soli*).

Counſel. Now, my Lord, we ſhall prove Mr. *Feilding*'s coming to Count *Gallas*'s for a Prieſt.

Call Conſtantine Pozzy. (*Who was ſworn.*)

Counſel. Where do you live?

Pozzy. I am a Servant to the Emperor's Envoy.

Counſel. Do you know Mr. *Feilding?*

Pozzy. I know General *Feilding* by Sight; I remember one Night he came and aſked for the Father in Red. I told him that he was not within; then he aſk'd for Count *Gallas*'s Almoner (meaning Father *Vanderber*, his Lordſhip's firſt Chaplain), but he happened not to be within neither. I told him that Father *Florence*, one of the Chaplains, was within. Then, ſaid Mr. *Feilding*, call him to me; I did ſo. Upon which Mr. *Feilding* gave me Half-a-Crown. Mr. *Florence* came immediately to Mr. *Feilding.*

Counſel. Was there a Prieſt at that Time in Red that had a long Beard?

Pozzy. My Lord had ſuch a Prieſt then; after Mr. *Florence* and Mr. *Feilding* had been diſcourſing ſome Time in the Hall together, Mr. *Florence* went up Stairs to Count *Gallas*; whilſt Mr. *Florence* was up Stairs, the Father in Red came in; I ſaw Mr. *Feilding* and the Father in Red go away together in the Hackney-Coach before Mr. *Florence* came down.

Counſel. What Time was this?

Pozzy. It was in *November*, the Beginning of it.

Counſel. Did you hear what Mr. *Feilding* and Mr. *Florence* did diſcourſe of?—*Pozzy.* No, nothing.

Counſel. Then ſwear Mr. *Florence.* (*Who was ſworn.*)

Counſel. Give my Lord and the Jury an Account of what you know of Mr. *Feilding*'s coming to you.

Mr. *Florence.* I have ſeen Mr. *Feilding.*

Counſel. Upon what Occaſion had you any Diſcourſe with him?

Mr. *Florence.* It was on *Friday* Night, Poſt-Night, about the Beginning of *November*, *Conſtantine Pozzy* came under my Chamber-Window, called to me and ſaid, Here is Major General *Feilding*, he wants one of the Chaplains, he deſires to ſpeak with you. I went to him immediately, and introduced him into the Hall. The Major General ſpoke to me in *French.* Sir, ſays he, I come here to look for the Father in Red; but I underſtand he is not at Home; you will do as well, be pleaſed to go along with me. He told me he had courted a young Lady for ſome Time, and now found her well diſpoſed, and therefore deſired me to go along with him to marry them. I underſtood there had been ſome Treatment between him and the Ducheſs of *Cleveland*, and therefore I aſk'd him, Whether it were to the Ducheſs? He did not inform me. I told him I did not care to do any Thing out of the Houſe; and deſired him to let me aſk my Lord; ſays he, Give my Service to Count *Gallas*, and tell him. I went up to him and ſpoke to him, and told him the Buſineſs Mr. *Feilding* came about. He bid me, ſays he, What you do, do it wiſely. When I came down Mr. *Feilding* was gone; I was told that the Gentleman in Red came in, and that Mr. *Feilding* and he were gone away together.

Counſel. That which he would have you to do, was to have married him with a certain Lady, was it not?—Mr. *Florence.* It was ſo.

Counſel. What Time was that?

Mr. *Florence.* It was upon *Friday*, I am ſure.

Counſel. Had you any Diſcourſe with Mr. *Feilding* after this?

Mr. *Florence.* The next *Sunday* after this, ſays he, I give you many Thanks for the laſt Favour. I knew of no other Favour I did him but this.

Counſel. Then call *Matthew Paul.* (*Who was ſworn.*)

Counſel. Do you give my Lord and the Jury an account of Mr. *Feilding*'s beating a Gentlewoman; and if any Marriage was claimed at that Time by a Gentlewoman.

Paul. Mr. *Feilding* came to *Whitehall-Gate* in a Chariot; he lit out of it. There was a Hackney Coach brought two Women; one of theſe Women got out of the Coach, and came up to Mr. *Feilding:* Mr. *Feilding* call'd her *Bitch*; the Lady call'd him *Rogue*, and ſaid, She was his *lawful Wife*; at that Mr. *Feilding* having a Stick he punch'd it at her; it happen'd upon her Mouth, and made her Teeth bleed. He order'd the Centry to keep her till he was gone, and he would give 'em a Crown. She ſaid, as I told you before, That ſhe was his *lawful Wife*, and for that Reaſon they did not care to meddle with her.

Counſel. Sir, Do you know what Time this was?—*Paul.* I cannot juſtly tell: It was, as near as I can judge, about the latter end of *May.*

Counſel. Pray, call Mrs. *Feilding*, and let the Witneſs ſee if he knows the Woman again that he ſaw Mr. *Feilding* beat.

(*Mrs.* Feilding *called into Court.*)

Counſel. Is this the Woman you ſaw?

Paul. This is the Woman, my Lord, I really believe.

Counſel. Then ſwear Mr. *Seymour.* (*Who was ſworn.*)

Counſel. Do you know Mr. *Feilding?*—Mr. *Seymour.* Yes, Sir.

Counſel. Do you remember his beating any Woman at *Whitehall-Gate?* Mr. *Seymour.* Yes, Sir.

Counſel. What Time was it?—Mr. *Seymour.* It was in the laſt Summer, but I cannot be poſitive to the Time.

Counſel. Do you know the Gentlewoman when you ſee her?

Mr. *Seymour.* Yes, I do; that's the Gentlewoman (*pointing to Mrs.* Feilding), I am ſure of it.

Counſel. What did ſhe ſay to Mr. *Feilding?*

Mr. *Seymour.* She ſaid to him, You are a *Rogue*, I am your *lawful Wife.*

Counſel. Then ſwear Captain *Eaton.* (*Who was ſworn.*)

Counſel. Captain, do you know any Thing of Mr. *Feilding*'s beating a Woman?

Captain *Eaton.* I was at the *King's Arms* Tavern, and whilſt I was there, the Drawer came to me, and told me there was two Women would ſpeak with me; this Woman (*pointing at Mrs.* Feilding) and another, whom ſhe call'd Mother. She told me, ſhe was married to Mr. *Feilding* before he was married to my Lady Ducheſs, and deſired me to acquaint my Lord Duke of *Northumberland* with it, that the Ducheſs of *Cleveland* might know of it: I told her I did not deſign to concern myſelf about it. She told me ſhe had been much abuſed by him.

Counſel. What Time was this?—Captain *Eaton.* It was ſome time before the 18th of *Auguſt*; it was the latter End of *June*, or Beginning of *July.*

Counſel. Was it before the Difference between Mr. *Feilding* and my Lady Ducheſs?—Captain *Eaton.* It was before that Time.

Counſel. Now we ſhall produce Mr. *Feilding*'s own Letters, where, under his Hand, your Lordſhip will find he took Mrs. *Wadſworth* for Madam *Deleau.*

(*Divers Letters produced in Court.*)

Counſel. Call Mr. *Lilley.* (*He appears.*)

Counſel. Do you know theſe Letters to be Mr. *Feilding*'s Hand-Writing?

Mr. *Lilley.* I am a Stranger to his Hand.

Boucher *call'd.*

Counſel. Can you read and write?—*Boucher.* Yes, my Lord, I can.

Counſel. Do you know theſe Letters to be Mr. *Feilding*'s Hand-Writing?

Boucher. This is his Hand, I believe. I have ſeen him write an hundred Times; I have had the Curioſity to obſerve his Hand, and this is his own Writing.

Counſel. Then ſwear *Frances Beale.* (*Who was ſworn.*)

Counſel. Do you know Mr. *Feilding*'s Hand-Writing?

Beale. I do, my Lord.

Counſel. Do you know that Letter to be his Hand?—*Beale.* I have ſeen him write ſeveral Times, and believe it to be his Hand.

Counſel. Now, my Lord, we will beg the Favour to read theſe Letters; and firſt of all, one directed

To the Counteſs of *Feilding.*

Sunday Night.

'I Hope my Deareſt Wife will eaſily believe that nothing can be Welcomer to me than the Aſſurance of her Health; but as I received hers but this Day, I could not have the Felicity of ſeeing her To-morrow, and ſhe have notice of it; therefore, if ſhe thinks fit on *Thurſday* next at Four a-Clock, I will ſee her at *Puggy*'s, and there endeavour to repair this tedious Abſence. Eternally *Your own*, Feilding.'

Another Letter proved to be his Hand by *Boucher* and *Beale.*

To my Deareſt Wife, the Counteſs of *Feilding.*

Friday.

'I Had return'd my Dear Wife's Favour long before now, but my Lady Ducheſs's Sickneſs on one hand, and more than ordinary Buſineſs (of which I will give my Dear a particular Account) on the other hand, has not given me a Moment of Time to write to my Love. *Puggy* brings you the Set of Knots you deſir'd, and the Pattern of the Damaſk; or if my deareſt Life wants any Thing elſe, ſhe may with Pleaſure command it; for I am never ſo well pleaſed as when employ'd by my Deareſt Wife, and muſt be ever *her affectionate Huſband, till Death,*

Feilding.

Another Letter proved by *Boucher* and *Beale.*

Nov. 27. 1705.

'THE laſt Letter I had from my deareſt Wife has mortified me much, finding, that notwithſtanding all my Kindneſſes, ſhe taxes me with Coldneſs in my Letters, which I call Heaven to witneſs I never in the leaſt intended; and beg my Deareſt to give me ſome Warning before ſhe taxes me of Unkindneſs. *Puggy* tells me that my Dear deſigns to come to Town To-morrow, which I hope ſhe will put off till another Day, becauſe I am obliged to be at her Grace's To-morrow all the Afternoon, and till late at Night; but any other Day my Dear ſhall find ſhe is always welcome to the Arms of him who loves her more than Life itſelf; and I ſhall never fail of giving her freſh Proofs that I am

'Her loving and affectionate Huſband,

'*Feilding.*'

Juſtice *Powel.* It is plain it is his Hand; and that he wrote to one whom he terms his Wife.

Counſel. Do you know theſe Letters to be writ by Mr. *Feilding*, and ſent to his Wife?

Mrs. *Villars.* I have ſeen them before, and I believe them to be Mr. *Feilding*'s Hand. I ſaw Mr. *Feilding* write them, as well as I can ſee by my Eyes; and when he had writ them, he delivered them into my Hands, and ordered me to deliver them to his dear Wife.

Counſel. What does he mean by *Puggy* in his Letters? Who is *Puggy?*

Mrs. *Villars.* He uſed to call me *Puggy.*

Counſel. My Lord, we have done for the preſent (having proved clearly his Marriage with this Woman), without Mr. *Feilding* denies his Marriage to the Ducheſs of *Cleveland.*

Mr. *Feilding.* My Lord, I own my Marriage with the Ducheſs of *Cleveland.*

Juſtice *Powel.* Mr. *Feilding*, You have heard from the Evidence that hath been given againſt you, That you were married to another Woman before you were married to the Ducheſs of *Cleveland:* And now is the Time to make your Defence.

Mr. *Feilding.* All the Evidence againſt me conſiſts in what Mrs. *Villars* hath ſaid: She is the only Evidence that ſwears poſitively to this Fact; the reſt are very inconſiſtent with themſelves. I beg of your Lordſhip, in a Caſe ſo nice as this is, where my Honour and Reputation, and every thing that is dear lies at Stake, that the Evidence in this Cauſe may be clear and poſitive. Mrs. *Villars* (my Lord) hath forſworn herſelf; 1. In that ſhe ſwears ſhe cut Mrs. *Deleau*'s Hair: Mrs. *Deleau* takes Notice, that ſhe never cut it. And as to her Reputation, it's ſo bad, that when our Witneſſes are heard, I hope your Lordſhip will ſee little Reaſon to believe any thing ſhe ſays to be true. My Lord, we will prove, that ſhe hath been in Cuſtody of a Maſter of *Bridewell*; that there ſhe hath received the Correction of the Houſe; therefore I think ſhe is not fit to appear as Evidence in this Court. She ſwears, that the Singing-woman was at the Marriage; but it appears ſhe was not, for the Singing-woman contradicts it. And as to this Mrs. *Wadſworth*, who they ſet up, ſhe was married to another Man, one *Bradby.*

Juſtice *Powel.* I muſt deal plainly with you, Mr. *Feilding*, from the Proof: I cannot ſpeak of Mrs. *Villars*'s Credit, for ſhe is an ill Woman (no doubt) from her own Evidence, in that ſhe put a falſe Woman upon you: But her Evidence is well ſupported by Circumſtances of Time and Place; and all of them put together bid fair for a Proof, that you were married to this Woman. You may call what Witneſſes you pleaſe to Mrs. *Villars*'s Reputation, and they may be heard. No Woman of Reputation will bring a mean Woman to a Man, inſtead of a Perſon of Quality. I think you ſay, Mrs. *Wadſworth* was married to another Man at the ſame time: Indeed that will be to the Purpoſe, if you can make it out.

Mr. *Feilding.* My Lord, I can. She was married to another Huſband, one *Bradby.* Call *Elizabeth Baſſet.* *(Who was ſworn.)*

Juſtice *Powel.* Do you call this Woman to be Witneſs to the Marriage?

Mr. *Feilding.* My Lord, I do.

Juſtice *Powel.* Do you know Mrs. *Wadſworth?*

Mrs. *Baſſet.* My Lord, I do not know her from another Woman; but there was a certain Woman, two or three Months ago, came to take a Name out of the Regiſter-Book.

Counſel. What Regiſter do you ſpeak of?

Mrs. *Baſſet.* The Regiſter of Marriages in the *Fleet.*

Counſel. Who keeps that Book?

Mrs. *Baſſet.* I keep it at preſent: My Father-in-Law is the Keeper of them; but he is ſick, and therefore he left them in my Charge.

Counſel. Where is your Father?

Mrs. *Baſſet.* He is not able to appear.

Counſel. Do you keep them in your Cuſtody?

Mrs. *Baſſet.* Yes, I do.

Counſel. Does nobody elſe come at them but yourſelf?

Mrs. *Baſſet.* No, not this Twelve-month; ſince they have been in my keeping.

Counſel. Who then makes the Entries?

Mrs. *Baſſet.* Theſe were my Father's Books when he was in Health.

Counſel. What can you ſay of this Woman?

Mrs. *Baſſet.* I do not know her. But ſome time ago there was a Woman came to my Houſe: She told me ſhe wanted to ſpeak with Mr. *Baſſet.* I told her ſhe could not ſpeak with him. She preſſed to ſpeak with him: But when I told her he was ill, and could not be ſpoken with; ſays ſhe to me, Here is a Marriage in your Book of one *Lilly Bradby* and *Mary Wadſworth.* Says ſhe to me, If you'll put it out of your Book, I'll give you a Piece of Money.

Counſel. Is this the Woman that made you this Offer?

Mrs. *Baſſet.* I will not ſwear to the Woman: I never ſaw her but that one Time, my Lord, I am not poſitive in the Matter; but I believe it is.

(The Certificate of the Marriage read.)

Lilly Bradby *marry'd to* Mary Wadſworth, *the* 28*th of* October, 1703.
The Man of St. James's, *the Woman of* St. Margaret's, Weſtminſter.

Juſtice *Powel.* Who uſed to write down the Certificates in the Regiſter-Book?

Mrs. *Baſſet.* Several People, my Lord, we hired to do it.

(The Place of the Regiſter ſhown Mrs. Baſſet.)

Counſel. Have not you yourſelf looked upon this Place now given as Evidence?——Mrs. *Baſſet.* Yes, I have.

Counſel. Whoſe Hand is that? *(Pointing to the Certificate.)*

Mrs. *Baſſet.* It is my Father-in-Law's: He that was Clerk of the *Fleet.*

Counſel. Is the whole Leaf of his Hand-writing?

Mrs. *Baſſet.* I cannot tell.

Juſtice *Powel.* Can you read Writing?—Mrs. *Baſſet.* Yes, my Lord.

(The Certificate viewed by the Court, and proved to be a different Hand from the reſt.)

Counſel. There are Hands various in this Book.

Mrs. *Baſſet.* My Huſband's Brother uſed to make Entries ſometimes.

Sir *James Mountague.* Does your Huſband's Brother uſe only to make Entries at the latter End of the Book?——Mrs. *Baſſet.* I don't know.

Counſel. Do you know when the Entry was made?

Mrs. *Baſſet.* I do not know when the Entry was made.

Counſel. Do you remember that there were any Gentlemen with you to examine the Book?——Mrs. *Baſſet.* Yes, Sir, there were.

Counſel. Did you ſhew them this very Book?

Mrs. *Baſſet.* I did not; becauſe Mrs. *Wadſworth* ſaid there would be ſome Trouble about it.

Counſel. Have you ſeveral Regiſters at the ſame Time?

Mrs. *Baſſet.* Yes, there are ſeveral Miniſters, and therefore are Entries made in ſeveral Books.

Counſel. Why were you ſo friendly to Mrs. *Wadſworth*; when the Gentlemen came to examine the Book for this Regiſter, and you ſhewed them other Books inſtead of this?

Mrs. *Baſſet.* I did not ſhew them that, becauſe Mrs. *Wadſworth* deſired me.

Counſel. What did Mrs. *Wadſworth* give you?

Mrs. *Baſſet.* She gave me nothing. I will not ſay it was Mrs. *Wadſworth.*

Counſel. Do you remember you ſhewed any Books to theſe Gentlemen, where there were Marriages regiſtered in 1703?

Mrs. *Baſſet.* The Book is at Home in my Houſe.

Counſel. Do you keep two Books for the Regiſter of Marriages, for one and the ſame Year and Time?

Mrs. *Baſſet.* There are ſeveral Books; and we enter ſometimes in one, and ſometimes in another; by reaſon that there are ſeveral Miniſters, and each hath his particular Book.

Counſel. Did the Gentleman aſk you at that Time, Whether there were more Books of Marriages?—Mrs. *Baſſet.* I do not remember.

Counſel. How many Books have you of that Year?

Mrs. *Baſſet.* But two.

Counſel. Did you ſhew them any falſe Books? That is, Did you ſhew them a falſe Regiſter of Marriages for a true one?

Mrs. *Baſſet.* I know nothing of that.

Mr. *Feilding.* Call Mrs. *Drinkwater.* *(Who was ſworn.)*

Juſtice *Powel.* Do you know Mrs. *Villars?*

Mrs. *Drinkwater.* I have known her above a Year.

Juſtice *Powel.* What is her Character and Reputation?

Mrs. *Drinkwater.* I know nothing of that.—But I know ſo far of her, that ſhe ſaid ſhe was married to Colonel *Fielding* on the fifth of *November:* She accordingly gave it out, that ſhe was with Child by him. And that ſhe told me, that the Ducheſs of *Cleveland* proffered to give her 200*l.* and 100*l.* a Year for fifteen Years, if ſhe would prove the Marriage with Mr. *Fielding:* But that ſhe would do more for Mr. *Fielding* for 40*l.* than ſhe would for the Ducheſs of *Cleveland* for a much greater Sum. And ſaid, It was purely Want that made her comply with my Lady Ducheſs's Deſire. I have read all the Letters between Mrs. *Villars* and the Colonel; and I never heard of any Marriage between Mrs. *Bradby* and Mr. *Fielding*, but between Mr. *Fielding* and Mrs. *Villars.*

Counſel. When was this Diſcourſe between you and Mrs. *Villars?*

Mrs. *Drinkwater.* I cannot tell exactly the Day; but the Time they were married was the fifth of *November* was Twelve-month, as ſhe ſaid.

Sir *Ja. Mountague.* You pretend to ſay, ſhe ſaid, That if Mr. *Fielding* gave her 40*l.* ſhe would do more for him, than ſhe would do for a greater Sum from my Lady Ducheſs. How long was this ago when ſhe ſaid this?

Mrs. *Drinkwater.* It was about three Months, or better.

Counſel. Where was this Diſcourſe, pray?

Mrs. *Drinkwater.* It was at her Lodgings, when ſhe lodged at the Back-ſide of *Red-Lion Square*, at a Widow Gentlewoman's Houſe.

Counſel. How came you to be there when this Diſcourſe was?

Mrs. *Drinkwater.* She, ſome time before, gave me an Invitation to her Lodgings; and I went to give her a Viſit, and then this Diſcourſe happened.

Counſel. Who was by then?

Mrs. *Drinkwater.* None but I and ſhe. She ſaid, It was Want and Neceſſity that made her act after this Manner.

Mr. *Feilding.* Did ſhe not ſend for you, to tell you ſhe was going to forſwear herſelf?—Mrs. *Drinkwater.* She talked of it firſt.

Counſel. When did you tell the Colonel of it?

Mrs. *Drinkwater.* I do not know juſtly the Time.

Counſel. How long have you been acquainted with Colonel *Feilding?*

Mrs. *Drinkwater.* Not but ſince this Thing happened. I never had any further Converſation with him, than to ſpeak in her Behalf to him. But I have this further to ſay, that an Outlandiſh Man came to me about a Fortnight's Diſtance, and ſaid, If I could do any thing on the Behalf of the Ducheſs of *Cleveland*, it would be a conſiderable Sum of Money in my Way.

Counſel. Where do you live yourſelf?

Mrs. *Drinkwater.* I live in the ſame Houſe where Mrs. *Villars* lodged: I am a Servant to one Captain *Howard:* My Maſter is now in the Service.

Counſel. Who lives in the Family?

Mrs. *Drinkwater.* We have none but a Footman and my Maſter.

Mr. *Feilding.* Call Mrs. *Engliſh.* *(Who was ſworn.)*

Juſtice *Powel.* What have you to ſay?

Mrs. *Engliſh.* My Lord, I went down to Mrs. *Villars*'s Lodging, the Morrow after laſt *Valentine*'s Day, for ſome Money; for I waſhed for her. Says ſhe, I have none at preſent. She told me, ſhe would ſend her Spouſe for ſome. A Gentleman came in and ſaid, I have none for you: Says he, My Maſter ſays, If a Crown will do, he will ſend it you out of Charity; but he cannot ſupply your Extravagances. On the fifth of *November* (ſhe ſaid) ſhe was married to Mr. *Feilding*; and ſhe ſaid, ſhe would have Money from Mr. *Feilding*, or ſhe would ſend her Soul to the Devil.

Mr. *Feilding.* Call Mrs. *Fletcher.* *(Who was ſworn.)* Give my Lord an Account of what you know of Mrs. *Villars.*

Mrs. *Fletcher.* All I know of her and Mrs. *Bradby* is, Mrs. *Villars* lived with me a Twelve-month. She told me ſhe had had two Baſtards; one by my Lord *Torrington*, the other by my Lord *Stamford.*

Juſtice Powel. How long was this ago, that ſhe was at your Houſe for a Twelve-month?

Mrs. *Fletcher.* It was about four Years ago. She confeſs'd ſhe had two Baſtard-Children; and that ſhe had been in *Bridewell.* I have nothing more than from her own Tongue, that ſhe was a very infamous Woman.

Sir *Ja. Mountague.* Miſtreſs, How long have you been acquainted with Mrs. *Villars?*

Mrs. *Fletcher.* She was recommended to me by one in the Court, and by her good Behaviour.

Sir *Ja. Mountague.* Would you have a Correſpondence with a Woman that had two Baſtards? Pray what is your way of Living in the World?

Mrs. *Fletcher*. My Huſband is a broken Mercer; he allows me 20*l*. a Year.

Counſel. What Vocation are you of?

Mrs. *Fletcher*. I drive little Trade, but work Plain-Work.

Sir *Ja. Mountague*. You are acquainted with Mr. *Feilding*; are you not?

Mrs. *Fletcher*. I know him.

Counſel. How long have you known him?

Mrs. *Fletcher*. About three or four Years.

Counſel. You would not ſcruple to aſſiſt Mr. *Feilding*, if he wanted a fair Lady. Look upon that Letter, and ſee whether it be your Hand-Writing, or no?

[*Then a Letter was ſhewn her*.]

Mr. *Longford*. If you deny it, we will prove it.

Mrs. *Fletcher*. It is my Hand-Writing.

Juſtice Powel. Miſtreſs, you can ſay no more of it?

Mrs. *Fletcher*. No, my Lord.

Mr. *Feilding*. Call Mrs. *Gardiner*.

[*Who was ſworn*.]

Juſtice Powel. What have you to ſay?

Mrs. *Gardiner*. My Lord, Mrs. *Villars* lodged in my Houſe; and ſhe came one Morning———

Counſel. When was it?

Mrs. *Gardiner*. It was the 6th of *November* laſt was Twelve-month; ſhe came in then, and had been abroad all Night. She told me, ſhe was married to Colonel *Feilding*. She gave a Pair of Gloves to me, and to this Gentlewoman; and likewiſe gave Favours and Garters in the Houſe. But ſhe deſired me to keep it ſecret. Mrs. *Bradby*, about a Fortnight or three Weeks before *Chriſtmas*, came into Mrs. *Villars*'s Lodging, and happened to fall down as if ſhe had been in a Swoon; and within a few Days ſhe fell in Labour.

Juſtice Powel. Was it a Boy, or a Girl, ſhe was deliver'd with?

Mrs. *Gardiner*. I was not there. It was not at my Houſe, but at new Lodgings.

Juſtice Powel. Where was it ſhe was brought to Bed?

Mr. *Feilding*. We can bring Evidence of that, my Lord.

Juſtice Powel. Woman, how can you ſwear, that ſhe was brought to bed before *Chriſtmas?*

Mrs. *Gardiner*. I may ſay it, my Lord, becauſe here is one, I believe, that will ſwear it. Mrs. *Villars* herſelf told me ſo; and the Midwife ſaid ſhe deliver'd her, for which Mrs. *Bradby* gave her a Guinea. The next Day after her Fall ſhe was very ill, and continued ſo till ſhe was brought to bed.

Juſtice Powel. Was ſhe big?

Mrs. *Gardiner*. She was paſt breeding; ſhe was very big.

Mrs. Drinkwater *call'd again*.

Juſtice Powel. What can you ſay about Mrs. *Bradby*'s Labour?

Mrs. *Drinkwater*. My Lord, Mrs. *Villars* and I were at Mrs. *Bradby*'s Labour.

Counſel. When was this?

Mrs *Drinkwater*. To the beſt of my Remembrance, it was about a Fortnight before *Chriſtmas*; but ſhe did not look before *February*. I do not know, but the Fall ſhe had in Mrs. *Villars*'s Houſe might be the Occaſion of her coming before her Time.

Juſtice Powel. Was ſhe deliver'd of a live or dead Child?

Mrs. *Drinkwater*. I do not remember that, my Lord.

Counſel. Was it a Boy or a Girl?

Mrs. *Drinkwater*. I know not that neither.

Juſtice Powel. I thought verily, that if you were at her Labour, that you could tell whether ſhe had a Child or no Child?

Mrs. *Drinkwater*. There were others that were at her Labour, can juſtify that the Midwife ſaid ſhe had a Child.

Counſel. Don't you know what became of the Child afterwards?

Mrs. *Drinkwater*. To the beſt of my Knowledge, I think it died as ſoon as it was born.

Counſel. Juſt now you ſaid, you did not know whether it was alive or no?

Mrs. *Drinkwater*. Here is Madam *Luet* will juſtify it.

Mrs. Villars *call'd again*.

Juſtice Powel. Mrs. *Villars*, do you know ſhe was with Child?

Mrs. *Villars*. I know that ſhe miſcarried.

Counſel. What Time was it?———Mrs. *Villars*. After *Chriſtmas*.

Mr. *Feilding*. Call the Keeper of the Houſe of Correction. (*Who was ſworn*.)

Juſtice Powel. What can you ſay?

Keeper. All that I know of Mrs. *Villars*, is, that ſhe was a Priſoner in the Houſe where I live.

Juſtice Powel Where is that?

Keeper. In *Weſtminſter*. I remember this Perſon was in my Cuſtody above five Years ago.

Juſtice Powel. Had ſhe the Correction of the Houſe?

Keeper. She had not the Correction of the Houſe, becauſe ſhe was then with Child.

Mr. *Feilding*. Call Mr. *Minors*. (*Who was ſworn*.)

Juſtice Powel. Mr. *Minors*, What have you to ſay?

Mr. *Minors*. My Lord, in *October* was Twelve-month, when Mr. *Feilding* lodged at Mrs. *Heath*'s, I was then with Mr. *Feilding* almoſt every Day; I ſaw this Woman there every Day, except *Saturday* and *Sunday*. I din'd there, and there was Mrs. *Margaretta*, and ſung theſe Songs which ſhe ſpoke of now. Two or three Days after this, Mr. *Feilding* communicated to me his Treaty of Marriage with the Ducheſs of *Cleveland*, and ſpoke to me to ſettle ſome Writings between them. (*He produced the Writings*.) Mr. *Feilding* deſired me that I would be ready with them by the Beginning of *November*, or the latter End of *October*. This is all I can ſay of this Matter. As to the Women, I ſaw theſe, and abundance of common Women of the Town: I ſaw him take no more Notice of Mrs. *Bradby*, than he did of any of the others.

Juſtice Powel. When did you ſee *Margaretta* there?

Mr. *Minors*. I cannot ſpeak to a Day; but ſhe was at Dinner when I dined there, about *October* was Twelve-month.

Mr. *Feilding*. Call Mr. *Chomley*. (*Who was ſworn*.)

Juſtice Powel. What can you ſay?

Mr. *Chomley*. My Lord, Not long ago there was a certain Perſon taken up, by the Name of *Villars*, about a Twelve-month ago.

Juſtice Powel. Do you know her when you ſee her?

Mr. *Chomley*. My Lord, I believe that is the Perſon (*pointing at her*); but whether ſhe was committed or not, I cannot ſay. I have ſeen her divers times at a lewd Time of Night, when ſhe ought to have been at home.

[*A Letter produc'd of Father* Dryan'*s, and ſhewn to Mr*. Florence.]

(*Mr*. Florence *ſworn*).

Counſel. Mr. *Florence*, Do you know this Letter?

Mr. *Florence*. I have ſeen it, and given an Anſwer to it accordingly.

Counſel. Is it *Dryan*'s Hand?

Mr. *Florence*. I cannot ſay poſitively it is his Hand. There are ſome more of his Letters in the Houſe: I cannot believe, or diſbelieve it.

Counſel. Could *Francis Dryan* ſpeak *Engliſh?*

Mr. *Florence*. Very little.

Counſel. How long was he in *England?*

Mr. *Florence*. About Eleven Months. He hath been gone a conſiderable Time.

Juſtice Powel. This Father that is now gone, Did he ſpeak *Engliſh* at all?

Mr. *Florence*. He was learning of it. Some *Engliſh* he could ſpeak; for I taught him from Time to Time.

Juſtice Powel. Do you think he could enquire for Mr. *Feilding* in *Engliſh?*

Mr. *Florence*. I believe he might ſay, Is Mr. *Feilding* at home? but could ſpeak little Senſe in *Engliſh*.

Juſtice Powel. Do you think that if he were deſired to ſpeak theſe Words, *I take this Man for my Huſband*, that he underſtood ſo much?

Mr. *Florence*. I believe he might ſay what another ſaid before.

(*Then the Queen's Counſel reply'd*.)

Sir *Ja. Mountague*. My Lord, Mr. *Feilding*'s Defence conſiſts of Two Parts. Firſt, he does endeavour to falſify his Marriage with Mrs. *Wadſworth*, by contradicting the Evidence of Mrs. *Villars*; and for that he calls divers to prove Mrs. *Villars* to be a diſhoneſt Woman. My Lord, we think there is no Occaſion for us to make a Reply to that Particular, ſince we ourſelves do not pretend to ſay ſhe is a Woman of very good Reputation. That which we inſiſt upon is, that Mr. *Feilding* hath been impos'd upon, and marry'd this Woman; and this we hope we have prov'd, not only by Mrs. *Villars*'s Evidence, but by other concurring Circumſtances, which are ſo ſtrong, that they cannot poſſibly be deny'd. And as to theſe Facts, he hath not at all contradicted our Evidence. For he does not ſo much as give your Lordſhip an Account how he came by the Ring, or for what End and Purpoſe he beſpoke it. He does not deny that he directed the Poſy of it to be *Tibi Soli*. So that, my Lord, he gives no Manner of Anſwer to all theſe Matters.

In the next place, he ſeems to admit that he had been fooliſh enough to be thus impos'd upon by theſe Intriguing Women. But, ſays he, they have not gain'd their Point; for this impoſing upon me ſignifies nothing, becauſe this Woman was Wife to another Man, when we ſaid ſhe was marry'd to Mr. *Feilding*. Now this ſort of Defence does, in great meaſure, admit the Thing we contend for, *His Marriage with Mrs*. Wadſworth; and whether he hath made it appear that this Marriage is null and void, ſhall be taken into Conſideration next, by making ſome few Obſervations on the Nature of the Evidence that he hath produc'd to prove this Woman's Marriage with another Man. He ſays ſhe is the Wife of one *Lilly Bradby*. That Man, by the Book, is deſcrib'd to live in St. *James*'s, and the Woman to be of St. *Margaret*'s *Weſtminſter*. But he hath not ſo much as given you any Account *that there is ſuch a Man in the World, that he would have to be the ſuppos'd Huſband of this Woman*. In the next Place, they have not undertaken to produce one Witneſs that was by at this Marriage, *not one Witneſs*. And what do they rely upon to prove this Wedding? Truly, nothing but the Regiſter-Book; and the Man that keeps the Regiſter-Book is not here. It's true, indeed, they ſay that it's a true Regiſter, but we deſire the Jury may inſpect it; for it appears by divers Circumſtances to be a Counterfeit-Entry; for it is written in another Character than what the reſt are; and it is written in the lower part of the Leaf, where we may ſuppoſe a Vacancy left to inſert ſuch a Thing as this is, upon Occaſion. The Perſon that wrote it is not here. The whole Year that is ſet down here, is all *entirely one Hand-Writing*; and it is not at all like the *Writing of this Entry*. I think they pretend to ſay, there is ſomethng of the like Hand-Writing in the ſame Book; and that they make uſe of to be a corroborating Circumſtance. But that appears likewiſe to be at the latter end of another Book. The Book is *Rul'd*, and this Entry is writ below Lines without a Rule.

My Lord, this is what I think fit to take Notice upon the View of the Thing. We had an Intimation given us of this Book. It was rumour'd about the Town, that this was the Defence which we were like to meet with. Therefore we did ſend to all Places where ſuſpicious Regiſters were kept, and among the reſt to this *Fleet*-Regiſter. My Lord, we ſhall ſhew you that our Witneſſes went to enquire for this Book; but there they found no Book where this Entry was written. It's a very unaccountable thing that this Book ſhould be concealed. Here is a Woman, indeed, gives you a Reaſon why ſhe did it. She ſays ſhe did it, becauſe ſhe was deſired to keep it ſecret by a Woman whom ſhe *never ſaw before*; and of whom ſhe ſays ſhe never *had a Penny*. This, methinks, is very extraordinary. But this very Book was ſhewn them, if my Inſtructions be true; and the Place where this Entry is made was then a *Blank*, and *filled up ſince*. There was no ſuch Entry at that Time when they look'd upon it. This is all we ſhall ſay in reſpect of the Regiſter, which is *all the Evidence* they bring to prove this Marriage.

But there is another thing they inſiſt upon: They make it an Objection, That this Father in Red was ſeen at Dinner with the Ducheſs of *Cleveland*, after Mr. *Feilding* was marry'd to my Lady Ducheſs. As to that Matter, we ſay it does not appear when that time was; nor do they make it out that the Father in Red did know that he was married to the Ducheſs of *Cleveland* at that time; tho' in Fact they might be marry'd. Twenty People might be at Dinner there, and yet might be ignorant of this Marriage. It is poſſible that a Man may eat and drink with another, and yet not know whether he be married or unmarried. They do not make it appear that there was any Occaſion given at Table that would give riſe to ſuch a Diſcourſe. The Man not having an Opportunity to ſpeak of it, to what end and purpoſe ſhould he do it? The next thing they inſiſt upon, and have endeavour'd to prove, is, That Mrs. *Feilding* was with Child, and brought to bed the *Chriſtmas* after ſhe was marry'd to Mr. *Feilding*. But they do not pretend to tell, whether the Child ſhe was brought to bed of was dead or alive, or whether it was a Boy or a Girl; but at laſt it proved a Miſcarriage. We have given your Lordſhip an Account how it is likely ſhe ſhould be with Child; for we have proved to you undoubtedly that ſhe was married to Mr. *Feilding*; that *they lay together ſeveral Times*; and we have no Reaſon to ſuſpect Mr. *Feilding*'s Ability. Mr. *Feilding* knew ſhe was with Child by him. He was the proudeſt Man in the World *of this Thing*, and call'd it *young Lord Tunbridge*. To prove this, my Lord, here is a Letter written by himſelf. The Stile is ſomething peculiar too; it is directed, *To the beſt of Wives*, Anne *Counteſs of* Fielding. Now, my Lord, Mrs. *Deleau*, whom Mr. *Feilding* thought he had married, her Name is *Anne*, but Mrs. *Feilding*'s Name is *Mary*.

The Letter produc'd and proved by Boucher *and* Beale; *and it was directed*
To the beſt of Wives, *Anne* Counteſs of *Feilding*, at *Waddon*.

Novem. 14. 1705.

‘ THERE is nothing can pleaſe me more upon this Occaſion, than to
‘ hear my Deareſt Wife ſay I made her ſick, by *turning her Liver*;
‘ for without that we could not hope *for a young Lord Tunbridge*; which
‘ would be, the next to my Dear herſelf, the moſt welcome *Preſent to my*
‘ *Arms*. Make haſte, then, my Deareſt Life, to *Cultivate the young Spark*;
‘ and be ſure you don't *ſtarve my Boy*. As for your coming to me, it wholly depends upon yourſelf, who can beſt judge when it is moſt proper to
‘ come to me; which you can do, by giving out, you are to ſtay all Night
‘ in *London*; and then you and *Puggy* have nothing to do but to come to me
‘ at Bed-time, and ſo we may go to Bed and lye till Morning, when *Puggy*
‘ may come again and call you. Adieu, *my Soul's Love!* whom I muſt
‘ ever value more than *Life*. FEILDING.’

Counſel. Call Mr. *Longford*. (*Who was ſworn.*)

Sir *Ja. Mountague*. Were you directed to go to the *Fleet*, and look into the Regiſter-Book?

Mr. *Longford*. Mr. *Attorney General* telling me that he heard there would be ſome Pretence of a Marriage that would be ſet up, adviſed me to enquire after it. I was informed, that ſome Certificate was, or would be given in the *Fleet*. I went with Mr. *Reſcorloe* to ſee the Books. We looked all over thoſe Months for the Year 1703. This Book is the very Book I take it to be, but am not poſitive. That which we ſaw, I obſerved had an Entry dated the Year 1705, before the Marriages *in the Year* 1704, *in yellowiſh Ink at the top of a Leaf*.

Counſel. Call Mr. *Reſcorloe*. (*Who was ſworn.*)

Sir *J. Mountague*. Do you remember that you ſaw that Book?

Mr. *Reſcorloe*. I do remember that I ſaw that Book with Mr. *Longford*. Mr. *Longford* and I went, by the *Attorney General*'s Order, to ſearch the Books at the *Fleet*, to ſee whether we could find any Entry of *Lilley Bradby*'s Marriage with Mrs. *Wadſworth*. This Woman that gave her Evidence here brought in this Book, and we look'd back for three Years. We found no ſuch Entry as ſhe ſhews here in this Book. We aſk'd her again, Whether there were any other Books of Entries of Marriages? She ſaid, No. I aſk'd her, whether there had been any one there to ſee after ſuch a Certificate? She ſaid, there was a Woman and a Man about a Week or Fortnight ago. I aſk'd her, whether ſhe ſhewed them this Book? She ſaid, ſhe had ſhew'd them this Book, and they gave her a Shilling for ſearching it. She ſaid poſitively there was no *ſuch Certificate* entered in the Book, and that there was *no other Book for the Entry of Marriages*. We ſearch'd the Month of *October* more ſtrictly; we look'd for the very Certificate with the greateſt Care and Induſtry that could be. We went to *Baſſet*'s Houſe, who, this Woman ſaid, was not at Home. She laugh'd in her Sleeve, and ſaid, He was a doating Man; and if he ſpoke two Words, he could not ſpeak a third. I do really believe this to be the Book. I took good Notice of the *Blank* where this Certificate is entered, and did remark that there was a *vacant Space* under this Certificate, where was no Writing. Mr. *Longford* and I turned back again to the Year 1705, which was put before the Year 1704, and obſerved it then, as it appears now, to be the Book, *Except this Entry*. I do believe it to be the ſame Book we then ſaw.

Sir *Ja. Mountague*. There is but one thing more that I would mention, which is, that the Woman in the Top-knot confeſs'd, that this Letter was her own Hand-Writing. I deſire it might be read.

The Letter was read. It was directed
To Major-General *Feilding*.

Tueſday Morning.

‘ ALL that know the Name of Major-General *Feilding*, muſt own
‘ the Generous and Charitable Actions that your Honour daily be-
‘ ſtows upon 'em. I, among the reſt, ſhall ever acknowledge your Good-
‘ neſs. It's Neceſſity that forces me to diſpoſe of this Picture. Your
‘ Honour is a nice Judge of Painting, as well as an Admirer of ſuch Pieces,
‘ which makes me humbly preſent it to you firſt; and in accepting the
‘ ſame, your Honour will highly oblige, as well as ſerve,
‘ *Your humble Servant*,
‘ M. FLETCHER.’

POSTSCRIPT.

‘ I long to ſee you. For Your Encouragement to grant me that Fa-
‘ vour, I am now acquainted with a *young Lady that's Pretty, and lives in*
‘ *good Faſhion*. Your Honour will oblige me in letting me receive your
‘ Commands.’

Juſtice Powel. Gentlemen of the Jury, The Priſoner, Mr. *Robert Feilding*, ſtands indicted for a capital Offence, for Felony, in marrying a ſecond Wife, his firſt being then alive. This is the Offence charged againſt him. The Counſel for the Queen have called ſeveral Witneſſes to prove this Matter upon him. And the firſt is one Mrs. *Villars*. She hath given her Evidence from one end to the other, if you believe what ſhe ſwears. She ſwears, That one Mrs. *Streights* came firſt to her Lodging, and ſhe was not at home; but left word that ſhe muſt needs ſpeak with her; that ſhe was always out of the way when any thing offer'd that would do her a Kindneſs; and that it would be 500 *l.* out of her way if ſhe did not ſee her. It ſeems, that when Mrs. *Streights* met her, ſhe acquainted her with Mr. *Feilding*'s Inclinations; and being inform'd that ſhe was acquainted with the Lady, that ſhe us'd to cut her Hair, thought that ſhe might have ſuch an Intereſt in her, as to be made ſerviceable to bring the Matter about; which if ſhe was, it might be worth 500 *l.* to her. Mrs. *Villars* undertakes the Buſineſs to bring Mr. *Feilding* and Mrs. *Deleau* together; ſhe did readily accept of it; thereupon Mr. *Feilding* and ſhe diſcours'd together concerning this Matter: ſhe told him ſhe was acquainted with Mrs. *Deleau*, and that ſhe would do the beſt ſhe could to bring it about. Mr. *Feilding* upon this went to Mrs. *Deleau*'s Country-Houſe at *Waddon*, in *Surry*, that thereby the Lady might have an Opportunity of ſeeing him. She ſays, Mr. *Feilding* told her, that he had Acceſs to the Gardens; that when he was there he ſaw the Lady through the Glaſs-Window; he was willing to give the Lady a full View of him, therefore he ſtood ſtill and ſet his Watch by the Sun-Dial, and took ſeveral Turns in the Garden; and he did afterwards ſend a Letter to her. Mrs. *Villars* was afterwards ſent of a Meſſage, as tho' it was from the Ducheſs of *Cleveland*, to acquaint the Lady that the Ducheſs had a great mind to ſee the Gardens. Mrs. *Deleau* told Mrs. *Villars*, that ſhe ſhould be proud that a Perſon of her Quality ſhould come to her. She ſaid that Mr. *Feilding* ſent her, and ſhe found afterwards that the Ducheſs of *Cleveland* did not intend to go; nay, that ſhe knew nothing of the Matter. But ſee how ſhe managed the matter, and play'd this Trick upon Mr. *Feilding*; it is no better, if true. They agreed together that Mrs. *Deleau* ſhould come to a Place where Mr. *Feilding* ſhould appoint; that ſomething of Muſick, or ſome Entertainment ſhould be provided; they contrived when it ſhould be; the Time was on my Lord-Mayor's Day at Night; and according to Appointment Mrs. *Villars* came with Mrs. *Deleau*, as Mr. *Feilding* thought, but in reality it was one *Mary Wadſworth*, which repreſented Mrs. *Deleau*; ſhe came in a Mourning Coach, and dreſs'd in a Widow's Habit; after this Manner they came to Colonel *Feilding*'s Lodgings in *Pall-Mall*. The Lady, truly, was not to know that they were Mr. *Feilding*'s Lodgings; however, Mr. *Feilding* was not at home; but it was not long before he came: He came up to the Lady: You have heard what Addreſſes he made to the Lady, and how much Love he expreſs'd towards her: Ask'd her, whether ſhe lov'd ſinging? One *Margaretta* was ſent for, and ſung two Songs. Mr. *Feilding* was ſo taken with her, he would have marry'd her preſently; but ſhe being coy, modeſtly declin'd it, and ſo they parted for that Time. Mrs. *Villars* was to bring her afterwards, which was on the 9th of *November*, on the Night the ſuppoſed Wedding was; Mrs. *Villars* brought her. When ſhe came there, Mr. *Feilding* propos'd to be married to her forthwith; ſhe ſeem'd to be ſhy at preſent, but Mr. *Feilding* ſaid he would fetch the Prieſt immediately; he lock'd them in, took the Key with him, and returned in three Quarters of an Hour; the Prieſt ſhe deſcribes to be in a long red Gown lin'd with blue, a long Beard and a Fur-Cap upon his Head, ſo he brought him along with him; when he came, he ſaid, *This is the Man that ſhould join their Hearts together*. She tells you further, that Mrs. *Wadſworth* queſtion'd the Prieſt; required of him a Proof to ſhew he was a Prieſt in Orders. The Prieſt pull'd a Picture of the Pope out of his Pocket, which he ſaid was a Credential for Prieſts. After Supper the Marriage was propos'd, whether it ſhould be in the Dining-Room, or Bed-Chamber? That was the Queſtion. The Lady thought the Bed-Chamber beſt; he thought ſo too. Well then, in the Bed-chamber it muſt be. The Prieſt did want Water, Salt and Roſemary, Things that he us'd in Performance of the Ceremony; *Boucher* was ſent down for them; he brought up Water and Salt, but could get no Roſemary: After theſe Things were brought up, *Boucher* the Servant was turned out, and the Doors were ſhut. Then there was nobody preſent but Mr. *Feilding*, the Lady, the Prieſt and Mrs. *Villars*. Then ſhe tells you of the Ceremony of the Wedding, the Ceremony of the Water, and the Ceremony of the Ring. After that was done, they proceeded to the Marriage; the Office was in *Latin*. When they came to the Marriage Words, *I take thee to be my Husband*, &c. Mrs. *Wadſworth* deſir'd it might be ſpoke in *Engliſh*; thereupon Mr. *Feilding* did ſay it in *Engliſh*, *I take this Woman to be my wedded Wife, with all my Heart and with all my Soul*. The Gentlewoman ſhe ſaid her Part likewiſe in *Engliſh*, *I take this Man to be my wedded Husband*; but Mr. *Feilding* obſerving her to ſpeak it too low, deſir'd her to ſpeak it as earneſtly as he did: Whereupon ſhe did ſay, *I take this Man to be my Husband, with all my Heart, and with all my Soul*. The Ceremony of putting on the Ring the Prieſt directed; that was, to take hold of the End of one of her Fingers, and put it on; ſhe ſaw that done, and when the Ceremony was over, the Prieſt went away; that when he was gone away, ſhe undreſſed the Bride, and put her to Bed, and then gave Notice to Mr. *Feilding* that the Lady was in Bed. Then Mr. *Feilding* went to Bed, and *ſhe ſaw them in Bed together*. Then ſhe went to Bed herſelf in a Lodging that was provided for her up another Pair of Stairs: That the next Morning ſhe aroſe, came down, went into the Room where there was a Fire made by *Boucher*; that then ſhe ſaw *them in naked Bed together*. If you believe her, ſhe ſwears the Marriage by this Prieſt, and the Conſummation of it. Mrs. *Villars* goes further, and ſwears, that ſhe brought her *two other Times*, and that thoſe Times *ſhe ſaw them in Bed together as Man and Wife*. I ask'd Mrs. *Villars* at laſt, How Mr. *Feilding* came to be undeceiv'd? She ſays, It was kept ſecret from *November* to *May*. Then Money was wanted; that was a great Diſappointment to Mr. *Feilding*, for he thought he had marry'd a Lady that would have furniſh'd him with Money. Then he diſcover'd the Fraud, and found he had been impos'd upon; then he was angry with her, beat her, and call'd her Names. Indeed, Gentlemen, I muſt deal plainly with you: If her Evidence ſtood alone, her Reputation is ſhaken to that Degree, that in Truth, where a Man ſtands upon his Life, one would not have a great Regard for what ſuch a Woman ſwears, if it were not ſupported otherwiſe. Now, tho' by herſelf ſhe be not a good Evidence, yet the Matters of Fact which ſhe ſwears to, are likewiſe proved by the concurrent Teſtimony of others.

Firſt, They call *Boucher*, and truly he fortifies her Evidence in a great many Particulars, gives an Account of Mrs. *Villars* bringing Mrs. *Wadſworth* to Mr. *Feilding*'s under the Character of a Perſon of Quality; gives an Account, juſt as ſhe does, of their coming to Mr. *Feilding*'s Lodgings in a Widow's Habit and Mourning Coach; their having a Treat of Plum-Cake and two Bottles of Wine. He further gives an Account of their coming a ſecond Time, and an Account of the Prieſt; knew the Prieſt; knew him to be the Emperor's Envoy's Prieſt. He remembers the Prieſt coming to the Place; he remembers alſo the Circumſtances of being ſent for Water, Salt and Roſemary. He ſays he was order'd down, and the Chamber-door was ſhut, and the Prieſt was then in the Chamber with Mr. *Feilding*, the Lady, and Mrs. *Villars*; and that when the Prieſt was gone, Mr. *Feilding* and the Lady went to Bed; that he *ſaw them in Bed together*; that the People that were below, when *Boucher* was ſent down for Salt and Roſemary, they could conclude no otherwiſe but that they were making this Lady a Convert. Now, Gentlemen, this is a material Thing, that there was a Prieſt at that Time, and they were private together; this is a concurrent Evidence to ſtrengthen Mrs. *Villars*'s Teſtimony. There is Mrs. *Martin*, Mrs. *Heath*, and Mrs. *Price*, they remember ſeveral of theſe Matters perfectly well. Mrs. *Martin* ſaw this Perſon and her Mourning Coach; ſhe ſaw the Lady and Mrs. *Villars* go up Stairs, and the Time when the Prieſt came in, ſhe let him in; deſcribes him by his particular Habit, as the reſt do. Mrs. *Heath* remembers Mrs. *Villars* coming with a Woman that ſhe thought was a Woman of Quality, but ſaw not the Prieſt. Mrs. *Villars* told her ſhe was worth 80000*l.* ſhe aſk'd her whether ſhe might lie there that Night, for it was too late to go home? She agreed they ſhould lie together, Mrs. *Villars* and Mrs. *Wadſworth*. But now here is another Circumſtance that hath mighty Weight in it, that is, the Ring; they have brought the Perſon of whom Mr. *Feilding* bought the Ring to the Value of 20*s.* that the Ring was ready made, and Mr. *Feilding* directed the Poſy (*Tibi Soli*) to be engrav'd in it. There was another Man by when Mr. *Feilding* bought the Ring, and order'd the Poſy for it; and this *very Ring* with *this Poſy* has been produc'd firſt by the Proctor and Regiſter; the Proctor does ſay, it was firſt brought to him by Mrs. *Wadſworth*, who came to retain him in an Action of Nullity of Marriage; he took notice of the Ring, and ſaid that it had this Poſy in it. Afterwards when Mrs. *Wadſworth* came again, he was not at home; it was in the Hand of his Brother, and he is ſure it is the ſame Ring. The Goldſmith ſwears it to be that Ring Mr. *Feilding* bought of him; he knew it by the Mark and Workmanſhip of it; for Goldſmiths know one anothers Work. This, Gentlemen, hath a great deal of Weight in it; it is a very great Circumſtance, unleſs they could tell you, which they have not, upon what Occaſion this Ring was bought at this Time.

Gentlemen, They give a further Account of this Matter by the Teſtimony of Letters, which they prove to be Mr. *Feilding*'s Hand. Mrs. *Villars* was the Carrier of theſe Letters; Mr. *Feilding* ſtiling her in them by the Name of *Puggy*, a Name by which it ſeems he uſed to call her. Theſe Letters are proved by *Boucher* and a Lady in the Gallery, to be Mr. *Feilding*'s Writing. Theſe Letters have been read to you; they are written as from a Huſband to a Wife; in them he owns her to be his *Wife*, calls her Counteſs of *Feilding*, ſtiles himſelf *her Huſband.* Theſe Letters have been read to you. This, Gentlemen, as I remember, is the Subſtance of the Evidence that hath been given for the Queen.

Sir *Ja. Mountague.* My Lord, be pleaſed to take notice of Mr. *Feilding*'s going to the Emperor's Envoy for the Father in Red.

Juſtice *Powel.* It is true, I had forgot the Evidence of Mr. *Florence* a Chaplain, that is a Prieſt, now belonging to Count *Gallas* the Emperor's Envoy, and the Porter. They tell you, about this Time Mr. *Feilding* did come to enquire for this Prieſt, and gave the Porter Half a Crown (by a good Token); but the Prieſt he aſked for not being at home, he enquired for Mr. *Florence*; he told Mr. *Florence*, that he had been in Love with a young Lady a good while, but now had prevailed with her to marry him. And ſeeing the Father in Red was not there, he deſired he would go along with him and do the Office. Mr. *Florence* told him, it was improper for him to go without the Envoy's Leave; he went up to the Envoy, and acquainted him with it; the Envoy gave him Caution to do it with Diſcretion; but when he came down again, it ſeems that the Red Father had been with Mr. *Feilding* in the mean time, and were both gone together.

Now, Gentlemen, you hear what Defence Mr. *Feilding* makes againſt this great Charge againſt him.

Firſt, He calls a great many Witneſſes to prove that this Mrs. *Villars* was married, as ſhe pretended, to Colonel *Feilding*, and that ſhe was a very common Woman, ſo far as that ſhe has been in a publick Houſe of Correction; and one of their Witneſſes does bear hard upon her Teſtimony; that is, that ſhe ſhould declare to her that ſhe was married to Colonel *Feilding*, and that my Lady Ducheſs ſhould ſay to her, If you can make that out that you are married to Mr. *Feilding*, ſhe would give her two hundred Pounds, and ſettle 100*l.* a Year upon her for fifteen Years together. Then as for Mrs. *Wadſworth*, they call you divers to prove that ſhe was brought to Bed about *Chriſtmas* after this ſuppoſed Marriage. But when they came to be examined, they did not prove very much of that; for indeed it proved to be a Miſcarriage; the Woman could not ſay ſhe ſaw the Child, could not tell whether it was a Boy or a Girl; whether it was dead or alive; it did not appear by their Evidence that ſhe went out her Time with a Child. Another Part of Mr. *Feilding*'s Evidence is this, to prove Mrs. *Wadſworth* married to another Perſon; and then admitting ſhe was married to Mr. *Feilding*, 'tis a null Marriage. To prove that Mrs. *Wadſworth* was before married to another, they have brought the Book of Marriages of the *Fleet*, and in that Book there is an Account of one *Lilley Bradby*, married ſuch a Time to Mrs. *Mary Wadſworth*; the Man of St. *James*'s, the Woman of St. *Margaret*'s *Weſtminſter.* The Woman of the *Fleet*, in whoſe Cuſtody this Book was, pretends that Mrs. *Wadſworth* came to her, and deſired if any came to ſee the Book, that ſhe would not let them ſee the Entry of her Marriage; and why? Becauſe there would be Trouble about her Marriage. This Woman ſwears that there were two Men came to ſearch the Book, but ſhe ſhewed them another Book; but this Book ſhe did not ſhew them. She was aſk'd whether ſhe had two Books of Marriages for the ſame Year? She ſaid, ſhe had ſeveral Books for the ſame Year: One Parſon made his Entry in one Book, and another Parſon in another Book. She pretends ſhe did not ſhew them this Book; but the Book ſhe ſhewed them was at home. I cannot conclude much from what this Woman hath ſaid; but, Gentlemen, you have look'd upon this Book; and if you are ſatisfied from this Evidence, that *Mary Wadſworth* was married to *Bradby* at this Time, I confeſs Mr. *Feilding* will not be within the Statute. You have look'd into the Book; they give you no Account that there was ever any ſuch Man as *Bradby*, nor of no Cohabitation; but a mere Book is produced, and not of the *beſt Credit* neither; it is entred in the Bottom of the Leaf, but not in the Middle: It is written with *another colour'd Ink*, and *in another Hand.* I aſk'd the Woman whether ſhe knew the Man that wrote it? She ſaid Yes; and it was her Huſband's Brother's Hand. He is alive, why is not he produced?

Gentlemen, they have called no Witneſſes to prove the Marriage with *Lilley Bradby.* There were two Gentlemen on the other Side, they went to the *Fleet* to ſearch the Books of the Entry of this Marriage. They ſay that a Perſon inform'd them, that there had been there a Man and a Woman before them; theſe Gentlemen went and deſired to ſee the Book, particularly for the Year 1703. They ſay the Woman did produce the Book of Marriages, but they could not ſee ſuch an Entry; ſhe denied to them that ſhe had any other Book for that Year; they cannot ſwear poſitively that this is the Book that was ſhewn them; but one of them ſays, he believes it to be the ſame; for in that which he ſaw, he obſerved Entries of the Year 1705, before the Year 1704. He took good notice of it, and ſo it is *found in Court.* The other Gentleman ſays, he took particular notice of the Space that was in the Book, where this Entry is now written. Now the Woman does not bring the other Book ſhe pretended to have ſhewn them. Now, as to the Labour, they have produc'd a Letter under Mr. *Feilding*'s Hand, whereby Mr. *Feilding* takes notice of her being with Child, directs the Letter to *Anne Counteſs of Feilding*, at *Waddon*; he took it that he had married Mrs. *Deleau*, for her Name is *Anne*, he directed his Letter to her Country-Seat. There is another Thing of Mr. *Feilding*'s coming to Mrs. *Heath*, and complaining what an ill Woman Mrs. *Villars* was, for ſhe had ſerved him a baſe Trick; inſtead of a Woman of Fortune, ſhe had put a common Woman upon him. Gentlemen, You have heard the Account too concerning his beating of her; for this Woman, it ſeems, was troubleſome to him at *Whitehall*; ſhe demanding him as her Huſband, ſaid ſhe was his lawful Wife; he ſtruck her, and cauſed her to be held till he got away from her.

Gentlemen, It is a very great Charge upon Mr. *Feilding*, it is true, if there be Evidence to maintain it; it does not really depend upon Mrs. *Villars*'s Evidence; for if her Evidence were to ſtand alone, no Credit ſhould be given to it; but as it is ſupported by concurring Evidence, I leave it with you, whether it be not ſufficient to find Mr. *Feilding* Guilty. But if you think that Mrs. *Wadſworth*'s Marriage to *Lilley Bradby* is proved ſufficiently, then, altho' you think Mr. *Feilding*'s Marriage with Mrs. *Wadſworth* ſufficiently proved, yet you are to find for the Defendant.

The Jury having withdrawn for ſome time, brought in their Verdict, *That Mr.* Feilding *was guilty of the Felony he ſtood indicted of.*

Mr. *Feilding* (*in caſe he was found guilty*) had obtained the Queen's Warrant to ſuſpend *Execution* of this Sentence; and then by his Counſel took Exceptions to the Indictment, and moved in Arreſt of Judgment; but they were anſwered by the Counſel for the Queen; but Mr. *Feilding* having obtained a Suſpenſion of the Execution, the Judges by a *Cur' adviſare vult* (as the Form is) ſuſpended giving Judgment till the next Seſſions, and accepted Bail for Mr. *Feilding*'s Appearance the next Seſſions.

The next Seſſions, being the Fifteenth of *January* following, Mr. *Feilding* appear'd, and his Counſel waving their Exception (as being frivolous) he was aſk'd what he had to ſay why the Court ſhould not proceed to Judgment and Execution? And then he craved the *Benefit of his Clergy*; which was allow'd. And then Judgment was given (as uſual) that he ſhould be burnt in his Hand. But he having the Queen's Warrant to ſuſpend Execution, he was admitted to Bail.

The Proceedings againſt Robert Feilding, *Eſq;* *in* Doctors Commons.

NOtwithſtanding Mr. *Feilding* was found guilty of Felony at the *Old Baily*, her Grace the Ducheſs of *Cleveland* having inſtituted a Cauſe of Nullity of Marriage againſt the ſaid Mr. *Feilding*, by reaſon of a former Marriage with the ſaid *Mary Wadſworth*, in the Arches Court of *Canterbury*; and having by Examination on Oath of divers credible Witneſſes, made good and ſufficient Proof of the ſeveral Articles of the Libel by her Grace exhibited in the ſaid Court againſt the ſaid Mr. *Feilding*, did proceed to obtain the Sentence of the ſaid Court; and accordingly on the 23d Day of *May*, in the Year of our Lord God 1707, the Right Worſhipful Sir *John Cooke*, Kt. Dr. of Laws, Official Principal of the ſaid Court, then judicially ſitting in the Common Hall of *Doctors Commons*, *London*, being then preſent the Duke of *Grafton*, the Duke of *Northumberland*, the Earls of *Litchfield*, *Suſſex*, *Jerſey*, and the Lord *Quarrendon*; as alſo the reſpective Proctors of her Grace the Ducheſs of *Cleveland* and Mr. *Feilding*, did, at the Petition of her Grace's Proctor, read and promulge his definitive Sentence in *Latin*, of the Tenor following, *viz.*

" *IN the Name of God*, Amen. We *John Cooke*, Kt. Dr. of Laws, Of-
" ficial Principal of the Arches Court of *Canterbury*, lawfully appointed,
" rightly and duly proceeding, having heard, ſeen, underſtood, and fully
" and maturely diſcuſſed the Merits and Circumſtances of a certain Cauſe
" of Nullity of Marriage, by reaſon of a former, now depending before
" us, between the moſt noble Lady, *Barbara* Ducheſs of *Cleveland*, the
" Party Agent and Complainant, on the one Part; and *Robert Feilding*,
" Eſq. of the Pariſh of St. *James*'s *Weſtminſter*, in the County of *Mid-*
" *dleſex*, the Party againſt whom it is complained, on the other Part:
" The Parties aforeſaid lawfully appearing before us in Judgment, by their
" Proctors reſpectively; and the Proctor for the ſaid moſt noble Lady, *Bar-*
" *bara* Ducheſs of *Cleveland*, praying Sentence to be given, and Juſtice

“ to be done to his Party; and alſo the Proctor of the ſaid *Robert Feilding*, Eſq. praying Juſtice to be done to his Party: And having carefully and diligently ſearch'd into, and conſider'd of the whole Proceedings had and done before us in this Court; and having obſerv'd all and ſingular the Matters and Things, that by Law in this Behalf ought to be obſerv'd; We have thought fit, and do thus think fit to proceed to the giving our Definitive Sentence, or Final Decree, in manner following; *viz.*

“ Foraſmuch as we have by the Acts enacted, deduced, alledged, exhibited, propounded, proved and confeſſed, That the Proctor for the ſaid moſt noble Lady *Barbara* Ducheſs of *Cleveland*, hath fully and ſufficiently proved and founded his Intention in a certain Libel, and other Matters now remaining in the Regiſtry of this Court, propounded and exhibited in this Cauſe on the Part and Behalf of his ſaid Client; And that nothing hath been, on the Part and Behalf of the ſaid *Robert Feilding*, effectually excepted, deduced, alledged, exhibited, propounded, proved and confeſſed, which might, or could in any wiſe (touching our Sentence hereafter to be pronounc'd) *hurt or weaken* the Intention of the ſaid moſt noble Lady *Barbara* Ducheſs of *Cleveland*:

“ Therefore, We *John Cooke*, Knight, Doctor of Laws, the Judge aforeſaid, *having firſt called upon God, and ſetting Him alone before our Eyes*, and having heard Counſel thereupon; do pronounce, decree, and declare the before-named *Robert Feilding*, Eſq. and one *Mary Wadſworth*, mentioned in the Proceedings of this Cauſe, being free from all Contract and Promiſe of Marriage with any other (ſo far as appears to us), on the ninth Day of *November*, in the Year of our Lord God 1705, at a Place mentioned in the Libel in this Cauſe, did contract Marriage, and did ſolemnize, or procure the ſame to be ſolemnized between them; and did afterwards conſummate the ſame: And that the ſaid *Robert Feilding* and the ſaid *Mary Wadſworth* were, and are Man and Wife. And that the ſaid *Robert Feilding*, Eſq. after the Solemnization and Conſummation of the aforeſaid Marriage, not having the Fear of God before his Eyes, on the 25th Day of the ſaid Month of *November*, in the ſaid Year of our Lord God, 1705, and in the Place alſo in the aforeſaid Libel mention'd, did contract a pretended Marriage with the ſaid moſt noble Lady *Barbara* Ducheſs of *Cleveland*. And alſo we pronounce, decree, and declare, That the ſaid pretended Marriage, or rather a Shew of Marriage, between the ſaid *Robert Feilding* and the ſaid moſt noble Lady *Barbara* Ducheſs of *Cleveland*, at the Time and Place libellated, was ſolemnized, or rather prophaned, the ſaid *Mary Wadſworth*, alias *Feilding*, being then and ſince living. And alſo we pronounce, decree, and declare the ſame pretended Marriage, or rather Shew of Marriage, between the ſaid *Robert Feilding*, and the ſaid moſt noble Lady *Barbara* Ducheſs of *Cleveland*, ſo as aforeſaid contracted and ſolemnized, or rather prophaned, by reaſon of the former Marriage between the ſaid *Robert Feilding* and the ſaid *Mary Wadſworth* ſolemnized and conſummated, was, and is, from the Beginning, void, and of no Force in Law, and doth, and ought to want the Force and the Effect of the Law. Therefore, by this our Definitive Sentence, or our Final Decree, which we now promulge in theſe our Writings, We do pronounce, decree, and declare, the ſaid moſt noble Lady, *Barbara* Ducheſs of *Cleveland*, was and is free from any Bond of Marriage with the ſaid *Robert Feilding*, and had and hath the Liberty and Freedom of Marrying with any other Perſon.”

The Original Sentence was Signed thus, *JOHN COOKE.*

The aforeſaid Sentence having been publickly read by the Judge, at the Time, Place, and in the Manner aforeſaid; the ſaid Judge did decree one or more publick Inſtrument or Inſtruments thereof to be made (at the Petition of her Grace's Proctor) by Mr. *Henry Farrant*, the principal Regiſter of the ſaid Court, which accordingly he hath ſince iſſued under the publick Seal of the Office of the ſaid Judge, on the Day following, *viz.* the 24th of *May* 1707.

On *Wedneſday*, the 25th Day of *June*, in the Year of our Lord 1707, before the Right Worſhipful Sir *John Cooke*, Knight, and Doctor of Laws, Official Principal of the *Arches Court* aforeſaid, in his Dwelling Houſe at *Doctors Commons*; in the Preſence of the ſaid Mr. *Henry Farrant*, Notary Publick, and Principal Regiſter of the ſaid Court; Mr. *Feilding*, by his Proctor, did renounce all Benefit of Appeal from the ſaid Sentence, in the manner following, *viz.*

“ Appearing perſonally, Mr. *Edward Cooke*, Proctor for her Grace, the moſt noble Lady *Barbara* Ducheſs of *Cleveland*; and Mr. *Thomas Willymot*, Proctor for the ſaid *Robert Feilding*, Eſq. At which Time, the ſaid *Willymot* did exhibit a certain Letter, or Epiſtle of the Tenor following; *viz.*

Mr. Willymott,

WHEN *Sentence is given in Behalf of her Grace the Ducheſs of* Cleveland, *pray enter no Inſtrument of Appeal, for I ſhall proceed no further therein.* Your Friend and humble Servant,

FEILDING.

“ And the ſaid *Willymot* alledg'd, That the ſaid Letter was all of the proper Hand-Writing of the ſaid *Robert Feilding*; and that he the ſaid *Willymot* receiv'd the ſaid Letter from the ſaid *Robert Feilding*. And the ſaid *Willymot* further alledged, that no Appeal from the definitive Sentence given by the ſaid Judge on the Part and Behalf of the ſaid moſt noble Lady *Barbara* Ducheſs of *Cleveland*, had been, or was interpoſed by, or on the Behalf of the ſaid *Robert Feilding*. And the ſaid *Willymot*, as Proctor of the ſaid *Robert Feilding*, did renounce all Benefit of Appeal from the ſaid Sentence, in the Preſence of the ſaid *Cooke*, as Proctor of the ſaid moſt noble Lady *Barbara* Ducheſs of *Cleveland*; who, on the Part and Behalf of the ſaid moſt noble Lady *Barbara* Ducheſs of *Cleveland*, accepted the aforeſaid Allegation and Renunciation of the ſaid *Willymot*; and then alſo pray'd the golden Ring, and ſeven Letters, by him exhibited on the Part of her Grace, and annexed to the Libel in this Cauſe, to be deliver'd out of the Regiſtry of this Court, for the Uſe of her ſaid Grace. Whereupon the Judge, at the Petition of the ſaid *Cooke* (the ſaid Letters being firſt regiſtred in the ſaid Court) decreed the ſaid golden Ring, and the ſeven Letters, to be delivered to the moſt Noble Lady *Barbara* Ducheſs of *Cleveland*, or to the ſaid *Cooke* for the Uſe of her Grace; as by Act of the Court had been expedited at the Time and Place aforeſaid, and now remaining in the principal Regiſtry of the ſaid Court, Relation being thereunto had, doth and may more fully appear.”

CLXXXIII. *The Trials of* JAMES STIRLING *of Keir, and Others, in* Scotland, *for* High-Treaſon, November 15. 1708. 7 Ann.

CURIA JUSTICIARIA, *S. D. N. Reginæ, tenta in novo Domo Seſſionis Burgi de* Edinburgh, *decimo quinto Die Menſis* Novembris, *Milleſimo Septingenteſimo Octavo*; *per Nobilem & Potentem Comitem*, Georgium *Comitem de* Cromertie, *&c. Juſticiarium Generalem, & Honorabiles Viros* Adamum Cockburn *de* Ormiſtoun, *Juſticiarium Clericum*; *Dominos* Joannem Lauder *de* Fountainhall, Gulielmum Anſtruther *de eodem*, *&* Gilbertum Eliot *de* Minto; *Magiſtrum* Robertum Steuart *de* Tillicoutrie, *& Magiſtrum* Jacobum Erſkine *de* Grange; *Commiſſionarios Juſticiarii dict. S. N. D. Reginæ.*

Curia Legitime Affirmata.

Intran.
James Stirling, Laird of *Keir.*
Archibald Seaton, Laird of *Touch.*
Archibald Stirling, Laird of *Carden.*
Charles Stirling, Laird of *Kippendavie*; and
Patrick Edmonſton, of *Newtoun.*

INdicted and Accuſed at the Inſtance of Sir James Steuart, *Her Majeſty's Advocate, for Her Highneſs Intereſt, and as having Special Warrant from Her Majeſty for that Effect.* That where, *by the Law of GOD, and the Laws of this, and all other well-govern'd Realms, the Crime of Treaſon and Leſe-Majeſty, and the Treaſonable and Unlawful Riſing and Continuing in Arms, are moſt Atrocious and Heinous Crimes, puniſhable by Forfeiture of Lands, Life and Eſtate, or other Pains of Law. Likeas by the Act of Parliament*, Jac. I. Par. 1. Cap. 3. *it is ſtatute*, That no Man openly rebel againſt the King's Perſon, under the Pain of Forfeiture of Life and Goods. *And by the Act of Parliament*, Jac. II. Par. 6. Cap. 24. *it is ſtatute*, That who commit Treaſon againſt the King's Perſon, or Majeſty, or who riſe in Feire of Weir againſt him, ſhall be puniſhed as Traitors. *And by the Act of Parliament*, Car. II. Par. 1. Seſſ. 1. Cap. 3. *it is declared to be* High-Treaſon, for the Subjects, more or leſs, upon any Pretext, to riſe and continue in Arms; and to make Treaties or Leagues with Foreign Princes or States, or among themſelves, without His Majeſty's Special Authority firſt interponed. *And by the Act of Parliament*, Car. II. Par. 1. Seſſ. 2. Cap. 2. *it is ſtatute*, That if any Perſon ſhall Plot, Contrive or Intend Death and Deſtruction to the King, or Bodily Harm tending thereto; or Deprive, Depoſe, or Suſpend Him from the Stile, Honour, and Kingly Name of this, or any other His Majeſty's Dominions; or levy War, or take up Arms againſt Him, or any Commiſſionate by Him; or entice Strangers, or others, to invade any of his Dominions, and expreſs and declare ſuch Treaſonable Intention; he ſhall be adjudged a Traitor, and puniſh'd as in the Caſe of High-Treaſon. *Likeas by the Act of Parliament*, 1702. *intituled*, Act Recognizing Her Majeſty's Royal Authority, *it is declared*, That it ſhall be High-Treaſon in any of the Subjects of this Kingdom, by Writing, Speaking, or any other manner of way, to diſown, quarrel, or impugn Her Majeſty's Royal Power and Authority, or Right and Title to the Crown. *And by the Act of Parliament*, 1703. *intituled*, Act Aſſerting and Recognizing Her Majeſty's Authority, *it is again ſtatute and declared*, That it ſhall be High-Treaſon in any of the Subjects of this Kingdom, to diſown, quarrel or impugn, Her Majeſty's Right and Title to the Crown of this Kingdom, or Her Exerciſe of the Government thereof. *NEVERTHELESS it is of Verity, That the ſaid* James Stirling *of* Keir, Archibald Seaton *of* Touch, Archibald Stirling *of* Carden, Charles Stirling *of* Kippendavie, *and* Patrick Edmonſton *of* Newtoun, *all and each of them were guilty of the ſaid Crimes, in ſua far as they all, and each of them, ſhaking off all Fear of GOD, and Regard to her Majeſty's Perſon, Authority and Laws, upon one or other of the Days of the Months of* February March *or* April *laſt, when an Invaſion of that Part of* Great-Britain *called* SCOTLAND *was threaten'd, by an Enemy-Fleet of Ships with Forces, and an Army aboard, ſent by the* French *King or by the* Pretender, *who went ſome Time by the Name of the Prince of* Wales, *and now aſſumes to himſelf the Name, Stile and Title of King* James, *as King of Her Majeſty's Dominions; with a manifeſt and open Deſign to invade Her Majeſty's Dominions, and to deſtroy Her Majeſty and Her good Subjects; at leaſt to deprive and depoſe Her Majeſty from the Stile, Honour, and Princely Name of theſe Her Dominions; Did convocate and convene in Arms, with others their Accomplices; ſuch as Major* William Graham, Alexander Steuart, *Uncle to* Ardvorlich, George Seaton, *Brother to the ſaid* Archibald Seaton, *and Mr.* Charles Fleeming, alias Hay, *Brother to the Earl of* Wingtoun, *all ſince abſconded, and upon the ſame Account declared Fugitives: And thus did riſe and continue in Arms without Her Majeſty's Special Authority firſt interponed;*

poned; and did levy War, and take up Arms againſt Her Majeſty. And farder, they having never before qualified themſelves by any Mark of good Affection to Her Majeſty or Her Government, did (at the Time aforeſaid) gather themſelves together, with their Accomplices, in Arms, with Swords and Piſtols, and other offenſive Weapons, in an open Correſpondence with the ſaid Enemies and Invaders, at the very time of their ſaid Invaſion; and being ſo convocate and convened in Arms, did march in one Body, or Company, with their ſaid Accomplices, ſeveral Days and Nights, to and from ſeveral Places, in the Shires of Stirling, Perth, *and other Shires adjacent, on purpoſe to encourage and ſtrengthen the ſaid Invaders, or at leaſt to raiſe Her Majeſty's other Subjects in Rebellion againſt Her. Like as for that End, they did openly drink to the good Health of their Maſter, as they called him; who could be none elſe but the ſaid* Pretender. *And did by their ſaid Riſing in Arms, and open Correſpondence with Her Majeſty's ſaid declared Enemies, and otherways, entice them and others to invade Her Majeſty's Dominions, to the deſtroying of Her, and Her good Subjects; at leaſt to deprive and depoſe Her from the Stile, Honour, and Princely Name of Queen and Sovereign of this and Her other Dominions; or at leaſt thereby endeavour the Alteration of the Right of Succeſſion to the Crown, ſo happily by Law ſettled upon Her Majeſty and Her Succeſſors. By all which they, and each of them were guilty, Art and Part, of the foreſaid Crimes of Treaſon, Rebellion, and Leſe-Majeſty, at leaſt of Treaſonable Riſing and Convening in Arms, without Her Majeſty's Special Authority firſt had thereto; at leaſt of a moſt unlawful Convocation in Arms, in a moſt dangerous and threatening Seaſon, and in open Correſpondence with the ſaid Enemies and Invaders; to the Deſtruction of Her Majeſty's Government, and of the Quiet and Peace of Her Dominions. Which Crimes, all or any of them, being found proven againſt all or any of the forenamed Perſons, by the Verdict of an Aſſize, before the Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary; They, and each of them, ought to be condemn'd by Sentence and Doom of the ſaid Lords Commiſſioners, to forfault their Lands, Lives and Goods, as Traitors; and be otherways puniſhed in their Perſons and Goods, by the Pains of Law, to the Example and Terror of others to commit the like in Time coming.*

Sic Subſcribitur,

JA. STEUART.

PURSUERS.

Sir *James Steuart*, of *Goodtrees*, Her Majeſty's Advocate.
Mr. *William Carmichael*, one of Her Majeſty's Sollicitors.
Sir *Walter Pringle*, and Sir *Francis Grant*, Advocates.

Procurators in DEFENCE.

Sir *Patrick Home*,
Sir *David Forbes*,
Sir *James Steuart*,
Mr. *Alexander Macleod*,
Mr. *James Graham*,
Mr. *Walter Steuart*,
Mr. *John Elphingſton*,
Mr. *Colin Mackenzie*,
Mr. *Charles Cockburn*, and
Mr. *David Lauder*,

Advocates.

My Lord Advocate judicially produced Her Majeſty's Letter, authorizing and requiring his Lordſhip to raiſe and inſiſt in the aforeſaid Proceſs; whereof the Tenor follows, ſuperſcribed thus:

ANNE R.

" Right Truſty and Well-beloved, We greet you well. Whereas " *James Stirling*, Laird of *Keir*, *Archibald Seaton*, Laird of *Touch*, *Archibald Stirling*, Laird of *Carden*, *Charles Stirling*, Laird of *Kippendavie*, " and *Patrick Edmonſton*, of *Newtown*, were about the Time of the late " intended Invaſion apprehended by Warrants, for Suſpicion of Treaſon, " and treaſonable Practices, againſt Us and Our Government; and have " ſince been committed by Warrants for High-Treaſon, Depoſitions upon Oath having been made againſt them; Our Will and Pleaſure is, " and We do hereby authorize and require you, to raiſe a Proceſs in the " ordinary Form, before the Commiſſioners of Juſticiary, againſt them, " and each of them, for the treaſonable Practices wherewith they, or any " of them, are, or ſhall be charg'd. And herein you are to take the " Aſſiſtance of Sir *David Dalrymple*, Mr. *William Carmichael*, Sir *Walter Pringle*, and Sir *Francis Grant*, Advocates; or any two of them, " if neceſſary; and who are hereby required to concur with you accordingly. For all which, this ſhall be your Warrant." *Given at our Caſtle at* Windſor, *the nineteenth Day of* July, 1708, *in the ſeventeenth Year of our Reign.*

By Her Majeſty's Command,

Subſcribed thus, *SUNDERLAND.*

Directed on the Back thus,
To Our Truſty and Well-beloved
Sir *James Steuart*, Our Advocate for *Scotland.*

Which being read in Preſence of the ſaid Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, they ordained the ſame to be recorded.

Sic ſubſcribitur,

CROMERTIE, I. P. D.

Thereafter, there was a Petition preſented to the ſaid Lords, by *James Stirling* of *Keir*, *Archibald Seaton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonſton* of *Newtown*, humbly ſhewing, " That the Petitioners being indicted at the Inſtance of Her " Majeſty's Advocate for the Crimes of Treaſon and Leſe-Majeſty; " and this being the Day of their Compearance and Trial, they had, according to the Privileges allowed to all the Lieges, and confirmed by " Acts of Parliament, made choice of the following Lawyers, to appear " before their Lordſhips in their Defence; *viz.* Sir *Patrick Home*, Sir *David Forbes*, Sir *James Steuart*, Mr. *Alexander Macleod*, Mr. *Walter Steuart*, Mr. *James Graham*, Mr. *Colin Mackenzie*, Mr. *Charles Cockburn*, " and Mr. *John Elphingſton*. And it being alſo uſual in Caſes of Treaſon, " That Lawyers are publickly authorized and warranted to manage the " Trials in their Pannels Defence; therefore humbly craving their Lordſhips would be pleaſed to allow of the Petitioners Choice of the Lawyers above-mentioned, and to authorize theſe Gentlemen accordingly, " as the ſaid Petition bears."

Which being conſidered by the ſaid Lords, They by their Deliverance thereon, allowed ſuch Advocates as the Pannels ſhould think fit to employ to appear and debate for them in the above-mentioned Indictment; they being already ſufficiently authorized by Law for that Effect.

Sic ſubſcribitur,

CROMERTIE, I. P. D.

The ſaid Indictment being read, and fully debated, *viva voce*, in Preſence of the ſaid Lords, Pannels and Aſſizes; the ſaid Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, ordained the Pannels to give in their Information thereon betwixt and *Wedneſday*'s Night next; and Her Majeſty's Advocate to give in his, betwixt and *Friday*'s Night thereafter, in order to be recorded; and continued the Dyet till *Monday* next; at nine a-Clock, in the Forenoon; and ordained the whole Aſſizers and Witneſſes to attend then, each of them under the Pain of One Hundred *Merks*; and the Pannels to be carried back to Priſon.

INFORMATION *for the Laird of* Keir, *and Others, againſt Her Majeſty's Advocate.*

IT is alledged for the Pannels, denying always the Indictment, and haill Articles and Qualifications thereof; 1. That the Indictment is not relevantly libelled, in reſpect it does not condeſcend upon any Overt-Act or Deed done by them, that could poſſibly be ſtretched to infer the Pains libelled; and the Acts of Parliament libelled on, expreſly require ſuch Facts and Deeds to infer the Pains of Treaſon therein mentioned. As *Act* 3. *Parl.* 1. *James* I. *That none rebel openly or notourly.* And *Act* 14. *Parl.* 6. *James* II. bears, *And if it happens, any within the Realm, openly or notourly againſt the King to Rebel, or make War againſt the King's Lieges, againſt his Forbidding*, &c. And *Act* 2. *Seſſ.* 2. *Parl.* 1. *Charles* II. has theſe Words: *And ſhall, by Writing, Printing, Preaching, or other malicious and adviſed Speaking, expreſs or declare ſuch their Treaſonable Intentions*, &c. *And the Act* 1702. bears, *That it ſhall be High-Treaſon, by Writing, Speaking, or any other manner of way, to diſown or impugn Her Majeſty's Royal Authority*, &c. Which Laws, and generally all Laws, as well as the Nature of Crimes, require, That the ſame ſhould be by expreſs *Words*, *Writs*, or *Deeds:* and not ſtrained by remote Inferences and Conjectures: And in the preſent Caſe, there is neither *Words*, *Writ*, or *Deeds* condeſcended on, that could poſſibly be drawn to infer the Crimes libelled.

2. Whereas the Indictment bears, That the Pannels did convocate and convene in Arms, with others their Accomplices, and ſo did riſe and continue in Arms, without Her Majeſty's Special Authority firſt interponed; and did levy War, and take up Arms againſt Her Majeſty, *&c.* It is anſwered, That albeit Levying War againſt Her Majeſty, or riſing and continuing in Arms without Her Majeſty's Authority, be undoubtedly Treaſon when duly qualified; yet there is no Circumſtance of Fact, Word, or Writ, condeſcended on in the Indictment, that can be imagined to infer a Riſing in Arms, or Levying War againſt Her Majeſty. And albeit the Law ſtatutes anent Riſing in Arms, or Levying War generally; yet in all Libels duly founded thereupon, the Subſumption muſt condeſcend upon Particular Facts and Deeds, capable to be found and conſtrued a Riſing in Arms. The Common Law expreſſes it thus: *Qui injuſſu Principis bellum geſſerit, delectumve habuerit, exercitum comparaverit.* And our Law, *Act* 75. *Parl.* 9. *Q. Mary*, explains what it is to riſe in Arms; *viz. That no manner of Perſons attempt to do, or raiſe any Band of Men of War, or Horſe or Foot, with Culverins, Piſtolets, Pikes*, &c. *or other Munition bellical whatſomever, for Daily, Weekly, or Monthly Wages, in any Times to come, without ſpecial Licence in Writ had of our Sovereign Lady, and Her Succeſſors thereto.* And Sir *George Mackenzie*, in his *Obſervation* on *Act* 2. *James* I. defines Riſing in Arms thus: *The Riſing of Men in warlike manner by muſtering them, or Forming them in Companies, or Swearing them to Colours.* Nor are theſe Qualifications by themſelves ſufficient, unleſs there be a formidable Number: And therefore he cites the Caſe of *Macleod* of *Aſſint*, *Feb.* 2. 1674, where the Lords of Juſticiary refuſed to ſuſtain the Articles wherein it was libelled the raiſing of Men, and diſpoſing of them under Colours, to be relevant; except it were alledged, that they were an hundred Men or upwards, and were under Colours, or muſtered under weekly or daily Pay. Whence it is evident, that the Riſing in Arms muſt be by publick and notour Appearance of Companies in Arms, ſo as their Deſign and Oppoſition to Authority could not be doubted; whereof the leaſt Shadow cannot be alledged in this Caſe.

3. Whereas the Libel bears further, That the Pannels did gather themſelves together, with their Accomplices, in Arms, with Swords and Piſtols, and other offenſive Weapons, in an open Correſpondence with the ſaid Enemies and Invaders, at the very Time of the Invaſion: It is anſwered, That the ſaid Article anent Correſpondence is not relevantly libelled; there being no particular Condeſcendence of any Acts of Correſpondence paſs'd betwixt the Pannels and the Enemy, as is neceſſary to be condeſcended on for inferring the Crime libelled. Correſpondence with the Enemy, in the Common Law, is thus expreſſed; *Quive hoſtibus nuncium literaſve miſerit, ſignumve dederit, feceritive dolo malo hoſtes conſilio juventur.* And no ſuch Fact or Qualifications can ever be pretended, or alledged in this Caſe; and their meeting together ſo few in Number of near Relations and Neighbours, as it were lawful for them to do at all times, ſo the accidental Circumſtance of an imminent Invaſion could never render the ſame unlawful. Nor could their Travelling together for ſome Space in the Country, be ſtrained to any Deſign of encouraging Enemies, or to raiſe the Subjects in Rebellion; whilſt they were no other ways ap-

pointed or attended, than as they (and others of their Character) do uſually travel, in a moſt peaceable manner, without giving the leaſt Occaſion, by Word or Deed, to any Rebellion or Sedition. And as there was not then any Body of Men in Arms in the Kingdom, againſt Authority, to whom they could be imagined to reſort; ſo it is an Evidence that they had no mind of Convocating themſelves againſt Authority, that they did not uſe the Means in their Power, by convocating their Tenants and Followers in Arms, either for aſſiſting themſelves, or giving Countenance and Encouragement to others on any ſuch Deſigns.

4. Whereas the Libel mentions, That the Pannels did openly drink to the good Health of their Maſter, as they called him, who could be none elſe but the *Pretender*; it is no ways relevant. 1. Becauſe the drinking of any Perſon's Health is not a Crime, there being no Law againſt it. 2. There is no Perſon named, whoſe Health is ſaid to be drunk; and therefore cannot infer any Crime. And the Gloſs put thereupon, That it could be no other but the *Pretender*, is only a Conjecture and uncertain Inference of the Purſuers; which can be nowiſe ſufficient to fix a Crime upon others, who can only be anſwerable for what is clearly expreſs'd and declar'd by them, by plain Words, Writs, or Deeds.

It was reply'd for the Purſuer, 1. That the Libel was moſt relevant, in ſo far as it did expreſly bear, That the Pannels did riſe and continue in Arms, without her Majeſty's Special Authority firſt interponed: And the ſaid *Act* 5. *Parl.* 1. *Car.* II. declares it *Treaſon to the Subjects, or any Number of them, more or leſs, upon any Ground or Pretext whatſomever, to riſe and continue in Arms, without His Majeſty's Special Authority.* And the particular Qualifications and Circumſtances of their ſaid Riſing in Arms, will appear from the Probation.

2. The Pannels riſing in Arms, leaving their own Houſes, and marching in a Body thro' the Shires of *Stirling* and *Perth*, in Company with the other Perſons mention'd in the Libel, whereof ſome have been ſince denounced for not Compearance, to underly the Law therefore; at the ſame time that the Nation was threatened by an Invaſion of a *French* Fleet, with Land-Forces Aboard, cannot be underſtood to be upon any other Deſign, than on purpoſe to encourage and ſtrengthen the Invaders, and in open Correſpondence with them, eſpecially whilſt the Pannels can adduce no reaſonable Cauſe for their ſo Convocating and travelling together; and this was ſuſtain'd *Treaſon* in *Caldwel*'s Caſe.

3. The Laws libelled on, do not only make actual Riſing in Arms, and Levying War againſt the Sovereign, to incur the Crimes and Pains of Treaſon, but likewiſe any Attempt ſo to do: For any Attempt or *Conatus* in the Caſe of Treaſon, is to be puniſhed with the ſame Pains as the conſummate Crime, as the Law ſays, *Eadem enim ſeveritate voluntatem ſceleris qua effectum puniri Jura voluerunt.* And Attempts are reckon'd as Treaſon in the Acts above mention'd.

4. The Libel bearing Art and Part, is ſufficiently relevant, notwithſtanding the Generality thereof, ſuch Libels being expreſly ordained to be relevant by the Act of Parliament 151. *Parl.* 12 *Ja.* 16th. So that no Objection can be ſuſtained againſt the Libels as Irrelevant, upon the Account of the Generality thereof, ſince Art and Part is libelled; which takes off any Objection, for not particularly condeſcending upon the Pannels Acceſſion to the Crimes libelled.

It is Duplyed for the Pannels to the *Firſt*, That albeit the Riſing in Arms without Authority, be mention'd in General to infer the Crime of Treaſon, ſince the Law could not deſcend to every particular Qualification that might happen to infer Riſing in Arms to be Treaſon, but left the ſame to be determined by the Judges competent; yet the Purſuer of a criminal Libel muſt adduce ſpecial Qualifications, and circumſtantiate Matters of Fact, that may be ſufficient to infer, That the Pannels did treaſonably riſe in Arms, or otherways the Libel cannot be ſuſtain'd. For as it could not be allowed to libel in General, that a Perſon is guilty of Murder, ſo no more can it be allowed to libel in General, that a Perſon is guilty of riſing in Arms without Authority, the Propoſitions in theſe Libels being equally founded in Law; but the Subſumption muſt be cleared and qualified by circumſtantiate Matters of Fact, inferring the reſpective Crimes; and if it were otherways, theſe evident Inconveniences would follow.

As, 1. That the Pannels would be deprived of the Benefit of Exculpations, which could not eaſily be brought to meet with general Libels; whereas ſpecial circumſtantiate Matters of Fact might have been more readily taken off by proper particular Grounds of Exculpation, whereby the Deeds condeſcended on, might be applied to other reaſonable Cauſes, that might wholly exclude the *animus delinquendi*, or *dolus*, requiſite in all Crimes.

2. This Inconveniency would likeways be inevitable, That the Aſſize would become Judges of the Relevancy, as well as of the Probation. For if the Libel bearing in General the Pannels to be guilty of riſing in Arms againſt Authority, ſhould be ſuſtain'd, and the Qualifications left to be determin'd by the Probation, then the Aſſize would be Judges both of the Relevancy and Probation; for they behoved to determine, whether the Qualifications ariſing from the Probation, did amount to a Riſing in Arms, or other Crimes generally mention'd in the Statute: whence it might come to paſs, that Pannels might be put to the Knowledge of an Inqueſt upon irrelevant Crimes; and therefore Crimes ſhould be particularly ſubſumed, as Sir *George Mackenzie* obſerves in his *Criminals Tit. Libels.* Page 465.

To the 2d. it's Duplyed, That whether the Pannels Travelling for ſome Space from their own Houſes, either for Diverſion or Buſineſs, in the moſt peaceable Manner imaginable, had happen'd in the Time in the threatned Invaſion or not, could never alter the Nature of that Deed, ſince it cannot ſo much as be pretended, that they were *verſantes in illicito*; the Travelling in ſuch a peaceful Manner ſingly with Domeſtick Servants, being unqueſtionably allowed by Law. And this Defence of the Pannels Travelling in their uſual Manner, and with their ordinary Equipage, was ſo evident of itſelf, that the Purſuers acknowledged there could nothing culpable be inferred from it at other Seaſons; but that the Crime now inſiſted on was founded, in that their Meeting and Travelling was the Time of the threatned Invaſion, when a Fleet of Enemies Ships was upon the Coaſt. And yet the Libel does not bear, that the Pannels knew of any ſuch Deſign, or that the *French* were actually upon the Coaſt; and without this Knowledge, the Circumſtance which the Purſuers inſiſt chiefly to make the Crime, was, as to the Pannels, no Circumſtance at all. So that the Libel ſhortly reſolves in the Pannels Travelling with their ordinary Equipage, after their uſual way, in a peaceable Manner; which neither in common Senſe, nor in the Conſtruction and Interpretation of our Law, and Opinion of our Lawyers above-mention'd, can be pled a Riſing in Arms againſt Her Majeſty or Government, or give the Occaſion of the leaſt Suſpicion of any Intention that way. Neither can Suſpicions, albeit there had been more evident Grounds for them, be ſufficient to infer a Crime: the Law ſaying expreſly, That *ex Suſpitionibus nemo eſt damnandus, Leg.* 5. *ff. de Pœn.* And whereas it is pretended, that the Pannels have given no reaſonable Account of their Progreſs and March at that Time; and therefore leaves place for the Purſuers Conjectures; the ſame is no ways of any weight to fortify the Purſuers Libel; it being ſufficient for the Pannels to alledge, That the meeting of a few Gentlemen, and Travelling with Swords and Piſtols, as they were hitherto uſed, does not infer a Riſing in Arms. And to pretend that the Pannels ſhould give ſpecial Accounts of their Progreſſes, is plainly to found a Criminal Charge or Libel *ſuper inquirendis*, and ſo expreſly diſcharged by Law: And doubtleſs it is ſufficient for the Pannels to ſay, that their Meeting or Travelling together with ſuch ſmall Retinue, and in ſuch peaceable and unprovided Manner, could not give the leaſt Jealouſy to any Perſon whatſomever; and if this Defence were not ſuſtained, the natural Liberty of the Lieges would be very much circumſcribed; and no Man could be ſure, but the Action of his Life which he intended ſhould be moſt innocent, ſhould be the moſt fatal, as concluding him under Treaſon, and the worſt of Crimes. And the Practique in *Caldwel*'s Caſe is greatly differenced from this, in that there was a conſiderable Body of Men with all Sorts of Arms actually in Rebellion againſt the Government at the Time; and that *Caldwel*, with his Aſſociates, likewiſe of a conſiderable Number, had intercepted common Poſts, and particularly ſome Letters to the Earl of *Eglingtoun*, a Privy-Counſellor, which was an Ouvert-Act, and ſufficiently declared their bad Deſign; beſides theſe Sentences were reduced, and the Perſons reſtored *per modum Juſticiæ.*

To the 3*d.* it is Duplyed, That albeit it be generally received by Lawyers, that Attempt or *Conatus* in Treaſon is puniſhable as Treaſon; yet that is never to be underſtood of a naked Deſign or *actus animi*; the Law ſaying expreſly, that *Cogitationis pœnam nemo patitur, Leg.* 18. *ff. de Pœn.* and *neminem qui male facere voluit plecti equum eſt niſi quod factum voluit etiam fecerit.* But that *Voluntas* or *Conatus* mention'd in Law, muſt break out into an external Act; if not conſummating the intended Crime, at leaſt inchoating the ſame, ſo as to become a Deed obvious to the external Senſes, before it can be ſubjected to the Cenſure of human Laws. And albeit *Dolus* or *Propoſitum* be requiſite in all Crimes; yet not as it is latent in the Mind, but as it is expreſs'd and declar'd by an external Act. And ſo *Mattheus de Crim. in Proleg.* ſays, *Dolo contrahi crimen diximus, per dolum autem factum doloſum intelligimus.* As it is clear by the expreſs Statutes libelled upon, particularly the ſaid *Act* 2*d. ſeſſ.* 2. *Parl.* 1*ſt Ch.* II. That Treaſonable Intentions ſhould be expreſſed and declared by Writing, Printing, or adviſed Speaking, before the ſame can be ſaid to have inferred the Pains mention'd in the Act; yea, even where there was Writing alledged upon; yet in Mr. *Robert Caddel*'s Caſe, that was not found ſufficient to infer the Crimes in the Statute, unleſs it ſhould have been qualified, that the Writing was publiſhed, and out of the Writer's Hand, whereby the Attempt would become manifeſt; and in the Caſe of an Ouvert-Act, which was the Point upon which *Balmerino*'s Trial proceeded, and without which no Crime could have been found againſt him. And in the preſent Caſe, as the Pannels had truly no manner of ill Deſign, ſo no external Act whatſomever is, or can be condeſcended on, either of Word or Deed, that infers any Deſign of the Pannels to oppoſe Authority, or to act any thing contrair to Law, or their Duty to the Sovereign; for as they uſed their natural and innocent Liberty of Travelling in a peaceable Manner with their near Relations and Neighbours, for their Diverſion or Buſineſs, ſo when they were called by Authority, they did not abſent or withdraw themſelves, but readily appeared and gave Obedience, upon the firſt Citation.

To the 4*th.* it is Duplyed, That the Libelling of Art and Part, is not ſufficient to exclude the Objection upon the Generality of the Libel, becauſe Art and Part relates to the particular criminal Facts and Qualifications thereof libelled, and includes an Alternative, that the Perſon complain'd upon, was either Actor, or Art and Part of the criminal Facts and Deeds particularly libelled. Which general and indefinite Qualification of Acceſſion, Law and Cuſtom had not allowed, without a more ſpecial Condeſcendence of the Parties Acceſſion to the Deeds libelled, which could only be certainly and diſtinctly known by the Probation: But ſtill that does not take off the Neceſſity of ſpecial Condeſcendences of the Qualifications that make up the principal Crime libelled, without which Pannels could not have the Benefit of Exculpations; nor could the Relevancy be determined by the Judges, but remitted with the Probation to the Aſſize, which always has been cautiouſly ſhunned as of dangerous Conſequence. And in the preſent Caſe, the ſuſtaining of the Libel in the Generality thereof above-mention'd, would be a moſt dangerous Preparative; it being evident, that if a few Gentlemen, Meeting and Travelling together with their ordinair Retinue and Equipage, which is generally with Swords and Piſtols, could be thought to fall under the Act of Parliament of Riſing in Arms without the Sovereign's Conſent, no Gentleman in the Kingdom could be free from Grounds of a Criminal Proceſs, if the bearing ſuch Weapons ſhould be conſtrued a Riſing in Arms; and few or many making no Difference, as the Purſuer contends, it would neceſſarily follow, that two or three Perſons meeting or Travelling with Swords or Piſtols, might be liable to a Proceſs of Treaſon, as riſing in Arms without Authority; which were moſt abſurd, and of dangerous Conſequence to the Lieges. And as no Company can ever be found to have met and travelled in a more peaceable and inoffenſive manner than the Pannels have done, doing no Injury by Word or Deed to any Perſon whatſomever, and travelling in ſuch a ſimple Manner, as did exclude all imaginable Jealouſy of their having any Warlike Deſigns, or creating the leaſt Diſturbance to themſelves or others, and giving a ready Obedience when called by Authority on a ſimple Citation: So they ought to be Aſſoilzied from the ſaid groundleſs and irrelevant Libel.

The Pannels ſhall not take up the Lords Time in informing more particularly upon the other Circumſtances of the Libel, ſuch as drinking of Healths, Correſpondence, and enticing of the Country; by reaſon that my Lord Advocate did not inſiſt upon theſe in the Debate, but only pretended to have libelled them as Aggravations, which is of no Moment in a Proceſs of Treaſon, and can be of no manner of Effect in this Caſe, where the Crime libelled is ſo manifeſtly elided. *Sic ſubſcribitur,*

Alexr. Macleod.

Information for her Majeſty's Advocate againſt the Lairds of Keir, Touch, *and others, now Priſoners in the Tolbooth of* Edinburgh.

HER Majeſty's Advocate, holding the Indictment as repeated, and here premiſed, before he offer to anſwer and remove the Exceptions and Objections made againſt it for the Defenders; takes leave to remember, what cannot well be forgot, That the Occaſion of the preſent Trial was an actual Invaſion of an Enemy-Fleet with *French*, *Iriſh* and *Popiſh* Forces aboard, in *March* laſt, threatening an imminent Invaſion upon our Coaſt, to deſtroy her Majeſty, and all her good Subjects, and ruin our Religion, Laws and Liberties.

Which Invaſion was the more formidable, that it was intended and carried on by *Papiſts* and *French*, and by *Iriſh Papiſts*, the Dregs of both, which are certainly the worſt Characters that can be apprehended in an Enemy.

While we ſtood thus threatened by ſuch Enemies that had riſen up againſt us, and were ready to ſwallow us up quick, ſo that the Waters had overwhelmed us, and the Stream had gone over our Soul, if GOD had not appeared for us; and Her Majeſty, by his Bleſſing upon her careful and moſt vigilant Conduct, interpoſed for our Delivery, and when the Enemy was upon our Coaſt, and ready to enter our *Firth*, and when all good Men were in the greateſt Suſpence of the ſaddeſt Apprehenſions of what might enſue, by turning our Country at leaſt to a Field of Blood, and Scene of all Confuſions and Miſchiefs: Yet there were found amongſt us, even among *Scots Proteſtants*, a Knot of Men who may juſtly ſeem to have wiſhed and longed for that which all Men beſides feared.

It is now indeed made an Argument to exculpate, that they were ſo few; and yet it may far more reaſonably be wondered, that there was ſo much as one Man to be found of ſuch a deſperate Reſolution and Practice.

The Five Gentlemen now in the Pannel, being of the Knot mentioned, ſo ſoon as this Invaſion was noiſed abroad, and when it was brought juſt upon our Coaſt, then they think fit to leave their Houſes, and going with their Horſes and Servants, and all well armed with Swords and Piſtols, and other invaſive Weapons, they riſe and continue in Arms, without any lawful Authority interpoſed: And thus appearing in Arms, and marching from Place to Place in ſeveral Shires, and for ſeveral Days and Nights, as it were in Correſpondence with the foreſaid Invaders, did what in them lay (if not to riſe to their Aſſiſtance, at leaſt) to diſturb Her Majeſty's good Subjects, from the Oppoſition and Defence that was at that Time ſo neceſſary.

It's true, when their Hopes were diſappointed, then they ſhrunk home, and ſuch of them as had more to loſe than they knew how to ſave other ways, compeared and rendered when called; when others of them that had no more Guilt, but leſs to loſe, thought fit to retire and abſcond: Whereupon Her Majeſty moſt juſtly ordered, that the Perſons now in the Pannel ſhould be brought to this preſent Trial.

The Indictment exhibit againſt them founds, upon moſt plain and poſitive Laws and Acts of Parliament, *That none rebel openly againſt the King's Perſon or Government; That none levy War and take up Arms againſt the King and His Government; And that for any of the Subjects, more or fewer, to riſe and continue in Arms upon any Pretext, or to attempt the ſame without His Majeſty's ſpecial Authority firſt interponed, it ſhall be High-Treaſon; and that if any levy War, or take up Arms againſt the King, or entice Strangers or others to invade, and expreſs and declare ſuch treaſonable Intentions, he ſhall be adjudged a Traitor, and puniſhed as in the Caſe of High-Treaſon.* And then the Indictment ſubſumes, in the very Terms of the Law, *That at ſuch a Time, and in ſuch a Manner, and with the other Circumſtances mentioned, the Defenders did actually riſe and convene, and continue in Arms without Her Majeſty's ſpecial Authority firſt interponed; which in Law is juſtly conſtrued to be the Levying of War, and taking up Arms againſt Her Majeſty, and did plainly appear to be in a real Correſpondence with, and for the Encouragement of the* French *Invaders; whom thereby, and otherways they did entice, to the invading of Her Majeſty's Dominions, and the deſtroying of Her and all Her good Subjects: Of which Crime the Defenders being Actors, Art or Part, ought to be puniſhed with the Pains of Law.*

To this Indictment the Defenders made Anſwer, denying the Crime libelled with all its Qualifications; that the Indictment is not relevant, in reſpect it doth not condeſcend upon any Ouvert-Act or Deed that can be ſtretched to infer the Crime, or any treaſonable Intention; and that all the Acts of Parliament libelled upon, require ſuch open Facts and Deeds; and the Act of Parliament, *Car.* II. *Parl.* 1. *Seſ.* 2. requires expreſly, *That by Writing, Printing, Preaching, or other malicious and adviſed ſpeaking, ſuch treaſonable Intentions ſhould be expreſſed or declared*; nothing of which can be found in this Caſe.

To which it is replied, 1. That it is granted, That neither inward Thoughts nor Intentions, unleſs ſome way expreſſed or declared, can be made criminal, and far leſs treaſonable; but on the other Hand, when the Law and Acts of Parliament does ſet down a ſpecific palpable Deed, ſuch as riſing and continuing in Arms, which is viſibly an open Ouvert-Act, and requires no more for the declaring of the Rebels Intention, ſave his ſo riſing and continuing in Arms, without having Her Majeſty's Authority interponed; what more can be required, either as to the Ouvert-Act, ſince the Fact itſelf is truly and openly ſuch; or as to the Certainty of the Parties Intention when the Law hath aſcertained it, *viz.* By the want of Authority; which is plainly the preſent Caſe? But 2. It is to be adverted, That our old Laws libelled upon, do indeed bear open and notour Rebellion: As likeways, *The levying of War againſt the King and His Perſon and Government*: But theſe Laws having been found very liable to the very Exceptions that the Defenders now make againſt the Indictment when in the Year 1661 this came to be conſidered, and the Parliament judged fit to aſcertain and define the Crime of Treaſon, ſo as every Man might moſt plainly underſtand it, and that there could be no Place for any of the former Evaſions: The Act of Parliament condeſcends upon riſing and continuing in Arms, as the very open and Ouvert-Act requiſite to the Crime; and withal fixes the treaſonable Intention upon this one Qualification, That the riſing and continuing in Arms, is without His Majeſty's Authority interponed, a Negative that proves itſelf, and requires no other Evidence. 3. As to what the Act of Parliament, *Car.* II. *Par.* 1. *Seſ.* 2. *Cap.* 2. requires, *That ſuch treaſonable Intentions ſhould be expreſſed and declared*; theſe Words are plainly ſubjoined to a long Enumeration of ſeveral Points and Kinds of Treaſon, and are certainly only to be applied to the Caſes wherein the Intention may be doubtful, but can never, in any good Senſe or Reaſon, be applied to ſuch Deeds as the Law itſelf declares to be open, and to import the Intention, ſuch as riſing and continuing in Arms, levying of War, or taking up Arms, where both the Deed and the Intention are manifeſt, and by Law declared and condemned. And in effect to alledge, where there is an open riſing in Arms, or a levying of War, or the Maintaining a Fort or Garriſon, That yet the Intention ſhould be deſiderate, where the Law requires no more to prove, but that it is done without Authority, is viſibly abſurd.

Secondly, Where it is objected, that albeit riſing and continuing in Arms without Her Majeſty's Authority be undoubtedly Treaſon, yet it muſt ſtill be qualified by ſome Circumſtances of Fact, Word or Writ, to infer the Intention; and to libel riſing in Arms is but general, and it ought to be cleared by ſome particular Fact and Deed libelled, to make the riſing criminal. Thus the common Law ſays, *Qui injuſſu principis bellum geſſerit, delectumve habuerit exercitum comparaverit*, &c. And our Act of Parliament, Q. *Mary*, explains the Matter, *viz. That no Man raiſe Bands of Men of Weir on Horſe or Foot, with Piſtols and other bellical Arms, for Daily or Monthly Wages, without ſpecial Licence*, &c.

To all which it is anſwered, That it is granted by the Defenders, that riſing and continuing in Arms, if duly qualified to be againſt Her Majeſty, is undoubtedly Treaſon: But then is it not as evident, that all the Qualification that the Act of Parliament requires, is, that the ſame be done without Her Majeſty's Authority? So that where the Qualification is ſo plainly defined, to require any farther, is to impoſe on the Law. It's true, that the Act Queen *Mary*, ſpeaks of raiſing of Bands of Men of Weir, and keeping them under Pay; and the Common Law may alſo have ſomething of that Nature. But if the Act of Parliament 1661, thought fit ſo far to ſecure the Prerogative as to cut ſhort and forbid all riſing in Arms without Her Majeſty's Authority, under the Pain of Treaſon, is not this plain Law, which the Defenders could neither miſken, nor ought to have tranſgreſſed?

The Caſe of *Aſſint* is much inſiſted on, That it was not found to be a treaſonable Riſing, unleſs there had been more than an hundred Men convened, and muſtered under Colours and Pay. But, 1. A Practick cannot change the Law. 2. The Reaſon of that Practick is manifeſt, *viz.* That *Aſſints* Convocation was covered with another Colour and Pretext, and was certainly not againſt the Government; and therefore the ſaid Qualifications were required, which doth no ways hold in this Caſe.

For to deal plainly, and to cut off all the Defenders groundleſs Pretexts, that they were only innocently convened, that they had no Arms, but ſuch as are ordinary, and allowed to Gentlemen in their Travelling; that they were only a ſmall Number of Friends and Neighbours for their Diverſion and Recreation: That they had no Correſpondence with the Invaders, tho' their meeting and travelling together happened about that Time: And *laſtly*, That if they ſhould be overtaken on the Fact and Deed libelled againſt them, none could be in Safety to travel with Arms, even in the ſmalleſt Company.

To all this it is anſwered, 1. For all that the Defenders have alledged or can alledge for Excuſe, yet their meeting and marching in Arms, at the Time and Manner that they did, is generally under this Prejugee by all that ever heard it, that it was at leaſt the Height of Folly, and had the worſt of Appearances.

But 2. If the Defenders would have the Deed to be conſidered with all its Circumſtances, it is not declined. Now as to the Deed itſelf, it is open and palpable, *viz.* riſing and continuing in Arms. 2. It has all the Qualification that Law requires to make it criminal, *viz.* That it was without Her Majeſty's Authority being interponed. But 3. Admit of all the Circumſtances that the Defenders can alledge for alleviating, are they not only bare Suppoſition and Queſtion? What if they meet by Rencounter? What if they met for Diverſion? Are not ſuch Meetings ordinary? And what was acted by them againſt the Government? All which do not import ſo much as one poſitive colourable Excuſe. Whereas to conſider the Deed certainly condemned in Law on the other ſide, with its undeniable Circumſtances, *viz.* That the Defenders left their own Houſes, having no juſt Occaſion to invite them abroad: That they met in ſuch a Company as perhaps all of them never met before; that they met well mounted, and with Swords and Piſtols of all Sorts, better appointed than moſt Men that go to War; that they were thus well mounted and armed, beyond what the Law and Act of Parliament 1693, allows to Men of their Faſhion, there being none of them qualified to the Government; that all this happened when the Invaſion was generally known, and juſt upon our Coaſt: That they marched backward and forward for ſeveral Days and Nights, as it were hovering in expectation of what they look'd after: That they did not at all diſſolve and go home, until their Hope of the Invaſion was loſt; and that ſince ſeveral of them have abſconded. Can any Man lay and reflect upon theſe Things together, but he muſt ſay, That beſides their being clearly Guilty in the Terms of Law as having riſen and continued in Arms without her Majeſty's Authority, which in the Conſtruction of Law is to levy War againſt her Majeſty, their Intention was as treaſonable as the Law preſumes: So that upon the whole, this Judgment may be both righteouſly and ſafely paſs'd in this Matter, *viz.* That their riſing and continuing in Arms at the Time and in the Manner, and with the other Circumſtances libelled, without her Majeſty's Authority firſt interponed, was Treaſon, unleſs they could exculpate, by at leaſt ſome colourable or probable Pretext, which they never can prove, or have ſo much as alledged.

Nor could a Judgment of this Nature ſo clearly founded, be of the leaſt ill Conſequence or Inconvenience, ſince every ordinary Meeting bears its own Excuſe; nor can indeed a lawful Meeting of this Sort be found without Excuſe. And further, it would ſecure the Government, according to the true Intention of the Law, againſt all ſuſpicious and evil Deſigns and Attempts in Time coming.

The Defenders object, That the Indictment doth not libel relevantly, as to the Point of Correſpondence with the Invaders; which ſhould be qualified by a Condeſcendance on the particular Acts of Correſpondence; and, as the Common Law expreſſes it, That *Hoſtibus nuncium literaſve miſerunt, ſignumve dederunt, feceruntque dolo malo quo hoſtes conſilio juventur.*

To which it is anſwered; If Correſpondence with Invaders had been the principal Crime libelled, the Defenders might have contended for ſuch a Condeſcendance *quo modo* they correſponded: But when the Correſpondence is only libelled, *viz.* an open and real Correſpondence, by their riſing at the ſame Time in Arms without Authority, that a Foreign Enemy was actually invading: This real Correſpondence, or this Correſpondence *in re ipſa*, is more than ſufficient to make out the Preſumption of Law; *viz.* That their Riſing and Continuing in Arms without Authority, was plainly againſt Authority. If at the time of the Invaſion, ſome Hundreds of diſaffected Perſons had got together in Arms; would it have been doubted, but that their getting together at that Time in Arms, without Her Majeſty's Authority, was really to correſpond with the Invaders, and to countenance and encourage them in their Invaſion? If then all the Difference be, that the Defenders did convene in a ſmaller Number; it only remains to be conſidered, That the Act of Parliament doth expreſsly declare againſt any Number, their Riſing and Continuing in Arms without Authority; and that the ſame is Treaſonable; which fully reaches the Number libelled.

As to what is added, of their being ſo ſmall a Number, and only armed in the ordinary Manner accuſtomed by Gentlemen Travellers; it is already anſwered; and withal it is certain, that the greateſt Miſchiefs may have their riſe from ſmall Beginnings. And as for the Defenders, they were very early in their Appearance, and viſibly did what in them lay, both to encourage the Invaders, and to raiſe an Inſurrection in the Country: And it was only the Goodneſs of God, and her Majeſty's vigilant Conduct, that cut off both their further Hopes, and the increaſing of their Numbers; which might have been infallibly expected, if the Invaſion had ſucceeded.

The Defenders take notice of that Part of the Indictment, which alledges, That they did openly drink the good Health of their Maſter, who could be none elſe but the *Pretender*; which they alledge is noways relevant to infer the Concluſion of the Libel.

To which it is Anſwered, That the foreſaid Drinking having been only mentioned in the Libel for a further Illuſtration of the Defenders Intentions, it is granted, that *per ſe* it is not relevant to infer a Crime. But, 2. Being joined with the other Circumſtances above mentioned, even in its doubtful Senſe, it cannot be denied to import a further Diſcovery of theſe Gentlemen's Intentions, in appearing and continuing in Arms without Authority; which (in effect) is the principal Crime ſufficiently declared by the Act of Parliament itſelf, tho' it were not adminiculate by this and the other Circumſtances above-mentioned.

The Defenders go on to reſume and anſwer the Charge brought againſt them; but the whole of the Matter being above abundantly cleared, it may ſuffice to notice, that they ſtill inſiſt, That the Riſing in Arms libelled without Authority, is but general, and ſo could not infer the Crime of Treaſon, unleſs more particularly qualified: Whereas it is certain, that the Riſing in Arms is a ſpecifick Act; and of the which, if libelled circumſtantiately as to Time and Place, as it here is, makes a moſt particular Libel: and for qualifying the Intention of the Act, and of the Riſers, all that the Law requires, is, That the riſing and continuing in Arms, be without her Majeſty's Authority firſt interponed; which, in the Conſtruction of Law, is to levy War againſt her Majeſty.

The Defenders alledge, That to libel riſing in Arms in general, is no better than to libel Murder in general: But if Murder be libelled circumſtantiately, as to the Perſon Murdered, and the Time and Place, the Libel is no doubt particular and relevant, without any further Qualification. What then ſhould hinder, why riſing and continuing in Arms circumſtantiately libelled as to Time and Place, and plainly qualified as the Law requires, (*viz.* without her Majeſty's Authority) ſhould not alſo be a particular and relevant Libel of Treaſon?

But the Defenders ſay, That by ſuch a Libel they are deprived of the Benefit of Exculpation. But this is wholly groundleſs; it having been often ſaid, That if the Defenders can but qualify any probable Pretext for their riſing and continuing in Arms without Authority, to take off the Preſumption of the Law, it ſhould be admitted: But when they can qualify no Pretext, nor can aſſign the leaſt probable Cauſe for their riſing and continuing in Arms as they did, except it was to countenance Invaders, or to raiſe Inſurrections within the Country; how is it poſſible, that this their riſing in Arms without Authority, as is libelled, ſhould not be Treaſon? Nor is there any thing here left to the Judgment of the Aſſize, ſave moſt plain and palpable Matter of Fact; *viz.* That the Defenders roſe, and continued in Arms; which being qualified as the Law requires, *viz.* That it was without her Majeſty's Authority, it inevitably preſumes the treaſonable Intention; which being further joined with the Circumſtances mentioned in the Indictment, cannot but evince to all Men, That the riſing and continuing in Arms without Authority, and in the Circumſtances above-mentioned, was an Ouvert-Act of Rebellion; ſpecially when nothing is, or can be adduced, to give it a more probable Interpretation.

The Defenders inſiſt much, That they were not *verſantes in Illicito*; That they only went out for Diverſion, or Buſineſs, with their ordinary Arms and Servants: But what can be more *Illicitum*, than to riſe and continue in Arms without Authority; the very Deed forbid by the Law as Treaſonable? And what need of any further Qualifications of their Intention, ſince the Law makes *without Authority* to be ſufficient? And the Indictment doth alſo ſuperadd moſt pregnant Circumſtances, to verify their ill Intention; which are not ſo much as offered to be cavilled, except by, What if this? or, What if that? which plainly ſignify nothing.

The Defenders ſeem to inſinuate, That they did not ſo much as know there was an invading Fleet upon our Coaſt: But it is ſo notour, that at that Time the Invaſion was univerſally known, and likewiſe ſignified by a Proclamation, That this Alledgeance is manifeſtly diſingenuous.

But the Defenders further alledge (*Eſto*), That riſing and continuing in Arms, as they did, was ſuſpicious; yet Suſpicions cannot found a Libel of Treaſon. But the Defenders advert not, That it is not Matter of Suſpicion that is objected, far leſs their travelling with their ordinary Horſes, Arms and Equipage, as formerly they were wont; but plainly that at ſuch a Time, when the Country was openly invaded by a foreign and moſt formidable Enemy, they, being never qualified to the Government, ſhould have run together in Arms without her Majeſty's Authority; which is all that the Law requires to make them guilty, and which, in effect, with the other Circumſtances libelled, declares their treaſonable Intentions to a Demonſtration.

The Defenders ſay, That their Caſe differs from *Caldwal*'s: But albeit they may vary in ſome Circumſtances, yet 'tis certain, that as to the main, *Caldwal* and his Complices were found guilty of Treaſon, only for their raiſing of about Thirty or Forty, and continuing in Arms without Authority, when there was another Party in the Country engaged in an open Inſurrection. So that the Defenders have in like manner riſen and continued in Arms without Authority, when there was a far more dreadful Enemy imminent upon our Coaſt, cannot but fall under the ſame Conſtruction. And that *Caldwal*'s Proceſs and Doom was afterwards reduced, ſignifies nothing; ſince it was reduced for Reaſons wholly different and alien from the Caſe in Hand, and which are ſo well known, as they need not be repeated.

The Defenders do alſo endeavour to take off what was alledged from the Act of Parliament, That even the Attempt and *Conatus* in this Caſe is condemned, by telling us, that this *Conatus* doth alſo require an Ouvert-Act. But *Eſto*, it be ſo; what more Ouvert-Act can be required, than open Riſing in Arms? And what Doubt can there be of the Intention and Deſign, when both the Act of Parliament, and the other Circumſtances of the Deed, do ſo fully clear it? And therefore it is in vain to notice either *Caldwal*'s Caſe, wherein there was indeed no Sentence; or yet *Balmerino*'s Caſe, where the Ouvert-Act was thought to be doubtful; when the riſing and continuing in Arms is, in this Caſe, an Act both Ouvert in itſelf, and expreſsly defined to be ſuch by the Act of Parliament.

The Defenders are at ſome Pains to make it believed, That the Libelling of Art and Part cannot ſuſtain this Indictment. But, 1. The Advocate adheres to his Indictment, as libelled and qualified with Art and Part. 2. Though Art and Part be libelled, and the Act of Parliament makes it a Supplement for Relevancy in all Caſes; yet her Majeſty's Advocate finds no Neceſſity to enter further into that Debate, than to adhere as above; ſeeing that his Indictment is founded on clear Law, and that he as clearly ſubſumes in the Terms of Law; *viz.* The riſing and continuing in Arms without her Majeſty's Authority interpoſed; the Levying of War, and taking up Arms againſt her Majeſty, and open Correſponding with her Majeſty's Enemies, and our Invaders; and that not only by the above-mentioned real Correſpondence, but even by enticing them otherways to invade, as ſhall be proven, if needful. All which are too manifeſtly Acts and Deeds of Rebellion, to need the conſtructive Support of Art and Part, further than that Actor Art and Part, are perpetually connected together.

And therefore, upon the whole, ſince, as hath been ſaid, the Country was (at the Time libelled) in the moſt imminent Hazard of a moſt deſtructive Invaſion; and that at that very Time, the Defenders, to the great Surprize and Aſtoniſhment of all her Majeſty's good Subjects, did flee out in Arms, and convene and march, and troop together in Arms, without her Majeſty's Authority, which in Law is ſufficient; and that, with the other aggravating and moſt concludent Circumſtances above libelled, which were not offered to be taken off with any rational or probable Pretext; It appears to be without Queſtion, That the Defenders fall under all the Concluſions of the Libel, and ought to be made liable in the Pains thereof.

In Reſpect whereof, &c.

Sic ſubſcribitur,

JA. STEUART.

CURIA JUSTICIARIA *S. D. N. Reginæ, tenta in novo Seſſionis Domo Burgi de* Edinburgh, *Vigeſimo ſecundo Die Menſis* Novembris, *Milleſimo Septingenteſimo Octavo*; *per Nobilem & Potentem Comitem*, Georgium *Comitem de* Cromertie, *&c. Juſticiarium Generalem*, *& Honorabiles Viros* Adamum Cockburn *de* Ormiſtoun, *Juſticiarium Clericum*; *Dominos* Joannem Lauder *de* Fountainhall, Gulielmum Anſtruther *de eodem*, *&* Gilbertum Eliot *de* Minto; *Magiſtrum* Robertum Steuart *de* Tillicoutrie, *& Magiſtrum* Jacobum Erſkine *de* Grange; *Commiſſionarios Juſticiarii Dict. S. D. N. Reginæ.*

Curia Legitime Affirmata.

Intran.
James Stirling of *Keir.*
Archibald Seaton of *Touch.*
Archibald Stirling of *Carden.*
Charles Stirling of *Kippendavie*; and
Patrick Edmonſton, of *Newtown.*

Indicted and accuſed at the Inſtance of Sir *James Steuart*, her Majeſty's Advocate, and as having ſpecial Warrant for that Effect, for the Crime of Treaſon and Leſe-Majeſty, in Manner mentioned in the Indictment raiſed againſt them thereanent.

PURSUERS.

Sir *James Steuart*, her Majeſty's Advocate.
Sir *Walter Pringle*, and Sir *Francis Grant*, Advocates.

Procurators in DEFENCE.

Sir *Patrick Home*,
Sir *David Forbes*,
Sir *James Steuart*,
Mr. *Alexander Macleod*,
Mr. *James Graham*,
Mr. *Walter Steuart*,
Mr. *John Elphingſton*,
Mr. *Colin Mackenzie*,
Mr. *Charles Cockburn*, and
Mr. *David Lauder*, Advocates.

The Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, having conſidered the Indictment at her Majeſty's Advocate's Inſtance, againſt *James Stirling* of *Keir*, *Archibald Seaton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonſton* of *Newtown*, Pannels, with the foregoing Debate thereon; THEY FIND, The ſaid Pannels, their riſing and continuing in Arms without her Majeſty's Authority, and actually Correſponding with an open Enemy upon the Coaſt, ready to invade this Part of *Great Britain* called *SCOTLAND*, *Relevant* to infer the Pains of Treaſon libelled againſt the Pannels; and repel the whole Defences proponed for the Pannels, and remit the whole to the Knowledge of an Aſſize. *Sic ſubſcribitur,*

CROMERTIE, I. P. D.

The ſaid Lords, for ſeveral Cauſes and Conſiderations, continued the Dyet of the ſaid Cauſe 'till Three a-Clock in the Afternoon; and ordained Aſſizers and Witneſſes to attend then, ilk Perſon under the Pain of one hundred *Merks*, and the Pannels to be carried back to Priſon.

Poſt Meridiem.

CURIA JUSTICIARIA *S. D. N. Reginæ, tenta in novo Seſſionis Domo Burgi de* Edinburgh, *Vigeſimo ſecundo Die Menſis* Novembris, *Milleſimo Septingenteſimo Octavo*; *per Nobilem & Potentem Comitem*, Georgium *Comitem de* Cromertie, *&c. Juſticiarium Generalem*, *& Honorabiles Viros* Adamum Cockburn *de* Ormiſtoun, *Juſticiarium Clericum*; *Dominos* Joannem Lauder *de* Fountainhall, Gulielmum Anſtruther *de eodem*, *&* Gilbertum Eliot *de* Minto; *& Magiſtrum* Jacobum Erſkine *de* Grange; *Commiſſionarios Juſticiarii Dict. S. D. N. Reginæ.*

Curia Legitime Affirmata.

Intran.
James Stirling, of *Keir*.
Archibald Seaton, of *Touch*.
Archibald Stirling, of *Carden*.
Charles Stirling, of *Kippendavie*; and
Patrick Edmonſton, of *Newtown*.

Indicted and accuſed at the Inſtance of her Majeſty's Advocate, and as having ſpecial Warrant for that Effect, for the Crime of Treaſon and Leſe-Majeſty in Manner mentioned in the Indictment raiſed againſt them thereanent.

PURSUERS.

Sir *James Steuart*, her Majeſty's Advocate.
Sir *Walter Pringle*, and
Sir *Francis Grant*,
Advocates.

Procurators in DEFENCE,
Ut ante.

ASSIZE.

Sir *Thomas Young*, of *Roſebank*.
John Hamilton, Portioner of *Newbottle*.
William Turnbul, of *Currie*.
James Kinloch, of *Stonyflate*.
James Deans, of *Woodhouſelie*.

Henry Niſbet, younger, of *Dean*.
Sir *James Fleeming*, of *Rathobyres*.
Sir *John Clark*, of *Pennycook*.
John Hunter, Merchant in *Edinburgh*.
David Cleland, Merchant there.

James Gordon, Merchant in *Edinburgh*.
Gilbert Campbell, Merchant there.
William Duncan, Merchant there.
Alexander Brown, Merchant there.
Robert Walwood, Merchant there.

The Aſſize lawfully ſworn, and no Objection of the Law made by the Pannels in the contrary.

The Purſuer for Probation adduced the Witneſſes after Deponing, *viz.*

Mr. *David Fenton*, in *Dunkeld*, aged forty Years, or thereby, married; ſolemnly ſworn, purged of partial Counſel, examined upon the Libel, depones, That about the Time libelled, being about the twentieth or twenty-firſt of *March*; tho' he knows not the Pannels Names, yet, by their Faces, he remembers they were at his Houſe at *Dunkeld*, ſome of them two Days, and ſome but one Day; that two of them, that came there on *Sunday*, went away on *Monday* Morning; *viz. Carden* and *Kippendavie*; and that the reſt went away from his Houſe on *Tueſday*. Depones, That all of them were in Arms, all of them having Swords, and ſome Piſtols; but he cannot remember how many Pair of Piſtols he ſaw. That nine of them owned themſelves to be Maſters; and that there were ſeven Servants; and that he ſaw no other Weapons but Swords and Piſtols, as ſaid is. Depones, That all the Maſters lodged in his Houſe; but that the Servants and Horſes lodged in common Stables. Depones, That he did not hear any of them ſpeak of the Government, or the Invaſion that was then intended: And that he knows nothing of their Purpoſe or Deſign of coming to his Houſe, or why they were together. Depones, That when they went away, ſome of them went to the *Eaſt* Boat on the Water of *Tay*, in the way towards *Perth*; and others of them croſſed at the *Weſt* Boat, in the way towards *Strathbrand*. And this is all he knows, and is the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur, *Da. Fenton.*
CROMERTIE.

John Maccleran, Change-keeper at the Bridge of *Turk*, aged forty-ſix Years and upwards, married; ſolemnly ſworn, purged of partial Counſel, examined upon the Indictment, and Interrogate, depones, That about the fifteenth of *March* laſt, he ſaw the five Pannels at his Houſe, but that he was not at Home when they came, and came Home the next Day: And that he ſaw with them, *William Graham*, *Alexander Steuart*, Brother to *Ardvorlich*, and a Brother of *Touch*'s; and remembers of none others, but ſome Servants, whoſe Names he knows not. That they went away from his Houſe the next Morning; and that all of them had Swords, and ſome of them had Piſtols; and ſaw them have ſome few Guns, but he knows not how many. Depones, That he was not ſent on any Meſſage, nor knows of none other there being ſent on any Meſſage from his Houſe by the Pannels; and that they went from his Houſe ſtraight *Eaſtward* towards *Lenie*: And that he did not hear them ſpeak of any Perſon that they expected to meet at his Houſe. *Cauſa ſcientiæ patet.* And this is all he knows; and is the Truth as he ſhall anſwer to GOD.

And being further Interrogate, if he heard the Pannels ſpeak of the Government, or of King *James*, or the Prince of *Wales*, or of the *French* Invaſion, or of their landing in any Place in the *North*; depones *Negative*. And this is alſo the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur, *John Maccleran.*
CROMERTIE.

Daniel Morriſon, Servant to the Laird of *Keir*, aged twenty-three Years or thereby, unmarried, ſolemnly ſworn, purged of partial Counſel, examined and Interrogate, depones, That about the Time libelled, he ſaw the Pannels, with ſome others, to the Number of ten or twelve Horſe, at *Dunkeld*, and at *Appinadove*, and at the Head of *Lochearn*; and that they had Swords and Piſtols, but no other Weapons that he ſaw; depones, That the firſt Place he ſaw the Pannels, was at a Place near the Bridge of *Turk*, and went then to *Appinadove*, and from that to *Dunkeld*; depones, That he heard, that there was one *Campbell* who commanded a Party at the Bridge of *Allan*, and that *Keir* being informed thereof, and that they deſigned to apprehend him and his Horſes, occaſioned his going away with his Horſes; and that *Touch* was with him that Morning, and went along with him to *Dunkeld*, and that they met *Carden* and *Kippendavie* at the Bridge of *Turk*; and that *Newtown* came there that Night, and from thence went all to *Lochearn*; depones, He heard them ſpeak nothing of the pretended Prince of *Wales*, or of the Invaſion then intended; and that *Keir*, *Carden* and *Touch*, came home together from *Dunkeld*; and that to the beſt of the Deponent's Memory, it was on the 23d of *March* that they were at *Dunkeld*, and that he knows not what was the Occaſion of their parting; and depones, That it was on the ſeventeenth of that Month that they went from *Keir*; and depones, That *Carden* and *Newtown* had neither Sword nor Piſtol that he ſaw, and that none of his Servants had either Piſtol or Sword, except *Keir*'s Man, who had a Sword; and depones, That *Touch*'s Brother, who was in Company, had neither Sword nor Piſtol that the Deponent ſaw. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD. And depones he cannot write. *Sic ſubſcribitur,*

CROMERTIE.

Peter Wilſon, Servant to the Laird of *Keir*, aged thirty Years, or thereby, *ſolutus*, ſolemnly ſworn, purged of partial Counſel, examined upon the Libel, and Interrogate, depones, That about the ſeventeenth Day of *March* laſt, *Keir*, accompanied with *Touch* and his Brother, and others, to the Number of five Horſes, came from *Keir*, and were that Night at the Bridge of *Turk*, where *Carden* and *Kippendavie* met them, and went all of them next Day to *Appinadove*, where one Mr. *Hay* met them; depones, That the Occaſion of *Keir*'s going from his Houſe, was the Apprehenſions he had of being ſeized with his Horſes by the Forces then lying at *Stirling*, as he heard. Being Interrogate, if he heard the Pannel ſpeak any thing concerning the Government, the Prince of *Wales*, and the intended Invaſion, depones *Negative*; but that they heard that Admiral *Bing* had chaſed the *French* Fleet off the Coaſt, before they went from *Keir*; depones, That ſeveral of them had Swords and Piſtols, but cannot be poſitive whether *Carden* and *Touch*'s Brother had any or not; or if any of the other Servants had any, except the Deponent himſelf; and that they had no other Weapons that he ſaw; and depones, That it was at *Lochearn*, and not at *Appinadove*, that Mr. *Hay* met them. *Cauſa ſcientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur, *Patrick Wilſon.*
CROMERTIE.

The Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, ordain the Aſſize preſently to incloſe, and to return their Verdict To-morrow at twelve a-Clock, in the High Council-houſe, and the haill fifteen Aſſizers to be preſent each of them, under the Pain of two hundred Merks.

CURIA JUSTICIARIA *S. D. N. Reginæ, Tenta in Prætorio Burgi de* Edinburgh, *Vigeſimo tertio Die Menſis* Novembris, *Milleſimo Septingenteſimo Octavo, per Nobilem & potentem, Comitem* Georgium *Comitem de* Cromertie, *&c. Juſticiarium Generalem, & Honorabiles Viros* Adamum Cockburne *de* Ormiſtoun, *Juſticiarium Clericum*; *Dominos* Joannem Lauder *de* Fountainhall, Gulielmum Anſtruther *de eodem*, *&* Gilbertum Eliot *de* Minto, *& Magiſtrum* Jacobum Erſkine *de* Grange, *Commiſſionarios Juſticiarii Dict.* S. D. N. *Reginæ.*

Curia legitime affirmata.

The ſaid Day, the Perſons who paſſed upon the Aſſize of *James Stirling*, of *Keir*, and others, returned their Verdict in Preſence of the ſaid Lords, whereof the Tenor follows.

Edinburgh, 22*d November*, 1708.

The above Aſſize having incloſed, did choiſe Sir *James Fleeming* of *Rathobyres* their Chancellor, and *Gilbert Campbell*, Merchant in *Edinburgh*, to be their Clerk. And having conſidered the Indictment purſued at her Majeſty's Advocate's Inſtance, as having ſpecial Warrant from her Majeſty for that Effect, againſt *James Stirling* of *Keir*, *Archibald Seaton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonſton* of *Newtown*, for the Crime of Treaſon and Leſe-Majeſty, with the Debate thereupon, the Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary their Interloquitor pronounced thereupon, and Depoſitions of the Witneſſes adduced, They all in one Voice *Find* the Libel not proven. In Witneſs whereof (written by the ſaid *Gilbert Campbell*) theſe Preſents are ſubſcribed by our ſaid Chancellor and Clerk, Day and Date aforeſaid. *Sic ſubſcribitur,*

James Fleeming.
Gilb. Campbell, Clerk.

After opening and reading of which Verdict of Aſſize, the Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, Aſſoilzied the Pannels, and diſmiſſed them from the Bar: Whereupon they took Inſtruments. *Sic ſubſcribitur,* *CROMERTIE*, I. P. D.

CLXXXIV.

CLXXXIV. *The Trial of* HENRY SACHEVERELL, *D. D. upon an Impeachment before the Houſe of Lords for* High Crimes *and* Miſdemeanors, February 27, 17$\frac{09}{10}$, 9 Ann. *

The Firſt Day.

ABOUT Eleven of the Clock the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, for the Trial of *Henry Sacheverell*, Doctor of Divinity, in the Manner following:

The Lord Chancellor's Gentlemen-Attendants, two and two.

The Clerks of the Houſe of Lords, with the two Clerks of the Crown in the Courts of *Chancery* and *King's Bench*.

The Maſters in *Chancery*, two and two.

Then the Judges.

The Peers eldeſt Sons, and Peers Minors, two and two.

The Yeoman-Uſher of the Houſe.

The Gentleman-Uſher of the Black Rod.

Then the Peers two and two, beginning with the youngeſt Barons.

The Serjeant at Arms, with his Mace.

Then one of the Heralds.

Then the Lord Chancellor alone.

The Lords being ſeated in the Place for that Purpoſe prepared in *Weſtminſter-Hall*, and the Commons in a Committee of the whole Houſe being in the Seats prepared for them, and the Managers for the Houſe being at their Lordſhips Bar, the Serjeant at Arms made Proclamations as follow:

Serjeant at Arms. O yes! Our Sovereign Lady the Queen doth ſtrictly charge and command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Serjeant at Arms. O yes! *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, or thou forfeiteſt thy Recognizance.

Then Doctor *Henry Sacheverell* came to the Bar, and kneeled; his Counſel, *viz.* Sir *Simon Harcourt*, Mr. *Dodd*, Mr. *Phipps*, Mr. *Dee*, and Dr. *Henchman*, ſtanding near him at the Bar; and riſing again by Direction of the Lord Chancellor, the Serjeant at Arms again made Proclamation as follows:

Serjeant at Arms. O yes! Whereas a Charge of High Crimes and Miſdemeanors has been exhibited by the Houſe of Commons, in the Name of themſelves and all the Commons of *Great Britain*, againſt *Henry Sacheverell*, Doctor in Divinity; all Perſons concerned are to take Notice that he now ſtands upon his Trial, and they may come forth, in order to make good the ſaid charge.

Lord *Cowper.*

Lord Chancellor. Doctor *Sacheverell*, it is needleſs to give you any Directions concerning your Behaviour during the Time of your Trial, or the ordering your Defence, becauſe the Lords have not only allowed, but aſſigned you the Counſel you deſired, ſome both of the Civil and Common Law, who will be able to direct and adviſe you, not only in the Subſtance, but Form of your Defence. The Lords have alſo made an Order for ſummoning all ſuch Witneſſes as you have propounded to appear for you. And that you might be the better able to provide for your Defence, you have had your Liberty on the firſt Application for it, and giving Security for your Appearance; you have alſo had all the Time you thought fit to deſire, in order to prepare for your Defence: So that you ought ever to remember, that their Lordſhips have uſed towards you all the Indulgence you could reaſonably expect.

Then the Clerk, by Direction of the Lord Chancellor, read the Articles of Impeachment, Doctor *Sacheverell*'s Anſwer, and the Replication of the Houſe of Commons, as follows:

ARTICLES *exhibited by the* Knights, Citizens, *and* Burgeſſes, *in Parliament aſſembled, in the Name of Themſelves and of all the* Commons *of* Great-Britain, *againſt* Henry Sacheverell, *Doctor in Divinity, in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

WHereas his late Majeſty King *William* the Third, then Prince of *Orange*, did with an armed Force undertake a glorious Enterprize for delivering this Kingdom from Popery and Arbitrary Power; and divers Subjects of this Realm, well affected to their Country, joined with, and aſſiſted his late Majeſty in the ſaid Enterprize: And it having pleas'd Almighty God to crown the ſame with Succeſs, the late happy Revolution did take Effect, and was eſtabliſhed. And whereas the ſaid glorious Enterprize is approved by ſeveral Acts of Parliament, and amongſt others, by an Act made in the firſt Year of the Reign of King *William* and Queen *Mary*, intituled, 'An Act, declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown:' And alſo, by one other Act made in the ſame Year, intituled, 'An Act for preventing vexatious Suits againſt ſuch as acted in order to the bringing in their Majeſties, or for their Service;' and alſo by one other Act made in the ſame Year, intituled, 'An Act for appropriating certain Duties for paying the *States-General of the United Provinces* their Charges for his Majeſty's Expedition into this Kingdom, and for other Uſes: and the Actings of the ſaid well-affected Subjects, in Aid and Purſuance of the ſaid Enterprize,' are alſo declared to have been neceſſary, and that the ſame ought to be juſtified. And whereas the happy and bleſſed Conſequences of the ſaid Revolution are, the Enjoyment of the Light of God's true Religion eſtabliſhed among us, and of the Laws and Liberties of the Kingdom; the Uniting her Majeſty's Proteſtant Subjects in Intereſt and Affection, by legal Indulgence or Toleration granted to Diſſenters; the Preſervation of her Majeſty's Sacred Perſon; the many and continual Benefits ariſing from her Majeſty's wiſe and glorious Adminiſtration, and the Proſpect of Happineſs for future Ages, by the Settlement of the Succeſſion of the Crown in the Proteſtant Line, and the Union of the two Kingdoms. And whereas the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, did, by their Addreſs of the Seventeenth of *December*, in the Year of our Lord One thouſand ſeven hundred and five, lay before her Majeſty the following Vote or Reſolution, *viz.* 'That the Church of *England*, as by Law eſtabliſhed, which was reſcued from the extremeſt Danger by King *William* the Third of glorious Memory, is now, by God's Bleſſing, under the happy Reign of her Majeſty, in a moſt ſafe and flouriſhing Condition; and that whoever goes about to ſuggeſt or inſinuate that the Church is in Danger under her Majeſty's Adminiſtration, is an Enemy to the Queen, the Church, and the Kingdom:' And by their ſaid Addreſs did humbly beſeech her Majeſty to take effectual Meaſures for making the ſaid Vote or Reſolution publick, and alſo for puniſhing the Authors and Spreaders of ſuch ſeditious and ſcandalous Reports; and on the twentieth Day of the ſaid *December*, her Majeſty was pleaſed to iſſue her Royal Proclamation accordingly. Yet, nevertheleſs, the ſaid *Henry Sacheverell* preached a Sermon at the Aſſizes held at *Derby*, *Auguſt* the Fifteenth, in the Year of our Lord One thouſand ſeven hundred and nine, and afterwards publiſhed the ſame in Print, with a Dedication thereof; and the ſaid *Henry Sacheverell* alſo preached a Sermon at the Cathedral Church of St. *Paul*, before the Lord Mayor, Aldermen, and Citizens of *London*, on the fifth Day of *November* laſt, being the Anniverſary Thankſgiving to Almighty God for the Deliverance from the *Gunpowder-Treaſon*, and for beginning the late happy Revolution, by giving his late Majeſty a ſafe Arrival here, and for completing the ſame, by making all Oppoſition fall before him, till he became our King and Governor; which ſaid Sermon he the ſaid *Henry Sacheverell* likewiſe publiſhed in Print, with a Dedication thereof to Sir *Samuel Gerrard*, Baronet, Lord Mayor of the City of *London*; and with a wicked, malicious, and ſeditious Intention to undermine and ſubvert her Majeſty's Government and the Proteſtant Succeſſion as by Law eſtabliſhed; to defame her Majeſty's Adminiſtration; to aſperſe the Memory of his late Majeſty; to traduce and condemn the late happy Revolution; to contradict and arraign the Reſolutions of both Houſes of Parliament; to create Jealouſies and Diviſions amongſt her Majeſty's Subjects; and to incite them to Sedition and Rebellion.

ARTICLE I.

He, the ſaid *Henry Sacheverell*, in his ſaid Sermon preached at St. *Paul*'s, doth ſuggeſt and maintain, 'That the neceſſary Means uſed to bring about the ſaid happy Revolution, were odious and unjuſtifiable: That his late Majeſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance: And that to impute Reſiſtance to the ſaid Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution.'

ARTICLE II.

He, the ſaid *Henry Sacheverell*, in his ſaid Sermon preached at St. *Paul*'s, doth ſuggeſt and maintain, 'That the foreſaid Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable: And aſſerts, That he is a falſe Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience: That Queen *Elizabeth* was deluded by Archbiſhop *Grindall*, whom he ſcurrilouſly calls a *Falſe Son* of the Church, and a *Perfidious Prelate*, to the Toleration of the *Genevian* Diſcipline: And that it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical Anathemas againſt Perſons intitled to the Benefit of the ſaid Toleration; and inſolently dares, or defies any Power on Earth to reverſe ſuch Sentences.'

ARTICLE III.

He, the ſaid *Henry Sacheverell*, in his ſaid Sermon preached at St. *Paul*'s, doth falſely and ſeditiouſly ſuggeſt and aſſert, 'That the Church of *England* is in a Condition of great Peril and Adverſity under her Majeſty's Adminiſtration; and in order to arraign and blacken the ſaid Vote or Reſolution of both Houſes of Parliament, approved by her Majeſty as aforeſaid, he, in Oppoſition thereto, doth ſuggeſt the Church to be in Danger; and, as a Parallel, mentions a Vote, That the Perſon of King *Charles* the Firſt was voted to be out of Danger, at the ſame Time that his Murderers were conſpiring his Death; thereby wickedly and maliciouſly inſinuating, That the Members of both Houſes, who paſſed the ſaid Vote, were then conſpiring the Ruin of the Church.'

ARTICLE IV.

He, the ſaid *Henry Sacheverell*, in his ſaid Sermons and Books, doth falſely and maliciouſly ſuggeſt, 'That her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution: And that there are Men of Characters and Stations in Church and State who are Falſe Brethren, and do themſelves weaken, undermine and betray, and do encourage, and put it in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment; and chargeth her Majeſty, and thoſe in Authority under Her, both in Church and State, with a general Male-Adminiſtration: And, as a publick Incendiary, he perſuades her Majeſty's Subjects to keep up a Diſtinction of Factions and Parties; inſtils groundleſs Jealouſies, foments deſtructive Diviſions among them, and excites and ſtirs them up to Arms and Violence: And that his ſaid malicious and ſeditious Suggeſtions may make the ſtronger Impreſſion upon the Minds of her Majeſty's Subjects, he the ſaid *Henry Sacheverell* doth wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture.'

All which Crimes and Miſdemeanors the Commons are ready to prove, not only by the general Scope of the ſame Sermons or Books, but likewiſe by ſeveral Clauſes, Sentences, and Expreſſions in the ſaid Sermons or Books contained; and that he the ſaid *Henry Sacheverell*, by preaching the Sermons, and publiſhing the Books aforeſaid, did abuſe his Holy Function, and hath moſt grievouſly offended againſt the Peace of her Majeſty, her Crown and Dignity, the Rights and Liberties of the Subject, the Laws and Statutes of this Kingdom, and the Proſperity and good Government of the ſame. And the ſaid Commons, by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any Time hereafter any other Article or Impeachment againſt the ſaid *Henry Sacheverell*; and alſo of replying to his Anſwers, or any of them, and of offering Proofs of all the Premiſſes, or any of them, and of any other Article or Impeachment that ſhall be exhibited by them, as the Caſe, according to Courſe of Parliament, ſhall require, do pray that the ſaid *Henry Sacheverell* be put to anſwer to all and every the Premiſes; and that ſuch Proceeding, Examination, Trial, Judgment, and exemplary Puniſhment, may be thereupon had and executed, as is agreeable to Law and Juſtice.

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* See State Trials, Vol. VIII. P. 540.

The ANSWER *of* Henry Sacheverell, *Doctor in Divinity, to the* ARTICLES *exhibited by the* Knights, Citizens, *and* Burgeſſes *in Parliament aſſembled, in the Name of themſelves, and of all the* Commons *of* Great Britain, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

THE ſaid *Henry Sacheverell*, ſaving to himſelf all Advantages of Exception to the ſaid Articles for the Generality, Uncertainty, and Inſufficiency thereof, and of not being prejudiced by any Words or want of Form in this his Anſwer, admits, That at the Requeſt of *George Sacheverell*, Eſq; High Sheriff of the County of *Derby*, he preached a Sermon at the Aſſizes held for that County, on the 15th Day of *Auguſt*, one thouſand ſeven hundred and nine; and that at the Deſire of the Right Honourable Sir *Samuel Gerrard*, Baronet, Lord Mayor of the City of *London*, he alſo preached a Sermon at the Cathedral Church of St. *Paul*, before the ſaid Lord Mayor, and the Aldermen and Citizens of *London*, on the fifth Day of *November* laſt; and that he cauſed the ſaid Sermons to be printed: But denies that he preached, or cauſed the ſame to be printed or publiſhed, with any ſuch wicked, malicious, or ſeditious Intent, as in the Preamble of the ſaid Articles is affirmed; the ſaid *Henry Sacheverell* having been induced to print the Sermon he preached at *Derby*, at the Requeſt of the Gentlemen of the Grand Jury for that County, to whom he humbly preſumed to dedicate the ſame, as the moſt public Acknowledgment he was capable of making, for the peculiar Honour he had received by their public Approbation of that Sermon. And the ſaid Lord Mayor having been pleaſed to expreſs his good Liking of the ſaid Sermon preached at St. *Paul*'s, the ſaid *Henry Sacheverell*, at his Requeſt, cauſed the ſame to be printed, with a Dedication thereof to him. And for Anſwer to the ſaid Articles, humbly ſaith,

Anſwer to Firſt Article.

To the firſt Part of the firſt Article, the ſaid *Henry Sacheverell* denies, That, in his ſaid Sermon preached at St. *Paul*'s, ‘ He doth ſuggeſt and maintain, that the neceſſary Means uſed to bring about the happy Revolution were odious and unjuſtifiable.’ Nor doth he in any Part of that Sermon affirm any Thing concerning the neceſſary Means uſed to bring about the happy Revolution. The ſaid *Henry Sacheverell* is ſo far from reflecting on his late Majeſty, or the happy Revolution, that he endeavours, in that Sermon, to clear the Revolution, and his late Majeſty, from the black and odious Colours which their greateſt Enemies has endeavoured to caſt upon both.

And as to that Part of the ſaid Article, whereby the ſaid *Henry Sacheverell* is charged with ‘ ſuggeſting and maintaining, that his late Majeſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance;’ the ſaid *Henry Sacheverell* doth acknowledge himſelf to have made ſuch Suggeſtion; and declares, that he made it not in Diſhonour, but in Vindication of his ſaid Majeſty. The Reſiſtance the ſaid *Henry Sacheverell* repreſents the late King to have diſclaimed, being ſuch a Reſiſtance as tended to the Conqueſt of this Realm, as plainly appears from that Part of his late Majeſty's Declaration which is referred to, and *verbatim* ſet forth at the Bottom of the ſame Page, in which he mentions his late Majeſty's declaiming any ſuch Imputation.

Whether the ſaid *Henry Sacheverell* was miſtaken or not, in expreſſing himſelf, as if the late King had diſclaimed any Imputation of Reſiſtance, when he the ſaid *Henry Sacheverell* meant thereby, that the late King diſclaimed the Imputation of a Deſign of Conqueſt, he humbly conceives, ſuch a Suggeſtion by him, plainly deſigned for the Honour of the late King, cannot in any reaſonable Conſtruction be thought a Reflection on his ſaid Majeſty, or deemed any Crime or Miſdemeanor.

For the further Juſtification of what the ſaid *Henry Sacheverell* ſaid in Reference to his late Majeſty's having diſclaimed any the leaſt Imputation of Reſiſtance, the ſaid *Henry Sacheverell* humbly obſerves, That in his late Majeſty's Declaration, the following Paſſages are contained: ‘ We have thought fit to go over to *England*, and carry over with us a Force ſufficient, by the Bleſſing of God, to defend ourſelves from the Violence of evil Counſellors.——We think fit to declare, that this our Expedition is intended for no other Deſign, but to have a free and lawful Parliament aſſembled.’

As to the laſt Charge in the ſaid Article, the ſaid *Henry Sacheverell* denies, ‘ That he doth in his ſaid Sermon ſuggeſt and maintain, that to impute Reſiſtance to the ſaid Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution.’ The Perſons whom the ſaid *Henry Sacheverell* in his Sermon deſcribes, as caſting black and odious Colours upon his late Majeſty and the Revolution, are not thoſe who impute Reſiſtance to the late Revolution, of whom the ſaid *Henry Sacheverell* affirms nothing, ‘ but thoſe new Preachers and new Politicians, who teach, in Contradiction to both Goſpel and the Laws, that the People have the Power veſted in them, the Fountain and Original of it, to cancel their Allegiance at their Pleaſure, and to call their Sovereign to Account for High-Treaſon againſt his Subjects; nay, and to dethrone and murder him for a Criminal, as they did the Royal Martyr by a Juſticiary Sentence; who are Maintainers of Anti-monarchial Schemes, and of ſuch damnable Poſitions as are, by the Laws of Church and State, condemned for Rebellion and High-Treaſon; and who urge the Revolution in Defence of ſuch Principles.’ Unleſs, therefore, thoſe who impute Reſiſtance to the Revolution, be the ſame with thoſe new Preachers and new Politicians above ſpecified, the ſaid *Henry Sacheverell* affirms nothing concerning them.

The ſaid *Henry Sacheverell*, upon the ſtricteſt Search into his ſaid Sermon preached at St. *Paul*'s, doth not find that he hath given any the leaſt colourable Pretence for the Accuſation exhibited againſt him in this firſt Article, but barely by his aſſerting the utter Illegality of Reſiſtance to the Supreme Power upon any Pretence whatſoever; for which Aſſertion he humbly conceives he hath the Authority of the Church of *England*, which in divers Paſſages of her Homilies, too large and too numerous to be here ſpecified, but by the ſaid *Henry Sacheverell* ready to be produced, hath taught and inculcated this Doctrine, as founded on the Word of God; particularly in the ſecond Part of the Sermon of Obedience, contained in the former Book of Homilies, ſet forth in the Time of King *Edward* the VIth, where are theſe Words: ‘ Here, good People, let us all mark diligently: It is not lawful for Inferiors and Subjects in any Caſe to reſiſt and ſtand againſt the ſuperior Powers; for St. *Paul*'s Words be plain, that whoſoever withſtandeth, ſhall get to themſelves Damnation; for whoſoever withſtandeth, withſtandeth the Ordinance of God.’

Which ſaid Book of Homilies is affirmed in one of the Thirty-Nine Articles of Religion, which concern the Confeſſion of the true Chriſtian Faith, to contain a godly and wholeſome Doctrine, and is ordered to be read in Churches, by the Miniſters, diligently and diſtinctly, that they may be underſtanded of the People. And the ſaid *Henry Sacheverell*, in further Maintenance of the ſaid Doctrine and Poſition, contained in the Book of Homilies, and of the Authority of thoſe Books, ſaith, That by an Act of Parliament made in the thirteenth Year of the Reign of Queen *Elizabeth*, intitled, ‘ An Act for the Miniſters of the Church to be of ſound Religion, *'tis enacted*, That no Perſon ſhould thereafter be admitted to any Benefice with Cure, except he ſhould firſt have ſubſcribed the ſaid Articles in the Preſence of the Ordinary, and publickly read the ſame in the Pariſh Church of that Benefice, with Declaration of his unfeigned Aſſent to the ſame.’ And that by an Act made in the fifth Year of her preſent Majeſty's Reign, intitled, ‘ An Act for ſecuring the Church of *England* as by Law eſtabliſhed, *it was enacted*, That the ſaid Act, made in the ſaid thirteenth Year of the Reign of Queen *Elizabeth*, ſhould remain and be in full Force for ever; and be inſerted in expreſs Terms in any Act which ſhould be made for ratifying the Union of the two Kingdoms of *England* and *Scotland*; and therein declared to be an eſſential and fundamental Part thereof.’ And the ſaid Act was accordingly inſerted in expreſs Terms, in an Act for the Union of the two Kingdoms; and thereby ratified and declared to be an eſſential and fundamental Part thereof.

And the ſaid *Henry Sacheverell* doth further humbly inſiſt, and is adviſed, that the aforeſaid Aſſertion is agreeable to, and warranted by, the Common Law of *England*, and divers Acts of Parliament now remaining in full Force.

The ſaid *Henry Sacheverell* doth with all Humility aver the Illegality of Reſiſtance on any Pretence whatſoever to be the Doctrine of the Church of *England*, and to have been the general Opinion of our moſt orthodox and able Divines, from the Time of the Reformation to this Day: This Doctrine hath, in the moſt ſolemn Manner, been taught in that Univerſity, whereof he hath been for more than twenty Years a Member; this hath been often, with public Approbation of each Houſe of Parliament, preached and printed; and in terms of greater Force than any uſed by the ſaid *Henry Sacheverell*, hath by the Right Reverend Fathers of our Church, dead and living, been avowed and maintained.

And the ſaid *Henry Sacheverell* was the rather induced to preach againſt the Doctrine of Reſiſtance of the ſupreme Power upon the fifth Day of *November*, becauſe on that Day the Church commemorates our Deliverance from the traitorous Attempts of rebellious Papiſts, and becauſe the Lawfulneſs of reſiſting the ſupreme Power, was originally a Popiſh Doctrine; for which Reaſons, as he humbly conceives, the Rubrick of the Office appointed for that Day, by her late Majeſty Queen *Mary* (of bleſſed Memory) directs, That after the Creed, if there be no Sermon, ſhall be read one of the ſix Homilies againſt Rebellion.

Whilſt, therefore, the Church of *England*, as by Law eſtabliſhed, is in a ſafe and flouriſhing Condition under her Majeſty's happy Adminiſtration, whilſt Popiſh Tenets are by all good Proteſtants condemned and abhorred, whilſt the Laws of this Realm continue in their full Force and Vigour, the ſaid *Henry Sacheverell* humbly hopes, that a dutiful Son of that Church, a ſincere Proteſtant, and a faithful Subject of her Majeſty, ſhall not ſuffer for aſſerting the Doctrine of Non-reſiſtance of the ſupreme Powers. But if this Doctrine be declared erroneous, and it ſhould pleaſe God that he ſhould ſuffer for aſſerting it, he truſts that God will enable him to ſhew his ſteady Belief of this Doctrine, by a meek and patient Reſignation to whatever ſhall befal him on that Account.

Anſwer to the Second Article.

To that Part of the ſecond Article which charges, that he the ſaid *Henry Sacheverell* doth ſuggeſt and maintain, ‘ That the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable;’ the ſaid *Henry Sacheverell* ſaith, That, upon the moſt diligent Enquiry, he hath not been able to inform himſelf, that a Toleration hath been granted by Law; but admits, that an Act did paſs in the firſt Year of King *William* and Queen *Mary*, entitled, ‘ An Act for exempting their Majeſties Proteſtant Subjects diſſenting from the Church of *England*, from the Penalties of certain Laws.’ Which Exemption the ſaid *Henry Sacheverell* doth not any where maintain or ſuggeſt to be unreaſonable, or that the Allowance of it is unwarrantable; but hoped that he had prevented any ſuch Miſapprehenſion, by declaring his ſincere Meaning in theſe Words contained in his Sermon preached at St. *Paul*'s;—‘ I would not be here miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence which the Government hath condeſcended to give them, which I am ſure all thoſe who wiſh well to our Church, are ready to grant to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law has preſcribed them.’

If there be any other Expreſſions concerning Toleration, which may ſeem to carry a dubious Senſe in any other Parts of his Sermon, he hopes that they will not be applied to the Exemption granted by Law, but will be interpreted agreeably to his avowed Approbation of that Law.

And to ſuch Part of the ſaid ſecond Article as charges, that the ſaid *Henry Sacheverell* aſſerts, ‘ That he is a falſe Brother with Relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience;’ he the ſaid *Henry Sacheverell* ſaith, That he having ſo plainly declared himſelf in Favour of the Exemption granted by Law, when he blames thoſe, who, upon all Occaſions, defend Toleration and Liberty of Conſcience, cannot be thought to reflect on the Defenders of that legal Exemption or Indulgence which he himſelf approves and defends: He doth indeed ſuggeſt it to be one Part of the Character of a falſe Brother, ‘ upon all Occaſions to defend Toleration and Liberty of Conſcience; and to excuſe the Separation, lay the Fault upon the true Sons of the Church, for carrying Matters too high.’ Which univerſal Defence of Toleration, and Excuſe of Separation, attended with the laying the Fault of ſuch Separation upon the true Sons of the Church, are by him jointly mentioned in one and the ſame Clauſe of the Sentence, and in one and the ſame Branch of the Character. So that his Reflection doth not extend to all who defend Toleration and Liberty of Conſcience, much leſs to thoſe who defend the Exemption granted by Law to Proteſtant Diſſenters; but to ſuch only, who at the ſame Time they defend univerſal Toleration and Liberty of Conſcience, do alſo excuſe the Separation, and lay the Fault thereof upon the true Sons of the Church, for carrying Matters too high. And theſe he did then, and ſtill doth, with all Humility, conceive to be juſtly blameable, and, if Members of this Church, to be Falſe Brethren.

And as to that Part of the ſecond Article, whereby the ſaid *Henry Sacheverell* is charged with aſſerting, *That Queen* Elizabeth *was deluded by Archbiſhop* Grindall, *to the Toleration of the* Genevian *Diſcipline*; he the ſaid *Henry Sacheverell* ſaith, He humbly conceives he hath good Authority from the Hiſtories and Monuments of thoſe Times for ſuch Aſſertion; but whether he hath, or hath not, he humbly apprehends ſuch Aſſertion to be no Proof of his maintaining or ſuggeſting, That the Exemption of Proteſtant Subjects diſſenting from the Church of *England*, from the Penalties of certain Laws, granted by an Act made in the firſt Year of the Reign of King *William* and Queen *Mary*, (which Exemption he ſuppoſes to be intended by the legal Indulgence or Toleration granted to Diſſenters, mention'd in the Preamble of the Articles, and by the Toleration granted by Law, mentioned in this ſecond Article) is unreaſonable, or the Allowance of it unwarrantable. For he is humbly of Opinion, that there is a wide and manifeſt Difference between a Toleration of the *Genevian* Diſcipline, and an Exemption of Proteſtant Diſſenters from the Penalties of certain Laws; between a Toleration allowed merely by the Regal Power, and an Exemption granted by Act of Parliament; which Exemption he is ſo far from thinking unreaſonable or unwarrantable, that from the Bottom of his Heart he wiſheth it, under the ſame Reſtrictions and Limitations, extended to all her Majeſty's Proteſtant Subjects throughout the whole Kingdom of *Great Britain*.

And as to ſuch Part of the ſecond Article, whereby the ſaid *Henry Sacheverell* is charged *with ſcurrilouſly calling the ſaid Archbiſhop* Grindall *a falſe Son of the Church, and a perfidious Prelate*; the ſaid *Henry Sacheverell* humbly hopes, that any harſh Expreſſions he hath uſed concerning that Prelate, may be rather excuſed, becauſe the ſaid Archbiſhop having permitted Innovations to be obtruded on the Church, did thereby incur the high Diſpleaſure of ſo good and pious a Princeſs as Queen *Elizabeth*, by whoſe Order he was ſuſpended, and continued under ſuch Suſpenſion to the Day of his Death. However, the ſaid *Henry Sacheverell* preſumes, that no Words ſpoken of an Archbiſhop above one hundred and twenty Years ſince deceaſed, will, in Conſtruction of Law, amount to an High Crime and Miſdemeanor.

And as to ſuch Part of the ſecond Article, whereby the ſaid *Henry Sacheverell* is charged with maintaining, *That it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical* Anathemas *againſt Perſons entituled to the Benefit of the ſaid Toleration*; he the ſaid *Henry Sacheverell* ſaith, That he doth not maintain or ſuggeſt that it is the Duty of ſuperior Paſtors to thunder out Eccleſiaſtical *Anathemas* againſt Perſons entituled to the Benefit of the Toleration; which Perſons, where he ſpeaks of ſuch *Anathemas*, are neither by him mentioned nor intended; but if the Expreſſions by him unapplied to any, muſt be determined to any one ſort of Perſons, he humbly conceives, that the Connection of his Diſcourſe will determine them *to thoſe ſchiſmatical and factious Perſons, who take Permiſſion for Power, and advance Toleration immediately into an Eſtabliſhment*; and ſuch ſchiſmatical and factious Perſons, he humbly apprehends, are not the Perſons entituled to the Benefit of the Act of Exemption, which was deſigned only to give ſome Eaſe to ſcrupulous Conſciences in the Exerciſe of their Religion.

And as to the laſt Part of the ſecond Article, whereby the ſaid *Henry Sacheverell* is charged *with inſolently daring or defying any Power on Earth to reverſe ſuch Sentences*; the ſaid *Henry Sacheverell* ſaith, That the Sentence which he the ſaid *Henry Sacheverell* dares any Power on Earth to reverſe, is ſuch, and ſuch only, as is ratified in Heaven; and ſuch Sentence he ſtill affirms to be by any earthly Power irreverſible; and hopes it will not be thought Inſolence in him to affirm, what he conceives would be Blaſphemy in any one to deny: And doth further acknowledge himſelf firmly to believe, that ſome Sentences pronounced by the Paſtors of the Church are ratified in Heaven; and that ſome Perſons exempted from Puniſhment by the particular Laws of the Land, may yet, by the Laws of Chriſt, be juſtly liable to ſuch Sentence; and that Schiſm, or a cauſeleſs Separation from a Church impoſing no ſinful Terms of Communion, is a Sin, which expoſes the Perſons guilty thereof to the Cenſures of the Church.

Anſwer to the Third Article.

As to ſo much of the third Article, as charges the ſaid *Henry Sacheverell*, *That he doth falſely and ſeditiouſly ſuggeſt and aſſert, that the Church of* England *is in a Condition of great Peril and Adverſity under her Majeſty's Adminiſtration; and that, in order to arraign and blacken the ſaid Vote and Reſolution of both Houſes of Parliament, approved by her Majeſty, he, in Oppoſition thereto, doth ſuggeſt the Church to be in Danger*; the ſaid *Henry Sacheverell* denies that he hath either aſſerted or ſuggeſted the Church of *England* to be in a Condition of great Peril and Adverſity under her Majeſty's Adminiſtration; but he doth freely acknowledge, that he hath in his Sermon ſuggeſted, That *when National Sins are ripened up to a full Maturity, to call down Vengeance from Providence on a Church and Kingdom debauched in Principles, and corrupted in Manners, and inſtead of the true Faith, Diſcipline and Worſhip, given over to all Licentiouſneſs both in Opinion and Practice, to all Senſuality, Hypocriſy, Lewdneſs, and Atheiſm, then we, (that is evidently) all the Members of ſuch a Church or Kingdom, are in Danger in ſuch deplorable Circumſtances.* And this Suggeſtion of Danger ariſing to a Church and Kingdom from Vice and Infidelity, he humbly preſumes is not oppoſite to the Vote of the two Houſes, or Seditious, but entirely agreeable to what is ſolemnly declared in an Act of Parliament made in the ninth and tenth of his late Majeſty King *William* the Third, for the more effectual ſuppreſſing of Blaſphemy and Profaneneſs; wherein it is affirmed, *That many Perſons had of late Years openly avowed and publiſhed many blaſphemous and impious Opinions, contrary to the Doctrines and Principles of the Chriſtian Religion; greatly tending to the Diſhonour of Almighty God, which might prove deſtructive to the Peace and Welfare of this Kingdom:* And he conceives, that ſince the paſſing that Act, the deteſtable Crimes, for the effectually ſuppreſſing of which that Act was intended, have greatly increaſed. And the ſaid *Henry Sacheverell* ſaith, the Suggeſtions by him made of Dangers ariſing to us from Vice and Infidelity, he apprehends to be in no wiſe more ſeditious or repugnant to the Vote of the two Houſes approved by her Majeſty, than the like Suggeſtions occurring in the ſolemn Prayers of the Church authorized by her Majeſty, and frequently uſed before each Houſe of Parliament; wherein *we beſeech God, that no Sedition may diſturb the State, nor Schiſm diſtract this Church; and that he would give us Grace ſeriouſly to lay to Heart the great Dangers we are in by our unhappy Diviſions.*

And as to ſo much of the ſaid third Article, whereby 'tis charged, *That the ſaid* Henry Sacheverell, *as a Parallel, mentions a Vote, That the Perſon of King* Charles *the Firſt was voted to be out of Danger, at the ſame Time that his Murderers were conſpiring his Death; thereby wickedly and maliciouſly inſinuating, that the Members of both Houſes who paſſed the ſaid Vote, were then conſpiring the Ruin of the Church*; he the ſaid *Henry Sacheverell* doth ſay, That he doth not draw any Parallel between the Vote concerning the King's Perſon, and the late Vote of the two Houſes, which he neither there, nor elſewhere in his Sermon, mentions: But had he ſuggeſted one Vote to be parallel to the other, which he hath not, yet would not he thereby have wickedly and maliciouſly inſinuated, that the Members of both Houſes, who paſſed the late Vote, were then conſpiring the Ruin of the Church; but would only have intimated, that as ſome Perſons were conſpiring the Murder of the King, whilſt others, no way privy to their wicked Intentions, voted his Perſon to be out of Danger; ſo when the two Houſes voted the Church of *England* to be in no Danger under his Majeſty's Adminiſtration, there might be ſome others who were conſpiring the Ruin of the Church; and many others, who, by their Vice and Infidelity, were drawing down God's Vengeance both on Church and Kingdom.

As the Vote of both Houſes, made four Years ago, did concern thoſe only who did then inſinuate the Church of *England* to be in Danger under her Majeſty's Adminiſtration; ſo it cannot, he preſumes, affect thoſe who do now ſuggeſt the Chriſtian Faith, which is the Foundation upon which every Chriſtian Church ſtands, to be endangered by thoſe atheiſtical and irreligious Principles which are daily from the Preſs propagated amongſt us, notwithſtanding the Proviſion made by the ſaid Act for ſuppreſſing Blaſphemy and Profaneneſs: So that the ſaid *Henry Sacheverell* thinks, that he might with Truth affirm, (as he did in his Sermon preached at *Derby*) *That there were never ſuch outrageous Blaſphemies againſt God and all Religion, Natural as well as Revealed, vented publickly with Impunity, in any Chriſtian Church or Kingdom in the whole World, as at preſent in our own*; of which Aſſertion the ſaid *Henry Sacheverell* is ready to produce undeniable and ample Proofs, if called thereto.

Anſwer to the Fourth Article.

As to the fourth Article, it contains ſeveral Charges of a very high and criminal Nature, of which the ſaid *Henry Sacheverell* knows his Heart to be entirely innocent; and he obſerves with Comfort, That whereas in the former three Articles he is ſaid to have maintained or aſſerted, as well as to have ſuggeſted, the Doctrines and Things therein laid to his Charge, in this fourth Article he is not accuſed of maintaining and aſſerting, but barely ſuggeſting what is therein contained: And he humbly hopes, that bare Suggeſtions or Inſinuations, could they with any Colour or Probability be made out, as he is fully ſatisfied they cannot, will not, under the moſt mild and gracious Government, (at a Time when ſeveral new Laws have been made for ſecuring the Liberties of the Subject) by your Lordſhips, the great Guardians of our Laws and Liberties, be adjudged ſufficient to involve an *Engliſh* Subject in the Guilt and Puniſhment of High Crimes and Miſdemeanors.

To the ſeveral Parts of the ſaid fourth Article, the ſaid *Henry Sacheverell* doth in all Humility anſwer: As to ſuch Part thereof whereby it is charged, *That the ſaid* Henry Sacheverell, *in his ſaid Sermons and Books, doth falſely and maliciouſly ſuggeſt, that her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution*; he the ſaid *Henry Sacheverell* ſaith, That he hath not made any mention, in either of his Books or Sermons, of her Majeſty's Adminiſtration in Eccleſiaſtical or Civil Affairs, or of her Miniſters: So far is he from ſuggeſting that her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution, that amongſt the ineſtimable Bleſſings which are owing to our Deliverance annually commemorated on the fifth of *November*, he reckons this to be one, *That her Majeſty, the good and pious Relict of the Royal Family, ſits now happily upon the Throne of her Anceſtors; and prays that God may long preſerve Her, for the Comfort and Support of the Church; and profeſſeth, that what he ſpoke proceeded from a tender Concern for her Majeſty's Perſon and Government:* And in the Dedication alſo of his ſaid Sermon preached at St. *Paul*'s, ſolemnly declares, as he did before in his Diſcourſe, *That his only Aim and Intention was earneſtly to contend for the Safety, Rights, and Eſtabliſhment of her Majeſty, together with thoſe of the Church.*

And as to ſuch Part of the ſaid fourth Article, whereby it is charged, That the ſaid *Henry Sacheverell* doth ſuggeſt, *That there are Men of Characters and Stations in the Church who are falſe Brethren*; the ſaid *Henry Sacheverell* ſaith, That the falſe Brethren, as deſcribed by him in his Sermon, *are either thoſe who propagate falſe Doctrines, or who give up the Diſcipline and Worſhip of the Church, or who are for a Neutrality in Religion, or who wiſh well to the Church of* England, *and are ready to ſacrifice their Perſons and Eſtates in their Vindication, but do not ſhew their Zeal in the Communion of the Church, as well as for it, in obeying her Precepts, as well as defending her Rights.* Theſe being the ſeveral ſorts of falſe Brethren enumerated by the ſaid *Henry Sacheverell*, if he ſhould have ſuggeſted that there are Men of Characters and Stations in Church and State, (Words by no Means reſtrained to the higheſt Characters and Stations) to whom the Denomination of falſe Brethren, in ſome or more Senſes of that Word, as by him interpreted, doth belong, he humbly hopes that ſuch Suggeſtion would not be deemed Falſe, Malicious, or highly Criminal.

And as to ſuch other Part of the ſaid fourth Article, whereby it is charged, That the ſaid *Henry Sacheverell* doth ſuggeſt, ‘ That there are ‘ Men of Characters and Stations in the Church and State, who do them- ‘ ſelves weaken, undermine and betray, and do encourage and put it ‘ into the Power of others who are profeſſed Enemies, to overturn and ‘ deſtroy the Conſtitution and Eſtabliſhment;’ the ſaid *Henry Sacheverell* denieth, that he ſuggeſteth any ſuch Things concerning Men of Characters and Stations in Church and State. Where he ſpeaks of thoſe ‘ who weaken, undermine, and betray, and encourage and put it in the ‘ Power of our profeſſed Enemies to overturn and deſtroy the Conſtitu- ‘ tion and Eſtabliſhment,’ there Men of Characters and Stations are not mentioned by him; and where he mentions Men of Characters and Stations, twelve Pages afterwards, the only Place wherein he mentions them, there he ſpeaks nothing of weakening, undermining and betraying, or encouraging and putting it in the Power of our profeſſed Enemies to overturn and deſtroy the Conſtitution and Eaſtbliſhment: And hopes, therefore, that he ſhall be no ways anſwerable for a ſuppoſed Reflection, which depends upon the Conjunction of Paſſages ſo widely diſtant from, and ſo little relating to each other. The Weakeners, Underminers, and Betrayers of our Conſtitution, and the Encouragers to whom the ſaid *Henry Sacheverell* doth in any Part of his Sermon refer, will, he preſumes, upon a candid Examination of thoſe Paſſages, appear to be one of theſe three Sorts of Perſons: either, ‘ Firſt, ſuch as ‘ by their Writings endeavour to ſubvert the Foundation of our Church ‘ and State; or, Secondly, ſuch, whether Writers or others, who are ‘ for a Latitudinarian Heterogeneous Mixture of all Perſons of what dif- ‘ ferent Faith ſoever, uniting only in Proteſtancy, which would let into ‘ her Bowels thoſe who neither believe her Faith, own her own Miſſion, ‘ ſubmit to her Diſcipline, or comply with her Liturgy; which he after- ‘ wards ſtiles the Model of an univerſal Coalition; or, Thirdly, thoſe ‘ occaſional Conformiſts, who have ſo far eluded the Corporation and ‘ Teſt Acts, by their abominable Hypocriſy, as to have undermined the ‘ Foundations, and endangered the Government, by filling it (as far as ‘ they could) with its profeſſed Enemies, that is, with themſelves.’ Of all theſe, and their Encouragers, the ſaid *Henry Sacheverell* confeſſes himſelf to have ſuggeſted that they do, in his Opinion, weaken, undermine, and betray the Conſtitution: But that either theſe, or their Encouragers, are Men of Characters or Stations in the Church or State, he hath not any where ſuggeſted.

And as to ſuch other Part of the ſaid Fourth Article, which charges the ſaid *Henry Saeheverell* ‘ with charging Her Majeſty, and thoſe in Au- ‘ thority under her, both in Church and State, with a general Male- ‘ Adminiſtration;’ the ſaid *Henry Sacheverell* ſaith, That he abhors the Thoughts of bringing any Charge againſt her ſacred Majeſty, whom he never mentions but in Terms of the profoundeſt Duty and Reſpect. Nor doth he tax thoſe in Authority with a General, or with any Male-Adminiſtration; which is a Word he hath never uſed, nor (as far as he can find) any other Word or Words by which the Thing is implied. So far is the ſaid *Henry Sacheverell* from making any undutiful Reflections upon her Majeſty or her Adminiſtration, that in the ſeveral Writings that he has publiſhed ſince her happy Acceſſion to the Throne, particularly in one which is an avowed Defence of her Title to the Crown, and Juſtification of her entering into a War with *France* and *Spain*, he hath expreſſed himſelf with the moſt hearty and loyal Zeal for her Majeſty's Perſon, Government, and Adminiſtration.

And as to ſuch other Part of the ſaid Fourth Article, whereby it is charged, ‘ That the ſaid *Henry Sacheverell*, as a publick Incendiary, per- ‘ ſuades her Majeſty's Subjects to keep up a Diſtinction of Factions and ‘ Parties:’ the ſaid *Henry Sacheverell* ſaith, That he is ſo far from being guilty of this Charge, that in his ſaid Sermon ‘ he invites the Separatiſts to ‘ renounce their Schiſm, and come ſincerely into the Church; and com- ‘ plains of thoſe who have villainouſly divided Us with the knaviſh Di- ‘ ſtinctions of High and Low Church-Men, and wiſhes we may be one ‘ Fold under one Shepherd; and that all thoſe invidious Diſtinctions that ‘ now diſtract and confound Us, were loſt, ſo that we might be terrible, ‘ like an Army with Banners, to our Enemies, who could never break in ‘ upon ſuch an uniform and well compacted Body.’

And to ſuch other Part of the ſaid fourth Article, as chargeth, ‘ That ‘ the ſaid *Henry Sacheverell* inſtills groundleſs Jealouſies, and foments de- ‘ ſtructive Diviſions among her Majeſty's Subjects;’ the ſaid *Henry Sacheverell* ſaith, That in his ſaid Sermon, ‘ he, on the contrary, rebukes and ‘ condemns thoſe, who, by falſe Inſinuations, and raiſing groundleſs Jea- ‘ louſies and Fears, embroil the Publick, and bring it into Confuſion.’

And as to ſuch other Part of the fourth Article, whereby it is charged, ‘ That the ſaid *Henry Sacheverell* excites and ſtirs up her Majeſty's Sub- ‘ jects to Arms and Violence;’ the ſaid *Henry Sacheverell* ſaith, God forbid that he ſhould be guilty of ſo heinous a Crime, who aſſerts the *utter Illegality of Reſiſtance to the Supreme Power* upon any Pretence whatſoever; which Aſſertion he conceives to be the chief, if not only Ground of the Charge exhibited againſt him in the Firſt Article.

In Confutation of this Charge, he begs Leave to recite one Paſſage out of his Sermon preached at *Derby* in the following Words: ‘ We may ‘ be Partakers of other Men's Sins, if we do not, to the utmoſt of our ‘ Power, endeavour to prevent or obſtruct their Commiſſion, when they ‘ manifeſtly endanger the Good of the Publick: As we are Members of ‘ any Government, or Society, we are all obliged in Point of Honour, ‘ Intereſt and Conſcience, to maintain its Security, promote its Welfare, ‘ and guard it againſt factious Deſigns, or ſeditious Conſpiracies, that ‘ may threaten its Conſtitution, diſcompoſe its Peace, or violate and ſub- ‘ vert its Laws. God and Nature have inveſted every Subject from his ‘ Cradle, with a Commiſſion to engage, diſcover, and diſappoint the Ene- ‘ mies of his Church and Country; and he that is either privy to, in- ‘ duſtriouſly conceals, or any way abets their ſchiſmatical, illegal or re- ‘ bellious Enterprizes, both in the Eyes of human as well as divine ‘ Laws, is an Accomplice and Partaker in the Guilt, a Traytor to God ‘ and his Prince, a Patron and Protector of Injuſtice, and a common Ad- ‘ verſary to himſelf as well as all Mankind’. And the ſaid *Henry Sacheverell* hopes, what he hath ſaid in the Dedication of the ſame Sermon, ‘ That ‘ there are not wanting ſome to preach the Truth, and others to ſupport ‘ it, at the Expence of their Lives and Fortunes,’ will not be conſtrued as exciting her Majeſty's Subjects to Sedition and Rebellion; ſince that Truth which he commends ſome for preaching, and others for ſupporting, is by him oppoſed to the Attempts of thoſe who betray and run down the Principles and Intereſts of our Church and Conſtitution; and ſince he there deſervedly commends the High Sheriff of that County, on the Account of his ſteady Loyalty and Zeal to ſerve her Majeſty and the Government, for which he hath been ſo remarkably diſtinguiſhed.

In the Sermon preached at St. *Paul*'s, he doth indeed excite Chriſtians *to put on the whole Armour of God, as wreſtling, not only againſt Fleſh and Blood, but againſt Principalities, againſt Powers, againſt the Rulers of the Darkneſs of this World, againſt ſpiritual Wickedneſs in high Places.* But he hath learned from the ſame St. *Paul*, That the Arms of Reſiſtance taken up by the Subjects againſt the higher Powers, are no Part of the ſpiritual Armour; and the Principalities and Powers by him mentioned being plainly diſtinguiſhed from Fleſh and Blood, cannot, he thinks, be ſo far miſinterpreted, as to be underſtood of earthly Potentates and Rulers.

And as to ſo much of the ſaid four Articles, whereby it is charged, that he the ſaid *Henry Sacheverell* doth wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture, that his ſaid malicious and ſeditious Suggeſtions may make the ſtronger Impreſſions upon the Minds of her Majeſty's Subjects; the ſaid *Henry Sacheverell* ſays, That having no malicious or ſeditious Suggeſtions to imprint, he could not intend to wreſt any Paſſages of the Holy Scripture to that wicked Purpoſe. Hard is the Lot of the Miniſters of the Goſpel, if, when they cite the Word of God in their general Exhortations to Piety and Virtue, or in their Reproofs of Men's Tranſgreſſions, or where they are lamenting the Difficulties and Conflicts with which the Church of Chriſt, whilſt Militant here on Earth, muſt always ſtruggle, the ſeveral Texts and Paſſages by them cited ſhall be ſaid to have been by them meant of particular Perſons and Things, and ſhall be conſtrued in the moſt Criminal Senſe, and be made by ſuch Conſtruction one Ground of an Impeachment for High Crimes and Miſdemeanors.

And as to all other Matters and Things in the ſaid Articles contained, and not herein before particularly anſwered unto, the ſaid *Henry Sacheverell* ſaith, He is not Guilty of them, or any of them, in Manner and Form as the ſame are charged upon him in and by the ſaid Articles; and humbly ſubmits himſelf to your Lordſhips Judgment.

HENRY SACHEVERELL.

The Commons Replication to the Anſwer of Doctor Henry Sacheverell.

THE Commons have conſidered the Anſwer of *Henry Sacheverell*, Doctor in Divinity, to the Articles of Impeachment exhibited againſt him by the Knights, Citizens, and Burgeſſes in Parliament aſſembled; and obſerve, that there are many Things in it not warranted by the Courſe of Proceedings upon Impeachments, foreign to the Charge of the Commons, unbecoming a Perſon impeached, and plainly deſigned to reflect upon the Honour of the Houſe of Commons in this Proceeding, for which they might demand your Lordſhips immediate Juſtice.

But the Commons being ſenſible that the Nature of the Crimes whereof he ſtands impeached, and the Neceſſity of bringing him to a ſpeedy and exemplary Puniſhment, require that all Occaſions of Delay ſhould be avoided; and not doubting that your Lordſhips will in due Time vindicate the Honour of the Commons, and the Juſtice of their Proceedings; the Commons do aver their Charge againſt the ſaid *Henry Sacheverell* for High Crimes and Miſdemeanors to be true, and that the ſaid *Henry Sacheverell* is Guilty in ſuch manner as he ſtands impeached, and that the Commons will be ready to prove their Charge againſt him at ſuch convenient Time as ſhall be appointed for that Purpoſe.

Lord Chancellor. Gentlemen of the Houſe of Commons, you may proceed with your Evidence.

Mr. *Attorney Gen.* Sir *J. Mountague.* MY Lords, by Command of the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, we appear in behalf of all the Commons of *Great Britain*, to make good the Impeachment againſt the Priſoner at the Bar, Doctor *Henry Sacheverell.*

The Miſdemeanors he ſtands accuſed of are ſpecified in the Articles which have been juſt now read to your Lordſhips, and the Facts there charged are laid to have been done with a wicked, malicious, ſeditious Intention to undermine and ſubvert her Majeſty's Government, and the Proteſtant Succeſſion as by Law eſtabliſhed; to defame her Majeſty's Adminiſtration; to aſperſe the Memory of his late Majeſty King *William*; to traduce and condemn the late happy Revolution; to contradict and arraign the Reſolution of both Houſes of Parliament; to create Jealouſies and Diviſions among her Majeſty's Subjects; and to incite them to Sedition and Rebellion.

My Lords, if the Charge is made good (as I am apt to think it will), I may preſume to ſay, no Words can either aggravate or alleviate the Offence.

My Lords, our Proofs in this Caſe will ariſe from Evidence which cannot be liable to the Imputation of being over-awed by the Weight of the Proſecutors, or corrupted or perverted; for out of his own Mouth we ſhall charge him, and by his own Words and Sermons we ſhall convict him.

My Lords, I can with Truth ſay, That it is no ſmall Trouble to the Commons of *Great Britain*, to have this Occaſion of coming in this manner before your Lordſhips: Could they have ſatisfied themſelves that her Majeſty's Honour, the Safety of her People, and the Proteſtant Succeſſion as by Law eſtabliſhed, were not highly concerned to bring this Man to ſpeedy Juſtice, they could very willingly have ſpared your Lordſhips this Trouble.

But when they conſidered of what Import it was to the Nation, how much it concerned the very Being of our Conſtitution, to diſcountenance and put an End to ſuch Sort of ſeditious Proceedings as the Doctor and ſome others of his Brethren have been lately practiſing in divers Parts of the Kingdom, they could not think otherwiſe, than that it was a Matter fit for the Grand Inqueſt of the Nation to take Notice of: And finding it to be a Cauſe of ſo great Moment to the Publick, they judged it fit to be taken under their own Management, and not truſt it to the Deciſion of any inferior Tribunal. And, my Lords, it muſt be agreed that your Lordſhips are the only proper Judges, when the whole Commons of *Great Britain* find it neceſſary to be the Proſecutors; nor can Doctor *Sacheverell* have any juſt Cauſe to complain of this manner of Proceeding, when it gives him ſo publick an Opportunity of defending himſelf (if his Innocence can clear him); and what can he deſire more, when he lies under ſo heavy an Accuſation, than to have your Lordſhips for his Judges, who have already ſhewn your great Indulgence to him, by allowing him (as the noble Lord from the Woolpack juſt now obſerv'd) all the Advantages a Man under his Circumſtances can aſk, or deſire to have?

My Lords, This Proſecution took its Riſe from a Complaint that was made in the Houſe of Commons the thirteenth of *December* laſt, of two Books which had been lately printed and publiſhed under the Name of Doctor *Henry Sacheverell.* The Books being delivered in, ſeveral Paragraphs were read; and by divers Paſſages, too many for me now to enumerate to your Lordſhips, it did plainly appear that both Books did contain very ſcandalous and ſeditious Matter, highly reflecting upon the Queen and Her Adminiſtration.

Hereupon the Doctor was ordered to attend; which he did accordingly the next Day, and at the Bar of the *Commons Houſe* own'd and avow'd both Books to be his; That they were Sermons he himſelf had preached; and that he had cauſed them to be printed and publiſhed.

After ſuch a Confeſſion, Your Lordſhips may imagine Her Majeſty's Dutiful *Commons* did expreſs their juſt Reſentments of the great Wrong and Injuries that were done to her Majeſty, and all that were in Authority under Her; and immediately ordered this Impeachment.

Your Lordſhips will perceive, by Peruſal of the Sermons and Epiſtles Dedicatory, that the Deſign and Drift of the ſame is to poſſeſs the People with ſtrange Notions, and terrible Apprehenſions of the Danger they are in, by a general Male-Adminiſtration of the Publick Affairs both in Church and State.

That both theſe Sermons were preached upon Publick Occaſions; and had, ſince the Printing thereof, been handed about with more than ordinary Application.

One of theſe Books is intitled [*The Communication of Sin,*] being a Sermon preached at the Aſſizes held at *Derby* in *Auguſt* laſt: And becauſe the Doctor thought he had not ſaid enough againſt the Queen and Her Government in the Sermon, he affixes a Dedication to it, wherein he affirms, That the Principles of our Church and Conſtitution are ſhamefully betrayed and run down: That both are perſecuted, on the one Side by rude and preſumptuous Inſults, and baſe undermining Treachery on the other; and that this Perſecution is carried on by aſſociated Malignants.

The other Sermon was preached at St. *Paul*'s *London*, on the Fifth of *November*, which is a Day ſet apart for a general Day of Thankſgiving, for two very great Deliverances vouchſafed to this Nation, by the Diſcovery of the Gun-Powder Plot, and the Arrival of his late Majeſty King *William*, to redeem us from Popiſh Tyranny and Arbitrary Power.

My Lords, When ye come to hear this Sermon read, I am confident that it muſt appear very ſtrange to find, that when there were two ſuch memorable Occaſions for the Doctor to have ſet forth his Eloquence in a Thankſgiving Sermon, he ſhould in great Meaſure paſs by both the Buſineſſes of the Day, and entertain his Audience with a long Harangue of the deplorable Condition the Church was in; not ſo much from Papiſts, (the avowed Enemies of the Church) as from her pretended Friends, as he calls them, the falſe Sons of the Church, who were crept into her Bowels, and ſhewn themſelves to be perfidious Brethren, by defending Toleration and Liberty of Conſcience, and favouring the Diſſenters.

And to ſhew his little Liking of the great Work which was begun to be wrought on that Day by the Arrival of His late Majeſty, the chief Turn of his Diſcourſe is, to cry up Non-Reſiſtance and Paſſive Obedience.

And to make it moſt evident, that what he ſaid of Non-Reſiſtance, was to caſt black and odious Colours upon the Revolution; he lays down a General Poſition, *That it is not lawful, upon any Pretence whatſoever, to make Reſiſtance to the ſupreme Power*; which Supreme Power, by other Paſſages, he explains to be the Regal Power.

And being apprehenſive, that every one that heard him talking in that manner againſt Reſiſtance, would ſee plainly he was cenſuring and condemning the Means that brought about the Revolution, and being deſirous to caſt as heavy Reflections as he could upon the Memory of King *William*, he aſſerts, *That the Prince of* Orange, *in his Declaration, utterly diſclaimed all manner of Reſiſtance.*

My Lords, Every Body knows, that knows any thing of the Revolution, That the Prince of *Orange* came over hither with an armed Force; and that in ſeveral Paragraphs of his Declaration, (the Doctor ſpeaks of) *His late Majeſty invites and requires all* Peers *of the Realm, both Spiritual and Temporal Lords, all Gentlemen, Citizens, and other Commoners, to come in and aſſiſt him, in order to the executing that Deſign he had then undertook, againſt all that ſhould endeavour to oppoſe him.*

Therefore it muſt be accounted very ridiculous for the Doctor to advance ſuch a Poſition, if he had no further Meaning in it, than to give an Account of the Prince of *Orange*'s Deſign in coming over here into *England.*

And this will make it neceſſary for your Lordſhips to conſider what is the true Meaning of this Aſſertion: Is it not plainly to make the Prince of *Orange* ſay one thing, and at the ſame time do directly another? And can this be done with any other Deſign, than to aſperſe the Memory of the late King *William?*

Then as to his Diſcourſe concerning Paſſive Obedience and Non-Reſiſtance, in ſuch Latitude as is there mention'ed; what could it tend to, but to caſt Reflections upon that Reſiſtance, which was the Means which brought about the Revolution?

For was there any Occaſion at that time to be ſo earneſt to cry down Reſiſtance, and preach up Paſſive Obedience?

Can any one pretend to ſay, there were any Symptoms of Diſcontent throughout the Nation, in any Parts thereof?

No: To our Comfort be it ſpoken, no Reign, no Age, no Hiſtory, can give a better Account of the good Diſpoſitions of the People to their Sovereign. Therefore, ſince the Preaching theſe Doctrines was needleſs, it does ſavour of ſome wicked Deſign, to be talking ſo unſeaſonably of this Subject.

If what the Doctor very frequently aſſerts in this Sermon be true, *That all are falſe Sons of the Church, who aſſiſted in bringing about the Revolution, or that joined in the Oppoſition that was made to the Encroachments which were begun by evil Miniſters in the Reign of King* James II. *againſt our Religion and Liberties*; let the Doctor a little conſider, how far his Character of a *Falſe Brother* may be carried!

Every Body knows, that liv'd in thoſe Days, that the Body of the Clergy of the Church of *England* made a noble Stand againſt the Encroachments which were then making, and appear'd as active as any of the Laity.

And was it not by their Writings, Preaching, and Example, that the Nobility and Gentry were animated to maintain and defend their Rights, Religion and Liberties? And as an undoubted Monument that this was the Senſe of the whole Kingdom at the Time of the Revolution, it is enter'd in the Journal of the Houſe of Commons, on the Firſt of *February*, 1688;

That the unanimous Thanks of the Houſe was given, Nemine Contradicente, *to the Clergy of the Church of* England, *for the great Service they had done their Religion and Country, by the Oppoſition they had made to the Execution of the Eccleſiaſtical Commiſſion, and their refuſing to read the King's Declaration for Toleration, which was then founded upon the diſpenſing Power.*

And how did the Archbiſhops receive the Meſſage that was ſent them upon this Occaſion, that they might communicate that Reſolution to the Clergy in their reſpective Dioceſes?

Our Journals tell us, That Mr. *Leviſon Gower* the next Day acquainted the Houſe of Commons, That he had attended the two Archbiſhops, according to Order, with the Thanks of the Houſe; and that Archbiſhop *Sancroft*, and the then Archbiſhop of *York*, returned their Thanks to the Commons for themſelves, and in Behalf of all their Clergy, for their favourable Vote.

Your Lordſhips ſee, the Commons were then happy enough to be thought favourable to the Clergy of the Church of *England*; and yet thoſe very Commons were the Men who paſſed the *Toleration-Act*, for exempting Proteſtant Diſſenters from the Penalties of certain Laws, as one of the moſt neceſſary Acts for the Good of the Kingdom.

And were they not encouraged to go about that Charitable Work, by the Petition of the Seven Biſhops, preſented to King *James*; wherein they acquainted him, *That it was not for want of a due Tenderneſs to Diſſenters, which made them refuſe reading his Declaration for Toleration to Diſſenters; in relation to whom, they were willing to come to ſuch a Temper as ſhould be thought fit, when the ſame came to be conſidered in Parliament.*

But now the ſame hath been conſidered in Parliament, and the Toleration hath been ſettled and eſtabliſhed by the Legiſlative Authority of the Kingdom, and hath been ratify'd and approv'd of in his Reign, by Her Majeſty and both Houſes of Parliament; Doctor *Sacheverell* belike diſapproves of it, and is pleaſed to tell us in a moſt extraordinary Manner, *That a Man muſt be very weak, or ſomething worſe, that thinks or pretends the Diſſenters are to be gained by any other Grants and Indulgences, than giving up our whole Conſtitution: And he that recedes the leaſt Tittle from it, to ſatisfy and ingratiate with theſe clamorous, inſatiable, Church-devouring Malignants, knows not what Spirit they are of.*

After ſuch an ample Declaration of his Opinion, what fatal Conſequences will attend the granting Indulgences to Diſſenters! Can the Doctor imagine, that his ſaying, in his Anſwer to the Articles, *That he intends not to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give them*, will take off the hard Cenſures he hath paſs'd upon Diſſenters?

And, my Lords, if an Archbiſhop, who hath been dead almoſt a hundred and twenty Years, cannot be permitted to reſt quiet in his Grave, but muſt have foul Aſperſions caſt upon his Memory, *as being a falſe Son, and a perfidious Prelate of the Church*, for interceding (as Doctor *Sacheverell* ſays) with Queen *Elizabeth* for the Diſſenters in thoſe Days: What muſt the preſent Archbiſhops and Biſhops of our Church expect from Doctor *Henry Sacheverell*, if they do not thunder out their Eccleſiaſtical Anathemas againſt Diſſenters, as often as the Doctor ſhall think there is Occaſion for them?

My Lords, I perceive the Doctor hopes to ſalve all he hath ſaid againſt Toleration to Diſſenters, by a nice Diſtinction he hath hit upon between an Indulgence and a Toleration.

Therefore he tells your Lordſhips, *That upon the moſt diligent Enquiry, he hath not been able to inform himſelf that a Toleration hath been granted by Law.*

Can the Doctor pretend to ſay, that this Word Toleration has never been made uſe of to expreſs the Religious Liberty and Indulgence that is granted and allow'd to Diſſenters? If we wanted Authorities to juſtify the Uſe of the Word, after the Doctor has made Uſe of it in the ſame Senſe over and over, in many Paſſages in his Sermons, as will be taken Notice of by the Gentlemen that are to make good the ſecond Article, the Doctor might be put in Mind, that Her Majeſty in Her Speech from the Throne, on the 17th of *December*, 1705, hath been pleaſed to declare, *That ſhe will inviolably maintain the Toleration.*

My Lords, As the Time was moſt unſeaſonable for the preaching ſuch Doctrines as theſe, ſo the Place was very improper for a Lecture of Politicks: For your Lordſhips do perceive this latter Sermon, which was preached on the fifth of *November* laſt, was preach'd in the great Metropolis of this Kingdom, before the Lord Mayor, Aldermen, and Citizens of *London*; from whoſe ſteady Loyalty to Her Majeſty, and firm Affections to the Revolution, ſuch vaſt Sums have been contributed for carrying on this long War againſt *France*, which hath proved ſo fatal to the *French* King, and other Enemies of this Kingdom.

And what more likely to give a fatal Wound to the public Credit at this Time, than ſuch Doctrine, which tends to the Overthrow of all the Acts of Parliament which have been made in Support of this Conſtitution?

And how ſtrange an Attempt was it for the Doctor to preach againſt the Revolution and this Government, before thoſe Citizens who owe the Reſtoration of their Charters, and all their Franchiſes and Immunities to it?

But, to do Juſtice to the Doctor, he in his Anſwer denies, he hath ſaid any thing of the Means which brought about the Revolution.

And, if your Lordſhips can believe him, he ſays, *he has endeavour'd to vindicate the Revolution from the black and odious Colours the Enemies of the Revolution would throw both upon that and his late Majeſty.*

To what End and Purpoſe then are theſe Doctrines preach'd with ſo much Vehemence at this Time, unleſs it be to reflect backwards upon what was done at the Time of the Revolution?

There is certainly no Occaſion to preach Non-Reſiſtance to her Majeſty's loyal and dutiful Subjects, who have never ſhewn the leaſt Inclination to give Diſturbances to this preſent Government.

Was there ever known a Time, in which there was ſo universal an Agreement in all Ranks and Degrees amongſt us? Does not every one almoſt ſtrive to ſhew their Zeal and Affection for Her Majeſty and Her Government? If there be any that are leſs quiet than their Neighbours, we ſhall find them amongſt the Friends of Doctor *Sacheverell*, who are profeſſedly no Friends to the Revolution. Nothing is more certain, than that all that are not ſatisfied with what was done at the Time of the Revolution, muſt be Enemies to the preſent Eſtabliſhment: And 'tis from this Source, all theſe Declamations againſt Men of Character and Station, both in Church and State, do proceed.

But I would have the Doctor conſider, that we have Laws to puniſh Spreaders of falſe News, and horrible Stories, of the great Men and great Officers of the Kingdom; and 'tis to put a Stop to theſe malicious Practices now on Foot, that this Delinquent is now brought to this Bar.

When we ſhall have read our ſeveral Proofs, which will juſtify every Particular charged on the Doctor in the Articles of Impeachment, the Commons will not doubt of your Lordſhips Judgment againſt this Defendant.

Mr. *Lechmere.* MY Lords, I am commanded to aſſiſt in ſtating to your Lordſhips the Grounds of the Charge of the Commons, and the Nature and Tendency of the Crimes now before you in Judgment.

Your Lordſhips have had open'd to you an Impeachment of the Commons of *Great Britain:* The Subjects of both Nations had an equal Concern in that which is the Ground of it: They are happily united in this Proſecution; and the common Intereſt of your Lordſhips, and us all, is inſeparable in its Event.

I need ſay no more to your Lordſhips of the Greatneſs of this Cauſe; not for the Perſon of the Offender, but for the high Importance of thoſe Matters which he has preſumed to draw in Queſtion.

The Commons, on their Part, have been exceeding careful, in every Step of this Proceeding, that it ſhould receive a Deliberation ſuitable to the *Weight of the Cauſe*, and the *Dignity of the Commons*; and they obſerve it to your Lordſhips, with great Satisfaction, That by your ready Concurrence, no Difficulties have ariſen to delay or diſcourage their Impeachment. They aſcribe this to a Deſire in your Lordſhips, equally with themſelves, to cultivate a good Correſpondence on ſo important an Occaſion, and to that due Regard your Lordſhips ſhew to the Courſe of Impeachments, *the ancient Right*, and *great Security* of the Commons.

In framing their Charge, the Commons have thought fit, by a Preamble to their Articles, to lay before you the Grounds of their Accuſation, in Terms the moſt cogent and expreſſive; to the End your Lordſhips might have early and perfect Notice of the Points on which the Commons intended to proceed; that your Lordſhips, and the whole Kingdom, might know the unanimous and hearty Zeal of the Commons, to aſſert the Juſtice of the late happy Revolution, and the Foundations of Her Majeſty's Government and Adminiſtration; and that the *Judgment* of the Commons, on this weighty Occaſion, might ſtand *fully on the Records of Parliament*, and be *tranſmitted to all Poſterity*.

Your Lordſhips will obſerve, in reading their Evidence, many Things excepted to by the Commons, precedent to the Ground of their firſt Article; but you will ſoon perceive, that all Parts of the Deſign of the Priſoner center in that. They could not therefore have acquitted themſelves, if they had not made that their Foundation: Being firmly convinced, they never can have the Honour and Juſtice of that glorious Work too much at Heart; nor be too jealous of thoſe, who under any Pretences, *though never ſo ſpecious, ſhall attempt* to leſſen it. And when they conſider the certain Dependance that the Juſtice of the late Revolution itſelf muſt have upon the Steps that led to it, they can have no doubt but your Lordſhips will think him equally Criminal, who condemns the Means by which it was effected.

My Lords, *The neceſſary Means* (which is the Phraſe uſed by the Commons in their firſt Article) are Words made choice of by them *with the greateſt Caution.* Thoſe Means are deſcribed (in the Preamble to their Charge) to be, That glorious Enterprize, which his late Majeſty undertook with an arm'd Force, to deliver this Kingdom from Popery and arbitrary Power; the Concurrence of many Subjects of the Realm, who came over with him in that Enterprize, and of many others of all Ranks and Orders, who appeared in Arms in many Parts of the Kingdom, in Aid of that Enterprize.

Theſe were the *Means* that brought about the Revolution, and which the Act that paſſed ſoon after, declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown, intends when his late Majeſty is therein called *the glorious Inſtrument of delivering the Kingdom*; and which the Commons, in the laſt Part of their firſt Article, expreſs by the Word *Reſiſtance.*

But the Commons, who will never be unmindful of the *Allegiance* of the Subjects to the *Crown* of this Realm, judg'd it highly incumbent upon them, out of regard to the Safety of Her Majeſty's Perſon and Government, and the ancient and legal Conſtitution of this Kingdom, to call that Reſiſtance the *neceſſary* Means; thereby plainly founding that Power, of Right and Reſiſtance, which was exercis'd by the People at the Time of the happy Revolution, and which the Duties of Self-preſervation and Religion called them to, upon the Neceſſity of the Caſe; and at the ſame time effectually ſecuring Her Majeſty's Government, and the due Allegiance of all Her Subjects.

Your Lordſhips will find, That the Priſoner, in his Sermon preached at *St. Paul*'s, has aſſerted a Doctrine in direct Defiance and Contradiction of that Reſiſtance uſed to bring about the Revolution; when he affirms the utter Illegality of Reſiſtance, on any Pretence whatſoever, to be a Fundamental of our Conſtitution: And, as your Lordſhips will hear it fully made out from the Proofs, by thoſe Gentlemen to whom that Part is aſſigned, he has alſo plainly declared himſelf, that even that Reſiſtance uſed at the Time of the late happy Revolution, is not to be excepted out of his fundamental Rule.

My Lords, when a Preacher of the Goſpel, and a Miniſter of the Church of *England*, even under this happy Eſtabliſhment, ſhall thus publickly condemn the Foundations on which it ſtands, in Defiance of her Majeſty and the great Council of the Nation then ſitting in Parliament; it becomes an indiſpenſible Duty upon us, who appear in the Name, and on the Behalf of all the Commons of *Great Britain*, not only to demand your Lordſhips Juſtice on ſuch a Criminal, but clearly and openly to aſſert our Foundations.

I crave Leave to remind your Lordſhips of the Condition of Things in both Kingdoms, immediately preceding the late Revolution: The Caſe is ſtated and recorded, between the late King *James* and the Subjects of both Kingdoms, in the ſeveral Declarations of the Rights of both Nations made by them at that Time.

I ſhall forbear to aggravate the Miſcarriages of that unhappy Prince, further than by ſaying, That it is declared in the Preamble to the Bill paſſed in *England*, *That by the Aſſiſtance of evil Counſellors, Judges and Miniſters, employ'd by him, he did endeavour to ſubvert and extirpate the Proteſtant Religion, the Laws and Liberties of the Kingdom, in the ſeveral Inſtances there enumerated.* And in that paſſed in the Kingdom of *Scotland*, it ſtands declared, *That, by the Advice of evil Counſellors, he did invade the fundamental Conſtitution of that Kingdom, and alter'd it from a Legal limited Monarchy, to an arbitrary deſpotick Power.*

Your Lordſhips, on this Occaſion, will again conſider the ancient legal Conſtitution of the Government of this Kingdom; from which it will evidently appear to your Lordſhips, That the Subjects of this Realm had not only a Power and Right in themſelves to make that Reſiſtance, but lay under an indiſpenſible Obligation to do it.

The Nature of our Conſtitution is that of a limited Monarchy, wherein the ſupreme Power is communicated and divided between Queen, Lords, and Commons, tho' the executive Power and Adminiſtration be wholly in the Crown. The Terms of ſuch a Conſtitution do not only ſuppoſe, but expreſs an original Contract between the Crown and the People; by which that ſupreme Power was [by mutual Conſent, and not by Accident] limited and lodged in more Hands than one: And the uniform Preſervation of ſuch a Conſtitution for ſo many Ages, without any fundamental Change, demonſtrates to your Lordſhips the Continuance of the ſame Contract.

The Conſequences of ſuch a Frame of Government are obvious: That the Laws are the Rule to both, the common Meaſure of the Power of the Crown, and of the Obedience of the Subject; and if the executive Part endeavours the Subverſion, and total Deſtruction of the Government, the original Contract is thereby broke, and the Right of Allegiance ceaſes: That Part of the Government thus fundamentally injured, hath a Right to ſave or recover that Conſtitution in which it had an original Intereſt.

Nay, the Nature of ſuch an original Contract of Government proves, That there is not only a Power in the People, who have inherited its Freedom, to aſſert their own Title to it, but they are bound in Duty to tranſmit the ſame Conſtitution to their Poſterity alſo.

'Tis miſ-ſpending your Lordſhips Time to illuſtrate this: 'Tis an eternal Truth, eſſential to the Government itſelf, and not to be defaced or deſtroyed by any Force or Device.

That the Rights of the Crown of *England* are legal Rights, and its Power ſtated and bounded by the Laws of the Kingdom; That the executive Power and Adminiſtration itſelf is under the ſtricteſt Guard for the Security of the People; and that the Subjects have an Inheritance in their ancient fundamental Conſtitutions, and the Laws of the Land, appears from every Branch of this Government. 'Tis the Tenor of all Antiquity; our Hiſtories and Records afford innumerable Proofs of it: And when your Lordſhips look back on the Hiſtory of *Magna Charta* alone, you can't doubt of the Senſe of our Anceſtors, that they were Maſters of Franchiſes that were truly their own, and which no earthly Power had Right to extort from them. Many others, of inconteſtable Authority, are thoſe valuable Relicts which our Popiſh Anceſtors have left us, as Proofs of the Freedom of our Conſtitution, of the conſtant Claims they made, both in and out of Parliament, to their Inheritance in their Laws againſt the Encroachment of arbitrary Power; and when the *laſt Extremity* called them to it, they never fail'd to vindicate them by the Arms of Reſiſtance.

" Such was the Genius of a People, whoſe Government was built on
" that noble Foundation, *not to be bound by Laws to which they did not con-*
" *ſent*; that muffled up in Darkneſs and Superſtition, as our Anceſtors
" were, yet that Notion ſeemed engraven on their Minds, and the Impreſ-
" ſions ſo ſtrong, that nothing could impair them."

Upon the Reformation of Religion, when all foreign Power was aboliſhed, and the Supremacy of the Crown was reſtor'd to its Height by many Acts of Parliament, your Lordſhips will always find Declarations at the ſame Time made of the Rights of the People; particularly that of the 25th of *H.* VIII. where 'tis ſaid, That *the Realm of* England *is free from any Man's Laws, but ſuch as have been deviſed, made and ordained within the ſame, for the Wealth of it; or ſuch other, as the People of the Realm have taken at their free Will and Conſent, and by long Uſe have bound thenſelves to, as the ancient eſtabliſhed Laws of the Realm*, and none otherwiſe.

Your Lordſhips will, I doubt not, conſider thoſe Laws made at that Time, to be freſh and remarkable Declarations and Ratifications of the original Contract.

This excellent Conſtitution of our Government has been, thro' many Struggles, preſerv'd from that Time to this, and the true Spirit of the *Engliſh* Nation ſtill kept alive, down to the Times of the late happy Revolution; at which Time the Danger being imminent, not only to the Laws and Liberties of the Kingdom, but to the Proteſtant Religion, THE ANCIENT VIRTUE OF THE *ENGLISH* NATION EXERTED ITSELF, AND SHONE OUT IN ITS FULL LUSTRE, IN THAT GLORIOUS WORK.

The many Laws paſs'd ſince, more particularly thoſe for the Settlement of the Crown and Succeſſion, are ſo many repeated Declarations of their late Majeſties, and her Majeſty now on the Throne, together with the repreſentative Body of the Nation, in Confirmation of their ancient Conſtitution. Nay, my Lords, we have higher Teſtimonies to appeal to; the many glorious Succeſſes with which God Almighty has bleſſed the Arms of her moſt Sacred Majeſty, employ'd in Defence of the Arms of Reſiſtance, are ſo many Teſtimonies from Heaven in our Vindication.

Your Lordſhips take notice on what Grounds the Doctor continues to aſſert the ſame Poſition in his Anſwer. But is it not moſt evident, that the general Exhortations to be met with in the Homilies of the Church of *England*, and ſuch like Declarations in the Statutes of the Kingdom, are meant only as Rules for the Civil Obedience of the Subject to the legal Adminiſtration of the ſupreme Power in ordinary Caſes? And it is equally abſurd, to conſtrue any Words in a Poſitive Law to authorize the Deſtruction of the whole, as to expect, that King, Lords, and Commons ſhould, in expreſs Terms of Law, declare ſuch an ultimate Reſort as the Right of Reſiſtance, at a Time when the Caſe ſuppoſes that the Force of all Law is ceaſed.

But the Commons think he hath, by his Anſwer, highly aggravated his Crime, by charging ſo pernicious a Tenet, as that of abſolute, unlimited Non-Reſiſtance, to be a fundamental Part of our Government, and by aſſerting this as the Doctrine of the Church of *England*.

It is a great Reproach to the Excellency of our Conſtitution, to impute ſuch Principles to it as inevitably infer its Deſtruction; and an equal Diſhonour to the Crown of this Realm, the great Glory of which is to be ſet over and govern a Nation of free-born Subjects, the meaneſt of which has an Inheritance in the Government and the Laws equal with the greateſt.

They likewiſe eſteem it an high Reflection on Religion itſelf, and the Church of *England*, to charge its pureſt Doctrines with ſuch Conſtructions, by which all Irreligion and Oppreſſion would be authorized.

The Commons muſt for ever conſider themſelves under the ſtrongeſt Obligations of Gratitude to our great Deliverer, to aſſert the Honour and Juſtice of that Reſiſtance by which he reſcued an oppreſſed People from inevitable Deſtruction; and think they ſhould not deſerve the Name of Subjects of *Great Britain*, or the leaſt Bleſſing of ſo good a Government, if at this Time before your Lordſhips, and for ever hereafter, they did not aſſert, in the moſt ſtrenuous Manner, the Honour and Juſtice of that Reſiſtance which brought about the late happy Revolution. And upon this Foundation it is, that they doubt not but your Lordſhips will, in a Parliamentary Way, faſten a Brand of indelible Infamy on that enſlaving Tenet by which it is condemned.

I ſhall take up leſs of your Lordſhips Time on the following Articles.

The Commons eſteem the Toleration of Proteitant Diſſenters to be one of the earlieſt and happieſt Effects of the late Revolution, wiſely calculated for the Support and ſtrengthening the Proteſtant Intereſt, the great End of the Revolution itſelf.

They remember, with the higheſt Gratitude to her Majeſty, her Royal Reſolution declared from the Throne, to preſerve it inviolably; and they obſerve to your Lordſhips, that it appears to them, from a Report on their own Journals of a Conference between both Houſes, on the Bill againſt *Occaſional Conformity*, (not meant to enlarge the Liberties of Proteſtant Diſſenters) That the Perſecution of Proteſtants is, in the Preamble to that Bill, declared *to be contrary to the Chriſtian Religion, and the Doctrine of the Church of* England, *and that the Act of Toleration ought to be kept inviolably*; and the Commons find no Exception then taken by your Lordſhips to that Declaration; but on the contrary, many Expreſſions from both Houſes, highly extolling the Policy and good Effects of that Law.

Your Lordſhips will perceive, from the Evidence of the Commons, many plain Declarations of the Priſoner in Maintenance of this Article; but we offer it to your Lordſhips, as a further Evidence, that he moſt ſhamefully arraigns the Memory of a Prelate, eminent for his Zeal to the Proteſtant Religion, for his compaſſionate Interceſſions with Q. *Elizabeth* in Favour of Diſſenting Proteſtants; a Reflection plainly meant by him to caſt an Odium on the Act of Toleration, and on the preſent Fathers of the Church, ſo eminent for their Charity and Moderation; and from the Applauſes he gives to the Severities ſhown by that Queen, he illuſtrates the Calumny thrown by him on her preſent Majeſty, and her Approbation of the Toleration: Your Lordſhips will duly conſider the Malignity of Expreſſions meant to condemn ſo good a Law, now ſtanding in its full Force, and to encourage the Unchriſtian Principles of Perſecution.

The latter Part of the ſecond Article is founded on the legal Supremacy of the Government in Matters Eccleſiaſtical, by which all Eccleſiaſtical Juriſdiction, by the ancient undoubted Laws of the Kingdom, is made ſubject to the Civil Power.

The Priſoner, in Terms very unbecoming, has ſtruck at this eſſential Part of our Conſtitution, in thoſe Words; wherein, after having perſuaded the ſuperiour Paſtors of the Church to thunder out their Anathemas againſt Proteſtant Diſſenters, *He defies any earthly Power to reverſe ſuch Sentences.*

My Lords, the reſtoring the legal Supremacy of the Crown, was the Effect of the Reformation of Religion in this Kingdom; and the Abuſe of that Power, to the apparent Danger and Deſtruction of the Church of *England*, in the Inſtance of the late illegal Eccleſiaſtical Commiſſion, remains condemned by the Bill of Rights.

But the Commons crave leave to obſerve, that the independent Power or Juriſdiction of the Church, or of Eccleſiaſtical Judges, which is the Doctrine advanced by the Priſoner, is no leſs dangerous. It ſtands in utter Defiance and Contradiction of *Magna Charta*, and the Laws of the Land; 'tis deſtructive of the legal Supremacy of the Crown and Legiſlature; a Violation of the Oath of Supremacy; contrary to the Principles of the Reformation, and the Doctrine and Intereſt of the Church of *England*, of which he is a Member.

The Commons are ſtrengthened in their Concern for the legal Supremacy, when they call to Mind her Majeſty's Letter to his Grace of *Canterbury*, of the 25th of *February*, 1705, for proroguing the Convocation; wherein her Majeſty is pleaſed to declare her conſtant Care and Endeavours to preſerve the Conſtitution of the Church of *England* as by Law eſtabliſhed, and her Reſolution to preſerve the Supremacy, as being a fundumental Part of it: And upon theſe Conſiderations, they have an abſolute Aſſurance of an equal Regard on your Lordſhips Part, to a Matter of ſo great Importance.

Your Lordſhips will obſerve the third Article to be included within the general Charge of the fourth: But, the Commons being ſenſible, with how diſtinguiſhed a Malice the Subſtance of this Charge is levelled by the Priſoner againſt the Honour of her Majeſty and the two Houſes of Parliament, they thought it their Duty to her Majeſty to lay this before your Lordſhips in a diſtinct Article, for your particular Conſideration and Judgment.

When your Lordſhips reflect on the late heavy Cenſure, which the Queen and both Houſes ſo juſtly laid on the Authors of the like groundleſs Slander, you will think that the Priſoner has revived and avowed the ſame, from an inveterate Pride to ſignalize his Enmity to her Majeſty and both Houſes, and in the moſt publick Manner to inſult the Honour of the Queen and Legiſlature, at the ſame time that he was endeavouring to ſubvert their Foundation.

The Commons will ever ſhew the utmoſt Jealouſy for the Safety and Honour of her Majeſty's Perſon, and muſt always eſteem it their peculiar Concern to vindicate every Attempt that ſhall be made againſt it; and aſſure your Lordſhips, they can't be forgetful of that ſignal Regard her Sacred Majeſty ſhewed to the Church of *England*, at the Time of the late Revolution; of that conſtant, uniform Zeal ſhe has expreſſed for it from that Day to this; that perpetual Monument of her Royal Bounty to the Clergy of the Church of *England*, to the Diminution of her own Revenue; nor of her Royal Care for the perpetual Eſtabliſhment of its Diſcipline and Worſhip, in making it a fundamental and eſſential Part of the Union of the two Kingdoms: Theſe Things they eſteem an abſolute Security, that her Royal Protection and Affection for the Church of *England* can never fail.

The Commons doubt not of your Lordſhips particular Notice of the Parallel mentioned in this Article, by which your Lordſhips will collect the Inveteracy of the Deſign from the Odiouſneſs of the Compariſon.

In their fourth Article the Commons have laid before your Lordſhips many Charges; which, though of different Conſiderations, yet all conduce to the main Charge of the Commons, as tending to undermine her Majeſty's Government, and to raiſe Sedition and Rebellion.

Your Lordſhips will find, from many and pregnant Proofs ſupporting this Article, That her Majeſty's Adminiſtration, whereby ſhe has juſtly gained the Affections of all her true Subjects, is repreſented by the Priſoner as deſerving the utmoſt Odium and Contempt of her People.

That the Civil and Religious Rights of her Subjects, which her Majeſty has protected with the Tenderneſs of a moſt indulgent Mother, are betrayed by thoſe to whom ſhe has committed the Care of them, and that they are now in a Condition more Calamitous than at that Time when Superſtition and Tyranny were ready to have ſwallow'd them up.

Your Lordſhips will find him labouring to perſuade the People, that the Condition of Peace and Proſperity, which the good Government of her Majeſty has ſecured to her Kingdom, is a State of utter Diſtraction and Confuſion, wherein all Irreligion and Diſorder is not only unpuniſhed, but encouraged.

Nor will your Lordſhips wonder to find a Perſon, who has thus ſet himſelf to weaken the Title of her Majeſty to the Throne, repreſenting her Adminiſtration like that of one who has no Title at all.

And from this ruinous and almoſt irretrieveable Poſture of Affairs, your Lordſhips will find him conſidering himſelf as a peculiar Meſſenger, appointed and called out to open the Eyes of the deluded People, and to undeceive a Nation thus abuſed. And this, my Lords, he has done, not in the Words of Meekneſs and Peace; not by exhorting them to the Exerciſe of the ſubmiſſive Doctrines of Paſſive Obedience and Non-Reſiſtance; but he aſſures them, that he does not come to preach Peace, but to ſound a Trumpet; he endeavours to excite ſuch true Sons of the Church as are of his Perſuaſion, to recover, defend, and maintain, with their Lives and Fortunes, their invaded Rights, and ſuch Doctrines as he has thought fit to deliver to them.

My Lords, I take Liberty to acquaint your Lordſhips, that the Commons conceive, that the Laws and Statutes of the Realm, and the Order and Peace of Government, neceſſarily injoin it as a Duty upon all private Subjects, to repreſent their Senſe of the Nation's Grievances in a Courſe of Law and Juſtice, and not otherwiſe; and whenever the Oppreſſions become National or Publick, They claim it as the peculiar Right of their own Body, to purſue the evil Inſtruments of them, till publick Vengeance be done; and at the ſame time the Commons aſſure your Lordſhips, that they will account it their indiſpenſible Duty to her Majeſty and their Country, to aſſert the Juſtice and Wiſdom of her Adminiſtration, againſt the Enemies of both.

I have thus ſtated to your Lordſhips the Nature of this Cauſe; wherein, I perſuade myſelf, you perceive many Points of the higheſt Moment to the Peace and Welfare of the Kingdom.

The Tendency of the Crimes, of which the Priſoner ſtands accuſed, lies open and apparent: But I yet beg your Patience, to draw the Scene a little cloſer.

Your Lordſhips will conſider the neceſſary Conſequence of a Poſition, meant and expounded ſo as to perſuade the World, that the glorious Work of the Revolution was the Fruit of Rebellion, and the Work of Traitors. Does it not declare the late Reign to be one continued Uſurpation? And under what better Circumſtances does it bring the preſent?

Is the Act of Toleration condemned with any other Tendency than to weaken ſo great a Support of the Revolution itſelf? And I intreat your Lordſhips to conſider the certain fatal Effects of an univerſal Diſſatisfaction of the People, in Things that concern them neareſt, the Safety of the Church of *England*, and the Proteſtant Intereſt, and the Security of themſelves and their Poſterity.

It's true, my Lords, that, conſidered at a Diſtance, there ſeems a Repugnancy in this Gentleman's Syſtem. How comes it to paſs, that abſolute Non-Reſiſtance and the Spirit of Rebellion ſtand ſo well together, and are made ſo ſuitable, in the ſame Diſcourſe?

But, if your Lordſhips ſhould diſcern, in any Part of his Sermon, any dark Hints, or diſguiſed Opinions, of a *Sole Hereditary Right of Succeſſion* to the Crown, that will ſhew your Lordſhips the true Conſiſtency of the whole; your Lordſhips will find, that in his Opinion, the Duty of the abſolute Non-Reſiſtance is owing to him only that has the Divine Commiſſion to govern; and from thence your Lordſhips cannot fail of knowing againſt what Queen, what Government, what Eſtabliſhment, he encourages the taking up the Arms of Reſiſtance.

I have thus endeavoured to diſcharge the Truſt repoſed in me by the Commons, and am not unſenſible how far ſhort I have fallen; but, my Lords, I aſſure myſelf that the Cauſe cannot ſuffer by it, its own Strength and Vigour will ſupport it at this Time, and ſo long, I hope, as the Nation endures.

Your Lordſhips ſee plainly, that the Duty of the Commons, which they will always diſcharge, called upon them very loudly to make Inquiſition on ſo remarkable an Offender as the Priſoner at the Bar.

Your Lordſhips ſee they had not accquitted themſelves aright, if they had intruſted the Proſecution of this great Cauſe in any other Hands but their own, or ſuffered theſe Points to have been handled in any Place but in full Parliament; or before any other Judicature but that of your Lordſhips: And it is with the greateſt Chearfulneſs and Security, that they ſubmit the Cauſe of the Queen, of the whole Nation, of the Proteſtant Religion, and Proteſtant Succeſſion, to the Weight and Wiſdom of your Lordſhips Judgment.

Mr. Attorney General. I did acquaint your Lordſhips that there were two Sermons delivered into the Houſe of Commons, which I deſire may be now delivered in, and read to your Lordſhips. We muſt deſire Mr. *Jodrell* to give an Account where he had thoſe Books in his Hands.

Then Mr. Jodrell *was ſworn.*

Mr. *Jod.* Theſe two Books were delivered in at the Table of the Houſe of Commons by one of the Members.

Mr. Att. Gen. Were they ſhewn to Dr. *Sacheverell* when he attended the Houſe?

Mr. *Jod.* They were ſhewn to him at the Bar of the Houſe.

Mr. Att. Gen. Did he own them to be his Books, or what did he own about them?

Mr. *Jod.* That which is the Sermon preached the fifth of *November* he owned to be his, and that he directed it to be printed.

Then that Book was delivered in.

Mr. Att. Gen. There is another Sermon which was preached at the Aſſizes at *Derby*, that was alſo ſhewn him at the Bar, and he owned it.

Lord *Chancellor.* What ſay you as to the Preface of the other Sermon?

Mr. *Jod.* He owned the Dedication of it to be agreeable with the Dedication of that Impreſſion which he ordered to be printed.

Mr. Att. Gen. We pray the Dedication may be ſhewn to him; if he denies it, we are ready to prove it by the Printer.

Sir *Simon Harcourt.* My Lords, the Doctor did own the Sermon, and the Dedication of both the Sermons before the Houſe of Commons; and he will not give your Lordſhips the Trouble of hearing any Proof of them. He doth own them.

Mr. Att. Gen. Then we deſire they may be read.

Clerk *reads the Dedication of the* Derby *Sermon, and the Dedication and Sermon at St.* Paul's.

The DEDICATION of a SERMON preached at the Aſſizes held at *Derby*, *Auguſt* 15, 1709, by *Henry Sacheverell*, D. D. Fellow of *Magdalen College*, *Oxon*, and Chaplain of St. *Saviour*'s, *Southwark.*

To the Right Worſhipful

GEORGE SACHEVERELL, Eſq;

High Sheriff of the County of *Derby*;

AND TO

The Honourable GENTLEMEN of the *GRAND JURY*,

Gilbert Thacker, Eſq;
Robert Wilmot, Eſq;
John Fitz-Herbert, Eſq;
John Beresford, Eſq;
Henry Vernon, Eſq;
William Cook, Eſq;
William Cavendiſh, Eſq;
Francis Pole, Eſq;
William Horton, Eſq;
George Savill, Eſq;
William Brown, Eſq;
Paul Balledon, Eſq;
James Chetham, Eſq;
William Wolley, Eſq;
George Turner, Gent.

GENTLEMEN,

‘THE *Peculiar Honour* You were pleaſed to confer upon me after the Delivery of this *plain Diſcourſe*, was ſo *Signal*, that nothing leſs than this *Publick Acknowledgment* can acquit Me of *Ingratitude*.

‘Now, when the *Principles* and *Intereſts* of our *Church* and *Conſtitution* are ſo ſhamefully *Betrayed*, and *Run down*, it can be no little *Comfort* to all thoſe who *wiſh* their *Welfare* and *Security*, to ſee, that notwithſtanding the *Secret Malice*, and *Open Violence* they are Perſecuted with, there are ſtill to be found ſuch *Worthy Patrons* of both, who dare *Own* and *Defend* them as well againſt the *Rude* and *Preſumptuous Inſults* of the *One Side*, as the *Baſe*, *Undermining Treachery* of the *Other*; and who Scorn to Sit ſilently by, and partake in the Sins of theſe *Aſſociated Malignants*.

‘Though the *Truth* ſeems to be ſo much forſaken at preſent, yet, God be thanked, they ſhall yet find, to our Honour, that we have ſtill amongſt Us thoſe who have *Courage* to ſpeak it, as well as thoſe who have *Lives* and *Fortunes* to Maintain it: And tho' the Age is ſunk into the *Loweſt Dregs* of *Corruption* that it cannot endure Sound Doctrine, there are not wanting ſome to *Preach* it, and Others to *Support* it, at the Expence of Both. May the *Influence* of your *Good Examples*, which as much Animates our *Friends*, as it Terrifies our *Enemies*, be as diffuſively Prevailing, as 'tis nobly Conſpicuous; and the Bleſſing of that *Church* attend you, which you ſo Eminently *adorn* and *ſuſtain!*

‘And, as I am obliged by the *Relation* I have the Honour to bear your *Family*, may a double Portion of the Divine Favour reſt on you, (Mr. *High Sheriff*) whoſe Commands I was very ready to execute in this Office, ſince you thought neither the Advancement of your *Years*, ſo generouſly expended for the *Good* of your Country, nor the great Trouble attending this *Poſt*, ſufficient to exempt you from ſhewing that ſteady *Loyalty* and *Zeal* to ſerve *Her Majeſty* and the *Government*, for which you have been ſo remarkably Diſtinguiſhed.

‘*I am, with all Regard,*

‘*GENTLEMEN,*

‘*Your very Humble Servant,*

‘Henry Sacheverell.’

The PERILS *of* FALSE BRETHREN, *both in Church and State*:

Set Forth in a

SERMON Preached before the Right Honourable the LORD MAYOR, Aldermen, and Citizens of *London*, at the *Cathedral Church of St.* Paul, on the Fifth of *November* 1709. By *Henry Sacheverell*, D. D. Fellow of *Magdalen College*, *Oxon*, and Chaplain of St. *Saviour's Southwark.*

To the Right Honourable

Sir *SAMUEL GERRARD*, Bart.

Lord Mayor of the City of *London*.

‘*My Lord*,

‘BY Your *Lordſhip*'s Command, this *Diſcourſe* ventures to appear in *Publick*, in Contempt of all thoſe *Scandalous Miſrepreſentations* the *Malicious Adverſaries* of our *Church* have traduced it with, and that *Impartial Sentence* it had the *Honour* to receive from ſome of thoſe *Acute* and *Wiſe Judges*, who *Condemned* it without *Sight* or *Hearing*. But it is no New Thing with ſome Men to *Cenſure* at *Random* what lies out of their *Sphere*; *Examining* a Cauſe may prove *Dangerous*, for fear of their own *Conviction* of its *Merits*. When Men are *reſolved* to *leap* into a *Gulph*, the beſt Way is to *ſhut their Eyes*, for fear they ſhould *ſee* their *Danger*, and *Repent* of their *Folly*. When they are thus *abandoned* and *given up* to *Ruin*, the *Charitable Hand*, that would hold out an *unwelcome Light* to *prevent* it, muſt expect to be treated with that ungrateful *Inſolence* and *Reproach*, which uſually attends the *Generous Freedom* of thoſe who *Dare* ſpeak *Seaſonable* and *Neceſſary Truths*. That *Patient*'s *Caſe*, doubtleſs, is very *Deſperate*, that ſets himſelf againſt his *Cure*; and when Men are ſo ſtupidly *hardened* in their Errours as to *reſiſt* the moſt *glaring Evidence*, there's no Room for *Argument*, or *Goſpel*. *Moſes* and the *Prophets* may, with *Chriſt* and his *Apoſtles*, be *Baniſhed* our *Synagogues*, when *Truth* muſt be *Oppreſſed* by *Number*, and *Noiſe* and *Rebellious Appeals* to the *People*, as the only *Judges* of *Right* and *Wrong*, and the *dernier Reſort* of *Juſtice* and *Dominion*. Are not theſe the *Faſhionable Methods* now made uſe of to *Overbear*, and *Silence* our *Church*, to *Affront* and *Revile* our *Legiſlature*, in order to *Break in* upon the *Prerogative of the Crown?* By *Threatening* them with *Imaginary Legions*, and a *popular Tribunal*, where their *Authority*, and *Eſtabliſhment* are to be *Try'd* and *Determined?* To put a ſtop to which *Dangerous* and *Encroaching Miſchief*, that now with *Impunity* walks up and down through this *Diſtracted Kingdom*, I thought it my *Duty* (being Summoned to this *Office* by your *Lordſhip*) to *Diſcharge* it in the *BEST METHOD* I could, to *Preſerve* Us from theſe *Malicious Deſigns*, by endeavouring, if poſſible, to Open the *Eyes* of the *Deluded People* in this Our *Great Metropolis*; being Conſcious of what *Prodigious Importance* it is to the Welfare of the *whole Nation*, to have its *Rich* and *Powerful Inhabitants* ſet right in their *Notions* of *Government*, both in *Church* and *State*; that they may not be *Flatter'd* into their *Ruin*, but ſeeing the *Fatal Conſequences* of theſe *Damnable falſe Doctrines*, which ſome *Seditious Impoſtors* have laboured to *Poiſon* them with, may *Forſake* and *Deteſt* them. I am confident, *My Lord*, that this *Glorious* and *Renowned City* can *Boaſt of* ſo many Excellent Examples of *Unſhaken Steadineſs*, *Diſintereſted Probity*, and *True Zeal* and *Loyalty* for *Our Church* and *Sovereign*, that if they would act with the ſame Open, and Undaunted *Reſolution* Your *Lordſhip* does, theſe *Affrighting Phantoms* muſt Vaniſh. But if *Honeſt Gentlemen* will ſit ſtill, and give up their *Cauſe*, through *want* of *Courage*, or a *Juſt Senſe* of the *Dangerous Attempts* of Our *Enemies*, without the Spirit of Prophecy, We may foretel what will become of Our *Conſtitution*, when 'tis ſo *Vigorouſly Attacked* from *Without*, and ſo *Lazily Defended* from *Within*.

‘We are told by theſe Men, who would fain *ſhut both our Eyes*, and our *Mouths*, in order the more effectually to *Undermine* and *Deſtroy* Us, that the *Pulpit* is not a Place for *Politicks*; and that 'tis the Buſineſs of a *Clergyman* to *Preach Peace*, and not *Sound a Trumpet in* Sion: ſo expreſly contrary to the Command of *God*, to *Cry aloud*, and *Spare not*. *My Lord*, I was humbly of Opinion, that the *Fifth Commandment* was *Genuine*; the *Fanaticks* would do well to ſtrike that *Dangerous Precept* out of the *Decalogue*, as the *Papiſts* have the *Second*, that neither might *Riſe* in *Judgment* againſt theſe *United Friends* and Brethren. Now, as *This* ſtands the *Firſt* in the *Second Table*, is it not of the utmoſt *Importance*, to be rightly *Underſtood*, as containing the *Principal Duty* that we owe to God's *Vicegerents*, which has been ſo Scandalouſly, and Villainouſly *Miſinterpreted* of late, to the *Great Diſhonour* of *Both?* Certainly *Our Church* thought ſo Formerly, when it took ſuch Care to *Guard* Our Obedience, with more *Homilies* concerning the *Peril* of *Rebellion*, than any other *Sin*. And when was more Reaſon for Enforcing their *Doctrines* than now, when We ſee theſe admirable *Diſſuaſives* againſt *Faction* and *Sedition*, maliciouſly *Wreſted* to *Countenance* and *Support* it? If our *Excellent Conſtitution* apprehends no *Hazard* from theſe *Licentious Proceedings*, I am ſure *Thoſe* who would *defend* it from them, have Reaſon to do ſo, with Regard to their *Own Perſons*: Our Paſtors cannot do their Duty, without being *Menaced for it*, and *Slandered* by the Vile *Amanuenſes* of the *Mob*, to expoſe us to their Fury, as *Papiſts*, and *Men Diſaffected* to Her *Majeſty's Government*, whoſe *Safety*, *Rights* and *Eſtabliſhment*, together with *Thoſe* of the Church, We ſo earneſtly contend for; which I ſolemnly here Declare (as I did *before* in this *Diſcourſe*) to be my only *Aim* and *Intention*; and in an humble way to follow the *Footſteps* of your Lordſhip, who is ſo bright an *Ornament* and *Support* of them. That this *Great* City may flouriſh under your *auſpicious Conduct*, and never want a *Magiſtrate* of your ſteady *Principles* to *Guide* and *Govern* it, is the hearty Prayer of,

‘*My LORD*,

‘*Your LORDSHIP's*

‘*Moſt Humble Servant*,

‘*HENRY SACHEVERELL.*’

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2 COR. xi. 26.

In Perils among falſe Brethren.

‘AMONG all the moſt dreadful *Plots* that ever threatened this *Church* and *Kingdom*, the diſmal *Tragedy* contrived as this Day to be executed on *Both*, may juſtly claim the *horrible Precedence*, and conſequently the *higheſt Expreſſions* of our *Gratitude* for ſo aſtoniſhing and *mi-*

raculous a Deliverance from it. For whether we conſider the *Black Depth* of its ſubtle *Contrivance*, the deſtructive *Extent*, and *ſanguinary Conſequences* of it, or its ſurprizing and unaccountable *Diſcovery*, we muſt confeſs, that nothing but the *All-Powerful* and Gracious *Hand of God*, interpoſing againſt the utter Subverſion of our *Nation* and *Religion*, could have prevented ſuch a *Fatal Conſpiracy:* A Conſpiracy! ſo full of the moſt Unheard-of *Malice*, moſt Inſatiable *Cruelty*, moſt Diabolical *Revenge*, as only could be *hatch'd* in the *Cabinet-Council* of *Hell*, and *brought forth* in a Conclave of *Romiſh Jeſuits!* Now, tho' the Hiſtory of this unparallel'd *Myſtery of Iniquity* was *Deſigned* againſt Us at ſuch a *Diſtance* of Time, and the *Fact* ſo evidently *Acknowledg'd*, that the *Papiſts* themſelves are ſo far from *Denying*, that they *Extol* it with the Higheſt *Panegyricks*; ſo that there needs neither *Proof* of the one, nor *Repetition* of the other: Yet doubtleſs 'tis as much our *Duty*, as *Intereſt*, to keep up the *Annual Celebration* of this *Never-to-be-forgotten Feſtival*. For that the very Face and Shadow of our *Church* and *Conſtitution* is yet *Surviving*; That this *Good* and *Pious Relict* of the *Royal Family* Sits now Happily upon the *Throne* of Her Great *Anceſtors*; That our *Hierarchy* and *Nobility* was not finally *Extirpated* and cut off; That our *Country* was not made an *Aceldama*, a *Field of Blood*, and a *Receptacle* of Uſurping *Robbers*; That We yet, without *Slavery*, *Superſtition*, or *Idolatry*, enjoy the *Benefit* of our Excellent *Laws*, and moſt Holy *Profeſſion* Undefil'd: In a Word, That God has yet vouchſafed us *this Opportunity* of coming into his Preſence, to *Acknowledge* theſe Ineſtimable Bleſſings, is owing to his *Mercy* ſo ſignally ſhewn to Us, in Diſappointing the *Barbarous Maſſacre* intended *This Day*. A *Day!* which ought to ſtand for Ever in the *Engliſh Kalendar*, as an Eternal *Æra*, at the *One* End, as the *Thirtieth* Day of *January* at the *Other*, for *Indelible Monuments* of the Irreconcileable Rage, and *Blood-Thirſtineſs* of both the *Popiſh*, and *Fanatick* Enemies of Our *Church*, and *Government!* For theſe are *equally* ſuch Treacherous *FALSE BRETHREN*, *from* whom we muſt always expect the utmoſt Perils, and *againſt* whom we can never ſufficiently Arm Ourſelves with the greateſt *Caution* and *Security*. Theſe TWO DAYS indeed, are but One *United Proof*, and *Viſible Teſtimonial* of the ſame *Dangerous*, and *Rebellious Principles*, theſe *Confederates in Iniquity* maintain: And as the *One* is but a *Thanksgiving* for our *Deliverance from* what the *Firſt Projected*; ſo is the *Other* an *Humiliation*, for what God permitted the Latter, by *Their Help and Direction*, to put in Execution. I think therefore the *Beſt way* of Acknowledging theſe Great *Mercies*, and *Judgments* of God, and Acquitting *Both Solemnities* in a Proper way, is by ſo juſtly Conſidering Our *Circumſtances* with reſpect to *Each Side*, as to Guard againſt Their *Malicious* and *Factious Deſigns* for the future: that we may never *Truſt Either*, to need a Second *Deliverance* from thoſe *Villainous Enterprizes*, they will never ceaſe to put in Practice, whenever they ſee an *Opportunity* of Doing it with *Security*.

‘ Now as *Perſecution*, and *Affliction*, were the *diſtinguiſhing Badges* of the *Meſſiah*, who was a *Man of Sorrows*, and *Acquainted with Griefs*; ſo to convince his *Diſciples*, that his *Kingdom was not of this World*, He *Bequeathed* the ſame *ſad Legacy* to Them, to *ſhare the Character*, as well as *imitate* the *Example*, of their *dying Lord*, and *Maſter*. With unſhaken *Courage*, and *Reſolution*, to take up His *Bloody Croſs*, and follow the *Great Leader of their Salvation:* To *March* with a Chearful Magnanimity through all the *Powers of Darkneſs*, *looking unto Jeſus the Author and Finiſher of their Faith, who for the Joy that was ſet before Him, Endur'd the Croſs, deſpiſing the Shame, and is ſet down at the Right-hand of the Throne of God.* Thus was *His Church* to expect no *Better Treatment* than Her *Great Founder* and *Original*, to paſs through the ſame *Fiery Trial*, to be *made Perfect through Sufferings*, to be *Militant here*, in order to be *Triumphant hereafter*; and like *Him*, *to be Crown'd with Thorns in this World*, to Obtain a *Crown of Glory* in the *Next*. Not only to Encounter the *Open Fury* and *Violence* of Her *Profeſs'd* and *Inveterate Enemies*; but (which was the *Bittereſt* Part of Her *Sufferings*) like Her *Saviour*, to be *Betray'd*, and perfidiouſly Given up by Her Own *Falſe-hearted* and *Inſidious Apoſtles*.

‘ As the *Hiſtories* of the *Church* in *All Ages* are as 'twere but One Continued *Ratification* of this *Melancholy Truth*, made up of ſo many Mournful *Narratives* of the *Unhappy Lives*, and *Diſaſtrous Deaths of Saints*, *Martyrs*, and *Confeſſors*, who Bravely *ſeal'd the Faith with their Blood*; ſo it is Exemplified in no One Inſtance more than in that *Primitive*, and *Heroick Champion* of Chriſtianity, the *Author* of this *Epiſtle*. Wherein, for the *Wonder*, and *Emulation* of Poſterity, He has recorded a Long and *Frightful Catalogue* of thoſe Aſtoniſhing *Calamities* He had underwent in the *Propagation* of the *Goſpel*. Such Ample Satisfaction did the *Pious Labours* of the *Convert* make for the wicked *Perſecution* of the *Jew*, when, by a *Miraculous Turn* of *Providence*, the *Greateſt Sinner* was changed into the *Devouteſt Saint*, and the moſt *Zealous Bigot againſt*, into the moſt Reſolute *Sufferer for*, Religion. Yet however this *Great Apoſtle* might have Attain'd ſo extraordinary a Degree of *Merit*, as to *Outſhine* all that *Noble Army of Martyrs* which Adorn the *Bloody Kalendar* of the *Church*; nay, as He expreſſes it, *to come never a Whit ſhort of the Greateſt Apoſtles*, and as 'twere to *Vye Characters* with the very *Choſen* of the *Son of God*; Does it not ſeem a little to carry the *Air* of *Oſtentation*, and *Vain-glory*, thus to claim the *Pre-eminence* and *Supremacy*, and to boaſt himſelf in that *Pompous Shew* of *Services* that He hath done for *God* and the *Church?* But We ſhall eaſily *Reconcile* the *Apoſtle* and the *Orator*, and find no Imputation upon his *Modeſty*, if we conſider the *Occaſion of it*. He had (as He informs Us) with much *Pains* and *Expence*, Planted Chriſtianity in *Corinth*, where he had no ſooner, by a *Miraculous Miniſtry*, Eſtabliſh'd it, but ſeveral *Falſe Apoſtles* and *Seducers* were, in his Abſence, *Crept* into the Church, to Vitiate and Corrupt his *New Proſelytes*, under Pretence of *More Purity* and *Holineſs*, (like our *Modern Sectariſts*) to raiſe a *Schiſm* amongſt them, and to draw them off from the Opinion they had of St. *Paul*; by *Ridiculing* Him for his *Perſon* and *Addreſs*, as a Little *Unedifying*, *Ungifted Preacher*, *of a weak bodily Preſence, and Contemptible Speech*; thus *Wounding* the *Miniſtry* through the Sides of the *Miniſter*. Such *Slights* and *Provocations* certainly were a *ſufficient* Ground for the *Apoſtle* to inſiſt upon his Character, leſt the *Goſpel* ſhould ſuffer by it: And with *Authority* to *Rebuke* the *Ingratitude* of the *Corinthians*, and *Vindicate* his *Dignity*, and *Tranſcendent Excellencies*, againſt the baſe *Lies*, and *Calumnies*, caſt upon Him by ſuch “ falſe Apoſtles, deceitful Workers, transforming themſelves into the Apoſtles of Chriſt, like their True Father the Devil, transforming himſelf into an Angel of Light.” With what Juſtice then might He here ſtand upon the *Compariſon*, when thus vilely *Run down*, by ſuch *Wretched*, *Empty*, *Hypocritical Sophiſters?* To appeal to his *Spiritual Gifts*, and *Revelations*, and *Sufferings*, in Competition with ſuch *Impudent*, *Boaſting*, *Self-conceited Pretenders*, was the Loweſt Act of *Humility*, and *Good-Nature*; to Condeſcend to *Diſpute* with ſuch as ought to be *Anſwered*, not with *Arguments*, but *Anathemas!* Yet behold the Singular *Modeſty* of this *Great Apoſtle!* He cannot enter upon his own *Juſtification*, without much Reluctance, and a long *Apology* to introduce it. “ I am become a Fool in *Glorying* (ſays he), but you have compelled me to it. I ſpeak as concerning Reproach, as tho' we had been Weak: Howbeit, wherein any is Bold, I ſpeak fooliſhly, I am bold alſo. Are they Hebrews? ſo am I! Are they Iſraelites? ſo am I! Are they the Seed of Abraham? ſo am I! Are they Miniſters of Chriſt? I ſpeak as a Fool, I am more. In Labours more Abundant, in Stripes above Meaſure, in Priſons more Frequent, in Deaths often; of the Jews five Times received I forty Stripes, ſave one. Thrice was I beaten with Rods, Once was I ſton'd, Thrice I ſuffered Shipwreck, a Night and a Day have I been in the Deep. In Journeyings often, in Perils of Waters, in Perils of Robbers, in Perils by my own Countrymen, in Perils by the Heathen, in Perils in the City, In Perils in the Wilderneſs, in Perils in the Sea, in Perils amongſt FALSE BRETHREN.” In this *Rhetorical Abridgment* of the *Sufferings*, and *Dangers* of his *Life*, there's a very *Obſervable Gradation*; the *Apoſtle* ſtill *Riſes* in his *Calamities*, and puts this *Laſt* as the *Higheſt Perfection* of his *Miſery*, as that which made the *deepeſt Impreſſion* upon his *Paſſions*, and what He bore with the greateſt *Reſentment* and *Difficulty*. The many ſevere *Pains*, and *Tortures* inflicted on his *Body*, were *nothing* to *This*; nay, the *Good-Nature*, and *Mercy* of *Highwaymen*, and *Pagans*, and even the *Devouring Boſom* of the *Deep*, were to be *Preferr'd* before, and ſooner (it ſeems) to be *Truſted* to, than the more certainly *Deſtructive*, and *Fallacious Boſom* of a *Treacherous*, *FALSE BROTHER*.

‘ I ſhall take the Expreſſion in its full *Latitude*, without confining it to the expreſs Deſign of the Place; tho' it were very obvious to draw a *Parallel* here, betwixt the ſad *Circumſtances* of the *Church of Corinth* formerly, and of the *Church of England* at preſent; wherein Her *Holy Communion* has been *Rent*, and *Divided* by *Factious*, and *Schiſmatical Impoſteos*; Her *pure Doctrine* has been *Corrupted*, and *Defil'd*; Her *Primitive Worſhip*, and *Diſcipline Prophan'd*, and *Abus'd*; Her *Sacred Orders Deny'd* and *Vilified*; Her *Prieſts* and *Profeſſors* (like St. *Paul*) *Calumniated*, *Miſrepreſented*, and *Ridicul'd*; Her *Altars* and *Sacraments Proſtituted* to *Hypocrites*, *Deiſts*, *Socinians*, and *Atheiſts*; and this done, I wiſh I could not ſay, without *Diſcouragement*, I am ſure with *Impunity*, not only by our *profeſs'd Enemies*, but which is worſe, by our *pretended Friends*, and FALSE BRETHREN. But to proceed to the Matter before us: In my Diſcourſe upon theſe Words I ſhall endeavour,

‘ I. *Firſt*, To ſhew in what *Senſe*, and upon what *Accounts* Men may be Denominated FALSE BRETHREN.

‘ II. *Secondly*, I will lay before you the Great PERIL, and *Miſchief* of ſuch, both in *Church* and *State*.

‘ III. *Thirdly*, I will ſet forth the Heinous *Malignity*, Enormous *Guilt*, and *Folly* of this *Prodigious Sin*.

‘ IV. *Laſtly*, As a Conſequence from the Whole, I will undertake to Evince what mighty Reaſon we have at all Times, and more eſpecially *at preſent*, to *ſtick* firmly to the *Principles* both of our *Church* and *Conſtitution*; and how much it *concerns* Us to *Beware* of all thoſe FALSE BRETHREN, that *Deſert*, or *Betray* them.

‘ And *Firſt*, *I will ſhew you in what Senſe, and upon what Accounts Men may be Denominated FALSE BRETHREN.* In order to which it will be Neceſſary to State the full Extent of the Nature of *FALSE BROTHERHOOD*.

‘ This Term Ψευδαδελφία being of a *Relative* Signification, muſt reſpect Men as conſidered under all *Social Caſes*, or as they are placed under ſuch *Regards* and *Circumſtances*, as in Duty *oblige* them both to *Think*, *Speak*, and *Act*, with *Truth* and *Integrity*, correſpondent to their *inward Principles*, and *outward Profeſſions*. And wherein they are found *deviating wilfully* from either, by an unreaſonable *Alteration* of *Judgment*, by any *tacit Mental Reſerve*, or *Equivocation*, upon any *indirect Ends*, or *Deſigns*, or guiding their *Expreſſions* and *Actions* contrary to theſe *ſtated Rules*, are guilty of *Falſhood*, both in *Conſcience* and *Practice*, of a Breach of that *Veracity*, *Juſtice* and *Truſt* that they owe to *God*, *themſelves*, and the *World*, and are properly what are ſtyl'd in the *Text* FALSE BRETHREN. For whereas every Man that either *believes*, *ſpeaks*, or *acts Rationally*, muſt be ſuppoſed to have ſome *Standing-Ground*, and *Meaſure* of *Judgment*, ſettled upon ſome Grand Primitve *Maxims* of *Truth*, both *Speculative* and *Practical*, whether founded upon *Revelation*, *Reaſon*, or *Honour*, which are what we call any Man's *Principles*, either in *Religion*, *Society*, or *Friendſhip:* If theſe *Fundamental Axioms* have with true Deliberation been *ſifted*, and *weighed*, not only as to their *intrinſic Nature*, and *Goodneſs*, but as to their *outward Tendency*, and *Conſequences*, they muſt appear, tho' not perhaps as *infallible* in *themſelves*, yet with Reſpect to the *Perſon* ſo conſidering them, as *demonſtrative Truths*, as the *Light*, and *Oracles* of *God*, and *Reaſon*, ſet up in his *Breaſt*; by which He is always *oblig'd* to *Direct* and *Govern* his *Thoughts*, *Reſolutions*, and *Actions*; and which if He *ſwerves* from, *diſowns*, or *betrays* upon any *ſiniſter Motive*, whatſoever tho' after this nice Search they ſhould prove *Erroneous*), involve the Man in a very heinous *Sin*, *treacherouſly* acting againſt his *Judgment*, and *giving the Lye* both to his *Faith*, his *Reaſon* and his *Knowledge*. This Matter being thus briefly *Premis'd*, it is evident, that with *regard* to the ſeveral *Objects* it is Converſant about, Men may in *three Reſpects* be term'd Guilty of FALSE BROTHERHOOD.

‘ 1. *Firſt*, With Relation to *God*, the *Church*, or *Religion*, in which they hold *Faith*, or *Communion*.

‘ 2. *Secondly*, With Relation to the *State*, *Government*, or *Society*, of which they are *Members*.

‘ 3. *Thirdly*, With Relation to thoſe *Private Perſons*, with whom they have either *Friendſhip*, *Correſpondence*, or *Dealing*.

‘ 1. And *Firſt*, *He is a FALSE BROTHER*, *with Relation to God*, *Religion, or the Church in which he holds Communion*, that *Believes*, *Maintains*,

‘ *tains*, or *Propagates* any *Falſe*, or *Heterodox Tenet*, or *Doctrine* repugnant to the expreſs *Declaration* of *Scripture*, and the *Decrees*, or *Senſe* of the *Church*, and *Antiquity* thereupon. For as in the *firſt alone* are contain'd the *Eſſential Points*, and *Articles* of our moſt Holy *Faith*; ſo the *Primitive Expoſitions*, *Deciſions*, and *Practice* of the *ancient Writers* of the *Pure* and *uncorrupted Ages* of *Chriſtianity*, muſt certainly be acknowledg'd the *beſt*, and moſt *Authentic Comments* upon their *Meaning*. In *Oppoſition* to which, if any *upſtart Noveliſt*, or *ſelf-conceited Enthuſiaſt*, out of *Pride*, as ſetting *Himſelf* above theſe *Genuine Oracles* of *Truth*; or out of *Ignorance*, as being *unacquainted* with the *Learning*, and *Records* of *Antiquity*; or out of *Perverſeneſs*, ſcorning to ſubmit his *Underſtanding* to the *Dictates*, or better *Reaſon* of *others*; or out of *Ambition* and *Vain-glory*, as affecting to be the *Head*, and *Leader* of ſome *New Sect*, or *Party*; (*all*, or *either* of which have, and will be found for ever the *Parents* of *Hereſy*) and ſhould break in upon this Sacred *Depoſitum* of the *Church*; and ſhould attempt Blaſphemouſly to *Corrupt* that inviolable Fountain of Truth, *with erroneous Conjectures*, and vain *Philoſophical Syſtems*; to Prophane and Degrade the *Holy Myſteries of Religion*, by abſurd *Interpretations*, and impudent *Reaſonings*; ſhould we ſtick to call ſuch a *Rebel to God*, and *Traytor* to his *Church*, a FALSE BROTHER? If a Man ſhould dare not only to *Revive*, but to *Juſtify* any *Execrable* Exploded *Hereſies*, as thoſe of *Arius*, and *Neſtorius*, denying the *Hypoſtatical Union*, or the *Eternity* of the *Son of God*; or ſhould affirm that *He was God in Man*, or that the *Godhead was only Locally in his Manhood*, as *God was in the Cloud*; or that ſhould preſume to *Evacuate* the *great Sanction* of the *Goſpel*, the *Eternity* of *Hell-Torments*; or Expound any of the *Articles of Our Faith*, in ſuch a Looſe and Vagrant way, as may ſuit them as well to a *Mahomitan*'s as a *Chriſtian*'s *Creed*; and to lay open all thoſe Sacred *Boundaries* of the *Church*, to let in all *Sectariſts*, and *Schiſmaticks*, of whatſoever *Wild*, *Romantic*, or *Enthuſiaſtic Notions*, ſo as to make the *Houſe of God*, not only a *Den of Thieves*, but a Receptacle of *Legions of Devils*: Should we cover ſuch a *Falſe Apoſtle* under the Sacred *Umbrage* of a *True Church-man*? In ſhort, whoſoever preſumes to *Recede* the leaſt *Tittle* from the *expreſs Word of God*, or to explain the great *Credenda* of our *Faith* in *New-fangl'd Terms* of *Modern Philoſophy*, muſt publiſh a *new Goſpel*, *Un-god* his Saviour, and *Deſtroy* his *Revelation*; and by unſettling the *Univerſal*, *Receiv'd Doctrine* of the *Church*, give up *Chriſtianity* into *Scepticiſm*, and *Atheiſm*; and to ſpeak the beſt of his *Character*, is FALSE both to his *God*, and his *Religion*, *and ſhall be called hereafter*, *The leaſt in the Kingdom of Heaven*, how *Great* ſoever he may be in the Kingdoms here *below*. And as a Man may thus *Betray* the *Doctrine of his Church*, ſo he is no leſs FALSE to its *Intereſt*, that gives up any *Point* of her *Diſcipline*, and *Worſhip*. Theſe are the *Exterior Fences* to Guard the *Internals* of *Religion*, without which they are left *Naked*, without *Beauty*, *Order* or *Defence*. Should any Man, out of *Ignorance*, or *Prejudice*, to the antient *Rights*, and *Eſſential Conſtitution*, of the *Catholick Church*, Affirm, That the *Divine Apoſtolical Inſtitution of Epiſcopacy*, *is a Novel Doctrine*, *not ſufficiently Warranted by Scripture*, and *that 'tis indifferent whether the Church is Govern'd by Biſhops*, or *Preſbyters*; Is not ſuch an one an *Apoſtate* from his own *Orders*? Let the Chriſtian World be Judge, who beſt *deſerve* the Name of *Churchmen*, thoſe that *ſtrictly Defend*, and *Maintain* the *Catholick Doctrines*, upon which the *Church*, as a *Society*, is *Founded*, or thoſe who would *Barter* them for a *Mungril-Union* of all *Sects*? Thoſe who Zealouſly ſupport her *Miſſion*, which only can *ſupport* her, or thoſe who would *deſtroy* it, to take in *Schiſmatical Preſbyters* without *Epiſcopal Ordination*, which would *Un-church* the very *Church*, and *Annihilate* her Conſtitution? Is this the *Spirit* and *Doctrine* of our Holy Mother? To aſſert *Separation* from her *Communion*, to be no *Schiſm*; or if it was, that *Schiſm* is no *Damnable Sin*; that *Occaſional Conformity* is no *Hypocriſy*, *but rather for the Benefit of the Church*; that *any one may be an Occaſional Conformiſt with Schiſmaticks*, and *yet not guilty of Schiſm*; that a *Chriſtian* may ſerve God in any *Way* or *Congregation of Worſhip*, as well by *Extemporary Prayers*, as by a *Preſcrib'd Form*, and *Liturgy*; that *Conformity* to the Church, and *Eccleſiaſtical Authority*, are no Parts of *Morality*, and a *Good Life*, which are *only neceſſary* to Salvation: That the *Orders* and *Ceremonies* of the *Church*, are only *Carnal*, *Arbitrary Obediences*, to be *Diſpens'd* with as Men pleaſe, both by *Clergy* and *Laity*; that the *Cenſures* and *Excommunications* of the *Church*, are mere *Bruta Fulmina*; *Canonical Obedience*, and *Abſolution*, *Spiritual Tyranny*, and *Uſurpation*; and in a Word, that the *whole Body* of the *Worſhip*, and *Diſcipline* of the *Church* of *England*, is nothing elſe but *Prieſtcraft*, and *Popery* in *Maſquerade*. If upon all Occaſions to comply with the *Diſſenters* both in *Publick* and *Private* Affairs, as Perſons of *Tender Conſciences* and *Piety*, to promote their *Intereſts* in *Elections*, to *ſneak* to 'em for *Places* and *Preferment*, to Defend *Toleration*, and *Liberty of Conſcience*, and under the Pretence of *Moderation*, to excuſe Their *Separation*, and lay the Fault upon the *True Sons of the Church*, for *carrying Matters too high*; if to Court the *Fanaticks* in Private, and to hear 'em with *Patience*, if not *Approbation*, *Rail* at and *Blaſpheme* the *Church*, and upon Occaſion to *Juſtify* the *King's Murder*; If to *Flatter* both the *Dead* and the *Living* in their *Vices*, and to tell the World, that if they have *Wit* and *Money* enough, they need no *Repentance*, and that only *Fools* and *Beggars* can be *Damn'd*; If theſe, I ſay, are the Modiſh, and Faſhionable *Criterions* of a *true Church-man*, God deliver *Us all from ſuch* FALSE BRETHREN!

‘ There is another Sort of them who are for a *Neutrality in Religion*, who *really* are of *none*, but are a *ſecret* Sort of *Reſerv'd Atheiſts*, who always pretend to be *of* the *Church*, join in the *Herd*, and will ſometimes frequent our *Publick Communion*, as long as the *Government* appears on our Side; but if any thing is to be got by it, can with as *ſafe a Conſcience* ſlide privately into a *Conventicle*, and look as *demure* as the *ſlyeſt Saint* amongſt 'em. They are equally of *all*, and of *no Communion*, they are the *Gallio's* that *care for none of theſe Things*; They tell us they are for the *Religion Eſtabliſh'd by Law*, but no longer than 'tis ſo; they can ſee neither Sin nor Danger in that *Eccleſiaſtical Bugbear*, as they call *Schiſm*, yet talk very loud about *Union*, *Comprehenſion* and *Moderation*; by all which *canting Expreſſions*, they mean nothing but getting *Money* and *Preferment*, by holding in with Perſons of all *Parties* and *Characters*, *halting* betwixt the Diverſity of Opinions, and Reconciling *God* and *Belial* for Gain. To theſe we may add thoſe who either out of *Fear*, or *Complaiſance*, can tamely, and without Vindication, hear their *God* and *Religion* Blaſphem'd and Abus'd. But there is *another ſort* of FALSE BRETHREN, who ſet up for a greater *Perfection* of *Piety* than their Neighbours, who, like their Originals, the *Phariſees* in the Goſpel, are always pleading their *Merits* before *God*, and the *World*, with an *Oſtentation* of *Sanctity*, in Compariſon with their *Profane Brethren*, with a *Stand off*, *for I am holier than Thou!* Theſe are the *Saints* that under the Pretence of *Conſcience*, ſhall commit the moſt *abominable Impieties*, and juſtify *Murder*, *Sacrilege* and *Rebellion*, by Texts of Scripture. There are yet another ſort of FALSE BRETHREN, of a quite *oppoſite* Character to theſe, who wiſh well to the *Church of England*, and really believe her Conſtitution in *Doctrine*, *Diſcipline* and *Worſhip*, the beſt and pureſt in the *Chriſtian World*; and when either their *Tongues*, *Hands*, or *Purſes* are wanting in her Defence, are ready to ſacrifice their *Perſons* and *Eſtates* in her Vindication. Theſe indeed are *noble Qualifications*, and 'tis Pity ſo good a Character ſhould want any thing to *Complete* it. And to turn the Words of our *Bleſſed Saviour* to the *rich Man*, *yet one thing thou lackeſt*, thy Zeal is to be ſhewn *in*, as well as *for* the Communion of the *Church*, in obeying her *Precepts*, as well as defending her *Rights*. In all theſe Caſes there is a Serious and Deliberate Act of *Treachery* againſt *Conſcience* and *Conviction*, a baſe Forfeiture of that *Spiritual Allegiance* we owe to God, and our Church, as a ſacred *Body*, and *Fraternity*, that ought to preſerve inviolable *Unity*, profeſſing *one Faith*, *one Baptiſm*, *one God*, *and Saviour* of us all.

‘ But, *Secondly*, *Men may be Denominated* FALSE BRETHREN, *with Relation to the State*, *Government*, *or Society of which they are Members*. The Conſtitutions of moſt *Governments* differing according to their ſeveral *Frames*, and *Laws*, upon which they are built and founded, it is impoſſible to lay down any *one Univerſal Rule*, as the Scheme and Meaſure of *Obedience*, that may *ſquare* to every one of them. Only this Maxim in general, I preſume, may be *Eſtabliſh'd*, for the Safety, Tranquillity, and Support of *all Governments*, that no *Innovation* whatſoever ſhould be allow'd in the *Fundamental Conſtitution* of any State, without a very preſſing, nay, unavoidable Neceſſity for it: and whoſoever *ſingly* or in a private Capacity ſhould attempt it, is guilty of the *Higheſt Miſdemeanor*, and is an Enemy to that *Politick Body* of which he is a Member. To apply this Maxim to *our Government*, in which the Truth of it will very evidently appear; our Conſtitution both in *Church* and *State*, has been ſo admirably contriv'd, with that *Wiſdom*, *Weight*, and *Sagacity*, and the *Temper* and *Genius* of each ſo exactly Suited, and Modell'd to the *mutual Support* and *Aſſiſtance* of one another, that 'tis hard to ſay whether the *Doctrines* of the Church of *England* contribute *more* to Authoriſe and Inforce our *Civil Laws*, or our *Laws* to Maintain and Defend the *Doctrines* of our *Church*. The Natures of both are ſo nicely Correſpondent, and ſo happily Intermixt, that 'tis almoſt impoſſible to offer a *Violation* to the *one*, without *Breaking in* upon the *Body* of the *other*. So that in all thoſe Caſes before-mention'd, whoſoever preſumes to Innovate, Alter, or Miſrepreſent any *Point* in the *Articles* of the *Faith* of our *Church*, ought to be *Arraign'd* as a *Traytor* to our *State*; *Heterodoxy* in the *Doctrines* of the *one*, naturally producing, and almoſt *neceſſarily inferring Rebellion*, and *High-Treaſon*, in the *other*; and conſequently a *Crime* that concerns the *Civil Magiſtrate*, as much to *Puniſh*, and *Reſtrain*, as the *Eccleſiaſtical*. However this Aſſertion at firſt View may look like an *High-flown Paradox*, the Proof of it will fully appear in a few *Inſtances*. The *Grand Security* of our *Government*, and the very *Pillar* upon which it *ſtands*, is founded upon the *ſteady Belief* of the *Subjects* Obligation to an *Abſolute*, and *Unconditional Obedience* to the *Supreme Power*, in *all* Things *lawful*, and the utter *Illegality* of *Reſiſtance* upon any *Pretence* whatſoever. But this *Fundamental Doctrine*, notwithſtanding its *Divine Sanction* in the *Expreſs Command* of *God* in *Scripture*, and without which, it is impoſſible any *Government* of any *Kind*, or *Denomination* in the World ſhould *ſubſiſt* with Safety, and which has been ſo long the *Honourable* and *Diſtinguiſhing Characteriſtick* of our *Church*, is now, it ſeems, quite *Exploded*, and *Ridiculed* out of Countenance, as an *Unfaſhionable*, *Superannuated*, nay (which is more wonderful) as a *Dangerous Tenet*, utterly *Inconſiſtent* with the *Right*, *Liberty* and *Property*, of the PEOPLE; who, as our *New Preachers*, and *New Politicians* teach us, (I ſuppoſe by a *New* and *Unheard-of Goſpel*, as well as *Laws*) have, in Contradiction to *both*, the *Power* Inveſted in *Them*, the Fountain and *Original* of it, to *Cancel* their *Allegiance* at Pleaſure, and call their *Sovereign* to account for *High-Treaſon* againſt his *ſupreme Subjects* forſooth; nay to *Dethrone* and *Murder* Him for a Criminal, as they did the *Royal Martyr* by a *Juſticiary* Sentence. And, what is moſt incredible, preſume to make their *Court* to their *Prince*, by maintaining ſuch *Antimonarchical Schemes*. But, God be Thanked! neither the Conſtitution of our *Church* or *State*, is ſo far *Alter'd*, but that by the *Laws of Both*, (*ſtill* in Force, and which I hope, *for ever* will be) theſe *Damnable Poſitions*, let them come either from *Rome* or *Geneva*, from the *Pulpit*, or the *Preſs*, are condemned for *Rebellion*, and *High-Treaſon*. Our Adverſaries think they effectually ſtop our Mouths, and have Us ſure and unanſwerable on this Point, when they urge the *Revolution of this Day* in their *Defence*. But certainly they are the Greateſt *Enemies* of *That*, and his *late Majeſty*, and the moſt *Ungrateful* for the *Deliverance*, who endeavour to caſt ſuch *Black* and *Odious* Colours upon Both. How often muſt they be told, that the * *King Himſelf* ſolemnly *Diſclaim'd* the leaſt Imputation of *Reſiſtance* in his *Declaration*; and that the *Parliament* declar'd, That they ſet the *Crown* on his Head, upon no other *Title*, but that of the *Vacancy of the* Throne? And did they not Unanimouſly condemn to the Flames (as it juſtly Deſerv'd) that *Infamous Libel*, that would have *pleaded* the *Title* of *Conqueſt*, by which *Reſiſtance* was ſuppos'd? So *tender* were they of the *Regal* Rights, and ſo averſe to infringe the leaſt Tittle of our *Conſtitution!* We ſee how ready theſe *Incendiaries* are to take the leaſt Umbrage, to charge their own *curſed Tenets* on

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* His *Highneſs* Declares, in Oppoſition to thoſe who give out, That we do intend to CONQUER and ENSLAVE theſe NATIONS, that we have thought fit to add a few Words to our *Declaration*; “ It is not to be imagined, that either *thoſe* who have *invited* Us, or *thoſe* who are already come to *Aſſiſt* Us, can join in a *WICKED* “ *ATTEMPT OF CONQUEST*, to make void their own *Lawful Titles* to their *Honours*, *Eſtates*, and *Intereſts*.” *See the Prince of* Orange's *Declaration*. *Dr.* Kennet's *Hiſtory of the Four Laſt Reigns*, p. 493.

‘the *Church* of *England*, to Derive *their Guilt* upon it, and Quit *Scores* with it for *Their Iniquity!* Thus do they endeavour to draw *Compariſons*, and to Juſtify the *Horrid Actions* and *Principles* of *Forty-One*, which have been of late Years, to the Scandal of Our *Church*, and Nation, ſo *publickly* defended, not only by the *Agents* and *Writers* of the *Republican Faction*, but by ſome that have the *Confidence* to ſtyle themſelves *Sons*, and *Preſbyters* of the *Church* of *England*; who in open *Defiance of* the moſt *peremptory Declarations* of God in *Scripture*, (never to be evaded by any *Shifts* or *Miſrepreſentations*) and the *Univerſal Doctrine*, and *Expoſitions* of the *Catholick Church* upon it in *all Ages*, with the *Expreſs Teſtimony*, and *Concurrence* of Our *Church*, from its *Reformation* down to the preſent *Times*, *Corroborated* with the *Senſe* of Our *Legiſlature*, ſo *unexceptionably confirm’d* in Our *Laws*, Dare, in *Deſpite* and *Contempt* of all *this Evidence*, manifeſtly defend the *Reſiſtance of the Supreme Power*, under a *New-fangled Notion* of *Self-Defence*; the only Inſtance they ſhew of *Shame*, that they dare not YET maintain *Rebellion* by its *proper Name*. Yet, if thoſe *ſilly Pretences*, and *weak Excuſes* for it alledg’d, carry *any Strength*, or *Reaſon* in them at all, they will equally ſerve to *Juſtify All the Rebellions* that ever *were* or *can be* committed in the World. Now as the *Republicans* Copy after the *Papiſts*, in moſt of their *Doctrines* and *Practices*, I would fain know in *this* where the Difference lies, betwixt the *Power Granted* to (as ’tis ſuppos’d Originally *Inveſted*, but from what *Commiſſion* God knows, in) the *People*, to *Judge* and *Dethrone* their *Sovereigns*, for any *Cauſe* they *think* fit; or a no *leſs Uſurped Power* of the *Pope*, to *ſolve* the People from their *Allegiance*, and *diſpoſe* of *Sceptres* and *Diadems* to his *Favourites*, whenever he thinks it his *Intereſt* to pluck them from his *Enemies* Heads. *Compariſons* are generally *Odious*; but a *Learned Biſhop of our Kingdom*, whoſe Averſion to *Popery*, I hope, is not doubted, I mean the[*] Right Reverend the Lord Biſhop of *Sarum*, has been bold Judiciouſly to determine, even on the *Papiſts* Side in this Caſe, That if ſuch a *Depoſing Power* is to be intruſted in *Mortals Hands*, leſs *Inconveniencies* will enſue in placing it in *One*, than in *Many*; though God forbid it ever ſhould be Lodg’d in any other than that of *God* himſelf, the *Original* of all Power, from whom it proceeds, and to whom it muſt Return; the *King of Kings*, *Lord of Lords*, *and ONLY Ruler of Princes*. So that theſe *Romantick wild* Notions will carry Us into ſomething *worſe* (if ’tis poſſible) than *Popery* itſelf; more *Fatal* to the *Rights* and *Intereſts* of the *Crown*, and the *Welfare* and *Tranquillity* of Our *Conſtitution*, which can never be *Safe* under ſuch *precarious Dependencies* and *Deſpotick Imaginations*. A *Prince* indeed, in *another* Senſe, will be the *Breath of his Subjects Noſtrils*, to be blown in, or out, at their *Caprice*, and *Pleaſure*, and a worſe Vaſſal than even the meaneſt of his Guards. Such *Villainous* and *Seditious Principles* as theſe, *Demand* a *Confutation* from that *Government* they ſo *inſolently Threaten* and *Arraign*, and which are only *proper* to be *anſwer’d* by that *Sword* they would make our Princes *bear in Vain*, by the *So-long-call’d for Cenſure* of an *Eccleſiaſtical Synod*, and the *Correction* of a Provoked and Affronted *Legiſlature*; to whoſe ſtrict *Juſtice*, and undeſerved *Mercy*, I commit both *them* and Their *Authors*. Only give me Leave to diſmiſs ’em with a *Remark* of the *pious* and *learned* Biſhop *Andrews*, upon ſome of their FALSE BRETHREN in his Time. [†] “*What* (ſays that Good Prelate) *is now become of thoſe Words of God*, Touch not mine Anointed? *Are we not fallen into Strange Times, that Men dare thus print and publiſh, yea, even preach and proclaim their Sins; even thoſe ſinful and ſhameleſs Poſitions, to the Eyes and Ears of the whole World? whereby God’s Anointed are Endanger’d, Men’s Souls are Poiſon’d, Chriſtian Religion is Blaſphem’d as a Murtherer of her own Kings; God in his Charge is openly Contradicted, and Men made Believe, they ſhall go to Heaven in breaking God’s Commandments.*” ‘What could have been ſpoken with a more *Prophetical* Spirit, of theſe *filthy Dreamers*, theſe *Preſumptuous* and *Self-will’d Men*, *Deſpiſers of Dominion*, and *Government*, who *are not afraid to ſpeak Evil of Dignities*, who *wreſt the Word of God to their Own*, and their deluded *People’s Perdition*, and think to *Conſecrate* even the worſt of Sins, with what is almoſt *Analogous* to the *Blaſphemy againſt the Holy Ghoſt!* Theſe FALSE BRETHREN in Our *Government*, do not *Singly*, and in *Private* ſpread their *Poiſon*, but (what is lamentable to be ſpoken) are ſuffer’d to combine into *Bodies* and *Seminaries*, wherein *Atheiſm*, *Deiſm*, *Tritheiſm*, *Socinianiſm*, with all the *Helliſh Principles* of *Fanaticiſm*, *Regicide*, and *Anarchy*, are openly *Profeſs’d* and *Taught*, to *Corrupt* and *Debauch* the *Youth* of the *Nation*, in all *Parts* of it, down to *Poſterity*, to the *Preſent Reproach*, and *Future Extirpation* of Our *Laws* and *Religion*. Certainly the *Toleration* was never intended to *Indulge* and *Cheriſh* ſuch *Monſters*, and *Vipers* in our Boſom, that ſcatter *Their Peſtilence* at *Noon-day*, and will *Rend*, *Diſtract*, and *Confound*, the firmeſt and *Beſt-ſettled Conſtitution* in the World. In ſhort, as the *Engliſh Government* can never be Secure on any other *Principles*, but *ſtrictly* Thoſe of the *Church of England*, ſo I will be bold to ſay, where any Part of it is *Truſted* in Perſons of any *Other Notions*, They muſt be *Falſe* to *Themſelves*, if They are *True* to their *Truſts*; or if they are *True* to their *Opinions* and *Intereſts*, muſt *Betray* that *Government* they are *Enemies* to upon *Principle*. Indeed, We muſt do ’em that Juſtice, to confeſs, that ſince the *Sectariſts* have found out a Way (which their *Forefathers*, God knows, as wicked as they were, would have abhorr’d) to ſwallow not only *Oaths*, but *Sacraments*, to *Qualify* themſelves to get into *Places* and *Preferments*; theſe *Sanctify’d Hypocrites* can put on a *Shew* of *Loyalty*, and ſeem *tolerably* Eaſy in the *Government*, if they can Engroſs *the Honours* and *Profits* of it: But let *her Majeſty reach out her Little Finger to touch their Loins*, and theſe *ſworn Adverſaries to Paſſive Obedience*, and the *Royal Family*, *ſhall fret themſelves, and Curſe the Queen, and their God, and ſhall look upwards*. And ſo much for Our *Political* FALSE BRETHREN, till I come to ſpeak with them again by and bye. I proceed,

‘3. In the Third Place, to a more *Inferior Species* of them, that *Act in a lower Sphere*, namely, *Thoſe who in their Private Capacities, are FALSE either in their Friendſhip, Correſpondence, or Dealing:* But theſe *Sins of Unfaithfulneſs*, as the *Pſalmiſt* calls them, being of ſo *Copious*, and *Extenſive* a Nature, and reſpecting the *Private Concerns* of *Human Life*, I ſhall only trouble you with enumerating ſome of the *General Inſtances* of them: Such as are, *Betraying* Our *Friend* in his *Secrets*, *Deſerting* him in his *Misfortunes*, in not *Defending his Reputation*, when *falſly Accus’d*, in an *Obſequious Compliance* with him in any *Indirect*, or *Diſhonourable Meaſures*, in a Nauſeous *Flattery* of his *Follies*, or *Vices*, in *permitting* him in any *Error*, without *Admonition*, and in giving him *wrong Advice*, and not leading him out of it. Such are alſo, with regard to Our *Neighbour*, the *Concealing*, or *Miſrepreſenting* any *Truth* that he is *Concern’d* to *know*, *Playing upon his Faith* with *doubtful* and *ambiguous Inſinuations*, with *Double Equivocations*, and *Diſſimulatory Expreſſions*, an *Actual Breach* of *Word*, *Promiſe*, or *Profeſſion*, *Clandeſtine Undermining*, by *Circumvention*, *Fraud*, or *Craft*, *Back-biting*, and ſecretly Slandering, *Propagating Scandal*, and *Bearing Falſe Witneſs*, and *Partaking* ſeveral Ways in his *Sins*; which are all the *Characteriſticks* of an *Inſidious*, *Treacherous*, and *Falſe-hearted Knave*. But theſe *Vices* being of a *Private Conſideration*, I haſten to the next *General Head* propos’d, *Namely*,

‘II. Secondly, *To lay before you the Great Peril, and Miſchiefs of theſe FALSE BRETHREN in Church and State*; which I ſhall endeavour to do, by Proving that They *Weaken*, *Undermine*, and *Betray* in *themſelves*, and *Encourage*, and put it in the Power of Our *Profeſs’d Enemies*, to *Overturn*, and *Deſtroy* the *Conſtitution* and *Eſtabliſhment* of *Both*.

‘1. And Firſt, as to the *Church*. But here it is very *Neceſſary* to Premiſe, That by the *Church of England*, We are to underſtand the *True Genuine Notion* of it, as it ſtands *Contra-diſtinguiſh’d* in its *Eſtabliſh’d Doctrine*, *Diſcipline*, and *Worſhip*, from all Other *Churches*, and *Schiſmaticks*, who would *Obtrude* upon Us a *Wild*, *Negative Idea* of a NATIONAL CHURCH, ſo as to *Incorporate themſelves* into the *Body*, as *True Members of it*; Whereas ’tis evident that this *Latitudinarian*, *Heterogeneous Mixture* of all Perſons of what *Different Faith* ſoever, *Uniting* in *Proteſtancy*, (which is but One *Single Note* of the *Church* of *England*) would render it the moſt *Abſurd*, *Contradictory*, and *Self-inconſiſtent Body* in the World. This *Spurious* and *Villainous Notion*, which will take in *Jews*, *Quakers*, *Mahometans*, and any Thing as well as *Chriſtians*, as ridiculouſly incongruous as ’tis, may be firſt Obſerv’d, as one of thoſe Prime, Popular *Engines*, Our FALSE BRETHREN have made Uſe of to Undermine the very *Eſſential Conſtitution* of Our *Church*; which as it ſtands *Guarded* with its *Own* ſacred *Fences*, with Her only *True Sons* in Her *Boſom*, may defy all the *Malice* of the *Devil*, and Her *Enemies*, to *prevail againſt Her*. But ſuch is Her *hard Fortune*, Her Worſt *Adverſaries* muſt be let into Her *Bowels*, under the *holy Umbrage* of Sons, who neither *believe* Her *Faith*, Own Her *Miſſion*, ſubmit to Her *Diſcipline*, or comply with Her *Liturgy*. And to admit this *Religious Trojan Horſe*, big with *Arms* and *Ruin*, into Our *Holy City*, the *Strait Gate* muſt be laid quite *Open*, Her *Walls*, and *Incloſures pull’d down*, and an *High Road* made in upon Her *Communion*, and this *pure Spouſe of Chriſt proſtituted* to more *Adulterers* than the *Scarlet Whore* in the *Revelations*. Her *Articles* muſt be Taught the *Confuſion* of all *Senſes*, *Nations*, and *Languages*, to render Her a *Babel*, and *Deſolation*. This was indeed the Ready Way to *Fill the Houſe of God*, but with what? With *Pagan Beaſts*, inſtead of *Chriſtian Sacrifices*, with ſuch *Unhallow’d*, *Loathſome*, and deteſtable Gueſts, as would have driven out the *Holy Spirit* of God with Indignation. This Pious Deſign of making Our *Houſe of Prayer a Den of Thieves*, of *reforming* Our *Church* into a *Chaos*, is well known, to have been *Attempted ſeveral* Times in *This Kingdom*, and lately *within our Memory*, when all Things ſeem’d to *Favour* it, but that *Good Providence*, which ſo happily interpos’d againſt the *Ruin* of Our *Church*, and *Blaſted* the *Long projected Scheme* of theſe *Eccleſiaſtical Achitophels*. A *Scheme* ſo *Monſtrous*, ſo *Romantic*, and *Abſurd*, that ’tis hard to ſay, whether it had more of *Villainy*, or *Folly* in it, and which even the *Sectariſts* of all Sorts (who will not be ſatisfied with any Thing leſs than Sovereignty) *Exploded*, and *Laugh’d* at, as *Ridiculous*, and *Impracticable*. It was doubtleſs a *Wiſe* Way to Exemplify Our *Brotherly Love*, and *Charity* for the *Souls* of Men, to put both *Them*, and *Ourſelves* into a *Gulph* of *Perdition*, by throwing up the *Eſſentials* of Our *Faith*, and the *Uniformity of our Worſhip*. But ſince this *Model* of an *Univerſal Liberty*, and *Coalition* fail’d, and theſe FALSE BRETHREN could not carry the *Conventicle* into the *Church*, they are now reſolved to bring the *Church* into the *Conventicle*, which will more *plauſibly*, and *ſlily* Effect Her *Ruin*. What could not be gain’d by *Comprehenſion*, and *Toleration*, muſt be brought about by *Moderation*, and *Occaſional Conformity*; that is, what they could not do by *Open Violence*, they will not fail by *ſecret Treachery* to *Accompliſh*. If the *Church* can’t be *pull’d down*, it may be *blown up*; and no Matter with theſe Men *How* ’tis *Deſtroy’d*, ſo that it *is Deſtroy’d*. Now let Us, I beſeech You in the Name of God, fairly conſider what muſt be the *Conſequence* of this *Scandalous Fluctuation*, and *Trimming* betwixt the *Church* and *Diſſenters*, both in *Conſcience*, and *Prudence*. Does not this *Innovating* in, *Giving up*, or *Receding from*, any *One Point*, or *Article* in our *Faith*, *Violate*, and *Affect* the *whole Frame*, and *Body* of it? Can we either *Add to*, or *Diminiſh from*, the *leaſt Jot* of our *Religion?* Are we to take its *Conſtitution* as our *Saviour*, and his *Apoſtles deliver’d* it down to Us; or have we Authority to *Curtail*, *Mangle*, or *Alter* it, to *Suit* it to the *Pride*, *Humours*, *Caprice*, and *Qualmſick Stomachs*, of Obſtinate, Moody, Wayward, and Self-conceited *Hypocrites*, and *Enthuſiaſts?* Will not ſuch a Baſe, and *Time-ſerving Compliance* give the *Enemies of our Church* an *Occaſion* of *Blaſpheming* Her as *Weak*, and *Inconſtant?* Will it not argue the *Illegality* of *Her Ordinances* and *Laws*, or that they were too *Rigid*, and wanted an *Abatement?* Will not this *Harden*, *Encourage*, nay *Juſtify* the *Diſſenters* in their Opinion of their *Separation*, when they ſee ſuch large *Allowances*, and Conceſſions made in its Favour? What *Diſhonourable*, and *Unworthy Opinions* muſt they entertain of the *Prieſts* of *that Church*, who

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[*] Leſs *Diſorder* may be apprehended from the *Pretenſions* of the *Roman Biſhops*, than from *theſe Maxims*, that put the *Power* of *Judging* and *Controlling* the *Magiſtrate* in the PEOPLE’s Hands, which opens a Door to *Endleſs Confuſions*, and indeed, ſets every *private Perſon* upon the *Throne*, and introduceth an *Anarchy*, which will never admit of *Order* and *Remedy*; whereas, Thoſe who have but *One* PRETENDER over Them, could more eaſily deal with Him, and more Vigorouſly RESIST Him. [*Vindication of the Church of* Scotland. *Printed at* Glaſgow, 1673. *p.* 68, 6.

[†] Sermon 3. on the Conſpiracy of the *GOWRIES*, preach’d before the King at *Holdenberg*, *Aug.* 5. 1610. *p.* 808.

‘ can *Sacrifice* their moſt Solemn *Declarations*, and *Oaths* to *Complaiſance*, and *Preferment?* What would be the *End* of All this, but to *Eſtabliſh Hereſy*, and *Eraſtianiſm* upon the *Ruins* of our *Faith* and *Diſcipline?* Would not this *Spiritual Legerdemain*, this *Fallacious Tricking*, and *Double-dealing*, eradicate all the *Principles* of *Truth*, and *Honeſty*, or Piety out of Men's Minds, make 'em *Unconcerned* whether there is *Any*, or *No Religion*, Run 'em into an *Univerſal Scepticiſm*, and *Infidelity*, and make 'em All *Atheiſts*, or *Papiſts?* For when they had *Turn'd about, and about*, and were grown *Giddy* with *Change*, they would either Give up Themſelves to the *Diſbelief of all Things*, or Reſt their *weary'd Judgments* in the *Authority* of *that Church alone*, that can Delude 'em with the *Specious Pretences* of an *Infallible Guide*. Thus our FALSE BRETHREN, as the *Jews* did our *Bleſſed Saviour*, crucify his *Church betwixt Thieves*; and as they committed that *Execrable Villainy* under a *Pretended Fear* leſt the *ROMANS ſhould come and take away their Place, and Nation*, which by *that very Fact* They *brought* upon *Themſelves*: So theſe *Men*, out of a *Fictitious Fear* leſt the *Modern ROMANS* ſhould come and Deſtroy *Our Church*, are Working *that Ruin* they *pretend* to *Avoid*, and under a *Falſe Zeal* of *Keeping* out *Popery*. are Themſelves infallibly *Bringing* in *That very POPERY* into *Our Kingdom*, with which they ſo *Falſly* and ungratefully endeavour to *Attaint the Church of England*, the *Greateſt Bulwark*, and only Safe-guard againſt *Popery* in the whole *World!* Tho' it were highly to be wiſh'd that thoſe *Excellent Laws* made for Her *Defence and Security*, were at preſent put ſtrictly into Execution; for the *Roman-Catholick* Agents, and Miſſionaries that ſwarm about this Great City, as it were in Defiance and Contempt of them, were never more Buſy in making Proſelytes to their *Superſtition*, and *Idolatry*, and Perverting and Debauching *Her Majeſty's Subjects* in every Corner of our Streets.

‘ 2. Thus we ſee how *Dangerous* theſe FALSE BRETHREN are to our *Church*, which is ſo Great and Conſiderable a *Branch* of our *Civil Conſtitution*, that the *Support* of Our *Government* depends upon *its Welfare*, and what *Affects* That muſt ſtrike at the *Foundation* of our *State*; *Innovations* in *Either*, tending to the *Subverſion* of their *Laws*, and the Unſettling the *Eſtabliſhment*, and conſequently to *Anarchy*, and *Confuſion*. But to draw this *Argument* more home to the *Point*; I will endeavour to prove, that our FALSE BRETHREN are as Deſtructive of our *Civil*, as *Eccleſiaſtical Rights*. For firſt, it cannot be deny'd, that tho' They do ſubmit to the *Government*, their *Obedience* is *Forc'd*, and *Conſtrain'd*, and therefore ſo *Treacherous*, and *Uncertain*, as never to be *Truſted*, becauſe proceeding upon no *Principle*, but mere *Intereſt* and Ambition; and whenever That *changes*, their Allegiance muſt follow it; and therefore (to uſe their *Own Expreſſion*) are as much *Occaſional Loyaliſts* to the *State*, as They are *Occaſional Conformiſts* to the *Church*; that is, They will *Betray* either, whenever it is in their *Power*, and They think it for their *Advantage*. FALSHOOD always implies *Treachery*; and whether That is a *Qualification* for any One to be *Truſted*, eſpecially with the *Guardianſhip* of our *Church*, or *Crown*, let our *Governors* conſider. And certainly nothing but the moſt *Sottiſh Infatuation*, can ſo far *blind* both our *Eyes*, and our *Judgments*, as to make us *believe*, that the *ſame Cauſes* ſhould not produce the *ſame Effects*, and that the ſame *Latitudinarian*, and *Republican* Notions ſhould not bring forth the ſame *Rebellious* and Pernicious *Conſequences*. They are pleas'd now to *ſoften* their *Lewd Principles*, and cover their *Dangerous Tenets* with the Name of *Speculative Opinions*; but what *Fatal Practices* they have created, and whether theſe *Seditious Thoughts* will not again *Exemplify* themſelves in the ſame *Bloody Actions*, We ſhall be *Convinc'd*, to our *Sorrow*, if We don't *Apprehend*. That the *Old Leaven* of their *Fore-Fathers* is ſtill *Working* in their *Preſent Generation*, and that this *Traditional Poyſon* ſtill remains in this *Brood* of *Vipers*, to *Sting* Us to *Death*, is ſufficiently *Viſible*, from the *Dangerous Encroachments* They now make upon our *Government*, and the *Treaſonable Reflections* They have *Publiſh'd* on her *Majeſty*, God bleſs Her! Whoſe *Hereditary Right* to the *Throne*, They have had the Impudence to *Deny*, and *Cancel*, to make *Her a Creature of their own Power*; and that by the ſame *Principles* They plac'd a *Crown* upon Her, They tell Us, *They* (that is, the *Mob*) may re-aſſume it at their Pleaſure. Nay, now They have advanc'd themſelves from the *Religious Liberty* Our *Gracious Sovereign* has *Indulg'd* them, to Claim a *Civil Right*, as they *Term* it, and to *Juſtle* the *Church* out of *Her Eſtabliſhment*, by Hoiſting their *Toleration* into its Place; and to convince Us what *alone* will *ſatisfy* 'em, inſolently Demand the *Repeal of the Corporation* and *Teſt Acts*, as an *Eccleſiaſtical Uſurpation*, which indeed under *Her Majeſty* (whom God long preſerve for its Comfort and Support!) is the only *Security* the *Church* has to Depend upon. And which they have ſo far *Eluded* by their Abominable *Hypocriſy*, as to have Undermin'd Her *Foundation*, and *Endanger* the *Government*, by filling it with its *Profeſs'd Enemies*. *Theſe Charges* are ſo *Flagrant*, and *Undeniable*, that a Man muſt be very *Weak*, or *ſomething worſe*, that thinks, or pretends, that *Diſſenters* are to be *Gain'd*, or won over by any other *Grants*, and *Indulgences*, than giving up our *Whole Conſtitution*: And He that *recedes* the *leaſt Tittle* from it, to ſatisfy, or *Ingratiate* with theſe *Clamorous*, *Inſatiable* and *Church Devouring Malignants*, knows not what Spirit They are of, or He ought to ſhew who is a *True Member* of *Our Church*. Have They not ever ſince their firſt *Unhappy Plantation* in this Kingdom, by the Interceſſion of that *Falſe Son* of the *Church*, *Biſhop Grindall*, always *Improv'd*, and *Riſe* upon their *Demands* in the *Permiſſion* of the *Government?* Inſomuch that *Queen Elizabeth*, that was Deluded by that *Perfidious Prelate* to the *Toleration* of the *Genevian Diſcipline*, found it ſuch an *Headſtrong*, and *Encroaching Monſter*, that in *Eight Years*, *She* foreſaw it would *Endanger* the *Monarchy*, as well as the *Hierarchy*: And like a Queen of *True Reſolution*, and *Pious Zeal* for Both, pronounc'd, That ‘ ſuch were the *Reſtleſs Spirits* of that FACTIOUS *People*, that no *Quiet* was to be *Expected* from them, till they were utterly *Suppreſs'd*:’ Which like a *Prudent Princeſs*, She did by *Wholeſome Severities*, that the Crown for many Years ſat *Eaſy*, and *Flouriſhing* on Her Head. And had *Her Succeſſor*, *King James*, but follow'd Her *Wiſe Politicks*, His Son had never fallen a *Martyr* to their *Fury*, nor any of his *Unhappy Offſpring* ſuffer'd thoſe *Diſaſtrous Calamities*, which made the *Royal Family* one *continu'd Sacrifice* to their *Malice*. And what better could have been expected from *Miſcreants*, *Begot* in *Rebellion*, *Born* in *Sedition*, and *Nurs'd up* in *Faction?* I would not here be miſunderſtood, as if I intended to caſt the leaſt Invidious Reflection upon that *Indulgence* the Government has condeſcended to give 'em, which I am ſure all thoſe that wiſh well to our Church are very ready to Grant to *Conſciences truly Scrupulous*; let *Them* Enjoy it in the full Limits the *Law* has Preſcib'd. But let them alſo *move* within their *Proper Sphere*, and not grow *Eccentrick*, and like *Comets* that *Burſt* their *Orb*, Threaten the *Ruin* and *Downfall* of Our *Church*, and *State*. Indeed they tell us they have *Relinquiſh'd* the *Principles*, as well as the *Sins* of their *Fore-Fathers*: If ſo, why do they not *Renounce* their *Schiſm*, and come *Sincerely* into Our *Church?* Why do they *Pelt* Her with more *Blaſphemous Libels*, and *Scurrilous Lampoons*, than were ever Publiſh'd in *Oliver's Uſurpation?* Have they not lately Villainouſly Divided us with *Knaviſh Diſtinctions* of *High* and *Low-Church* Men? Are not the *Beſt Characters* they can give Us, thoſe of *Papiſts*, *Jacobites*, and *Conſpirators?* And what do they mean by all this *Inſidious Cant*, but by *Falſe Inſinuations*, and raiſing *Groundleſs Jealouſies*, and *Fears*, to *Imbroil* the *Publick*, and to bring it into that *Confuſion*, they are *Suggeſting* upon Us? Whether theſe Men are not *Contriving*, and *Plotting* our utter *Ruin*, and whether all thoſe FALSE BRETHREN, that fall in with theſe *Meaſures*, and *Deſigns*, do not contribute baſely to it, I leave every Impartial Man that wiſhes the *Welfare* of Our *Conſtitution* to Determine: And if we find this true *in Fact*, what Reaſon have we to think, but that the *National Sins* are *Ripen'd* up to a full Maturity, to call down Vengeance from *Providence* on a Church and Kingdom, thus *Debauch'd* in its *Principles*, and *Corrupted* in its *Manners*, and inſtead of the *True Faith*, *Diſcipline*, and *Worſhip*, given over to all Licentiouſneſs, both in *Opinion*, and *Practice*, to all *Senſuality*, *Hypocriſy*, *Lewdneſs*, and *Atheiſm?* And now are we under no *Danger* in theſe *Deplorable Circumſtances?* Muſt we *Lull* Ourſelves under this *ſad Repoſe*, and in ſuch a *Stupid*, *Lethargick Security*, *Embrace* our *Ruin?* When *Eliſha* the Great *Prophet of* God, was Surrounded with an *Hoſt of Enemies*, that ſought for his Life, his *Blind Servant* beheld not the *Peril* his *Maſter* was in, till his *Eyes* were open'd by *Miracle*, and he found himſelf in the *midſt of Horſes and Chariots of Fire*. I pray God We may be out of *Danger!* but we may remember the *King's Perſon* was *Voted* to be ſo, at the *ſame Time* that his *Murtherers* were *Conſpiring* his *Death*. What I have thus freely ſpoken, I hope is as much without Offence, as it proceeds from a good Intention, and a Tender Concern for Her *Majeſty's Perſon*, and *Government*, and an Hearty Zeal for the *Honour* and *Safety* of our Excellent *Church*, and *Conſtitution*. I intreat Your Patience,

‘ III. Briefly to *ſet forth the Heinous Malignity*, *Enormous Guilt*, *and Folly of this Prodigious Sin of* FALSE BROTHERHOOD.

‘ 1. And Firſt, With Regard to *God* and *Religion*. It is a moſt Perfidious *Apoſtacy* from, and *Reproach* upon *Both*. It is no leſs than *Renouncing* Our *Allegiance* to our *Almighty Sovereign*, an Open *Denial*, and *Proſtitution* of Our moſt *Holy Faith*, and *Church*, upon which *Crime* God has *Entail'd* ſo many Dreadful *Threats*, and *Anathemas*. It is *Betraying* Our moſt Solemn *Oaths*, proving *Falſe* to Our Sacred *Truſt*, and *Commiſſion*, *Adminiſtring* to, and *Indulging* Men in the moſt *Mortal Sins*, Endangering both our *Own*, and the Salvation of that *Dear Flock*, for which *Chriſt* Dy'd, by Expoſing it to the Corruptions of *Hereſy* and *Schiſm*, the Impoſtures of *Falſe Apoſtles*, and the Deceit, and Malice of *Wolves in Sheep's Cloathing*. It is Deriving the higheſt *Blaſphemy*, and *Diſhonour* upon the *Holy Spirit of* God, Thus to Prevaricate with his *Immutable Oracles of Truth*, in Wreſting 'em to maintain the moſt *Diabolical Falſhoods*, and *Errors*, and making *Veracity itſelf* the *Author* and *Patronizer* of *Lyes*. It is *Forſaking* Our *Baptiſmal Covenant*, Baſely *Deſerting* the Glorious *Colours* we are *Liſted under*, turning *Refugees* from our *Saviour*, and *Adherents* to his moſt *Abjur'd Enemies*. In a Word, to accompliſh any wretched Secular Deſign, to Gratify their *Pride*, or *Ambition*, to Feed their *Luſt* or *Avarice*, to wreak their *Spleen* or *Revenge*, out of *Envy*, or *Diſappointment*, for a Little, Paultry *Honour*, *Money*, or *Preferment*: Theſe FALSE BRETHREN will *Renounce* their *Creed*, and *Read the Decalogue backward*, be the very *Reverſe* of Our *Bleſſed Saviour* (whom like their *Primitive Pattern*, they firſt *ſell*, and then *betray*) *Fall down and Worſhip the very Devil himſelf for the Riches and Honours of this World*.

‘ 2. *Secondly*, In Regard to the *World*. What a vaſt Scandal, and Offence muſt it give to all Perſons of *Piety*, and *Integrity*, to ſee Men of *Character*, and *Stations*, thus Shift and Prevaricate with their *Principles*, and Starting from their *Religion* upon any Occaſion of *Difficulty*, or *Trial*, and like the *Diſciples*, flying from, and forſaking our *Saviour*, when his Life Lay at Stake? To ſee Men's *Opinions ſit as looſe* about 'em as their Garments, to put on, or off, for *Convenience?* What can *Unwary* Perſons conclude from ſuch *Tergiverſation*, and *Hypocriſy*, but that all Religion is *State-Craft*, and *Impoſture?* That all *Godlineſs is Gain*; and that the *Doctrines* of the *Church* lie not ſo much in Her *Articles*, as Her *Honours*, and *Revenues?* Without doubt this *Modern Latitude*, and Infamous *Double-Dealing*, as it can proceed from nothing but the *rankeſt Atheiſm*, ſo it muſt Propagate it whereſoever it goes; and 'tis not to be Queſtioned, but that the *Wonderful Increaſe*, and *Impudent Appearance* of all *Sects* and *Hereſies* in this Kingdom at preſent, beyond what was ever known in *Former Ages*, is chiefly to be attributed to it. But this *Crime* is as *Pernicious* to *Human Society*, as *Religion*; for it Deſtroys all *Common Honeſty*, *Faith*, and *Credit* in the *World*, and in the Place of it ſets up an *Univerſal Trade* of *Cozenage*, *Sharping*, *Diſſimulation*, and downright *Knavery*. For, what *Dependance* can there be upon a Man of *no Principles?* What *Truſt* in *Equivocations*, *Evaſions*, and *Lyes?* Nor indeed could any one be ſuppos'd ſo Sottiſh, as to place the leaſt Confidence in theſe *Men*, did they not *Bait* their *Hook*, and *Cover* their *Treachery* with the Sacred and Plauſible *Pretences* of FRIENDSHIP, whereby they are capable of doing *much more Miſchief*, than a *barefac'd* and *profeſs'd Enemy*. In what moving and *Lively Colours* does the Holy Pſalmiſt paint out the *Crafty Inſidiouſneſs* of ſuch wilely *Volpones?* *Wickedneſs* (ſays he) *is therein, Deceit and Guile go not out of their Streets. For it is not an Open Enemy that has done me this Diſhonour, for then I could have borne it: Neither was it mine Adverſary,* ‘*that did Magnify himſelf againſt me, for then peradventure I would have hid myſelf from him. But, it was even Thou! my Companion, my Guide, and mine own Familiar Friend. We took ſweet Counſel together, and walked in the Houſe of God as Friends. There is no Faithfulneſs in their Mouths, their inward Parts are very Wickedneſs; Their Throats are Open Sepulchres, and their Words are ſmoother than Oil, yet be they very Swords. Like* Joab, *they pretend to* ſpeak peaceably, *and ſmite us Mortally under the fifth Rib.*

‘3. *Thirdly, With Regard to a Man's Self*, it is hard to diſtinguiſh whether our FALSE BRETHREN prove themſelves Guilty of more exceſſive *Knavery*, or *Folly*. For whatever theſe *Cunning*, *Temporizing Politicians* may think, they will find, after all their *Shuffling*, and *Compliance*, that the *Plain Road* of *Truth*, *Honeſty*, and *Integrity*, is both the moſt *Prudent*, as well as the *Safeſt Way* they can follow, and that the *Wiſdom of this World* is as much *Fooliſhneſs* with *Men*, as 'tis with *God*. For certainly there is no Sin that ſo much *Diſappoints* its *Own Ends* as *This* does. Perhaps *the Man* may Obtain the *Preſent Advantage* He has in Proſpect, by relinquiſhing his *Old Friends* and *Principles*; but is ever ſuch a *Mercenary Convert* receiv'd *heartily* into the *Boſom* of his *Former Enemies?* Or are *They* ever found ſo *Credulous* and *Good-natur'd*, as to *Forgive*, and *Believe* ſuch an *Apoſtate* Cordial and Sincere, and fit to be *Truſted* in any Matter of *Weight* or *Importance*, who has *Betray'd* his *Own Party* for the *Little*, *Sordid Lucre* of a *Place* or *Preferment?* And is again ready to be *Retrogarde*, whenever the *Wind* ſhall *Change* and *Veer* about? Such a FALSE BROTHER may ſerve the *Preſent Turn* of his *Adverſaries*, who may ſeem, whilſt they want the TOOL, to *Flatter* and *Careſs* him; but let ſuch a *Turn-Coat* reſt aſſured, He ſhall meet with *Hypocriſy* for *Hypocriſy*; and ſince he is got upon the *Stage*, ſhall *Act his Part* and be *Hiſs'd off* when He has done? Such a *Wiſe Game* do our *Projectors Play*, they *Barter*, and *Betray* their *Friends*, only to *ſell* themſelves *Slaves* into the Hands of their *Enemies*, who ſhall *Treat* them with more *Inſolence*, *Diſdain*, and *Tyranny*, than *Honeſt Men* do with *Scorn* and *Contempt*, if they don't go the *whole Lengths of their Party*, *ſtick at Nothing*, tho' never ſo *Impious*, and Abſurd, and run from one *Extreme* to a *quite contrary*. Thus *Little*, thus *Baſe*, thus *Odious*, thus *Contemptible*, thus *Servile*, nay thus *Execrable* is the *Traytor*, and *Double Dealer*, in the Sight, not only of all *Honeſt Men*, but the moſt *Profeſs'd Knaves*, and *Hypocrites*. Who cannot but have a *Tacit Regard*, and *Veneration* for a Man of *Steadineſs* and *Probity*, that upon *All Occaſions* is *True* to *Himſelf*, and his *Cauſe*, is above the *Threats*, as well as *Flatteries* of this World, ſtill *Truſting* in his *God*, and his own *Integrity*, and *Juſtice*, *Deſpiſing* his *Intereſt*, or *Succeſs*, and is under all Circumſtances like that *God*, and *Religion* He *Believes* and Serves, *without Variableneſs, or Shadow of Change, but is the ſame, To-day, To-morrow, and for ever?* Farther, theſe FALSE BRETHREN cannot be more *Odious* to *God* and *Man*, than they are to *Themſelves*, who are always *a Self-contradiction*, full of *Confuſion* and *Perplexity*, perpetually *Haunting* themſelves, the *Worſt* of *Dæmons*, maintaining an *irreconcileable War* betwixt the *Outward* and *Inward Man*, *Conformiſts in Profeſſion*, *Half-Conformiſts* in Practice, and *Non-Conformiſts* in *Judgment*. Such a *Mixture* of *Inconſiſtency* and *Nonſenſe*, that any one that has the leaſt *Spark* of *Conſcience* or *Reaſon*, muſt *Renounce* and *Deteſt*. But this diſmal Effect has ſuch a *State* of *habitual Hypocriſy*, that it quite *Damps*, and *Extinguiſhes Both*, *Quenches* the *Holy Spirit of God*, and *Crucifies his Son afreſh*; and as it *finds* a Man *void* of *Shame*, generally without a miraculous Converſion *leaves* him incapable of *Repentance*, and both *Damns* him *here*, and *hereafter*; and as He *Choſe* it in *This World*, *Appoints* him in the *Next*, his *Portion with Hypocrites and Unbelievers, with all Lyars that have their Part in the Lake which burns with Fire and Brimſtone*, with the *Grand-Father* of *Falſhood*, the *Devil* and his *Angels*. And ſo here we leave our FALSE BRETHREN, in the *Company* they always *keep Correſpondence* with.

‘IV. Now what ſhould be the *Reſult* of this *Long Diſcourſe*, but that if We bear any *True Concern* for the *Intereſt*, *Honour*, and *Safety* of Our *Church* and *Government*, We ought *ſtedfaſtly* to *Adhere* to thoſe *Fundamental Principles*, upon which *Both* are *Founded*, and upon which their *Security*, under *God*, alone, depends; and conſequently that it highly *Behoves* Us, *Cautiouſly* to *watch againſt*, to *Mark*, and *Avoid* All thoſe that thus *Treacherouſly Deſert* them. And indeed it would be both for *Our Advantage*, as well as *Their Credit*, if ſuch Men would *throw* off the *Maſk*, entirely *Quit our Church*, of which they are no *True Members*, and not *fraudulently Eat her Bread*, and *lay wait for Her Ruin*, *Purloin* Her *Revenues*, and ungratefully *lift up their Heels* againſt Her. For then We ſhould be *One Fold under one Shepherd*, all thoſe *Invidious Diſtinctions* that now *Diſtract*, and *Confound* Us *Loſt*, and We ſhould be *Terrible like an Army of Banners* to our *Enemies*, who would never *break in* upon ſuch an *Uniform*, and *Well-compacted Body*. This indeed would be a *True Peace*, and *Solid Union*, when we ſhould *All with one Mind, and one Mouth, Glorify God*, and not with a *Confus'd Diverſity* of *Contradictious Opinions*, and inconſiſtent *Jargon* of Worſhip, which the *God of Peace*, *Purity* and *Order* cannot but *Abhor*. As it is a *Maxim* in *Politicks*, that *All Governments are beſt ſupported by the ſame Methods, and Counſels upon which they are Founded*; ſo it will appear undeniably True in its *Application* to *our Conſtitution*, which can be *Maintain'd* by no *Other Principles*, but *Thoſe* on which it is *Built*, and like their *Baſis*, the *Goſpel*, if there's any *Violation*, or *Breach* made in any *Branch* of it, it *ſhakes* and *endangers* the *whole Frame* and *Body*. Theſe Things, however *Little* they may be *Repreſented* by Our *Adverſaries*, will be found of the moſt *Conſiderable Conſequence*. Let Us therefore, as We are unhappily *Sharers* of St. *Paul*'s *Misfortune*, to have our *Church in Perils among* FALSE BRETHREN, follow his *Example* and *Conduct* in a Parallel Caſe. He tells us in his *Epiſtle* to the *Galatians*, c. ii. That he was Obſtructed, and Peſter'd in his Preaching the Goſpel, by FALSE BRETHREN, *unawares brought in, who came privily to ſpy out his Liberty, which he had in Chriſt Jeſus, that they might bring him into Bondage. To whom he gave place by Subjection, no not for an Hour, that the Truth of the Goſpel might continue with the Church. Doubtleſs* this *brave*, and *bold Reſolution* did the *Apoſtle* take by the peculiar *Command*, and *Inſpiration* of the *Holy Ghoſt*; and yet if our *Diſſenters* had Lived in thoſe Times, they would have *branded* him as an *Intemperate*, *Hot*, *Furious Zealot*, that wanted to be Sweeten'd, by the Gentle Spirit of *Charity*, and *Moderation*, *forſooth! Schiſm* and *Faction*, are Things of *Impudent* and *Incroaching* Natures; they *Thrive* upon *Conceſſions*, take *Permiſſion* for *Power*, and advance a *Toleration* immediately into an *Eſtabliſhment*; and are therefore to be treated like *Growing Miſchiefs*, or *Infectious Plagues*, kept at a Diſtance, leſt their *Deadly Contagion* ſpread. *Let us therefore have no Fellowſhip with theſe Works of Darkneſs, but rather reprove them.* Let our *Superior Paſtors* do their Duty in *Thundering* out their *Eccleſiaſtical Anathemas*, and let any *Power on Earth Dare* Reverſe a *Sentence Ratiſy'd in Heaven*. Let them Diſcountenance all theſe *Seditious*, *Luke-warm*, *Almoſt-Chriſtians*, and Promote Men of *Probity*, *Conſcience*, and *Courage*, I ſay *Conſcience*, and *Courage*, for the *One* without the Other is like *Faith* without *Works*, *Dead* and *Inſignificant*. A *Chriſtian*, and a *Coward*, are ſuch *Contradictions*, as were never found in the *Church Militant*; Men of *Timorous* and *Daſtardly Spirits*, who are aſham'd to *Own*, or afraid to *Defend* their *Principles*, leſt they ſhould *loſe*, or *ſuffer* by it, will prove very *Poor Diſciples* of the *Croſs!* Such *Men* (as an *Ingenious Prelate* Wittily expreſſes it) are only *Honeſt by Chance*. Let us Deſpiſe the *ſneaking*, *ſhuffling Compliances* of ſuch as Conſult their *Safety*, and not their *Innocence*, and *dare to be True* in the *worſt of Times*, with this *All-ſuſtaining Cordial Comfort*, that whatever *Enemies* We *gain*, or *Friends* We *loſe*, We carry *One within* Us, that can *Confront*, *Vanquiſh*, *and Counter-Balance* All. *Woe unto them that have a Fearful Heart, and to the Faint Hands, and to the Sinner that goeth two manner of ways!* ſays the Wiſe Man, *Ecclus.* ii. 12. And agreeable to Him the *Apoſtle in very Sarcaſtic* Expreſſions, *Jude* 11, 12, 13. *Woe unto them that have gone in the Way of* Cain, *and ran greedily after the Error of* Balaam *for Reward, and Periſh'd in the Gain-ſaying of* Corah! *Theſe are Spots in your Feaſts of Charity, Clouds without Water, carry'd about of Winds, Trees whoſe Fruits are wither'd, without Fruit, Twice Dead, pluck'd up by the Roots: Raging Waves of the Sea, foaming out their Own Shame; Wandring Stars, to whom is reſerv'd the Blackneſs of Darkneſs for ever.* Let Us therefore, being well aſſur'd how much Our *Cauſe* Deſerves, and how much at preſent it Requires Our *braveſt Reſolutions*, hold *faſt our Integrity*, and *Religion*, *without Wavering*, and *earneſtly contend for the Faith, which was once deliver'd unto the Saints. My Brethren, be ſtrong in the Lord, and in the Power of his Might. Put on the whole Armour of God, that Ye may be able to ſtand againſt the Wiles of the Devil. For we Wreſtle not only againſt Fleſh and Blood, but againſt Principalities, againſt Powers, againſt the Rulers of the Darkneſs of this World, againſt Spiritual Wickedneſſes in High Places. Wherefore take unto you the whole Armour of God, that ye may be able to withſtand in the Evil Day, and having done All, to ſtand*, Eph. vi. 10. &c. Not doubting, but that if We ſhew the ſame *Courage*, and *Indefatigable Zeal*, and Labour, to *Defend*, as Our Adverſaries to *Reproach*, *Divide*, and *Ruin* our *Church*, neither their united *Malice*, nor *Power*, nor all the *Plots*, and *Machinations* of *Rome*, nor the very *Gates of Hell*, itſelf, ſhall ever be able to *Prevail* againſt Her. And let us *Truſt* in that *Gracious Providence*, which ſo Miraculouſly deliver'd Her on this Day, that tho' She lies *Bleeding of the Wounds ſhe has receiv'd in the Houſe of Her Friends*, Lam. ii. 2, 4. tho' *the ways of* Zion *may mourn* for a Time, and Her *Gates be Deſolate, her Prieſts Sigh, and ſhe in Bitterneſs, becauſe Her Adverſaries are Chief, and Her Enemies* at preſent *Proſper; tho' among all her Lovers ſhe has few to comfort Her, and many of her* Friends *have dealt* Treacherouſly *with Her, and are become her* Enemies, Zech. xiii. 6. *Tho' there are few to Guide Her among all the* Sons *whom ſhe hath brought forth; neither are there many that take Her by the Hand, of all the* Sons *that ſhe hath brought up*, Iſa. li. 18. *Tho' her Enemies cry, Down with her, Down with her, even to the Ground*; Yet there is a God that *can* and *will Raiſe* Her up, if We *Forſake* Her not. Let us not therefore ungratefully contribute to Her Deſtruction; but let us *continue Stedfaſt, Immoveable, always abounding in the Work of the Lord, foraſmuch as We know that our Labour will not be in vain in the Lord.* 1 Cor. xv. 58. *Now the God of all Grace, who hath called Us into his Eternal Glory by Chriſt Jeſus, after that ye have* ſuffer'd *a-while, make you* Perfect, Stabliſh, Strengthen, Settle *You*. 1 Pet. v. 10, 11. To him be *Glory, and Dominion, for ever and ever.* Amen.’

“Let Us conclude all in that Excellent Collect of Our Church;”

O *Lord, We beſeech thee, let thy continual Pity* Cleanſe, and Defend *thy Church; and becauſe it cannot continue in* Safety, *without thy* Succour, Preſerve *it evermore by thy* Help *and* Goodneſs, *through Jeſus Chriſt, Our Lord.*

After which the Lords Adjourned to the Houſe of LORDS.

Tueſday, Feb. 28. The Second Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel as before,

Lord Chancellor. Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Sir *Joſeph Jekyll*. MY Lords, Yeſterday your Lordſhips heard the Articles againſt Doctor *Sacheverell*, his Anſwer, and the Commons Replication, read; and the Charge being open'd, your Lordſhips likewiſe heard the Doctor's Sermon preached at *St. Paul's*, and the Dedication of his *Derby* Sermon; ſo that the Caſe is now fully before your Lordſhips.

That Part which is aſſigned to me, and ſome other Gentlemen, is to maintain the Firſt Article of the Commons Charge. The Method I ſhall take will be, firſt, to ſhew the Importance of this Article; Secondly, To clear up and vindicate the Juſtice of the *Revolution*; and, Thirdly, To ſtate the Evidence or Proof of this Article, which charges the Doctor with traducing and condemning the Revolution.

My Lords, I muſt premiſe, that the Commons cannot but think it hard, that in this Aſſembly of the *Britiſh* Nation, they ſhould now, after more than twenty Years Enjoyment of the Benefits ariſing by the Revolution; they cannot but think it hard, I ſay, that in this Place, and at this Time, they ſhould be forced to plead in Vindication of the Juſtice of that Revolution. But ſince we muſt give up our Right to the Laws and Liberties of the Kingdom, or (which is all one) be precarious in the Enjoyment of them, and hold them only during Pleaſure; if this Doctrine of unlimited Non-reſiſtance prevails, the Commons have been content to undertake this Proſecution; and they who ſhare in the Legiſlature with your Lordſhips, have put themſelves into the Condition of Suiters for Juſtice againſt this Offender, in whom your Lordſhips will find the Reverſe of a true *Britiſh* Subject: For ſuch a one is dutiful and ſubmiſſive to his Prince, and true to the Liberty of his Country; but in this Criminal your Lordſhips will find virulent Faction, and ſlaviſh Submiſſion.

As to the Importance of this Article, your Lordſhips were rightly told Yeſterday, that the whole Charge centers in this Article. If the Juſtice of the Revolution be eſtabliſhed, the Toleration will be rejoiced in by ſome, and be acquieſced in by all; the Reſolutions of the two Houſes of Parliament will have a juſt Regard ſhewn to them; her Majeſty's Adminiſtration will be no longer defamed, nor will that unhappy Diſtinction of Parties be capable of being heightened amongſt us. But if the Juſtice of the Revolution (which is our Foundation) be queſtioned, every Thing that is built on it is in ſome Degree ſhaken, and Occaſion is given for Diſputes and Factions, never to be ended but by a total Subverſion of our Conſtitution.

My Lords, As it is ſelf-evident that the Honour of her Majeſty's Government ſtands upon the Juſtice of the Revolution, ſo doth the Peace and Tranquillity of it depend upon that alſo. The Commons may appeal to your Lordſhips, and the whole Nation, in this Matter: From what Quarter is it, that all that Oppoſition and Obſtruction to the Adminiſtration of the late King, and her preſent Majeſty have come? Has it not been from thoſe who have queſtioned the Lawfulneſs of the Reſiſtance made uſe of in the Revolution? whoſe Purſuit after Power is indefatigable, and to obtain which they would make a willing Sacrifice of the Common Liberty; whilſt others who have a contrary Principle, and are convinced of the Juſtice of that Proceeding, have acted a quite contrary Part. Have they not contributed every thing in their Power to ſtrengthen the Government in her preſent Majeſty's Hands, as well as the late King's; and that with a Zeal and Conſtancy through ſeveral Changes, which nothing but a Principle could inſpire? How much is owing to this Zeal in promoting the Settlement of the Proteſtant Succeſſion, and how little to the contrary Principle, every one that remembers the State of Things at the End of the late King's Reign can tell. Upon the preſent Queſtion, therefore, my Lords, depend our preſent Happineſs, and future Hopes. Hath not this Principle of unlimited Non-reſiſtance been revived by the profeſſed and undiſguiſed Friends of the Pretender? Hath it not been proſecuted with an unuſual Warmth, ſince his Attempt upon her Majeſty's Crown? Can the Pretender have any Hopes, but from the keeping alive ſuch Notions? Or can the Queen's Title receive any Advantage from them? Or can it be ſeaſonable to preach this Doctrine in the Reign of the beſt of Princes, which can be of no Uſe to any but the worſt?

In clearing up and vindicating the Juſtice of the Revolution, which was the Second Thing propoſed, it is far from the Intent of the Commons to ſtate the Limits and Bounds of the Subject's Submiſſion to the Sovereign. That which the Law hath been wiſely ſilent in, the Commons deſire to be ſilent in too; nor will they put any Caſe of a juſtifiable Reſiſtance, but that of the Revolution only; and they perſuade themſelves that the doing Right to that Reſiſtance, will be ſo far from promoting popular Licence or Confuſion, that it will have a contrary Effect, and be a Means of ſettling Men's Minds in the Love of, and Veneration for the Laws; to reſcue and ſecure which, was the only Aim and Intention of thoſe concerned in that Reſiſtance.

To make out the Juſtice of the Revolution, it may be laid down, That as the Law is the only Meaſure of the Prince's Authority, and the People's Subjection, ſo the Law derives its Being and Efficacy from common Conſent: And to place it on any other Foundation than common Conſent, is to take away the Obligation this Notion of Common Conſent puts both Prince and People under to obſerve the Laws. And upon this ſolid and rational Foundation, the Lawyers in all Ages have placed that Obligation, as appears by all our Law-Books. But inſtead of this, of later Times, Patriarchical and other Fantaſtical Schemes have been framed, to reſt the Authority of the Law upon; and ſo Queſtions of Divinity have been blended with Queſtions of Law; when it is plain, that Religion hath nothing to do to extend the Authority of the Prince, or the Submiſſion of the Subject, but only to ſecure the legal Authority of the one, and enforce the due Submiſſion of the other, from the Conſideration of higher Rewards and heavier Puniſhments. And if this Diſtinction were attended to, it might ſerve to bury the uſeleſs Labours (to ſay no worſe of them) of ſeveral Divines, and others, on theſe Subjects, in utter Oblivion.

My Lords, Nothing is plainer, than that the People have a Right to the Laws and the Conſtitution. This Right the Nation hath aſſerted, and recovered out of the Hands of thoſe who had diſpoſſeſſed them of it at ſeveral Times. There are of this two famous Inſtances in the Knowledge of the preſent Age; I mean that of the Reſtauration, and that of the Revolution; in both theſe great Events were the regal Power and the Rights of the People recovered. And it is hard to ſay in which the People have the greateſt Intereſt; for the Commons are ſenſible, that there is not one legal Power belonging to the Crown, but they have an Intereſt in it; and I doubt not, but they will always be as careful to ſupport the Rights of the Crown, as their own Privileges.

My Lords, That the Conſtitution was wholly loſt before, and recovered by the Reſtauration, is known to all; and before the Revolution, it is known how Popery and abſolute Power had invaded the Conſtitution. The regal Supremacy, of ſuch abſolute Neceſſity to preſerve the Peace of the Kingdom, was diſclaimed, and the Papal Supremacy, by a ſolemn Embaſſy to *Rome*, owned and acknowledged, and no Footſteps left of the regal Supremacy but that which was worſe than naught, an illegal High Commiſſion Court: And at that Time the popular Rights, in almoſt all the Species of them, were invaded, That great Privilege of the People, on which all others depend, that of giving their Conſent to the making new, or repealing old Laws, was invaded; and a diſpenſing Power, ſuch as rendered all our Laws precarious, and at the Will of the Prince, was exerciſed. Theſe, and a great many other Acts of abſolute Power, are mentioned in that Act of Parliament, called *The Bill of Rights*. It would be to miſpend your Lordſhips Time, to mention all the Inſtances there given: For, my Lords, the whole Tenor of the Adminiſtration then in Being, was agreed by all to be a total Departure from the Conſtitution; the Nation was at that time united in that Opinion, all but the Criminal Part of it. And as the Nation joined in the Judgment of their Diſeaſe, ſo they did in the Remedy. They ſaw there was no Remedy left, but the laſt; and when that Remedy took Place, the whole Frame of the Government was reſtored intire and unhurt. This ſhewed the excellent Temper the Nation was in at that Time, that after ſuch Provocations from an Abuſe of the Regal Power, and ſuch a Convulſion, no one Part of the Conſtitution was altered, or ſuffered the leaſt Damage; but, on the contrary, the whole received new Life and Vigour.

My Lords, As that Doctrine of unlimited Non-reſiſtance was implicitly renounced by the whole Nation in the Revolution, ſo divers Acts of Parliament afterwards paſſed, expreſſing that Renunciation. I beg Leave to read a few Paſſages out of the Laws that were then made. In the Firſt of King *William* and Queen *Mary*, was the Act for abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths. By that Act, the Declaration injoined to be taken by ſeveral Acts, in the Time of King *Charles* II. to this Purpoſe, *That it is not lawful, on any Pretence whatſoever, to take up Arms againſt the King*, was taken away. Then in the ſecond Seſſion of that Parliament, was the Act for declaring the Rights and Liberties of the Subject: In that Act Notice is taken, that the late King *James* did endeavour to ſubvert and extirpate the Proteſtant Religion, and the Laws and Liberties of the Kingdom; and the particular Inſtances of Male-Adminiſtration are ſet forth: Then it declares, That that unhappy Prince had abdicated the Government, and the Throne was thereby vacant; and that it had pleaſed Almighty God to make the Prince of *Orange* the glorious Inſtrument of delivering the Kingdom from Popery and Arbitrary Power. And if the Inſtrument, who brought about that Deliverance, be ſtiled Glorious, ſurely the Means uſed by him is (in Conſequence) approved and applauded; and his late Majeſty is mentioned as the ſame glorious Inſtrument, in the Act for paying the *States-General* the Charges of his Expedition. And ſurely this is an Approbation of the Means uſed by him, when that Act charges the People with Six Hundred Thouſand Pounds for thoſe Means, *viz.* the Force he brought along with him. But if it ſhould be thought theſe Words are too general, and do not particularly approve the Reſiſtance at the Revolution; there came a memorable Occaſion, when the Parliament had that Particular under their Conſideration; and that was, when they were conſidering, whether they ſhould meddle with ſo tender a Thing, as the taking away the Benefit of the Law from a great many of the Subjects of the Kingdom? Which was done by an Act in the ſame ſecond Seſſion of that Parliament, intitled, *An Act for preventing vexatious Suits, againſt ſuch as acted in order to the bringing in their Majeſties, or for their Service.* There they take Notice, that at the Time of his Majeſty's glorious Enterprize, for delivering this Kingdom from Popery and arbitrary Power, and in Aid and Purſuance of the ſame, divers Lords, Gentlemen, and other good People well affected to their Country, did act as Lieutenants, Deputy-Lieutenants, Juſtices of the Peace, or other Officers, Civil or Military, though not ſufficiently authoriſed thereunto; and did apprehend and put in Cuſtody ſeveral criminous and ſuſpected Perſons; and did ſeiſe and uſe divers Horſes, Arms, and other Things; and did enter into the Houſes and Poſſeſſions of ſeveral Perſons, and did quarter, and cauſe to be quartered, Soldiers and others there; which Proceedings, in Times of Peace and common Safety, would not have been warrantable: Yet that Act declares they were neceſſary, in regard of the Exigence of publick Affairs, and ought to be juſtified; and provides an Indemnity for thoſe who acted in that Reſiſtance, from the Actions that might be brought by their Fellow-Subjects.

My Lords, I ſhall conclude this Head with taking Notice of the Form of Prayer, appointed by Royal Authority for the fifth of *November*, now doubly memorable: There is in that Form not only Thanks offered to Almighty God for the Revolution, but for the Succeſs given to thoſe Means that were uſed to bring about that wonderful Deliverance: What elſe is the meaning of thanking God for giving his late Majeſty a ſafe Arrival here, and making all Oppoſition fall before him, till he became our King and Governor?

But, my Lords, notwithſtanding the Juſtice of thoſe Steps that were taken to bring about the Revolution, notwithſtanding the Temper and Prudence that was ſhewn in the Settlement of it, and the Sanction ſince given to it, not only by the Royal, but the whole Legiſlative Authority, Dr. *Sacheverell* hath condemned the Reſiſtance, (which was the principal, if not the only Means) by which that Deliverance was wrought; which was the laſt Thing I propoſed to ſhew to your Lordſhips.

My Lords, This Article is divided into three Branches: Firſt, The general Charge, that he ſuggeſts and maintains, that the neceſſary Means uſed to bring about the Revolution were odious and unjuſtifiable. The ſecond and third Branches are Particulars of that General; *viz.* That his late Majeſty diſclaimed the leaſt Imputation of Reſiſtance; and that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution.

To maintain this Article, I will not repeat the particular Words of the Sermon, in order to the Application of them; that is a Province which is aſſigned to another Gentleman, who will ſpeak after me: But I ſhall offer to your Lordſhips what I apprehend to be the clear Senſe and Meaning of thoſe Paſſages in the Sermon, which maintain this Article. In the eleventh Page of the *Quarto* Edition, he lays down a general Poſition, of the utter Illegality of Reſiſtance, upon any Pretence whatſoever. He ſays, there are ſome who deny this Poſition, who are new Preachers, and new Politicians, who teach divers Antimonarchical and pernicious Doctrines. He goes on, and ſays, They do not only deny this Poſition, but urge the Revolution in Defence of their Denial; that is, by producing that as an Inſtance of a juſtifiable Reſiſtance. Then he exclaims againſt theſe Men, as endeavouring to caſt black and odious Colours on the late King and the Revolution; whereas he ſays, the King diſclaimed the leaſt Imputation of Reſiſtance by his Declaration; and the Parliament diſowned it, becauſe they declare they only fill'd a vacant Throne, without taking Notice how it became ſo; and they burnt a Book which alledged Conqueſt, becauſe it had that Ingredient of Reſiſtance in it.

This Extract out of the Sermon makes out the firſt Article, which is, his condemning the Reſiſtance, which the Commons call the neceſſary Means uſed to bring about the Revolution. For, firſt, That general Poſition of his condemns Reſiſtance in any Caſe whatſoever. Secondly, He introduces ſome as denying this Poſition, and faſtens a vile and odious Character upon them. Thirdly, He makes thoſe that deny this Doctrine object to it an Authority or Precedent of a lawful Reſiſtance, *viz.* that at the Revolution; but, my Lords, this he does only to give up the Lawfulneſs of that Reſiſtance, and condemn that as well as any other. For, Fourthly, He anſwers this Objection, by denying there was any Reſiſtance in that Caſe; a Fact as clear as the Sun at Noon-day, and which all the Nation ſaw and rejoiced at. He brings the late King and the Parliament to witneſs againſt any Reſiſtance in the Revolution; and yet he has ſhewn by two Quotations out of the Prince of *Orange*'s Declaration, one in his Anſwer, and the other in the printed Sermon, that his late Majeſty was ſo far from diſclaiming Reſiſtance, that he avowed it, and invited the Subjects of this Kingdom to join in that Reſiſtance; for in his Anſwer, he cites that Paſſage in his Declaration, wherein his Majeſty takes Notice, that he carried a Force with him, ſufficient, by the Bleſſing of God, to defend him from the Violence of Evil Counſellors; and that he deſigned that Expedition to oblige King *James* to call a Free Parliament: And by his Quotation of another Paſſage in the Prince of *Orange*'s Declaration, it appears his late Majeſty was, by divers Subjects of King *James*'s, invited to, and aſſiſted in that Expedition; which being an Expedition by Force, to oblige that King to call a Free Parliament, doth it not carry in it a plain and manifeſt avowing of Reſiſtance? My Lords, as to what he ſays in Relation to the Parliament's diſowning any Reſiſtance at the Revolution, by aſſerting, that they ſet the Crown on the King's Head on no other Title than that of the Vacancy of the Throne, that appears to be directly otherwiſe from the ſeveral Paſſages in divers Acts of Parliament which I have before mentioned: To which I only add, that in the Conference between the two Houſes, previous to the ſettling the Crown on the King's Head, the Word *Abdicated* was inſiſted upon and carried; for that it included in it the Male-Adminiſtration of King *James*, which the Word *Deſerted* (deſired to be uſed inſtead of it) did not: And this appears by the Journal. He therefore knowing that there was Reſiſtance at the Revolution, and that the late King and the Parliament avowed that Reſiſtance; and he pretending to defend it only by denying thoſe Facts, hath (by a neceſſary Implication) aſſerted, That that Reſiſtance was not an Exception to his general Rule, but ſtands condemned by it.

My Lords, I ſhall not enter upon the Conſideration of the Doctor's Anſwer to this Article, becauſe I don't know whether his Counſel will think fit to abide by it; nor would I meddle with any Thing that is proper for the Reply.

The Sum of the whole Proof is this: The Doctor lays down a Doctrine, condemning Reſiſtance in all Caſes whatſoever: He makes thoſe who deny this Doctrine, Aſſerters of Antimonarchical Principles: He takes Notice of the Revolution, only to give it up: He admits, that if there were Reſiſtance in that Caſe, that it was as unlawful as any other Reſiſtance. He aſſerts that to be true, which every one knows to be falſe: He ſays, The late King diſclaimed the leaſt Imputation of Reſiſtance; the Parliament diſowned it; and they who ſay there was any Reſiſtance in it, caſt black and odious Colours on the late King and the Revolution; and conſequently, he condemns the Reſiſtance uſed to bring about the Revolution, which is the Matter of the firſt Article.

This, my Lords, is what the Commons rely upon, to maintain and make out the firſt Article of their Charge againſt the Criminal at the Bar; and they refer the Conſideration of it to your Lordſhips Wiſdom and Juſtice.

Mr. Sol. Gen. Sir *Rob. Eyre.* MY Lords, It falls to my Share, to ſtate to your Lordſhips the ſeveral Paſſages in the Sermon preached at St. *Paul*'s, which the Commons rely upon as a Proof of the firſt Article; and to ſhew the particular Weakneſs and Inſufficiency of the Anſwer given to this Charge.

The Charge is, That the Gentleman at the Bar doth ſuggeſt and maintain, That the neceſſary Means uſed to bring about the late happy Revolution, were odious and unjuſtifiable; That his late Majeſty, in his Declaration, diſclaim'd the leaſt Imputation of Reſiſtance; and, That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution.

The Paſſages upon which this firſt Article is founded, are in the eleventh and twelfth Pages of this Sermon; where Dr. *Sacheverell* having firſt aſſerted, “ That the grand Security of our Government, and the very “ Pillar upon which it ſtands, is founded upon the ſteady Belief of the “ Subjects Obligation to an abſolute and unconditional Obedience to the “ ſupreme Power in all things lawful, and the utter Illegality of Re- “ ſiſtance upon any Pretence whatſoever, *which*, He ſays, has been lately “ exploded and ridiculed,” *goes on in theſe words:*

“ Our Adverſaries think they effectually ſtop our Mouths, and have us “ ſure and unanſwerable on this Point, when they urge the Revolution “ of this Day in their Defence; but certainly they are the greateſt Ene- “ mies of that, and his late Majeſty, and the moſt ungrateful for the De- “ liverance, who endeavour to caſt ſuch black and odious Colours upon “ both. How often muſt they be told, that the King himſelf ſolemnly “ diſclaim'd the leaſt Imputation of Reſiſtance in his Declaration? And “ that the Parliament declared, that they ſet the Crown on his Head upon “ no other Title but that of the Vacancy of the Throne? And did they not “ unanimouſly condemn to the Flames that infamous Libel, that would “ have pleaded the Title of Conqueſt, by which Reſiſtance was ſuppos'd?”

Theſe Words the Commons apprehend to be a full Proof of the Aſſertions charg'd in the firſt Article; for Reſiſtance was the neceſſary Means uſed to bring about the Revolution.

And the Doctor expreſly affirms in this Place, that the King diſclaim'd the leaſt Imputation of Reſiſtance; he aſſerts it as a thing notorious, which Nobody could be a Stranger to: He ſays, the King diſclaim'd it ſolemnly; he diſclaim'd it in his Declaration.

And he as plainly affirms, That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the Revolution; for he firſt lays down the utter Illegality of Reſiſtance upon any Pretence whatſoever, as a fundamental Doctrine; and then acquaints his Auditory, that his Adverſaries thought they could effectually ſtop his Mouth, and had him ſure and unanſwerable *on this Point*, when they urged the Revolution in their Defence; but that they were the greateſt Enemies to the King and to the Revolution, who endeavour'd to caſt ſuch *black and odious Colours upon both.*

Now *this Point*, which he ſays his Adverſaries thought they had him ſure and unanſwerably upon, is plainly the Point of Reſiſtance, which he had aſſerted to be illegal upon any Pretence whatſoever; and others, he ſays, had denied, and had urged the Revolution in their Defence.

And the urging of the Revolution in that Caſe, as an Inſtance of the Legality of Reſiſtance, in Oppoſition to his general Doctrine, is what he calls caſting black and odious Colours upon the King and the Revolution; for his Argument runs thus. All Reſiſtance is utterly illegal; the King diſclaimed the leaſt Imputation of Reſiſtance; the Parliament ſet the Crown upon his Head upon no other Title than that of the Vacancy of the Throne; and burnt a Book becauſe it aſſerted a Title by which Reſiſtance was ſuppoſed; and therefore to impute Reſiſtance to the Revolution, is to caſt *black and odious Colours* upon his late Majeſty and the Revolution.

This, my Lords, is the Force of his Reaſoning, and the plain and obvious Senſe of this Part of the Paragraph; and therefore fully makes out the Charge of his aſſerting and maintaining, that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution.

I come now to conſider the Anſwer he makes to this Article, which he divides into three Parts.

“ And firſt, He denies that he doth ſuggeſt and maintain, that the ne- “ ceſſary Means uſed to bring about the happy Revolution were odious and “ unjuſtifiable; and ſays, that he doth not affirm, in any Part of that Ser- “ mon, any thing concerning the neceſſary means uſed to bring about the “ happy Revolution; the ſaid *Henry Sacheverell* is ſo far from reflecting on “ his late Majeſty or the happy Revolution, that he endeavours in that “ Sermon to clear the Revolution, and his late Majeſty, from the black “ and odious Colours which their greateſt Enemies had caſt upon both.”

Now the material Part of the Anſwer to this Branch of the Article is, “ That he denies his maintaining, that the neceſſary Means uſed to bring “ about the Revolution were odious and unjuſtifiable, and his affirming “ any thing concerning thoſe neceſſary Means.” But this is no more than ſaying, that he has affirmed nothing by the Words *Neceſſary Means*; and 'tis very true, that the Words *Neceſſary Means* are not uſed in any Part of the Sermon.

But Nobody will ſay, that 'tis requiſite to charge the Aſſertion in the very Words.

And therefore, if Reſiſtance was neceſſary, and the Means uſed, in that extraordinary Caſe of the Revolution, he has aſſerted the Means to be odious and unjuſtifiable, tho' he has done it in other Terms, and by Words more particular and expreſs.

“ And as to that Part of the Article whereby he is charged with ſug- “ geſting and maintaining, That his late Majeſty in his Declaration diſ- “ claimeth the leaſt Imputation of Reſiſtance:

“ He acknowledges himſelf to have made this Suggeſtion; but ſays, “ that he made it not in Diſhonour, but in Vindication of his Majeſty; “ the Reſiſtance he repreſents the King to have Diſclaimed, being ſuch a “ Reſiſtance as tended to the Conqueſt of this Realm; for which he refers “ to that Part of the Declaration which is printed at the Bottom of the “ eleventh Page in the Sermon; and upon this Ground he obſerves, that “ there are theſe other Paſſages in the Declaration——We have thought “ fit to go over to *England*, and to carry over with us a Force ſufficient, “ by the Bleſſing of God, to defend ourſelves from the Violence of evil “ Counſellors.——We think fit to declare, that this our Expedition is “ intended for no other Deſign than to have a free and lawful Parlia- “ ment aſſembled.”

Now, in this Part of his Anſwer, Doctor *Sacheverell* admits, that he made the Suggeſtion charged upon him, in the ſame Words that are uſed in the Article; but defends himſelf by alledging, that the Commons have miſtaken his Meaning—He meant only, that the King diſclaimed a Reſiſtance which tended to Conqueſt.

But 'tis clear and plain, that the Words have no ſuch limited or reſtrained Senſe, and that the Meaning he would now put upon them is a mere Shift and Evaſion; for the Propoſition is general, The King diſclaim'd the leaſt Imputation of Reſiſtance: And the Uſe he makes of it ſhews, that his Meaning was as general as his Words; for he is replying upon thoſe who urge the Revolution in Anſwer to his general Poſition, That Reſiſtance is utterly illegal upon any Pretence whatſoever; and how does he anſwer the Caſe of the Revolution, or is it poſſible to be anſwered, but by ſaying, That there was no reſiſtance at all in the Revolution; the King, who was principally concerned in it, diſclaimed the leaſt Imputation of Reſiſtance?

The Queſtion is ſtated upon Reſiſtance in general; Whether Reſiſtance in any Caſe, or upon any Occaſion, be lawful?

And therefore, if the Lawfulneſs of Reſiſtance in any Caſe be allowed, 'tis impoſſible that his general Aſſertion ſhould ſtand; and 'tis equally impoſſible to get clear of the Objection, without denying the Reſiſtance.

Doctor *Sacheverell* was aware of this, and therefore denies that there was any Reſiſtance at all in the Revolution, and ſays, That the leaſt Imputation of it was ſolemnly diſclaim'd and diſavow'd.

For had he ſaid, in expreſs Terms, that the King diſclaim'd all Imputation of Reſiſtance that tended to Conqueſt, this would have been no Anſwer to the Objection: For if there was any Reſiſtance, tho' not the particular Reſiſtance which the King diſclaim'd; and if that Reſiſtance which was us'd be agreed to be lawful, his fundamental Doctrine muſt certainly be ſhaken. And therefore, if your Lordſhips ſuppoſe him to make any Uſe at all of this Aſſertion, his Words plainly ſpoke his Meaning, and repreſent the King to have diſclaimed all Reſiſtance whatſoever.

But he excuſes the making of this Suggeſtion, by declaring, “ That he “ made it not in Diſhonour, but in Vindication of his Majeſty; and there- “ fore, whether he was miſtaken or not in expreſſing himſelf, as if the late

“ King had diſclaimed all Imputation of Reſiſtance, when he meant thereby, that the late King diſclaim'd the Imputation of a Deſign of Conqueſt, he humbly conceives ſuch a Suggeſtion, plainly deſign'd for the Honour of the late King, cannot in any reaſonable Conſtruction be thought a Reflection upon his ſaid late Majeſty, or deem'd any high Crime or Miſdemeanor.”

My Lords, had theſe Words been ſpoken in Vindication of his late Majeſty, our great and glorious Deliverer, the Commons, who have ſo much at Heart the Honour of the late King, and the Juſtice of the Revolution, had never charg'd them upon this Gentleman as a Crime.

But they carry with them the higheſt Reflection upon the Honour and Juſtice of his Majeſty; for they ſuppoſe that he denied the Lawfulneſs of Reſiſtance when he was actually engaged in it, and diſclaimed the leaſt Imputation of Reſiſtance when he brought over an Army on purpoſe to maintain that Reſiſtance, to which all the People of *England* were invited and encouraged by his Declaration.

And this Aſſertion, of the King's diſclaiming all Reſiſtance, could never be meant in Vindication of his Majeſty from any Imputation of a Deſign of Conqueſt; for there was no Occaſion for vindicating the King upon this Point, the Subject-Matter of the Diſcourſe did not lead him to it; for the Buſineſs of the Sermon, or of this particular Paragraph, is not to vindicate the Honour of the King from any ſuch Aſperſion, or to maintain the Liberties of *England*, by aſſerting, That the Conſtitution of Government ſtill remains, and was not broken and diſſolv'd by Conqueſt at the Revolution: Had that been his Ground, his Miſtake had been more excuſable; for then it had been proper to have urg'd, that there was no Step taken towards the Revolution which look'd like a Deſign of Conqueſt; and that the armed Force which was uſed in it, and had the Appearance of ſuch a Deſign, was not intended to conquer; for the King, who commanded it, diſclaim'd all Imputation of Reſiſtance that tended to Conqueſt. Upon ſuch a Queſtion theſe things had been very properly urg'd, and there might have been ſome Indulgence to a general Expreſſion, that in any Propriety of Speech could have received ſuch a Meaning.

But when the Queſtion is not, Whether the Revolution was brought about by Conqueſt, or what would be the Conſequence of ſuch an Aſſertion, either in regard to the Honour of the King, or the Condition of the People, there can be no Colour for ſaying that he meant by this general Expreſſion, which carries no ſuch Meaning in itſelf, that the King diſclaimed Conqueſt, or a Reſiſtance which tended to Conqueſt only.

Eſpecially, my Lords, when the Subject-Matter of his Diſcourſe naturally led him to aſſert this Propoſition in the common and ordinary Senſe which the Words import: For he is aſſerting the Doctrine of abſolute Non-Reſiſtance; and ſhewing, that the Lawfulneſs of the Revolution was no Argument againſt it; and why? Becauſe the King diſclaim'd the leaſt Imputation of Reſiſtance; there was no ſuch wicked Ingredient as Reſiſtance in it; no other Anſwer would have ſerv'd him; and therefore it can never be ſuppos'd that he meant to clear the King from any Deſign of Conqueſt, or intended to ſay any thing in Vindication of his Majeſty upon that Head.

And, in Truth, it is an apparent Scandal upon the Memory of the late King, to ſay there was any Occaſion to clear him from this Imputation; his Actions ſpoke the Juſtice and Sincerity of his Intentions; his Buſineſs was not to conquer and enſlave us, but to deliver us from Popery and Slavery, the moſt dreadful Calamities that could befal us, and to reſettle and eſtabliſh our Conſtitution both in Church and State. This was the Ground of the glorious Enterprize he undertook, and the general Aim and Deſign of all his Labours through the whole Courſe of his Reign.

'Tis therefore plain, that what Doctor *Sacheverell* ſays in his Anſwer, in Excuſe of his Aſſertion, relating to the King's diſclaiming all Imputation of Reſiſtance, was rather made to the Diſhonour, than in Vindication of his Majeſty; for there was no Colour to ſuggeſt that he needed any ſuch Vindication or Defence.

And that the King did not diſclaim all Imputation of Reſiſtance, is evident, even from that Part of his Declaration which is cited in the Anſwer, whereby “He declares to the People (to encourage them to join with him) that he had brought over a ſufficient Force to defend himſelf from the Violence of evil Counſellors.——And that this Expedition was deſigned to have a free and lawful Parliament aſſembled, which was a plain Force upon the executive Power that was directed by thoſe evil Counſellors, who, by ſubverting the Liberties of Corporations, and practiſing upon the Freedom of Elections, never intended that any ſuch free or lawful Parliament ſhould be aſſembled.”

This is plain Reſiſtance in the Senſe that Doctor *Sacheverell* takes the Word; and is ſo far from a Juſtification, that there is no Colour to ſay, that his Majeſty diſclaimed the leaſt Imputation of Reſiſtance.

As to the laſt Branch of the Article, whereby he is charged that he ſuggeſts and maintains, “That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution; he denies that he ſuggeſts or maintains any ſuch Poſition.”

But this Negative is fully anſwer'd by what has been offer'd to your Lordſhips upon the firſt Head of this Article, his aſſerting, That the neceſſary Means uſed to bring about the Revolution were odious and unjuſtifiable; for if Reſiſtance be utterly illegal upon any Pretence whatſoever, and there was Reſiſtance in the Revolution, it neceſſarily follows, that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon it. And this is expreſsly aſſerted by his ſtating the Caſe of the Revolution, in which there was Reſiſtance, as an Objection to his general Doctrine of Non-Reſiſtance upon any Pretence whatſoever; and then anſwering this Objection, by ſaying, That the urging of the Revolution, as an Inſtance of the Legality of Reſiſtance, was caſting black and odious Colours upon his late Majeſty and the late Revolution: For there could be no black or odious Colours caſt, but from the ſhaking that fundamental Doctrine of abſolute Non-Reſiſtance; the Belief of which he aſſerts to be the Pillar upon which the Government of *England* ſtands.

And therefore the imputing of Reſiſtance to the Revolution, muſt, according to the Principles he lays down, caſt black and odious Colours upon the Revolution, and upon the great and glorious Inſtrument of it, his late Majeſty, by whom it was happily brought about.

And Doctor *Sacheverell* himſelf, by the ſubſequent Part of his Anſwer, ſeems to think that this Aſſertion is fairly and plainly inferred from the Tenor of his Diſcourſe.

For he is pleaſed to excuſe it, by ſaying, “That he intended to apply it not to ſuch Perſons who impute Reſiſtance to the Revolution, of whom he affirms nothing; but to thoſe new Preachers, and new Politicians, who teach in Contradiction both to the Goſpel and the Laws, that the People have the Power inveſted in them, the Fountain and Original of it, to cancel their Allegiance at their Pleaſure, and call their Sovereign to Account for High-Treaſon againſt his Subjects, and who urge the Revolution in Defence of ſuch Principles; and that, unleſs thoſe who impute Reſiſtance to the Revolution be the ſame with thoſe new Preachers and new Politicians, he affirms nothing concerning them.”

But, my Lords, this Part of his Anſwer is far from excuſing or extenuating his Crime; for if a Propoſition be true, it will loſe nothing of its Weight and Force, though the vileſt Man upon Earth ſhould make uſe of it; and it can be no Argument againſt a true Principle, that it has been made uſe of to ill Purpoſes, and to maintain Poſitions which are not warranted by it. 'Tis rather an Aggravation of his Crime, and a high Reflection upon the Commons, and the Juſtice of this Proceeding, to ſuppoſe that any ſuch wicked Conſequences, as he mentions, can poſſibly be inferr'd from defending the Reſiſtance at the Revolution: And the Queſtion is, Whether Doctor *Sacheverell* himſelf aſſerts, that to impute Reſiſtance to the Revolution, be to caſt black and odious Colours upon it; and not, OF WHOM he affirms the caſting ſuch black and odious Colours?

I go on to the laſt Part of his Anſwer to this Article, where he ſays, “That upon the ſtricteſt Search into his ſaid Sermon preach'd at St. *Paul*'s, he doth not find that he hath given the leaſt colourable Pretence for the Accuſation exhibited againſt him in this firſt Article, but barely by his aſſerting the utter Illegality of Reſiſtance to the ſupreme Power upon any Pretence whatſoever; for which he conceives he has the Authority of the Church of *England*, which has taught and inculcated this Doctrine in her Homilies—And he doth further inſiſt, That this Aſſertion is agreeable to, and warranted by, the Common Law of *England*, and divers Acts of Parliament now remaining in full Force.”

Now it muſt be agreed, that there is no colourable Pretence to charge him with ſuggeſting and maintaining, that the Reſiſtance uſed at the Revolution was odious and unjuſtifiable, if the Doctrine of the utter Illegality of Reſiſtance upon any Pretence whatſoever, be true; for upon this Principle his Cenſure is juſt, and it muſt neceſſarily follow, that the Reſiſtance uſed in bringing about the Revolution is not to be maintain'd.

And therefore the Commons ſhould think themſelves ungrateful for the Deliverance, if they did not vindicate the Honour of the late King, and of thoſe illuſtrious Perſons, who, upon his Invitation, defended the Conſtitution at that time by Reſiſtance, and declare that this Reſiſtance was lawful, honourable, and juſt.

They had Reaſon to hope, that after ſo many Years had paſſed in a happy Enjoyment of all the Advantages of a Free-born People, and at a Time when the Subjects of this Kingdom are in the full Poſſeſſion of their Rights and Liberties under her Majeſty's gracious Protection, and the wiſeſt and happieſt Adminiſtration that *England* ever ſaw, that nobody could have been ſo wicked as to caſt an Odium upon the neceſſary Means whereby theſe Bleſſings were obtain'd, and are continued to us. But ſince, notwithſtanding our bleſſed Deliverance from Popery and Arbitrary Power, and the Benefits we enjoy by reſtoring the Conſtitution both in Church and State; and above all, by her Majeſty's happy Adminiſtration, which has improved the Luſtre of the Crown to the Honour of the Nation, and the common Benefit of every particular Subject; yet there are Men of reſtleſs and turbulent Spirits, Enemies to the Revolution, who are continually urging the Reſiſtance then uſed as a fundamental Error, fatal to every thing that has been built upon it: This, my Lords, ſtrikes ſo directly at the preſent Eſtabliſhment, that the Commons think it their indiſpenſible Duty to demand your Lordſhips Judgment upon this important Subject.

And they think it the more neceſſary at this time, becauſe 'tis plain and obvious to every one's Obſervation, that ſince the late Attempt made by the Pretender, this Principle of the utter Illegality of Reſiſtance upon any Pretence whatſoever, has been eſpouſed and maintained with more than ordinary Warmth and Zeal; and the Commons apprehend, that it can have no other Aim or Tendency than to blacken the Revolution, and thereby to ſhake the Foundation of our preſent happy Settlement.

Your Lordſhips will, therefore, in your great Wiſdom, conſider the Conſequences of this Aſſertion, in regard to her Majeſty, the Proteſtant Succeſſion, and the future Happineſs of this Kingdom.

The Commons muſt always reſent, with the utmoſt Deteſtation and Abhorrence, every Poſition that may ſhake the Authority of that Act of Parliament, whereby the Crown is ſettled upon her Majeſty, and whereby the Lords Spiritual and Temporal, and Commons, do, in the Name of all the People of *England*, moſt humbly and faithfully ſubmit themſelves, their Heirs and Poſterities, to her Majeſty, which this general Principle of abſolute Non-Reſiſtance muſt certainly ſhake.

For, if the Reſiſtance at the Revolution was illegal, the Revolution ſettled in Uſurpation, and this Act can have no greater Force and Authority than an Act paſs'd under an Uſurper.

And the Commons take leave to obſerve, that the Authority of this Parliamentary Settlement is a Matter of the greateſt Conſequence to maintain, in a Caſe where the hereditary Right to the Crown is conteſted; for her Majeſty's moſt bitter and implacable Enemies, the Friends of the Pretender, (who all aſſert the utter Illegality of the Reſiſtance uſed at the Revolution) can advance his Title to the Crown, and call him King, upon no other Ground than the Pretence of an hereditary Right.

The Commons, therefore, out of the moſt profound Duty and Allegiance, which they owe, and ſhall ever pay to her Majeſty, and to maintain the Security of her Government, and guard her Throne againſt every Inſinuation that may promote or favour the Intereſt of the Pretender, think themſelves obliged to take Notice of this Aſſertion, as tending to weaken the Authority of this Act of Parliament, whereby her Majeſty's Title is declared.

Your Lordſhips will likewiſe conſider of what Conſequence the Diſhonouring of the Revolution may be to Poſterity, and the future Happineſs of this Kingdom in a Proteſtant Succeſſion to the Crown. For by the ſame Act, all Perſons who ſhall hold Communion with the See of *Rome*, or ſhall marry Papiſts, are declared uncapable to Inherit, Poſſeſs, or Enjoy the Crown. And 'tis enacted, That the Crown and Government ſhall from time to time deſcend to, and be enjoyed by, ſuch Perſons, being

Proteſtants, that ſhould have inherited and enjoyed the ſame, in caſe ſuch Popiſh Prince were naturally dead.

And the immediate Proteſtant Succeſſion in the illuſtrious Houſe of *Hanover*, is likewiſe ſettled by an Act of the ſame Reign.

This ſhews of what Importance it is, to the preſent and future Happineſs of this Kingdom, to clear his late Majeſty and the Revolution from thoſe black and odious Colours which this Gentleman has caſt upon both.

But, my Lords, he makes it Part of his Defence, that his Aſſertion is agreeable to the Common Law of *England*, and divers Acts of Parliament now remaining in Force.

The Gentleman that ſpoke before me, has ſhewn how far that Aſſertion is a direct Contradiction to ſeveral Acts of Parliament; and therefore I ſhall only ſay, that it can never be ſuppoſed that the Laws were made to ſet up a deſpotick Power to deſtroy themſelves, and to warrant the Subverſion of a Conſtitution of Government which they were deſigned to eſtabliſh and defend.

This would be a ſtrange, abſurd, and contradictory Imagination, and was thought ſo at the Revolution by the wiſeſt Men of that Time, by the beſt Friends to the Monarchy, and Men the moſt eminent for their Sufferings in the Cauſe of the Church.

And it appears by the ſeveral Inſtances mentioned in the Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown, that at the Time of the Revolution there was a total Subverſion of the Conſtitution of Government both in Church and State, which is a Caſe that the Laws of *England* could never ſuppoſe, provide for, or have in View.

And the ſame Anſwer may with equal Reaſon be applied to the general Doctrine of the Church, expreſſed in her Homilies.

This, my Lords, is what I have to offer to your Lordſhips in Maintenance of the firſt Article; I am ſenſible how defective I have been, but what I have failed in, will be abundantly ſupplied by the Gentlemen who are appointed to aſſiſt in maintaining this Article.

Sir *John Holland.* MY Lords, the preſent Conſideration is of the greateſt Importance; no leſs, than whether ſo many of your Lordſhips, and the Commons of *Great Britain*, who took up Arms at the Revolution, and were then thought Patriots of your Country, were really Rebels? whether our late Deliverer was an Uſurper? and whether the Proteſtant Succeſſion is legal and valid?

All theſe Conſiderations depend upon the Lawfulneſs of the Reſiſtance at the Revolution. That there was a Reſiſtance is moſt plain, if taking up Arms in *Yorkſhire*, *Nottinghamſhire*, *Cheſhire*, and almoſt all the Counties of *England*; if the Deſertion of a Prince's own Troops to an invading Prince, and turning their Arms againſt their Sovereign, be Reſiſtance. But if Subjects be obliged to *Abſolute and Unconditional Obedience*, the Convention of the States, the Settlements and Entail of the Crown by them, and the further Settlement in the Proteſtant Succeſſion under that Settlement, muſt, from that Reſiſtance, be unlawful and void.

The Criminal was aware of this juſt Objection to his general Doctrine, when applied to the Revolution; as appears from his endeavouring, upon ſecond Thoughts, to conceal it by his marginal Note, to hint, that by *Reſiſtance* he meant *Conqueſt*. And no wonder he endeavoured to colour ſo bold a Stroke, which he could not but expect to hear of with the utmoſt Reſentment from the Government.

But it ſo falls out, my Lords, that what he truſted to for a Screen, aggravates the Heinouſneſs of his Crime; for it ſhews, that he inſtils into his Auditors thoſe Notions from the Pulpit, which he dares not own in Print. Nothing can be more manifeſt, than that he could not by *Reſiſtance* mean *Conqueſt*, even from his own Expreſſions: For in the very next Period he ſays, And *did they not*, i. e. the Parliament, *unanimouſly condemn to the Flames* (*as it juſtly deſerved*) *that infamous Libel*, *that would have pleaded the Title of* Conqueſt, *by which* Reſiſtance *was ſuppoſed?* So that he knew them to be diſtinct Notions; and indeed ſo they muſt be, becauſe one may be without the other.

It is an unaccountable Preſumption, that he could ſuppoſe ſo weak a Pretence could paſs upon the World; but much more ſurprizing it is, that he could apprehend ſo mean a Subterfuge could prevent your Lordſhips Juſtice. But from hence the Commons obſerve, That he is a concealed Man, and of a dangerous Spirit; and as ſuch we have brought him hither to reform him, and to be an Example to others.

My Lords, The Commons would not be underſtood, as if they were pleading for a licentious Reſiſtance; as if Subjects were left to their Goodwill and Pleaſure, when they are to *Obey*, and when to *Reſiſt*. No, my Lords, they know they are obliged by all the Ties of ſocial Creatures, and Chriſtians, for Wrath and Conſcience-ſake to ſubmit to their Sovereign. The Commons do not abet humourſome factious Arms: They aver them to be Rebellious. But yet they maintain, that that Reſiſtance at the Revolution, which was ſo neceſſary, was lawful and juſt from that Neceſſity.

We do agree, that the Laws concerning Obedience, both Human and Divine, are very expreſs and poſitive; and no Wonder that the *Homilies and Fathers*, *dead and living*, follow the ſame way of expreſſing our Duty in general Terms. We readily grant this; but it does not follow that there can be no Exceptions from theſe general Rules in Conſcience.

There is no Law more poſitive and expreſs, than that which injoins the Obſervation of the Sabbath, for therein we are commanded to *do no Manner of Work*. But yet we know, that Neceſſity makes an allowed Exception to that general Law. And the Reaſon why that Neceſſity is allowed as a juſt Exception to that poſitive Law, will guide us to know what Laws will admit of Exceptions from Neceſſity, and what not. The Reaſon our Divine Law-giver aſſigns is, becauſe *the Sabbath was made for Man, and not Man for the Sabbath*; from whence plainly follows this Corollary, That where there is a poſitive Law, and that Law reſpects not ſome principal End for which Man was made, there Neceſſity may make a juſtifiable Exception how expreſs ſoever that Law is

Now, my Lords, whether Government was made for Man, or Man for Government, will eaſily appear from this ſhort Obſervation, that Man was made in a State of Perfection; and the Rectitude of that State ſuppoſes the Abſence of all thoſe Crimes, which are the Objects of Government, and which Government is to reform. And therefore Government could not be one End of Man's Creation; and theſe general Rules of Obedience may, upon a real Neceſſity, admit a lawful Exception; and ſuch a neceſſary Exception we aſſert the Revolution to be.

'Tis with this View of Neceſſity, only abſolute Neceſſity of preſerving our Laws, Liberties, and Religion; 'tis with this Limitation that we deſire to be underſtood, when any of us ſpeak of Reſiſtance in general. The Neceſſity of the Reſiſtance at the Revolution was at that Time obvious to every Man. Every one, who either was not, or did not find his eaſy Mind prepared to be a Tool to Popery and Slavery, dreaded the Inſtances of that Neceſſity. The cancelling all the Security from Laws by a diſpenſing Power; the erecting Commiſſions to deprive Subjects of their Property, not according to Law, but Humour; the making the whole Government depend upon the arbitrary Pleaſure of the then Prince, cannot but be a Juſtification of that Neceſſity before God and Man.

And thus, my Lords, it was thought, at the Time this Reſiſtance was on Foot. For then, when the Time was moſt proper for Admonitions of this Nature, the Clergy were ſo far from averring the *Unlawfulneſs of Reſiſtance upon any Pretence whatſoever*, that the *true diſtinguiſhing Characteriſtick of a Church-of-*England-*Man* then was, wiſhing that Reſiſtance good Luck; and rejoicing at its Succeſs. And yet the Gentleman at the Bar makes this Exception the Inſtance of an unjuſt Reſiſtance, by an ironical Aſſertion of *the late King's ſolemnly diſclaiming the leaſt Imputation of Reſiſtance in his Declaration*; for ironical it muſt be, when every Body muſt believe that he himſelf knew the contrary; a Figure of Speech very well underſtood, and known to be the moſt biting Sarcaſm.

My Lords, So much depends upon the Revolution, that the Commons are highly jealous of the Honour of it. It is, indeed, twenty Years ſince the Revolution was ſettled; but it is within much leſs than twenty Years that a Pretender has attempted to invade our Country, to ſet this Revolution aſide. That Perſon, even with his own good Opinion of his Right, knows he can have no Pretence to the Crown, unleſs the Priſoner's political Divinity be true, which we aver it is not. But leſt this Pretender ſhould apprehend that his Friends are much increaſed, when he hears that the Revolution is publickly branded in Sermons as *black and odious*; the Commons have impeached this Preacher, that he might not be guilty of this high Crime and Miſdemeanor *without Diſcouragement*, and have brought him to your Lordſhips Bar for Juſtice, that he may not do it *with Impunity*.

Mr. *Walpole.* MY Lords, The Commons are now making good their Charge againſt Doctor *Henry Sacheverell* contained in the firſt Article, wherein he is accuſed for ſuggeſting and maintaining, that the neceſſary Means uſed to bring about the happy Revolution were odious and unjuſtifiable, and that to impute Reſiſtance to the Revolution, is to caſt *black and odious Colours* on his late Majeſty and the Revolution.

By what has been already offered to your Lordſhips, I make no Doubt but you are fully convinced, how injurious theſe Poſitions muſt be to the Peace and Quiet of the Kingdom, and how highly they deſerve, and loudly call for your Lordſhips ſpeedy and exemplary Juſtice.

The great Licentiouſneſs of the Preſs, in cenſuring and reflecting upon all Parts of the Government, has of late given too juſt Cauſe of Offence; but when any Pamphlets and common Libels are Matters of Complaint; when none but mercenary Scribblers, and the Hackney Pens of a diſcontented Party are employed to vent their Malice, 'tis fit to leave them to the common Courſe of the Law, and to the ordinary Proceeding of the Courts below. But, my Lords, when the Trumpet is ſounded in *Sion*; when the Pulpit takes up the Cudgels; when the Cauſe of the Enemies of our Government is called the Cauſe of God, and of the Church; when this bitter and poiſonous Pill is gilded over with the ſpecious Name of Loyalty, and the People are taught, for their Souls and Conſciences Sake, to ſwallow theſe pernicious Doctrines; when, inſtead of ſound Religion, Divinity, and Morality, factious and ſeditious Diſcourſes are become the conſtant Entertainments of ſome Congregations; the Commons cannot but think it high Time to put a Stop to this growing Evil, and for the Authority of a Parliament to interpoſe, and exert itſelf, in Defence of the Revolution, the preſent Government, and the Proteſtant Succeſſion. All which the Commons think ſo materially concerned in this Queſtion, that if the Doctrines advanced by Doctor *Sacheverell* are not Criminal in the higheſt Degree, it will follow, that the neceſſary Means uſed to bring about the Revolution were illegal, and conſequently that the preſent Eſtabliſhment, and Proteſtant Succeſſion, founded upon that Revolution, are void and of no Effect.

The Commons cannot but apprehend, that the juſt Reſentment and Indignation they have ſhewn upon this Occaſion, will meet with the general Applauſe of all that are heartily and ſincerely well affected to her Majeſty and her Government; but for all thoſe, whoſe Principles and Practices render them moſt juſtly ſuſpected to have other Views, they are not at all ſurprized to find them alarmed, and under the greateſt Concern, at this Trial.

I am very ſenſible, my Lords, of the Difficulty and Nicety that attends the ſpeaking to this Point, and that whilſt a loyal Subject and faithful Servant of the beſt of Queens, is ſpeaking in Defence of the neceſſary and commendable Reſiſtance uſed at the Revolution, his Arguments may be miſconſtrued and miſrepreſented, as maintaing Anti-monarchical Schemes.

But ſurely, my Lords, to plead for Reſiſtance, that Reſiſtance, I mean, which alone can be concerned in this Debate, is to aſſert and maintain the very Being of our preſent Government and Conſtitution; and to aſſert Non-reſiſtance in that boundleſs and unlimited Senſe in which Doctor *Sacheverell* preſumes to aſſert it, is to ſap and undermine the very Foundations of our Government, to remove the natural Baſis and fundamental Strength of our Conſtitution, and to leave it underſet with imaginary Props and Buttreſſes, which do, at beſt, but ill ſupport a ſhaken Foundation: And 'tis a moſt ſurprizing Aſſurance in the Enemies of our Government, that whilſt they are ſtriking at the Root, and digging up the Foundations, upon which our preſent and future Settlement is built, that they ſhould hope to paſs upon the World as Friends to either. But ſo irreconcileable are the Profeſſions and Practices of ſome Men, ſo aukwardly do they ſpeak well of what they do not in their Hearts approve, that in Vindication of his late Majeſty (for that's a Part that ſometimes they think uſeful to act) they declare his moſt glorious Enterprize to ſave a ſinking Nation, utterly illegal: To recommend themſelves to the Queen, they condemn that Revolution, without which ſhe never had been Queen, and we a moſt unhappy People: To teſtify their Zeal and Affection for the Proteſtant Succeſſion, they invalidate all the Laws that have been made for ſecuring that

Bleſſing to Poſterity: And laſtly, To manifeſt their Averſion, and for ever to blaſt all Hopes of the Pretender, they advance and maintain the Hereditary Right, as the only true Right to the Crown. But what Intereſt theſe Opinions may at one time or other be produced to ſupport, and in favour of whoſe Pretenſions theſe Inſinuations are eaſily underſtood to be, and in favour of what Settlement they can hardly be conſtru'd, I ſubmit to your Lordſhips Conſideration.

The utter Illegality of Reſiſtance, upon any Pretence whatſoever, is the general Poſition laid down in the Sermon, which, if it be ſtrictly, and in the moſt extenſive Manner true, the aſſuming and exerciſing a Power of diſpenſing with, and ſuſpending the Laws; the Commitment and Proſecution of the Biſhops; the erecting a Court of Commiſſioners for Eccleſiaſtical Cauſes; the levying Money by Pretence of Prerogative; the raiſing and keeping a Standing Army without Conſent of Parliament; the violating the Freedom of Elections of Members to ſerve in Parliament; and all the Grievances enumerated in the Bill of Rights, were all mere Pretences, and not ſufficient to warrant and juſtify what was then done, in Defence of the true, antient, and indubitable Rights and Liberties of the People of this Kingdom; which are now again enacted, ratified and confirmed, and injoined to be firmly and ſtrictly holden and obſerved. By what Evaſions, or Diſtinctions, the Doctor will explain himſelf off upon this Head, I cannot eaſily foreſee; unleſs he will be ſo ingenuous as now to confeſs, what there is too much Reaſon to believe will be his Opinion, if ever a proper Time ſhall ſerve for declaring, That the Acts of Parliament made upon, and ſince the Revolution, are only the Effects of a happy Uſurpation, and no Part of the true Law of the Land.

Reſiſtance is no where enacted to be legal, but ſubjected, by all the Laws now in Being, to the greateſt Penalties; 'tis what is not, cannot, nor ought ever to be deſcrib'd or affirm'd, in any poſitive Law, to be excuſable: When, and upon what never-to-be-expected Occaſions, it may be exerciſed, no Man can foreſee, and ought never to be thought of, but when an utter Subverſion of the Laws of the Realm threatens the whole Frame of a Conſtitution, and no Redreſs can otherwiſe be hoped for: It therefore does, and ought for ever to ſtand, in the Eye and Letter of the Law, as the higheſt Offence. But becauſe any Man, or Party of Men, may not, out of Folly or Wantonneſs, commit Treaſon, or make their own Diſcontents, ill Principles, or diſguiſed Affections to another Intereſt, a Pretence to reſiſt the Supreme Power, will it follow from thence that the utmoſt Neceſſity ought not to engage a Nation in its own Defence for the Preſervation of the Whole? Or, on the other Side, becauſe the greateſt and moſt inexpreſſible Emergencies did ſufficiently juſtify and warrant the Reſiſtance of the Revolution, will it be a Conſequence, that therefore, upon every ſlight Pretext or common Occaſion, the Laws that fence againſt Treaſon will be of no Effect? No, my Lords, I hope your juſt Judgment in this Caſe will convince the World, that every *ſeditious, diſcontented, hot-headed, ungifted, unedifying Preacher*, (the Doctor will pardon me for borrowing one String of Epithets from him, and for once uſing a little of his own Language) who had no Hopes of diſtinguiſhing himſelf in the World, but by a matchleſs Indiſcretion, may not advance, with Impunity, Doctrines deſtructive of the Peace and Quiet of her Majeſty's Government, and the Proteſtant Succeſſion, and prepare the Minds of the People for an Alteration, by giving them ill Impreſſions of the preſent Eſtabliſhment and its Adminiſtration.

The Doctrine of unlimited, unconditional paſſive Obedience, was firſt invented to ſupport arbitrary and deſpotick Power, and was never promoted or countenanced by any Government that had not Deſigns ſome time or other of making uſe of it: What then can be the Deſign of preaching this Doctrine now, unask'd, unſought for, in her Majeſty's Reign, where the Law is the only Rule and Meaſure of the Power of the Crown, and of the Obedience of the People? If then this Doctrine can neither be an Advantage or Security to her Majeſty, who neither wants nor deſires it, to what End and Purpoſe muſt every thinking Man conclude 'tis now ſet on Foot, but to unhinge the preſent Government, by ſetting aſide all that has been done in Oppoſition to that Doctrine? and when, by theſe Means the Way is made clear to another's Title, the People are ready inſtructed to ſubmit to whatever ſhall be impoſed upon them.

It may be expected, after I have ſaid thus much in general, that I ſhould proceed to ſhew in what Parts of the Sermon theſe Aſperſions are contain'd: But, my Lords, that Part has been ſo fully and diſtinctly ſpoke to by thoſe learned Gentlemen who are more proper, and a great deal more able to manage that Province, that I will not miſpend your Lordſhips Time, by repeating what has been already ſo fully and juſtly made out; but ſo much I will venture to ſay, That if we remove the Rubbage, with which the Doctor has an excellent Talent at puzzling Common Senſe, and bring together the ſeveral Sentences, that can only be relative to one another, 'tis impoſſible for the Art of Man to make any Inferences or Conſtructions, ſo cloſe and ſtrong, as the plain and genuine Senſe of the whole Scope of his Sermon muſt, at firſt View, ſuggeſt to every Man's Underſtanding. And all that the Doctor alledges in his Defence is, that in the Revolution there was no Reſiſtance at all; and that the King did utterly diſclaim any ſuch Imputation. But ſurely, my Lords, it cannot be now neceſſary to prove Reſiſtance in the Revolution; I ſhould as well expect that your Lordſhips would deſire me, for Form's ſake, to prove the Sun ſhines at Noon-day. If then there was moſt undoubtedly Reſiſtance uſed to bring about the Revolution, it will follow that all the Cenſures, which are ſo freely beſtowed upon Reſiſtance in general, muſt attend, and will be imputed to the Revolution: And if *Reſiſtance be utterly illegal, upon any Pretence whatſoever*; if it is a *Sin*, which unrepented of, by the Doctrine of the Church of *England*, carries *ſure and certain Damnation*; if, upon *Repentance*, there is no *Remiſſion of Sins* without a ſtedfaſt Purpoſe to amend the Evil we have done, and to make all poſſible *Reſtitution*, or at leaſt to do our utmoſt Endeavours for that Purpoſe; I beg your Lordſhips to conſider what a Duty is here preſſed, upon the Peril of Damnation, upon every Man's Conſcience, that knows or believes that there was Reſiſtance in the Revolution, and is conſcious to himſelf of being any ways aſſiſting, or even conſenting to this *damnable Sin*; and what muſt be the Conſequence if theſe Doctrines, without any Reſerve or Exception, are with Impunity preach'd throughout the Kingdom. All which, my Lords, I hope, is ſufficient to ſatisfy your Lordſhips that Doctor *Sacheverell* is guilty of the Charge exhibited againſt him in the firſt Article; and that he is an Offender of that Nature and Malignity, that this Court only could be the proper Judges of ſuch High Crimes; and from your Lordſhips Juſtice, the Commons hope, That his Puniſhment will be adequate to the Heinouſneſs of his Offence.

Sir *John Hawles.* MY Lords, I am commanded by the Commons of *Great Britain* to be aſſiſting to the Gentlemen that ſpoke before me, for the proving the Priſoner at the Bar guilty of the Crime charged in the firſt Article of his Impeachment; which is, That he did ſuggeſt and maintain, in his Sermon preached at *St. Paul's*, That the neceſſary Means uſed to bring about the happy Revolution were odious and unjuſtifiable; and that his late Majeſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance; and that to impute Reſiſtance to the ſaid Revolution, is to caſt black and odious Colours on his late Majeſty. In making good which Article againſt the Doctor, I hope the Gentlemen that have ſpoke before me will excuſe me, if I make uſe of another Method than what they have done; which I ſhall do, not miſliking the Courſe they have taken, not that I think the Method I ſhall take is better than theirs, but only becauſe I would not repeat what's ſaid by them, which, I am ſure, would come with a worſe Grace from me, than it did from them; and becauſe I am ſure what was ſaid is very well remembered by your Lordſhips. What I ſhall offer is, I think, ſomewhat to the Purpoſe, and was not mentioned by the Gentlemen before. As to the Paſſages taken out of the Sermon to prove the Doctor guilty of the Fact of this firſt Article, they have been ſo fully opened, and ſo very well applied, that I have very little to add to what has been ſaid; I ſhall therefore only ſay, that the Clauſe of his Sermon, wherein he aſſerts, that "The grand ſecurity of "our Government, and the very Pillar on which it ſtands, is founded "upon the ſteady Belief of the Subjects Obligation to an abſolute and un-"conditional Obedience to the Supreme Power in all things lawful, and "the utter Illegality of Reſiſtance upon any Pretence whatſoever," he lays down not as a Doctrine he would teach his Congregation; but in order to draw an Argument from thence for ſome other Purpoſe; and what that is, appears plainly afterwards. For having alledg'd ſome Things not proper for the Occaſion for which the Day upon which he preach'd was ſolemniz'd, he adds, "Our Adverſaries think they effectually ſtop our "Mouths, and have us ſure and unanſwerable on this Point, when they "urge the Revolution of this Day in their Defence; but certainly they "are the greateſt Enemies of that, and his late Majeſty, and the moſt un-"grateful for their Deliverance, who endeavour to caſt ſuch black and "odious Colours upon both. How often muſt they be told, that the late "King himſelf ſolemnly diſclaimed the leaſt Imputation of Reſiſtance?" By which 'tis plain, that the Poſition of the Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power laid down, was only to ſhock and lay odious Colours upon the Revolution, or the Means whereby it was brought about; he knowing that the Means whereby the Revolution was brought about was by Force, and he knew it was ſo declared by the Act of Parliament made in the firſt Year of King *William* and Queen *Mary*, for preventing vexatious Suits againſt ſuch as acted in order to the bringing in the late King and Queen. And tho' he would inſinuate that the ſame was not done by Force, I muſt own he does not aſſert that either it was or was not done by Force; but he ſtrongly inſinuates it was not done by Force, when he aſſerts, tho' untruly, that the late King diſclaimed any Reſiſtance upon his coming. I'll ſay nothing more as to that Matter; and nothing as to that other, that has been largely open'd, relating to the Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power; the rather, becauſe, if it was doubtful, the Acts of Parliament mentioned in the Preface to the Articles, whereby the Revolution has been declared to be a glorious Enterprize, and the Means whereby it was brought about juſtified, have determin'd that Matter; and becauſe your Lordſhips, as I think, will not ſuffer the Doctor, or his Counſel, to ſay any thing againſt the Revolution, or the Means whereby it was brought about.

The Commons of *Great Britain* own your Lordſhips to be the Supreme Court of Judicature in this Government, but yet they think that Acts of Parliament, whereof your Lordſhips are in part the Makers, are as binding upon your Lordſhips, as a Court of Judicature, as they are upon any Court of *Weſtminſter-Hall*, where Matters determin'd by Act of Parliament are never ſuffered to be diſputed afterwards; but I own, what is practis'd in *Weſtminſter-Hall* is not a Rule whereby your Lordſhips ought to be govern'd, and therefore I rely only upon the Reaſon of what I aſſerted; for altho' your Lordſhips are the Supreme Court, and from whom no Appeal lies to any other Court of Judicature, yet your Lordſhips, as you are Part of the Legiſlature, are greater than you are in your Judicial Capacity, in which you are ſubject to the Law; tho' in your Legiſlative Capacity, in Concurrence with two other Powers, you are above the Law. It is therefore incongruous, that a Court of Perſons of leſs Power ſhould judge otherwiſe than the Court of greater Power had determined; but this I ſubmit to your Lordſhips, and am ſure the Gentlemen of Counſel with the Doctor know their Duty ſo well in this Matter, that they will not give your Lordſhips the Trouble of an Admonition upon this Occaſion. I won't add more upon this Subject, but proceed, with your Lordſhips Permiſſion, to prove the Doctor Guilty of what he is charged with in this firſt Article, by the Doctrine by himſelf laid down in his Sermon, and admit, for Argument-ſake, the ſame to be true; tho' this I muſt aſſert, that he carries the Doctrine ſomewhat farther than the Apoſtles did in ſome Reſpects, but in other Reſpects ſeems to reſtrain it more than they did. In the reſtraining Part he ſeems to confine the abſolute and unconditional Obedience to Things lawful; which Reſtraint looks like ſomething, but in Truth, upon Examination, is nothing; for ſuppoſe the Supreme Power commands the Subject to do ſomething which it thinks is Lawful, but the Subject not willing to obey, pretending the thing to be Unlawful, the true Reaſons being that they are chargeable, troubleſome, hazardous, or the like; in this Caſe who is to be Judge, the Supreme Power, or the Subject? In the Reaſon of the Thing, neither of them are proper Judges; for the Supreme Power will be byaſs'd, by Reaſon of the Command given by them at firſt, and will be aſhamed to own what they commanded was Unlawful, and therefore will give Judgment on their own Side, to juſtify themſelves in what they have commanded; and the Subject will be as much byaſs'd for the ſame Reaſon that he was at firſt diſſatisfied with the Command. And there being no higher Power or Authority to appeal to than the Supreme Power, that muſt needs be the Judge, from whom there can be no Appeal. But perhaps the Doctor and I differ in the Perſons in whom the Supreme Power is lodg'd; for the Doctor has not mention'd that Matter, either in his Sermon, or in his Anſwer to the Articles; but I hope, in the Anſwer he is to give to what's now objected againſt him, he will tell us in whom that Power is lodg'd. I'll tell him in whom I think it is lodg'd; I think it is lodg'd in the Queen's Majeſty, the Lords Spiritual and Temporal, and Commons in Parliament aſſembled: And I think when the Acts mentioned in the Impeachment did paſs (except the Act for declaring the Rights and Liberties of the Subject), the Supreme Power was lodg'd in the late King *William* and Queen *Mary*, and the Lords Spiritual and Temporal and Commons in Parliament aſſembled. But as the Doctor ſeems to have reſtrain'd his Doctrine of Non-reſiſtance, he has as much enlarged his Doctrine of abſolute Obedience; for, as I think, what hitherto written or aſſerted, upon the Occaſion of that Matter, went no farther than Paſſive Obedience and Non-reſiſtance; but the Priſoner's Doctrine extends to Active Obedience as well as Paſſive; becauſe, as I think, the Words of the Apoſtles, from whom this Doctrine is taken, ſeems to reſtrain it only to Paſſive Obedience and Non-reſiſtance; and the Reaſons why the Apoſtles inculcated no other Obedience, as I believe, was, becauſe that was ſufficient to ſecure the Government under which the Apoſtles liv'd, which was the *Roman* Government, and which ſtood in Fear of no Foreign Force, and which Government was ſaid and believed could not be ruin'd but by its own Subjects, which afterwards prov'd to be true. That that, their Doctrine, was the Doctrine of Chriſtianity, and truly ſo called, I'll readily agree to the Priſoner; but I do not think that Chriſtianity introduc'd that Doctrine into the World; for I think, as the Doctor does, that it was as antient as Government, becauſe it was impoſſible that Government could ſubſiſt, unleſs ſupported by its Subjects: but how antient that Doctrine was, can't be aſſerted, without knowing how Government came to be introduc'd into the World. If it was Patriarchal, as ſome have aſſerted, it was as ancient as *Adam*; if it was introduc'd by Conqueſt, then its Date was no higher than *Nimrod*; if it was by Compact, then I can't ſay when it began; but this is certain, that it was as ancient as the *Roman* People, which was about ſeven hundred Years before the coming of our Saviour; but how long before the *Roman* Name was known, I can't take upon me to ſay. But tho' this Doctrine was not introduced by Chriſtianity, yet I think it may well and properly be called the Chriſtian Doctrine; for tho' amongſt the Heathens it was a political Law, and oblig'd (as other Laws did) for fear of Puniſhment; yet Chriſtianity firſt preſs'd this Doctrine upon the Conſcience of the Subject, which no other Religion did, and that was ſufficient to intitle it to the Name of Chriſtian. But the Doctor, as I ſaid, has carry'd it farther than the Words of the Apoſtles did, extending it to an Active Obedience, which the Words of the Apoſtles do not warrant, in the Strictneſs of the Expreſſions. But yet I won't conteſt with the Doctor in this Matter; for if the Doctrine, as preach'd by the Apoſtles, was ſufficient to ſecure the Government they liv'd under, as it was, and that Doctrine is not ſufficient to ſecure the Government we now live under, as it is not; the Doctor might very well think, that what he now aſſerts, by the Equity, as we call it, (that is) the Reaſon of the Doctrine preach'd by the Apoſtles, was well warranted.

Having thus ſtated the Matter of the Subjects Obedience to the Supreme Powers, in which I have agreed with the Doctrine ſet forth in the Sermon, I can't imagine how the Doctor can juſtify himſelf in declaring againſt the Revolution, as he has done; when he knows, as well as any, that the Revolution has been juſtified by the Supreme Power, in the Acts of Parliament mentioned: For certainly it muſt be granted, that the Doctrine that commands Obedience to the Supreme Power, tho' in Things contrary to Nature, even to ſuffer Death, which is the higheſt Injuſtice that can be done a Man, rather than make an Oppoſition to the ſupreme Power; becauſe the Death of one, or ſome few private perſons, is a leſs Evil than diſturbing the whole Government; that Law muſt needs be underſtood to forbid the doing, or ſaying any Thing to diſturb the Government, the rather, becauſe the obeying that Law cannot be pretended to be againſt Nature: And the Doctor's refuſing to obey that implicit Law, is the Reaſon for which he is now proſecuted; tho' he would have it believ'd, that the Reaſon he is now proſecuted, was for the Doctrine he aſſerted of Obedience to the Supreme Power; which he might have preach'd as long as he had pleas'd, and the Commons would have taken no Offence at it, if he had ſtopt there, and not have taken upon him, on that Pretence or Occaſion, to have caſt odious Colours upon the Revolution. If he is of the Opinion he pretends, I can't imagine how it comes to paſs, that he that pays that Deference to the Supreme Power, has preach'd ſo directly contrary to the Determinations of the Supreme Power in this Government; he very well knowing that the Lawfulneſs of the Revolution, and of the Means whereby it was brought about, has already been determin'd by the aforeſaid Acts of Parliament; and do it in the worſt manner that he could invent. For queſtioning the Right to the Crown here in *England*, has procur'd the ſhedding of more Blood, and caus'd more Slaughter, than all the other Matters tending to Diſturbances in the Government put together. If therefore the Doctrine, which the Apoſtles had laid down, was only to continue the Peace of the World, as thinking the Death of ſome few particular Perſons better to be borne with than a Civil War; ſure it is the higheſt Breach of that Law, to queſtion the firſt Principles of this Government.

It is not forgotten how much Blood was ſpilt upon the Account of the Title between the Houſes of *York* and *Lancaſter*, in which the Learned in the Law did differ; and the ſetting on Foot that Queſtion of the Title of the preſent Government, which was above twenty Years ago determin'd, and that Determination acquieſc'd in from that Time till now, in all Probability, if not ſuppreſs'd, would tend to as great Miſchief as that War intail'd on the Nation. But yet the Doctor, who preaches up the Subjects Submiſſion to the Supreme Power, even to Death itſelf, thinks he hath not only a Licence, but a Command from God, to inquire into the late King and Queen's Right to the Crown; and to blow a Trumpet, to ſet his Fellow-Subjects to cut one another's Throats upon that Account. This ſurely is the abſurdeſt Conſtruction of a Text that ever was made; and yet this I'll ſay is the Caſe, if you'll compare the Priſoner's Practice with his Doctrine.

Methinks the Doctor ought to have conſider'd what our Saviour and his Apoſtles did in their Time: We don't find that any of them ever queſtion'd the Title of the Emperors under whoſe Government they liv'd; or ever ſaid any Thing relating to their Titles, or that Power they exercis'd; and yet if they had thought it lawful or expedient, they had juſt Occaſions to have done it. St. *John*, the Survivor of the Apoſtles, liv'd (as 'tis ſaid) to the Time of *Trajan*; ſo that by that Account he liv'd under thirteen Emperors, including *Auguſtus* and *Trajan*; and yet neither of them had ſo much as a Pretence of Right to the Empire, according to the Opinion we have of that Right now. The firſt and laſt of thoſe Emperors were the very beſt the *Romans* had, except perhaps *Titus Veſpaſian*; and yet *Auguſtus* came to the Empire by the worſt Means of any of them, for he waded thro' a Sea of Blood, and was guilty of a great many Acts of Treachery and Cruelty: But after the World had reap'd ſo many Benefits by his excellent Government, it forgot the Iniquity of the Means whereby the Empire was obtain'd. And the beſt Means of obtaining the Empire, by the following Emperors, till the Time of *Titus Veſpaſian*, were by Force, and moſt of them by treacherous Murders; and yet we don't find, that either our Saviour, or his Apoſtles, reproach'd any of thoſe Emperors with the Injuſtice of the Means whereby they became ſo. And methinks it would have become the Doctor to have follow'd thoſe good Examples. But the Doctor is of another Opinion, and thinks the aforeſaid Words of *Iſaiah*, to *Cry aloud*, &c. do well warrant that his Opinion; not conſidering that that Prophet had that expreſs Command from God, for reproving the Hypocriſy of the *Jews*: And if the Doctor had the like Command for Preaching as he has done, I think he has quoted a good Authority for ſo doing; but he muſt give us a better Proof of ſuch Command than hitherto he hath done.

If he thinks the Command given to *Iſaiah* extends to him; how came it to paſs that the Apoſtles did not think that the ſame Command extended to them? Did not they live nearer the Time of *Iſaiah?* Were not they acquainted with the Writings of *Iſaiah*, as well or better than the Doctor, and ſo might have known the Authority given to that Prophet better than the Doctor? but yet forbore to do as the Doctor has done: And their having forborn ſo to do, cannot proceed from any other Reaſon, than that they thought thoſe Words did not extend to the Apoſtles; or that they thought it was not lawful or expedient for them to queſtion the Title of thoſe Princes, or the Juſtice or Means whereby they obtain'd it.

I'll only add to this Matter, That if the Doctor had been contented with the Liberty he took of preaching up the Duty of Paſſive Obedience in the moſt extenſive Manner he had thought fit, and would have ſtopp'd there, your Lordſhips would not have had the trouble, in relation to him, that you now have; but it is plain, that he preached up his abſolute and unconditional Obedience, not to continue the Peace and Tranquility of this Nation, but to ſet the Subjects at Strife, and to raiſe a War in the Bowels of this Nation; and it is for this that he is now proſecuted; tho' he would fain have it believed, that the Proſecution was for preaching the peaceable Doctrine of abſolute Obedience.

I can't but take Notice of the Scandal the Doctor charges upon the late King, as if when he landed here, he had diſclaimed all Manner of Imputation of Reſiſtance; than which nothing is more untrue, even by his own Confeſſion in his Anſwer, and the Words of the Declaration mentioned in the Print of the Sermon, tho' no Part of the Sermon; whereby he pretends to explain himſelf, by ſaying, he intended a Diſclaimer of Reſiſtance in order to a Conqueſt; than which nothing could be more abſurd: For never was a Conqueſt made, or ever will be made, by bare Reſiſtance; nor ever was there a weaker Thing charged upon a Prince, than to make him diſclaim all Reſiſtance, at a Time when he was actually making War: For his bringing an armed Force of that Number he did into this Kingdom, with a great Train of Artillery with him, was making War by the Law of Nations, and then and now by the Law of *Great Britain:* And he hath charged the Prince of *Orange* with an Act of the higheſt Treachery, in pretending Peace, when he actually made War.

The laſt Matter I ſhall take Notice of, are the Words in the nineteenth Page of the Doctor's Sermon; *viz. That old Leaven of their Forefathers is ſtill working in the preſent Generation; that this traditional Poiſon ſtill remains in this Brood of Vipers, to ſting us to Death, is ſufficiently viſible, as to the dangerous Encroachment they now make upon our Government, and the treaſonable Reflection they have publiſhed upon her Majeſty, God bleſs her! whoſe Hereditary Right to the Throne they have had the Impudence to deny and cancel, to make her a Creature of their own Power; and that by the ſame Principles they placed a Crown upon her, they tell us, they (that is the Mob) may re-aſſume it at their Pleaſure.* Now I think it cannot be doubted who it is the Doctor means by the Word *Mob*, which is the People of *England:* For tho' the Word *Mob* is a Cant Word amongſt a Sort of People call'd Gypſies, and with them ſignifies the Meaneſt, or the Scum or Dregs of the People, yet as the Doctor has uſed it in this Place, it can ſignify nothing elſe than the Body of the People of *England*; of whom, I think, your Lordſhips do not think it beneath you to be thought a Part, and the chiefeſt Part: For he aſſerts, They ſay, that they placed a Crown upon her Majeſty; and from thence makes an Inference, that they may re-aſſume it at their Pleaſure; which can be intended nothing elſe than what was done in reſpect of her Majeſty by the Bill of Rights; wherein 'tis ſaid, "That the Lords "Spiritual and Temporal, and Commons in Parliament aſſembled, did "declare her Majeſty, after the Death of the late King and late Queen, "without Heirs of her Body, was lawful and rightful Queen of this "Realm." Now, tho' her Majeſty hath an Hereditary Right and Title to the Crown, and ſo ſhe is not ſo much concerned in the Declaration by the ſaid Act, as the laſt King and Queen, in what that Act conferred upon them, which was done only by the People of *England*, under the Denomination of Lords Spiritual and Temporal, and Commons in Parliament aſſembled: And if that did not confer a Title to the Crown on the late King and Queen, they, who were in their Lives-Time thought to be lawful and rightful King and Queen of theſe Realms, by the Doctor's Reaſoning, were no better than the Uſurpers of another's Right. And tho' that Bill of Rights was afterwards confirmed by an Act in the ſecond Year of their Reign, yet that will not at all mend the Matter; for if they did not obtain a Right, by the Bill of Rights, to the Crown of theſe Realms, they were no more King and Queen of theſe Realms, than they were before the ſaid Bill of Rights. But the Truth is, that when a Government is brought out of Frame, by the extraordinary Steps of a Prince, 'tis a vain Thing to hope that it ever can be ſet right by regular Steps; this never was done, nor ever will be done: But thoſe Methods which were neceſſary to

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ſet the Government in a right Frame again, have been always taken to be legal, tho' by the Nicety of Law it could not be well juſtified. Upon the Change of Government from *Richard* the Second to *Henry* the Fourth, the Parliament called in the Time of *Richard* the Second, and by his Authority continued to ſit in the Time of *Henry* the Fourth, and paſſed ſeveral Acts in the Time of *Henry* the Fourth; which was never practiſed before, nor warranted by any Laws that we know of; yet what was done was allowed to be legal. To the ſame Purpoſe was that which was done in the Time of *Henry* the Seventh: For he and thoſe of his Friends being attainted of High-Treaſon, which, according to the Rules of Law at that Time, prevented the Deſcent of the Crown on him; and his Friends being moſtly attainted, were uncapable of Sitting in Parliament till thoſe Attainders were reverſed, which could not be done but by Act of Parliament, or the Court of *King's Bench*; and he did not care to have a Parliament, till his Friends were capable of ſitting there; nor could he make Judges till he was King; which Difficulty ſeemed to be inſuperable: But the Judges made a Reſolution according to the Exigence of the Thing, and declared that Sir *William Stanley*'s placing the Crown upon the Earl of *Richmond*'s Head, purged his Attainder, and he thereby became from thenceforwards King of *England*, and the King thereby enabled to conſtitute Judges, and the Judges to reverſe the Attainder of all the King's Friends. 'Tis true, *Henry* the Seventh married the Heireſs of the Houſe of *York*, and was thereby (as we now think) King in Right of his Queen; but he never would own her Title to the Crown, nor ever ſuffer her to join with him in any Act of Government, nor ever declar'd by what Title he poſſeſs'd the Crown; but yet none of the Acts paſſed in his Time, nor any Thing then tranſacted was afterwards queſtion'd upon the Account of his Title to the Crown. 'Tis true, there was an Act paſſed in his Time, that indemnified ſuch as ſhould obey, or aſſiſt the King that was in Being, whether he had Right to the Crown or no: But if he had not been allowed to be King before the paſſing of that Act, the Acts of Parliament that paſſed in his Time would have been of no more Validity, than the Acts paſſed in the Time of *Cromwell*, or any other Uſurper. Whereby 'tis plain, that the Doctor now, and the Perſons who had the beſt Knowledge of Matters of this Kind in thoſe Days, diſagreed in Opinion. And I can't but take Notice that the Doctor, notwithſtanding his little Knowledge in the Matters he diſcourſes of, makes the Declaration by Parliament of the Queen's Title to the Crown, to be the cancelling of her Title by Deſcent; and therefore he ſeems to adviſe her Majeſty to quit that Title ſhe claims from her People, and to rely upon her Title by Inheritance. Whereas, if the Doctor had but known what our Laws allow, or if he had read any Thing of this Matter, he would have known that thoſe Titles did by no Means diſagree, but were conſiſtent with one another; and that Princes that ſometimes have claimed by ſeveral Titles, would not make their Choice of which they relied on. *Henry* the Eighth, who was Heir of the Houſe of *York* and *Lancaſter*, never declared on which Title he relied. Queen *Elizabeth*, after the Death of her Brother and Siſter, claimed as Heir to *Henry* the Eighth, and was likewiſe Deviſee of the Government of *England* by the Will of her Father, who was (by Act of Parliament) enabled to give it by his Will to whom he pleaſed: But notwithſtanding that, ſhe deſired to have an Act of Parliament, which ſhe had, declaring her to be the Queen of *England*, &c. Which Act of Parliament was to the ſame Purpoſe, as was the Bill of Rights in reſpect of her Majeſty's Title to the Crown. I'll trouble your Lorſhips with no more, to prove the Priſoner guilty of the Crimes charged upon him by the firſt Article of the Impeachment; but I cannot but obſerve ſome aggravating Circumſtances of the Priſoner's Crime. As firſt, That the Doctrine in the Impeachment was preach'd by a Divine of the Church of *England* as by Law eſtabliſh'd: For a Divine of the Church of *England* is a Perſon of that Credit, that the People are ready to aſſent to what he ſays, without conſidering what the ſame is, or how made out. In the next Place, 'Twas preach'd in the Cathedral Church of the Metropolis of this Kingdom: Had it been preach'd in ſome obſcure Country Town, 'twould have hardly been taken Notice of. In the third Place, 'Twas preach'd before the Lord Mayor and Court of Aldermen of the City of *London*, and ſo far approv'd of by them, or ſome of them, as to be commanded to be printed; for which Reaſon, what he preach'd hath done more Miſchief than otherwiſe 'twould have done; there having been about forty thouſand printed, to vilify the Revolution, on which depend the Security of the Proteſtant Religion both at Home and Abroad, and the Succeſſion of the Crown in the Proteſtant Line; the Union of the Two Kingdoms, the Queen's Bounty to the poor Clergy, and ſeveral other Benefits we enjoy by the Revolution; and amongſt others, that her Majeſty was and is ſo peaceably poſſeſs'd of the Crown. For if the Force before the Revolution, which ſuppreſs'd her Majeſty's Hereditary Right to the Crown, had not been remov'd by the Revolution, as 'twas, that her Majeſty's Title would never have been able to have exerted itſelf: And if ever the Doctor, or any of his Accomplices, ſhould ever be able ſo to ſhock the Revolution, as to remove what is built upon it, I doubt that Force which the Revolution removed, will return again, and oppreſs the Queen's Title to the Crown, as it did before.

I can't paſs by the Doctor's Anſwer to the Articles, without taking Notice of one Paſſage in the ſame, *viz.* ‘ Hard is the Lot of the Mini- ‘ ſters of the Goſpel, if when they cite the Word of God in their gene- ‘ neral Exhortations to Piety and Virtue, the ſeveral Texts by them ‘ cited, ſhould be ſaid to be by them meant of particular Perſons and ‘ Things.’ Now I muſt ſubmit to your Lordſhips Judgment the Unreaſonableneſs of this Complaint; and whether the ſeveral Texts and Paſſages cited by him in the Sermon, can bear any other Conſtruction than what has been made? and whether it be not the Duty of the Preacher to deliver himſelf ſo in the Pulpit, that his Meaning ſhould not be doubtful to his Congregation? The Commons of *Great Britain* don't go about to make him aſſent or ſwear to what the Supreme Power hath determin'd; tho' the Doctor in his Sermon has thought fit to impoſe Matters of that Kind upon other Perſons, ſo as to make them ſwear to them: No, the Commons of *Great Britain* would only have him reſtrain'd from publiſhing any Thing, and eſpecially in the Pulpit, which reflects upon the Supreme Power; or what they have or ſhall determine, which even the niceſt Conſcience never yet boggled at. I can add more Aggravations of the Doctor's Crimes, but will forbear to do it, rather following the Example of the Commons of *Great Britain*; who have, indeed, demanded Judgment againſt this Perſon of your Lordſhips, but they have done it in Mercy; for they might have charg'd theſe Matters againſt the Doctor as High-Treaſon; and ſo it has been done in Indictments againſt ſome Divines, in a Reign known to your Lordſhips, for Matters in their Sermons leſs heinous than thoſe for which he is impeach'd; yet the Commons have called the Matters of this Impeachment only High Crimes and Miſdemeanors; and it is a Rule in our Law, that the Court in which a Proſecution is had, cannot call the Crimes greater than what the Proſecutor thought fit to charge them, and cannot adjudge a greater Puniſhment to the Crimes than uſual; but in ſome Caſes may leſſen the Puniſhment for ſuch Crimes; and whatſoever Cenſure your Lordſhips ſhall paſs upon this Criminal, the Commons of *England* will acquieſce, and be well ſatisfied with the ſame.

Major-General Stanhope. MY Lords, The Gentlemen who ſpoke before me to this Article, have ſaid ſo much to it, that they have left little to me, who am laſt in it. I ſhall therefore particularly apply myſelf to make out to your Lordſhips, that as the Priſoner at the Bar is guilty of the Matter charg'd in this firſt Article, ſo he has done it (as the Preamble of this Article ſets forth) with a wicked and malicious Intention to undermine and ſubvert her Majeſty's Government, and the Proteſtant Succeſſion, as by Law eſtabliſh'd; to defame her Majeſty's Adminiſtration; to aſperſe the Memory of his late Majeſty, and to traduce and condemn the late happy Revolution, as in the ſame Preamble to the Articles it is charged againſt him.

My Lords, if it be Truth, (as your Lordſhips have been told by moſt of the Gentlemen who went before me) that Non-reſiſtance, aſſerted in general Terms, does deſtroy the Foundation of the Revolution, the preſent Eſtabliſhment, and her Majeſty's Title to the Crown, and the Settlement of the Proteſtant Succeſſion: If that be true, it is as true that the Doctor, who has advanced that Doctrine in general Terms, is guilty of that Charge of intending to ſubvert the Government: And then your Lordſhips ought to proceed againſt him, as an Enemy to the Government.

What has been ſaid by the Gentlemen that ſpoke before me, concerning the Doctrine of Non-reſiſtance, has been ſaid with ſo much regard to Truth, to her Majeſty and her Government, that I am perſuaded, nothing that has been ſaid on that Subject can juſtly be miſconſtrued. But, on the contrary, to aſſert in general Terms the abſolute Illegality of Reſiſtance, on any Pretence whatſoever, (as this Doctor, and all the profeſs'd Enemies of the Government avowedly do) muſt be underſtood by all impartial and thinking People, to overthrow her Majeſty's Title and Government; ſince at the ſame Time that they ſkreen themſelves under the ſpecious Notion of profeſſing Abſolute and Paſſive Obedience to the Supreme Powers, they cannot conceal their true Meaning: That the true and real Object of their darling Doctrines, ſuch as *Jus Divinum*, *Non-reſiſtance*, *the Undefeaſible*, *Unalienable*, *Hereditary Right*, that (I ſay) the true Object of theſe Doctrines, is a Prince on the other Side the Water. They could not otherways be conſiſtent with themſelves. For in the ſame Breath, in the ſame Diſcourſe, to preach Paſſive Unlimited Obedience to Magiſtrates, and to revile and defame the Magiſtrates; to preach Non-reſiſtance on any Pretence whatſoever, and to encourage Sedition, by inveighing in the ſtrongeſt Manner againſt the Adminiſtration; theſe are ſuch Contradictions, as can no otherways be reconcil'd, no otherways than by concluding, what is very plain from their Conduct, that however they are pleaſed to colour and diſguiſe their Diſcourſes, their true End is only to diſengage and alienate the People's Affections from their preſent Governors; to inſinuate to them, that the Foundation of the Revolution was wrong; that the Revolution itſelf was an Uſurpation; that whatever has been built upon that Foundation, can have no Weight; and to miſrepreſent thoſe who had a Hand in it, as Rebels and Traitors.

As to the Doctrine itſelf of abſolute Non-reſiſtance, it ſhould ſeem needleſs to prove by Arguments, that it is inconſiſtent with the Law of Reaſon, with the Law of Nature, and with the Practice of all Ages and Countries. Nor is it very material, what the Opinions of ſome particular Divines, or even the Doctrine generally preach'd in ſome particular Reigns, may have been concerning it. It is ſufficient for us to know what the Practice of the Church of *England* has been, when it found itſelf oppreſſed. And, indeed, one may appeal to the Practice of all Churches, of all States, and of all Nations in the World, how they behav'd themſelves when they found their Civil and Religious Conſtitutions invaded and oppreſſed by Tyranny: I believe one may further venture to ſay, that there is not at this Day ſubſiſting, any Nation or Government in the World, whoſe firſt Original did not receive its Foundation either from Reſiſtance or Compact: And as to our Purpoſe, it is equal, if the latter be admitted. For where-ever Compact is admitted, there muſt be admitted likewiſe a Right to defend the Rights accruing by ſuch Compact. To argue the municipal Laws of a Country in this Caſe, is idle. Thoſe Laws were only made for the common Courſe of Things; and can never be underſtood to have been deſigned to defeat the End of all Laws whatſoever; which would be the Conſequence of a Nation's tamely ſubmitting to a Violation of all their Divine and Human Rights.

That there is a Latitude left to the Subjects in ſuch a Caſe, is allowed by the moſt ſtrenuous Advocates of Paſſive Obedience: And I ſhall, on this Occaſion, quote to your Lordſhips the Sermon of a Reverend Divine, who, I am ſure, is not thought to be a Favourer of Antimonarchical Principles; nor to deſerve any of thoſe pretty Epithets, which the Doctor ſo liberally beſtows on thoſe who differ from him in Opinion. 'Tis the *Latin* Sermon of Dr. *Atterbury*, preached to the Convocation. The Scope and Drift of that Diſcourſe, my Lords, was to preach up abſolute Obedience; yet ſuch is the invincible Force of Truth, and ſuch the Nature of this Argument, that the Doctor, not to betray his own Conſcience, after having well thought upon it, is obliged to expreſs himſelf in the following Words, which your Lordſhips will give me leave to read to you out of his Sermon, which I have here in my Hand: *Quando autem, quibuſq; de cauſis Magiſtratuum imperia detrectare*, Noſmetipſos in libertatem vindicare *liceat*, *ne verbulo quidem indicant: niſi cum aliquid ab hominibus fortè imperatum fuerit*, *latis à Deo legibus contrarium. Id ubi acciderit*, *quid agendum ſit*, *Petri vox illa declarat*, Obedire oportet Deo magis quam Hominibus.

The Senſe of this Paſſage my Lords, if I miſtake not, is this: “ But “ when, and upon what Cauſes it may be lawful to oppoſe the Power of “ the Prince, and *aſſert our Liberties*, the Scriptures do not ſay: Unleſs “ in Caſes when Men ſhall command Things contrary to the Laws of God.

" When that ſhall happen, St. *Peter* tells us what we muſt do, *We muſt* " *obey God before Men.*"

To apply this, my Lords, to our preſent Argument, I appeal to the Memory of your Lordſhips, whether King *James* did not command Things contrary to the Laws of God? whether his Commands to the Reverend Fathers of our Church were conſonant to the Law of God? whether his Commands to execute a diſpenſing Power; whether his Commands to all ſuch of both Houſes, as he could influence to vote for a diſpenſing Power, contrary to their own Conſciences, were agreeable to the Law of God? or, in ſhort, whether the whole Courſe of his Reign was not a Series of illegal Commands, calculated to deſtroy our Holy Religion, and to violate all our Religious and Civil Rights? Your Lordſhips thought ſo (my Lords); the Commons thought ſo; and the Nation thought ſo; and in Conſequence of this Doctrine, preach'd by St. *Peter*, they choſe to obey God before Men.

But to return to Dr. *Atterbury*'s Sermon, he goes on thus, my Lords: *Petenda ſunt iſta (ſi quidem peti neceſſe ſit) à Juriſconſultis, à Theſium Politicarum Tractatoribus; è Legibus, è Rerumpublicarum Formis, cuiq; Genti propriis, tanquam è fonte ſuo, ſunt haurienda.* In *Engliſh* thus:

" But in ſuch Caſes, you muſt adviſe with the Lawyers, and thoſe " learned in Politicks; and have Recourſe to the Laws and Conſtitutions " peculiar to each Country, as to the Springs and Fountains of this " Knowledge."

My Lords, in Compliance to what is recommended by this Reverend Dean, I have endeavoured to follow his Advice, to conſult with thoſe learned in the Laws of Nations and Politicks. I have heard that *Grotius* is of as good Authority on thoſe Subjects as any that have wrote about them; that he has ever been reckoned a Favourer of Monarchy, and held in great Repute amongſt the Divines of our Church. I ſhall beg Leave, out of the many Paſſages to be found in his excellent Treatiſe *de Jure Belli & Pacis*, which ſupport this Argument, to quote only one, for the ſaving of your Lordſhips Time. 'Tis in his firſt Book, the 4th Chapter, and 13th Section. *Si Rex partem habeat ſummi Imperii, partem alteram Populus, aut Senatus, Regi in partem non ſuam involanti vis juſta opponi poterit, quia eatenus imperium non habet: quod locum habere cenſeo, etiamſi dictum ſit, Belli poteſtatem penes Regem fore; id enim de bello externo intelligendum eſt, cùm alioquin quiſquis Imperii ſummi partem habeat, non poſſit non jus habere eam partem tuendi.*

The Senſe of this Paſſage I conceive to be this: " If the King had one " Part of the Supreme Power, and that the other Part is in the Senate, or " People, when ſuch a King ſhall invade that Part that doth not belong " to him, it ſhall be lawful to oppoſe a juſt Force to him, becauſe his " Power doth not extend ſo far. Which Poſition I hold to be true, even " though the Power of making War ſhould be veſted only in the King; " which muſt be underſtood to relate only to foreign War: For as for " Home, it is impoſſible for any to have a Share of the Supreme Power, " and not to have likewiſe a Right to defend that Share."

This Paſſage, my Lords, is exactly adapted to the Conſtitution of *England*; and the latter Part of it is perfectly agreeable to what I have always heard quoted as a Maxim of our Law, *That where-ever there is a Right, there is a Remedy.* That your Lordſhips have Rights, nobody will preſume to deny; that the Commons have Rights, nobody will deny; that every Subject of *Britain* has Rights, nobody will deny. Now to ſay, that when a Prince ſhall invade all theſe Rights at once; to ſay that the whole collective body of the Nation has no way to vindicate thoſe Rights, is ſo inconſiſtent, ſo contrary to Reaſon, that 'tis to be wonder'd it could ever enter into the Mind of Man.

If I did not fear to tire your Lordſhips, I might, from many Paſſages out of *Forteſcue* *, and Mr. *Hooker* †, evince beyond Contradiction, that the Conſtitution of *England* is founded upon Compact; and that the Subjects of this Kingdom have, in their ſeveral publick and private Capacities, as legal a Title to what are their Rights by Law, as a Prince to the Poſſeſſion of his Crown.

Your Lordſhips, and moſt that hear me, are Witneſſes, and muſt remember the Neceſſities of thoſe Times which brought about the Revolution: That no other Remedy was left to preſerve our Religion and Liberties; that Reſiſtance was neceſſary, and conſequently juſt. It was then by no good Man thought a black and odious Crime to take up Arms for the Defence of his Country. Many of your Lordſhips were Actors in that Reſiſtance. The greateſt Part of the Nation did either actually reſiſt, or countenance, abet, and ſupport thoſe who ſet them the glorious Example. I hope we have all ſo much Gratitude to the beſt and greateſt of Queens, as to retain for ever a grateful Memory, how great a Share her Majeſty had in promoting that Revolution. When theſe Facts are ſo freſh in our Memories, What muſt we ſay to thoſe who give the injurious Names and Epithets of *Republicans*, of *Enemies and Traitors to Church and State*, to thoſe who were concerned in that Reſiſtance which brought about the Revolution? Sure it might have become them to conſider *who* were concern'd, and *who* had a Share in it. It is not only traducing the late King and Queen, our glorious Deliverers; it goes yet further: But I ſhall out of Reſpect forbear to mention what they not only think, but have frequently the Inſolence to own.

My Lords, If it be true that this Doctrine of Non-reſiſtance, aſſerted in ſo unlimited a Senſe as not to except the Revolution, does certainly ſap the Foundation of the ſaid Revolution, and the preſent Eſtabliſhment which is built upon it; If it be true, that to arraign as guilty of black and odious Crimes, all ſuch as were concerned in the Reſiſtance at the Revolution, doth involve the greateſt Part of this Nation in the Guilt of Rebellion and Treaſon; If it neceſſarily follows, from the ſame Poſitions, that our Allegiance is not due to the preſent Government; I think we may as neceſſarily conclude, that this Sermon of the Doctor's before your Lordſhips does tend, as is ſet forth in the Preamble of the Impeachment, to undermine and ſubvert her Majeſty's Government, and the Proteſtant Succeſſion, which ſtands on the ſame Foundation.

My Lords, If the Doctor had in this Sermon only preach'd up Obedience to the Supreme Power as a Chriſtian Duty, without meddling with Politicks, he might have been allow'd perhaps to plead for Excuſe, that he was ignorant of the Conſequences that might be deduced from ſuch general Propoſitions; that his only Aim was Charity, Peace, and Submiſſion to the Magiſtrates in Being. We muſt therefore pray your Lordſhips to compare one Part of his Sermon with the other; and your Lordſhips will then, I am perſuaded, be of Opinion with us, not only that the Concluſion we have drawn from his Poſitions, does neceſſarily flow from them, but that the Doctor himſelf muſt have been conſcious of it; and conſequently that what he has done, muſt have been, as we ſet forth in our Charge, *with a wicked and malicious Intention.*

Had the Doctor, my Lords, in the remaining Part of his Sermon, preach'd up Peace, Quietneſs, and the like; and ſhewn how happy we are under her Majeſty's Adminiſtration; and exhorted Obedience to it, he had never been called to anſwer a Charge at your Lordſhips Bar. But the Tenor of all his ſubſequent Diſcourſe, is one continued Invective againſt the Government. Paſſive Obedience is ſet down as an indiſpenſible Duty: But 'tis evident, by the whole Sermon, that it is not due to Queen *ANNE*, or her Adminiſtration. Now what can that be, but to uſher in *a Rightful Title*, (I think they call it) of one on the other Side the Water?

There is ſuch an Affinity, my Lords, between this Sermon, and the Doctrines which are preach'd and propagated by a certain Set of Men, that I cannot but obſerve to your Lordſhips on this Occaſion, how induſtrious they have been, ever ſince the Revolution, to prepare a Way for another. They are the pure and undefiled Church of *England!* The only Men of loyal and ſteady Principles! They never took the Oaths to the Government; never bent their Knee to *Baal!* They have their own Archbiſhops, Biſhops and Paſtors, and conſtitute the only true and pure Church of *England!* We are all Schiſmaticks, that is, all the reſt of *England* are Schiſmaticks, Hereticks and Rebels! Now, pray, my Lords, What are the peculiar and diſtinguiſhing Characteriſticks, the favourite and darling Tenets of theſe Men? What elſe but *Paſſive Obedience*, *Jus Divinum*, an *Hereditary*, *Indefeaſible Right of Succeſſion*, which no Neceſſity, no Act of Parliament, no Preſcription of Time, no natural or legal Incapacity, can ever invalidate or ſet aſide? If they are in the Right, my Lords, what are the Conſequences? The Queen is not Queen; Your Lordſhips are not a Houſe of Lords, for you are not duly ſummon'd by a legal Writ; We are no Houſe of Commons, for the ſame Reaſon; all the Taxes which have been raiſed for this twenty Years have been arbitrary and illegal Extortions; all the Blood of ſo many brave Men, who have died (as they thought) in the Service of their Country, has been ſpilt in Defence of an Uſurpation; and they were only ſo many Rebels and Traitors.

My Lords, If theſe Puritans (I think I may call them), theſe undefiled pure Church-Men, would confine themſelves to their own Conventicles, to get Money from a few deluded Women; it may, perhaps, be conſiſtent with the Indulgence of the mildeſt of Governments, to ſuffer them to enjoy the Benefit of that Toleration which is allow'd to Proteſtant Diſſenters, how pernicious and deſtructive ſoever to the Publick may be their Principles. But when they ſhall come and vent their Treaſons abroad; when they ſhall occaſionally conform, and take the Oaths to the Government, in order the better to deſtroy it; when they ſhall abjure the pretended Prince of *Wales*, but not forget him; when they ſhall invade the Pulpits of the true Church of *England*; when the Pulpit of your Metropolis, inſtead of teaching the People to pay their Anniverſary Tribute of Praiſe and Thanks to Almighty God for the many wonderful Succeſſes with which he has bleſs'd thoſe Arms which were taken up in Defence of the Revolution; when (I ſay) that Pulpit ſhall be proſtituted and polluted by venting Sedition againſt the beſt of Queens; it is high Time for your Lordſhips to animadvert upon it, for the Honour of thoſe glorious Princes who are dead; for the Honour of her Majeſty, who ſo happily rules over us; and for the Peace and Tranquillity of all her Subjects.

My Lords, If I was not afraid of being thought too tedious to your Lordſhips, I would offer to you a few Words concerning that Adminiſtration which the Doctor has ſo maliciouſly defamed; for as fond as this Gentleman, and thoſe like him, are of meddling with Politicks in the Pulpit; and, as himſelf expreſſes it, *of ſetting the People right in their Principles*; I do not find they ever teach what the Ends of Government truly are.

My Lords, *Tully*, who takes it from *Ariſtotle*, ſtates the ultimate End of Government, and the Mark which Rulers ought to aim at, to be *Otium cum Dignitate*, or Peace with Reputation. Towards attaining this End, he enumerates the ſeveral Particulars which it requires the greateſt Application and Vigilance of good Governors to promote and maintain. And the chief Branches, as he ſtates them, are Religion; the juſt and legal Powers and Rights of the Legiſlative, and of the Magiſtrates ſubordinate to that; a due Adminiſtration of Juſtice; the Publick Treaſure and Credit; Military Virtue; and concludes with *Laus Publica*; which, indeed, is the Reſult of a good Adminiſtration of the ſeveral Branches mention'd. For Praiſe both at Home and Abroad will never fail to attend good Management.

Oratio pro Publio Sextio.

Now, my Lords, if any Man will but reflect on every one of theſe Particulars, and inſtance when in any Age there has been in this Iſland a more univerſal glorious Adminiſtration, I will allow what the Doctor ſays to be true.

To begin with Religion, my Lords, let any one look upon that Reverend Bench, and ſay when it was ever filled with greater Examples of Piety, Learning, and Chriſtian Charity. That truly Chriſtian Moderation, and extenſive Zeal, and Charity to the Proteſtant Religion, will, in all human Probability, my Lords, (if ourſelves, by little Animoſities, do not obſtruct it) will, I ſay, raiſe the Luſtre and Reputation of our Church to ſuch a Degree, that, as the Glory of our Arms juſtly intitles our Nation at preſent to hold the firſt Rank, ſo ſhall our Church be look'd upon as the Mother of all the Reformed Churches in *Europe*.

As to the juſt Rights and Powers of our Legiſlative, your Lordſhips and all of us know, whether ever any Prince on our Throne has had a more tender Concern for them than her Majeſty; or whether, at any time, there has been a more due and impartial Adminiſtration of Juſtice.

For the Treaſure and Credit of the Nation, I appeal to all that hear me, whether ever ſuch large Sums were more chearfully given, or more juſtly adminiſtred. Never were there greater Demands than during this neceſſary War, nor ever Demands more freely complied with by the People. Such is the Confidence they have in the publick Management, and ſo ineffectual this Doctor, and his Brethren's ſounding a Trumpet to Sedition.

As for our Arms and Reputation; the many unparallel'd Succeſſes, during her Majeſty's Reign, by Sea and Land, ſpeak ſufficiently, and do ſufficiently proclaim, that her Majeſty has far exceeded all her Predeceſſors. Our *Henrys* and our *Edwards* have juſtly left behind them immortal Fame, for having broke and ſubdued in their Times the Power of *France*. Queen *Elizabeth* will be ever Glorious for having humbled the Pride of *Spain*. Thoſe two great Monarchies have each in their Turn aimed at the univerſal Monarchy of *Europe*; and each hath been near compaſſing it, notwithſtanding that the one always oppoſed the other. But it was never imagined, that if they once became united, any Force in *Europe* could have diſputed with them. Yet, my Lords, we have lived to ſee thoſe two formidable Powers united, and threatening Deſtruction to all the Liberties of *Europe*. It was a Taſk reſerved for her Majeſty to encounter this united Force. She has attacked and reduced them to ſue for Peace; and we are perhaps juſt now at that very deciſive Period of Time, when we are to reap the Fruits of a long and expenſive War, by the Concluſion of a ſolid and laſting Peace.

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* *Forteſque de laudibus legis Angliæ*, Cap. 10, 11, 12, 13.

† *Ec. Polity*, Pag. 86, 444, 446, 470.

Now, my Lords, at ſuch a critical Juncture, at a Time when it behoves us more than ever to preſerve that Union amongſt ourſelves, upon which the Union of the whole Alliance does ſo much depend; upon which the happy Concluſion of this War, and conſequently the Safety and Honour of our Church and State does depend; What does this Pious Son of the Church? What does this Loyal Subject, this Paſſive Obedience Gentleman do? He is Preaching to the City of *London*, from whence we are to receive the greateſt Part of the Supplies granted for carrying on the War: Does he ſay one Word to them to promote and carry on the Publick Good? No, my Lords: He does, to the utmoſt of his Ability, endeavour to create in them groundleſs Miſtruſts and Jealouſies of the Adminiſtration. And I will appeal to the Conſcience of every one that hears me, and deſire, that laying their Hand upon their Heart they will truly determine within themſelves, whether, if thoſe Citizens who heard this Sermon had been biaſſed by it, we could have expected one Penny of Money from them, to ſupport a Government which was repreſented ſo odious? But thoſe honeſt Citizens, my Lords, heard this Trumpeter of Sedition with Indignation. Their Affection to the Government is not to be ſhaken. Her Majeſty is Abſolute in the Hearts of her Subjects; which is the beſt way of being Abſolute: And all the Artificial Suggeſtions of theſe *Falſe Brethren* (to uſe his own Language) will never leſſen their Affections to her.

But, my Lords, how impotent and weak ſoever the Malice of theſe Men may prove; yet when ſuch Doctrines are broached, and publickly preached, as tend to enſlave a free Nation, to foment Diviſions and Parties, to ſeduce us from our Allegiance to the beſt of Princes; it becomes the Houſe of Commons, who are Guardians of the Conſtitution and Liberties of the People, to bring ſuch Delinquents to Juſtice; and it will become your Lordſhips, who are Guardians of the Conſtitution of the People, to prevent the growing of ſuch an Evil. This Man, my Lords, is an inconſiderable Tool of a Party, noways worth the Trouble we have given your Lordſhips: But we look upon it that your Lordſhips Judgment in this Caſe, will be giving a Sanction which ſhall determine what Doctrines of this kind ſhall, or ſhall not be preached. We are perſuaded, therefore, that your Lordſhips, in giving Judgment on this Caſe, will have a Regard to the Honour of the late King and Queen, ſo highly aſperſed; to the Security of her Majeſty and her Government; to the Proteſtant Succeſſion; to the Preſervation of the Peace at home, and Reputation abroad; where, if it ſhall be heard that you have Men amongſt you inſolent enough to vent ſuch Notions, they may likewiſe hear that it has not been done with Impunity. For all theſe Reaſons, we do hope that your Lordſhips will inflict ſuch condign Puniſhment on this Offender, as may deter others from the like Inſolence for the future.

Sir *Peter King*. MY Lords, The Gentlemen who have gone before me having finiſh'd the firſt Article of the Impeachment, by Command of the Houſe of Commons I proceed to make out the ſecond, which relates to the Toleration, one of the principal Conſequences of the Revolution. It is well known that great Severities had been formerly uſed againſt Proteſtant Diſſenters, which were fomented by Popiſh Practices, in order to divide us, and thereby weaken the common Proteſtant Intereſt, and particularly that of the Church of *England*: This the whole Church of *England* plainly ſaw in the Reign of the late King *James*, when Popery was coming in like a Flood, and threatened an univerſal Ruin; and when they did univerſally profeſs their Readineſs and Intention to ſhew all manner of Tenderneſs to other Proteſtants, when it ſhould be in their Power to do it.

The Seven Biſhops, who, to their everlaſting Honour, made ſo noble a Stand for the Liberties of the Church and Kingdom, did, in their Petition to King *James*, declare, That their not reading the Declaration for Liberty of Conſcience, was not from any want of due Tenderneſs to the Diſſenters, in relation to whom they were willing to come to ſuch a Temper as ſhould be thought fit, when that Matter ſhould be conſidered and ſettled in Parliament and Convocation.

And to the Glory of the Church of *England* it muſt be remembered, that when the Revolution was afterwards effected, they were as good as their Word, and an Act paſs'd in the very firſt Year of their late Majeſties King *William* and Queen *Mary*, intitled, *An Act for Exempting their Majeſties Proteſtant Subjects, diſſenting from the Church of* England, *from the Penalties of certain Laws*. This is that Act that is commonly call'd *The Act of Toleration*, and was confirm'd by another Act made in the ſucceeding Parliament. As this Act is agreeable in itſelf to the Profeſſion of the Chriſtian Religion, and particularly to the Doctrine of the Church of *England*; ſo it hath been found, by Experience, ſo much for the Honour of the Kingdom, and for the Credit of the Church, that her Majeſty has been pleaſed to declare from the Throne her Intention inviolably to maintain it; and both Houſes of Parliament have done the ſame in the moſt ſolemn Manner.

Here the Duke of Buckingham *moved the Lords to adjourn to their own Houſe; which they did: And the Lords being returned to the Court, and Proclamation commanding Silence made:*

Lord Chancellor. Gentlemen, you that are the Managers for the Houſe of Commons may proceed in the Method you were in.

Sir *Peter King*. My Lords, the Act of Parliament that I was mentioning to your Lordſhips, is the Act relating to the Toleration, referr'd to in the Preamble to the Articles; your Lordſhips, and every one elſe, remember the Neceſſity there was for that Act; and having experienced the Benefit of it, her Majeſty and both Houſes of Parliament have concurred in a Declaration, that that Act ſhall be inviolably obſerved: This being then not only a poſitive Law, but alſo a beneficial One, as well for the Benefit of the Church in particular, as the Welfare and Support of the Proteſtant Intereſt in general, it very ill became any private Perſon to endeavour to bring that Law, by any publick Diſcourſe, into Contempt or Diſrepute.

The Article the Doctor is charged with in relation hereto, is, “That “he ſuggeſts and maintains, That that Toleration granted by Law is un- “reaſonable, and the Allowance of it unwarrantable; and aſſerts, that he “is a falſe Brother, with Relation to God, Religion and the Church, “who defends Toleration and Liberty of Conſcience; that Queen *Eli-* “*zabeth* was deluded by Archbiſhop *Grindall*, whom he ſcurrilouſly calls “a falſe Son of the Church, and a perfidious Prelate, to the Toleration “of the *Genevian* Diſcipline; and that it is the Duty of the ſuperior “Paſtors to thunder out their Eccleſiaſtical Anathemas againſt Perſons “intitled to the Benefit of the ſaid Toleration, and inſolently dares and “defies any Power on Earth to reverſe ſuch Sentences.”

My Lords, The firſt Part of this Article, which is the principal Part, contains a general Charge againſt the Doctor, for affirming and maintaining, “That the Toleration granted by Law is unreaſonable, and the “Allowance of it unwarrantable.” The reſt of the Article conſiſts of particular Paſſages, taken out of his Sermon, tending to make good and prove that general Charge.

As to the general Charge contain'd in the firſt Part of this Article, of his maintaining the Toleration granted by Law to be unreaſonable, and the Allowance of it unwarrantable: His Anſwer is very obſervable, and is, That upon the moſt diligent Enquiry, he has not been able to inform himſelf that a Toleration hath been granted by Law; but admits, that an Act did paſs in the firſt Year of King *William* and Queen *Mary*, intitled, *An Act for exempting their Majeſties Proteſtant Subjects, diſſenting from the Church of* England, *from the Penalties of certain Laws*. Which Exemption, he ſaith, he doth not any where maintain to be unreaſonable, or the Allowance of it unwarrantable; but hopes that he had prevented any ſuch Miſapprehenſion, by declaring in his Sermon preach'd at St. *Paul*'s, that he intended not to caſt the leaſt invidious Reflection upon that Indulgence which the Government had given.

Indeed, it is almoſt difficult to be ſerious in giving a Reply to that Part of his Anſwer, That he cannot inform himſelf that a Toleration hath been granted by Law. 'Tis true the Word Toleration is not mentioned in that Act, neither is the Word Indulgence to be found in that Law; but every Body knows, that the Exemption granted by that Act is commonly called *The Toleration*, and the Act itſelf, *The Toleration Act*: What is the Intent of that Act, but to tolerate and allow Perſons, qualified by that Act, to exerciſe their Religion, notwithſtanding Penal Laws to the contrary? Toleration is really a Word of leſs Import than Indulgence, it is a bare Permiſſion, and Allowance; and this Word has gain'd ſuch a known and fix'd Notion and Signification in every one's Mind, that whenever it is mentioned, there is not any Doubt what is meant by it: It is now become a Word of Art, that not only in common Converſation, but even in the moſt public Acts of State, the Exemption granted by the Act made in the 1ſt of King *William* and Queen *Mary*, is call'd *The Toleration*. Did not her Majeſty, in her Speech to both Houſes of Parliament from the Throne, in the Year 1705, declare that ſhe would always inviolably maintain *The Toleration*? Did not both Houſes of Parliament, in their ſeveral Addreſſes to her Majeſty for that moſt gracious Speech, expreſs their deep Satisfaction of her Majeſty's Reſolution to maintain *The Toleration*? In the free Conferences between the Lords and Commons about the Bill for preventing Occaſional Conformity, in the Year 1702, Is not this Act of the 1ſt of *William* and *Mary* called *The Act of Toleration*, and the Exemption granted by that Act called *The Toleration*? So that it ſeems ſtrange the Doctor ſhould not know that a Toleration had been granted by Law; and it is more ſtrange yet, when he himſelf, in this very Sermon, call'd the Indulgence granted by that Act, *The Toleration*.

In the 14th Page of his Sermon, where he is complaining of falſe Brethren in the Kingdom, who are permitted and ſuffered to combine into Bodies and Seminaries, wherein Atheiſm, Deiſm, Tritheiſm and Socinianiſm, and a great many other wicked Principles are taught; he concludes thus, “Certainly, (ſays he) *The Toleration* was never intended to “indulge and cheriſh ſuch Monſters and Vipers in our Boſom.” What was it poſſible for the Doctor to mean in that Place, by *The Toleration*, but the Indulgence, as he calls it, granted to the Diſſenters by the Act of 1 *Gul. & Mar.*?

In the 19th Page of the Sermon, ſpeaking of the Diſſenters, he ſays, “Now they have advanced themſelves from the religious Liberty our “gracious Sovereign has indulged them, to claim a civil Right, as they “term it, and to juſtle the Church out of her Eſtabliſhment, by hoiſting “*their Toleration* into its Place.” What could he poſſibly mean here by theſe Words, but that Toleration, or that Indulgence, which was granted in the Time of the King and Queen to the Diſſenters? So that it is plain, that when he made, and preached, and publiſhed this Sermon, he knew very well, that that Indulgence that was granted by the Law made in the firſt Year of King *William* and Queen *Mary*, was commonly called *The Toleration*; and this Toleration, granted by that Law, is that which the Commons in their Impeachment ſay, he maintains to be unreaſonable, and the Allowance of it unwarrantable; and this is what I am now to make out and prove.

But I muſt do the Doctor juſtice to own, that Page 20. of his Sermon preach'd at St. *Paul*'s, he doth uſe theſe Words, referr'd to by him in his Anſwer, *viz.* “I would not here be miſunderſtood, as if I intended to “caſt the leaſt invidious Reflection upon that Indulgence the Govern- “ment has condeſcended to give them; which I am ſure all thoſe that “wiſh well to our Church, are very ready to grant to Conſciences truly “ſcrupulous; let them enjoy it in the full Limits the Law has preſcrib'd.”

The Doctor, by putting in that Caution, ſeems himſelf to be apprehenſive, his Words were otherwiſe in danger to be eſteeem'd a Reflection upon that Indulgence or Toleration that the Government had given. Having juſt before commended the Severities that were uſed in the Reign of Queen *Elizabeth* againſt the Diſſenters; which could not be ſpoken in Commendation of the Toleration, but would reaſonably be underſtood to be a Commendation of it, becauſe it removed and took away thoſe Severities; he then ſubjoins the foremention'd Paſſage; which dry Caution will not excuſe the Doctor, if in the other Parts of his Sermon he doth viſibly and plainly condemn the Toleration, and cenſure it as unreaſonable, and the Allowance of it unwarrantable; which that he doth, I ſhall endeavour to prove from other direct and formal Paſſages in his ſaid Sermon.

The firſt Paſſage that I ſhall cite to this Purpoſe is in the 10th Page of the Sermon, and is in theſe Words: "So that in all thoſe Caſes before-mentioned, whoſoever preſumes to innovate, alter, or miſrepreſent any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traitor to our State; Heterodoxy in the Doctrines of the one naturally producing, and almoſt neceſſarily inferring Rebellion and High-Treaſon in the other, and conſequently a Crime that concerns the Civil Magiſtrate, as much to puniſh and reſtrain, as the Eccleſiaſtical." The Beginning of this Paſſage is tied up to the Caſes before-mentioned, *ſo that in all thoſe Caſes before-mentioned*, which being a Term of Relation, muſt be expounded in Reference to what went before.

This Paſſage is contained in his ſecond Head of falſe Brethren, of thoſe who are falſe Brethren with Relation to the State, Government, or Society of which they are Members. And on Peruſal thereof, I do not find any one Article of the Faith of our Church before-mentioned under that Head, to which theſe relative Terms do refer; for all that he ſaith before under that Head is, "That the Conſtitutions of moſt Governments, differing according to their ſeveral Frames and Laws upon which they are built and founded, it is impoſſible to lay down any one univerſal Rule, as the Scheme and Meaſure of Obedience, that may ſquare to every one of them: Only this Maxim in general, he preſumes, may be eſtabliſhed for the Safety, Tranquility, and Support of all Governments, That no Innovation whatſoever ſhould be allowed in the fundamental Conſtitution of any State, without a very preſſing, nay, unavoidable Neceſſity for it; and whoſoever ſingly or in a private Capacity ſhould attempt it, is guilty of the higheſt Miſdemeanor, and is an Enemy to that Politic Body of which he is a Member."

Then the Doctor applies this Maxim to our Government: "Our Conſtitution, ſaith he, both in Church and State, has been ſo admirably contrived, with that Wiſdom, Weight, and Sagacity, and the Temper and Genius of each ſo exactly ſuited and modelled to the mutual Support and Aſſiſtance of one another, that 'tis hard to ſay, whether the Doctrines of the Church of *England* contribute more to authorize and enforce our Civil Laws, or our Laws to maintain and defend the Doctrines of our Church. The Natures of both are ſo nicely correſpondent, and ſo happily intermixt, that 'tis almoſt impoſſible to offer a Violation to the one, without breaking in upon the Body of the other: So that in all thoſe Caſes before-mentioned, whoever preſumes to alter, innovate, or miſrepreſent any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traitor to our State, *&c.*"

I read your Lordſhips this whole Paragraph, to ſhew, that the Caſes ſaid to be before-mentioned, are not contained in this Head of the Sermon, but they are plainly contained in a former Paragraph, *viz.* in his firſt Head of falſe Brethren, with Relation to God, Religion, and the Church in which they hold Communion; under which Head the Doctor enters into a long Deſcription of ſuch Kind of falſe Brethren, and enumerates ſeveral Articles and Rites of the Church, the Diſbelievers or Deniers whereof are termed falſe Brethren; and amongſt other of his Characters, in *p.* 8. he brands him for being falſe to the Intereſt of the Church, that gives up any Point of her Diſcipline and Worſhip; theſe are the exterior Fences to guard the Internals of Religion, without which they are left naked, without Beauty, Order, or Defence. Should any Man, out of Ignorance or Prejudice to the antient Rights and eſſential Conſtitution of the Catholick Church, affirm, "That the Divine Apoſtolical Inſtitution of Epiſcopacy is a novel Doctrine, not ſufficiently warranted by Scripture, and that 'tis indifferent whether the Church be governed by Biſhops or Preſbyters:" Is not ſuch an one an Apoſtate from his own Orders? So that one of the before-mentioned Caſes of falſe Brotherhood is, the affirming that the Divine Apoſtolical Inſtitution of Epiſcopacy is a novel Doctrine, not ſufficiently warranted by Scripture, and that it is indifferent whether the Church be governed by Biſhops or Preſbyters. This is affirmed and held by all the Diſſenters; and though they ſhould be miſtaken in their Opinion, yet ſtill it is their Opinion; and they are notwithſtanding tolerated, and are exempted by the Toleration Act from ſubſcribing the 36th Article, that the Book of Conſecration of Archbiſhops and Biſhops, and of the Ordination of Prieſts and Deacons, ſet forth in the Times of K. *Edward* the Sixth, contain in it all Things neceſſary to their Conſecration and Ordination, and hath nothing in it either ſuperſtitious or impious: Now, nowithſtanding this Innovation or Alteration of this Article of the Church by the Diſſenters, the Law doth nevertheleſs tolerate and indulge them.

But the Doctor is of another Opinion, and he affirms, that whoever innovates, alters, or miſrepreſents this Point in the Articles of the Faith of our Church, ought to be arraigned as a Traitor to the State, and ought to be puniſhed, as well by the Temporal as the Eccleſiaſtical Magiſtrate. For he goes on, and carries it a great deal further, by the Reaſon he gives for his Aſſertion, which is, "Heterodoxy in the Doctrines of the one naturally producing, and almoſt neceſſarily inferring, Rebellion and High-Treaſon in the other; and conſequently a Crime that concerns the Civil Magiſtrate as much to puniſh and reſtrain, as the Eccleſiaſtical." Here's an Aſſertion to the Purpoſe; that Heterodoxy, that is, the holding a different Opinion from any Article of the Faith of our Church, naturally produces, and almoſt neceſſarily infers Rebellion and High-Treaſon in the State, and conſequently a Crime that concerns the Civil Magiſtrate to puniſh, as well as the Eccleſiaſtical. He himſelf, in the immediate ſubſequent Words, doth own, that this Aſſertion at firſt View may look like an highflown Paradox; and I believe it will ſtill appear to be ſo upon a Review, That whoſoever is of a different or other Opinion, in any of the Articles of the Faith of the Church, is guilty of High-Treaſon; and the Temporal as well as the Spiritual Magiſtrate ought to puniſh him as a Traitor for it. The Articles of the Church are in Number Thirty-nine; ſome of the Diſſenters are by the Act of Toleration exempted from ſubſcribing three and a Half of them, *viz.* the 34th Article, which relates to the Traditions and Ceremonies of the Church, and the Power of the Church to ordain, change, and aboliſh Ceremonies and Rites: The 35th Article, concerning the Book of Homilies, and reading of them in Churches: The 36th Article, concerning the Conſecration of Archbiſhops and Biſhops, and the Ordination of Prieſts and Deacons; and the former Part of the 20th Article, which aſſerts the Power of the Church to decree Rites and Ceremonies, and Authority in Controverſies of Faith. Other Diſſenters, who ſcruple the baptizing of Infants, are alſo exempted from ſubſcribing that Part of the 27th Article, which relates to Infant Baptiſm; and the Quakers are exempted from ſubſcribing any of the Articles, and are only required to ſubſcribe a ſhort Declaration of the Trinity, and that the Scriptures are given by Divine Inſpiration. All theſe ſeveral Sorts of Diſſenters, notwithſtanding their Heterodoxy in theſe Points, are exempted by the Toleration Act from the Penalties of the former Laws, and are by this Act preſerved in the free Exerciſe of their Religion or Worſhip; and not only the Penalties inflicted on them by former Laws are taken away, but ſeveral Immunities and Privileges are given them, as an Exemption of their Teachers from Pariſh Offices, and a Penalty for diſturbing their Congregations. Now, when this is eſtabliſhed by a Law, and that Act of Toleration is in full Force; for the Doctor to affirm, notwithſtanding all this, that Heterodoxy, or a different Opinion from any of the Articles of Faith of our Church, almoſt neceſſarily infers Rebellion and High-Treaſon in the State, and is a Crime that concerns the Civil Magiſtrate to puniſh, as well as the Eccleſiaſtical; what can be a more direct breaking in upon, and diſavowing of the Toleration than this? Is not this to maintain the Toleration granted by Law to be unreaſonable, and the Allowance of it unwarrantable?

Another Paſſage that I ſhall cite to prove the general Charge againſt the Doctor, is in the 16th and 17th Pages of the Sermon: 'What could not be gained by Comprehenſion and Toleration, muſt be brought about by Moderation and occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church cannot be pulled down, it may be blown up; and no Matter with theſe Men how 'tis deſtroyed, ſo that it is deſtroyed.' In this Place the Doctor is ſpeaking of the great Miſchiefs and Perils of his falſe Brethren to the Church. And to prevent any miſtaken Notions of the Church, he intimates, that we are to underſtand the true genuine Notion of it, as it ſtands contradiſtinguiſhed in its eſtabliſhed Doctrine, Diſcipline, and Worſhip, from all other Churches and Schiſmaticks, who would obtrude upon us a wild negative Idea of a National Church, ſo as to incorporate themſelves into the Body as true Members of it; whereas that Latitudinarian, Heterogeneous Mixture would render it the moſt abſurd, contradictory, and ſelf-inconſiſtent Body in the World: And from thence he proceeds to ſhew that this Deſign of a Comprehenſion miſcarried, and that that long projected Scheme of the Eccleſiaſtical *Achitophel's* was blaſted: "But, ſays he, ſince this Model of univerſal Liberty and Coalition failed, and theſe falſe Brethren could not carry the Conventicle into the Church, they are now reſolved to bring the Church into the Conventicle, which will plauſibly and ſlily effect her Ruin." And how is that to be done? Why, "What could not be gained by Comprehenſion and Toleration, muſt be brought about by Moderation and occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh; if the Church cannot be pulled down by Comprehenſion and Toleration, it may be blown up by occaſional Conformity and Moderation; and no Matter with theſe Men how it is deſtroyed, ſo that it is deſtroyed." Is not this calling the Toleration an open Violence to the Church? That it was an Attempt made to deſtroy the Church, though the Church itſelf came into, and ſettled this Toleration? I ſay, the Legiſlature in the Time of their late Majeſties King *William* and Queen *Mary*, and particularly the Biſhops, the Fathers of the Church, were very well ſatisfied that this Toleration granted to the Diſſenters, was no way prejudicial to the Safety and Security of the Church. Now for the Doctor to come and ſay, the Toleration was intended to pull down the Church, and that it is an open Violence to the Church; is not this to maintain, that the Toleration is unreaſonable, and the Allowance of it unwarrantable?

My Lords, Theſe Paſſages which I have cited to your Lordſhips, do prove the general Charge of this Article: There are other Paſſages in the Sermon particularly referred to in the Article, which likewiſe prove this general Charge, to which I ſhall next proceed. And,

The next Part of the Charge in the ſecond Article is, That he aſſerts, that he is a falſe Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience.

Theſe Words are contained in ſo many expreſs Terms in the eighth Page of his Sermon, where, after he had copiouſly deſcribed his falſe Brethren, he comes and ſums up the whole in theſe Words: 'If upon all Occaſions to comply with the Diſſenters both in publick and private Affairs, as Perſons of tender Conſcience and Piety, to promote their Intereſts in Elections, to ſneak to them for Places and Preferment, to defend Toleration and Liberty of Conſcience, and under the Pretence of Moderation to excuſe their Separation, and lay the Fault upon the true Sons of the Church for carrying Matters too high; if to court the Fanaticks in private, and to hear them with Patience, if not Approbation, rail at and blaſpheme the Church, and upon Occaſion to juſtify the King's Murder; if to flatter both the dead and the living in their Vices, and to tell the World, that if they have Wit and Money enough they need no Repentance, and that only Fools and Beggars can be damned; if theſe, I ſay, are the modiſh and faſhionable Criterions of a true Churchman, God deliver us from all ſuch falſe Brethren!'

So that one Mark of theſe falſe Brethren, in this Part of his Sermon, is to defend Toleration and Liberty of Conſcience. As to this, the Doctor gives two Anſwers, one by way of Inference or Preſumption, and the other direct; that by way of Inference is, "That he having ſo plainly declared himſelf in Favour of the Exemption granted by Law; when he blames thoſe who upon all Occaſions defend Toleration and Liberty of Conſcience, he cannot be thought to reflect on the Defenders of that legal Exemption or Indulgence, which he himſelf approves and defends."

Now, if he had not in other Parts of his Sermon condemned the Toleration expreſly, it might have paſſed for an Anſwer. But now, if the Doctor has more than once in other Parts of his Sermon directly inveighed againſt this Toleration, then his Meaning is more naturally to be underſtood by ſo many ſeveral Paſſages, than by one ſingle Sentence, and with what View thrown in, the reading of the Sermon will plainly ſhew. And therefore the true Way to come at the true Meaning of his Words, is to take them as they ſtand in his Sermon; and that is what your

Lordſhips will judge by. In the next Place, he gives a direct Anſwer to this Part of the Charge, which is, that he does not mean by this Deſcription of a Falſe Brother, thoſe who only defend Toleration and Liberty of Conſcience, and do no more; but he only blames thoſe who upon all Occaſions defend Toleration and Liberty of Conſcience, and to excuſe their Separation, lay the Fault upon the true Sons of the Church for carrying Matters ſo high; ſo that I don't reckon him, ſays he, as a Falſe Brother who barely defends Toleration and Liberty of Conſcience; except, that at the ſame Time that he is defending Toleration, he lays the Fault of the Separation upon the true Sons of the Church for carrying Matters too high. Now I ſubmit to your Lordſhips, upon reading of this Paſſage, whether it is capable of ſuch an Interpretation? If it be look'd into, it will be found that the ſeveral particular Characters there mention'd, are all of them ſo many particular Marks of a Falſe Brother; it is not neceſſary that two, or three, or all of them meet together in one Perſon to make up the Character of a Falſe Brother; but if any one of them be found in any Perſon, 'tis ſufficient to characterize him a Falſe Brother: Whoever is guilty of any one of theſe Acts, of which defending Toleration is one, is a Falſe Brother; and his aſſerting the defending of Toleration to be a Mark of a Falſe Brother, is an evident Declaration againſt the Juſtice and Expediency of the Toleration.

The next particular Charge upon him in this Article is for aſſerting, “ That Queen *Elizabeth* was deluded by Archbiſhop *Grindall*, whom he “ ſcurrilouſly calls a falſe Son of the Church, and a perfidious Prelate, “ to the Toleration of the *Genevian* Diſcipline.” This Charge upon him is founded on thoſe Words of his Sermon, in the 19th Page; theſe are his Words: ‘ Have they not, ever ſince their firſt unhappy Plantation in this ‘ Kingdom, by the Interceſſion of that Falſe Son of the Church Biſhop ‘ *Grindall*, always improv'd, and riſe upon their Demands in the Permiſſion ‘ of the Government? Inſomuch that Queen *Elizabeth*, that was deluded ‘ by that perfidious Prelate to the Toleration of the *Genevian* Diſcipline, ‘ found it ſuch an headſtrong and incroaching Monſter, that in eight ‘ Years ſhe foreſaw it would endanger the Monarchy, as well as the Hierarchy; and, like a Queen of true Reſolution, and pious Zeal for both, ‘ pronounc'd, That ſuch were the reſtleſs Spirits of that factious People, ‘ that no Quiet was to be expected from them, 'till they were utterly ſuppreſs'd: Which, like a prudent Princeſs, ſhe did by wholeſome Severities, that the Crown for many Years ſat eaſy and flouriſhing ‘ on her Head.’

As to that Part of the Charge, where he ſays, that Queen *Elizabeth* was deluded to the Toleration of the *Genevian* Diſcipline by Archbiſhop *Grindall*, the Doctor's Anſwer is, “ That he humbly conceives he hath good “ Authority from the Hiſtories and Monuments of thoſe Times for ſuch “ Aſſertion; but whether he hath, or hath not, humbly apprehends ſuch “ Aſſertion to be no Proof of his maintaining or ſuggeſting, That the “ exempting of Proteſtant Subjects diſſenting from the Church of *England* from the Penalties of certain Laws, granted by an Act made in “ the firſt Year of the Reign of King *William* and Queen *Mary*, (which “ Exemption he ſuppoſes to be intended by the legal Indulgence, or Toleration granted to Diſſenters, mention'd in the Preamble of the Articles, and by the Toleration granted by Law mention'd in this ſecond) “ is unreaſonable, or the Allowance of it unwarrantable.”

My Lords, It might not perhaps be difficult to ſhew that there are ſome Miſtakes in this Fact; but whether there be or no, will not now be worth ſpending your Lordſhips Time; for I do agree with him, That the material Point is what he puts it upon, Whether this Aſſertion, as printed and delivered by him in his Sermon, be a Cenſure or Condemnation of the Toleration Act? Now whether it be ſo or no, will appear by taking the whole Clauſe together. This Paſſage is in the 19th and 20th Pages, and is in that Part of his Sermon where he is ſhewing the great Perils and Miſchief of his Falſe Brethren to the State, and that they are deſtructive to our Civil Rights and Liberties; and in the Purſuit of his Argument he plainly ſhews, that the Falſe Brethren there meant are the Diſſenters, who are tolerated by this Act of Parliament. “ Theſe Falſe Brethren, ſays he, “ have now advanced themſelves from the Religious Liberty our Gracious “ Sovereign has indulged them, to claim a Civil Right, and to juſtle the “ Church out of her Eſtabliſhment, by hoiſting their Toleration into its “ Place.” So that 'tis plain, theſe Falſe Brethren here ſpoken of are the Diſſenters, thoſe who have the Benefit of the Toleration Act. And then he goes on: “ And to convince us what alone will ſatiſfy them, inſolently “ demand the Repeal of the Corporation and Teſt Acts, as an Eccleſiaſtical Uſurpation, which indeed under her Majeſty (whom God long “ preſerve for its Support and Comfort) is the only Security the Church “ has to depend upon; and which they have ſo far eluded by their abominable Hypocriſy, as to have undermin'd her Foundations, and endanger'd the Government, by filling it with its profeſs'd Enemies. “ Theſe Charges are ſo flagrant and undeniable, that a Man muſt be very “ weak, or ſomething worſe, that thinks or pretends the Diſſenters are “ to be gain'd or won over by any other Grants and Indulgences, than “ by giving up our whole Conſtitution: And he that recedes the leaſt “ Tittle from it, to ſatiſfy or ingratiate with theſe clamorous, inſatiable, “ and Church-devouring Malignants, knows not what Spirit they are of, “ or he ought to ſhew who is a true Member of our Church.”

Theſe Paſſages I have read to your Lordſhips, to ſhew that theſe Falſe Brethren here ſpoken of are the Diſſenters, who are now tolerated by the Law granted to them in the Time of their late Majeſties King *William* and Queen *Mary*; and of theſe Diſſenters follows this Paſſage: “ Have “ they not, ever ſince their firſt unhappy Plantation in this Kingdom, by “ the Interceſſion of that Falſe Son of the Church Biſhop *Grindall*, always improv'd, and riſe upon their Demands in the Permiſſion of the “ Government? Inſomuch that Queen *Elizabeth*, that was deluded by “ that perfidious Prelate to the Toleration of the *Genevian* Diſcipline,” *id eſt*, The Diſcipline and Polity of the Diſſenters, ſo called becauſe taken from *Geneva*, “ found it ſuch a headſtrong and encroaching Monſter, that “ in eight Years ſhe foreſaw it would endanger the Monarchy, as well as “ the Hierarchy; and, like a Queen of true Reſolution and pious Zeal “ for both, pronounc'd, That ſuch were the reſtleſs Spirits of that factious “ People, that no Quiet was to be expected from them, 'till they were “ utterly ſuppreſs'd; which, like a prudent Princeſs, ſhe did by wholeſome Severities, that the Crown for many Years ſat eaſy and flouriſhing on her Head.”

In this memorable Paſſage he repreſents Archbiſhop *Grindall* as a Falſe Son of the Church, and a perfidious Prelate, for deluding the Queen into a Toleration of the *Genevian* Diſcipline. Whether that Fact be true, or not, is not material to our Purpoſe; but this is, that he charges it for a Fault on the Archbiſhop, and for which he calls him a Falſe Son of the Church, and a perfidious Prelate, for inducing the Queen to give a Toleration to the Diſſenters in thoſe Days: The Fault is not, that it was a regal Toleration only, but the Fault was in the Toleration itſelf, in conſenting to a Liberty to the Diſſenters. Now what is this in Effect, but to preach to the whole World, That the Parliament are in the Wrong to grant a Toleration to the Diſſenters; That the Lords and Commons, who conſented to the Toleration, are not true Sons of the Church; And that the Biſhops, who are for tolerating the Diſſenters, are neither Fathers nor Sons of the Church, but corrupt and perfidious Prelates!

That this Character of Archbiſhop *Grindall* was deſign'd for a Cenſure of the preſent Toleration, will appear more fully by the contrary Character he gives of Queen *Elizabeth*; he commends her Reſolution and pious Zeal for “ the Monarchy and Hierarchy, in declaring, that no Quiet was to “ be expected from the reſtleſs Spirits of that factious People, till they “ were utterly ſuppreſs'd; which, like a prudent Princeſs, ſhe did by “ wholeſome Severities, that the Crown for many Years ſat eaſy and “ flouriſhing on her Head.” Now what can the *Engliſh* of all this be, but to inflame the Government againſt the Diſſenters? What could be ſaid more prevalent for this Purpoſe, than to recommend it as a noble Reſolution and pious Zeal in Queen *Elizabeth*, utterly to ſuppreſs the Diſſenters? And if that Reſolution be to be followed, the Legiſlature muſt repeal the Toleration Act. And what could be ſaid more contrary to the Toleration Act, than to recommend the Severities uſed in Queen *Elizabeth*'s Reign, becauſe they were wholeſome in themſelves, and of happy Conſequence to the Perſon and Government of that Renowned Queen? If there were not a Neceſſity for it on this Occaſion, I would not mention what thoſe wholeſome Severities were, but rather caſt a Veil over that Part of the Reign of that great and glorious Queen.

To give a ſhort View of theſe wholeſome Severities; ſome Hereticks were burnt, other Perſons were hang'd, ſome had their Goods confiſcated, others had their Perſons impriſon'd; and to mention more particularly a publick Act in Writing that cannot be falſified or miſrepreſented, and which is ſince relaxed by the Toleration Act, an Act paſſed in the 35th Year of Queen *Elizabeth*, Intitled, *An Act to retain the Queen's Majeſty's Subjects in their due Obedience*; by which the Diſſenters are, among other Penalties, to abjure the Realm in forty Days, or ſuffer Death without Benefit of the Clergy.

This Penalty of Abjuration of the Realm was taken from the antient Common Law of *England* in relation to Felony, by which if a Man committed any Felony, excepting Sacrilege, and fled to a Pariſh Church, he might within forty Days before the Coroner confeſs the Felony, and take an Oath to abjure the Kingdom for ever; and if he thus confeſs'd, and took that Oath, he was thereby attainted of the Felony, and then he had forty Days from the coming of the Coroner to provide and prepare for his Voyage; and the Coroner aſſigned him ſuch a Port as he choſe for his Departure out of the Kingdom; and if he did not go ſtraightway out of the Kingdom, or being gone out, did return without Licenſe, he had Judgment to be hang'd, except he was a Clerk, and then he had his Clergy.

This Practice was what the Law call'd Abjuration; and being by ſeveral Regulations (in the Time of *Henry* the Eighth) in Effect taken away, the Revival of this Practice was thought to be a wholeſome Severity, fit to be inflicted on the Proteſtant Diſſenters of thoſe Times: And therefore the 35th of Queen *Elizabeth* doth enact, ‘ That if any Perſon, obſtinately refuſing to repair to ſome Church or Chapel, or uſual Place of Common-‘ Prayers, and forbearing by the Space of a Month to hear Divine Ser-‘ vice, ſhould after forty Days after the End of that Seſſion of Parliament, ‘ willingly join or be preſent at any Conventicle or Meeting, under Pretence ‘ of Religion, contrary to the Laws and Statutes of the Realm; that then ‘ ſuch Perſon ſhould be committed to Priſon, till he ſhould conform and ‘ come to Church: And if within three Months after Conviction he ſhould ‘ not conform and come to Church, and make his publick Confeſſion and ‘ Submiſſion, being thereunto required according to the Form of the ſaid ‘ Act; that then ſuch Offender ſhould abjure the Realm; and if, being ‘ thereunto required, ſhould refuſe to make ſuch Abjuration, or after ſuch ‘ Abjuration made, ſhould not within the Time appointed him depart ‘ the Realm, or after ſuch Departure ſhould return without the Queen's ‘ Licenſe; then, in every ſuch Caſe, every Perſon ſo offending ſhould be ‘ a Felon without Benefit of Clergy.’ So that the Abjuration inflicted on Proteſtant Diſſenters by this Act, was worſe than Abjuration for Felony at the Common Law; in that they had the Benefit of the Clergy, in this they had not.

This is one of the Severities of Queen *Elizabeth*'s Reign. Whether it be a wholeſome Severity or not, human Nature will determine: However wholeſome it might have been eſteemed in thoſe Days, by thoſe who had the Power and Will to puniſh others, yet the Legiſlature have *in Terminis* declar'd it unwholeſome for theſe Times; and the Toleration Act doth expreſly, and by Name, exempt the Proteſtant Diſſenters from the Penalties of this Act of the 35th of Queen *Elizabeth*.

Now when the Toleration Act hath granted this Exemption, for the Doctor to come and publickly repreſent an Archbiſhop as a Falſe Son of the Church, and a perfidious Prelate, for being for the Toleration of Diſſenters in his Time; and at the ſame Time recommend the Reſolution and pious Zeal of Queen *Elizabeth*, for declaring that ſhe would utterly ſuppreſs them, and her great Prudence in exerciſing wholeſome Severities againſt them, which were of happy Conſequence to her Perſon and Government; What could be ſaid more againſt the Toleration Act, than this is? The Toleration Act exempts the Diſſenters from the Penalties and Severities inflicted in Queen *Elizabeth*'s Reign; the Doctor recommends them all again, as wholeſome and neceſſary. Let any Perſon judge, whether this is not an expreſs Declaration againſt the Toleration Act?

There is yet one Thing more charged upon the Doctor in this Part of the ſecond Article; *viz.* That he ſcurrilouſly calls Archbiſhop *Grindall* a

Falſe Son of the Church, and a perfidious Prelate, for deluding Queen *Elizabeth* to the Toleration of the *Genevian* Diſcipline. Whether this, conſider'd abſtractedly by itſelf, be in Law a Crime, or not, is not neceſſary for me here to examine. The Doctor conceives, that no Words ſpoken of an Archbiſhop, above one hundred and twenty Years ſince deceaſed, will in Conſtruction of Law amount to an High Crime and Miſdemeanor: Whether it be ſo or not, in itſelf, I ſhall ſay nothing of at preſent; becauſe I take it, that this is only taken Notice of as an Aggravation of the Crime charged upon him, and to ſhew his Zeal againſt the Toleration; that he was not contented with cenſuring the Toleration itſelf, but rakes into the Aſhes of an Archbiſhop that had been in his Grave one hundred and twenty Years, and blackens his Memory, becauſe he was for the Toleration of thoſe People who are now by Law tolerated.

My Lords, I would on this Occaſion ſay a Word or two to the Memory of that Archbiſhop. The Doctor ſays, He was under the Diſpleaſure of Queen *Elizabeth*; that is very true: And he pretends, the Occaſion of his being under her Diſpleaſure was, for permitting Innovations to be obtruded upon the Church. Thoſe Innovations were no other than what ſeveral other Biſhops at the ſame Time likewiſe practis'd, and ſome Biſhops ſince have done not much unlike: It was for encouraging the Meetings and Exerciſings in thoſe Days, call'd Propheſyings; which were Meetings of the Clergy, to improve one another in the Knowledge of the Scriptures, and tended to make a learned and induſtrious Clergy. This was miſrepreſented to the Queen, and was the viſible Cauſe of his Diſgrace. But the true Reaſon of his Diſgrace, as Hiſtorians ſay, ſprung from the Hatred of the Earl of *Leiceſter*, who was then in great Power and Credit with the Queen, and her great Favourite. This Earl of *Leiceſter* caſt a covetous Eye upon *Lambeth-Houſe*, and would have had the Archbiſhop to have alien'd it, but he would not comply with him; which, as the Hiſtorians ſay, made the *Leiceſtrian* Party to malice him. The Earl was likewiſe provoked and incenſed againſt him for another Reaſon, *viz.* for proſecuting one *Julio*, a Phyſician of the Earl's, an *Italian* Phyſician, for having two Wives, one of which was the Wife of another Man, with whom he lived in Adultery: For theſe two Offences againſt the Earl of *Leiceſter*, who bore a mighty Power at Court with the Queen at that Time, was this Storm raiſed againſt him. But, my Lords, for his Life and Doctrine, the Archbiſhop was one of the moſt pious, learned, and conſiderable Prelates of that Time. 'Tis very true, that he was one of thoſe Biſhops that look'd upon the Exerciſes uſed in thoſe Times by the Clergy, called Propheſyings, to be very neceſſary for their Improvement, and for the Benefit of the Church; and ſome of the beſt Biſhops of thoſe Times concurr'd with him in the ſame Opinion He was a Man of the moſt exemplary Life and Converſation, free from the Suſpicion of a Crime. In his younger Days he was Chaplain, with *Rogers* and *Bradford*, to *Ridley* Biſhop of *London*, who gave this Character of him, That he was known to be a Man of Virtue, Honeſty, Diſcretion, Wiſdom and Learning. In the Perſecution under Queen *Mary*, when his Maſter and Fellow-Chaplains were burnt for Religion, he became an Exile on the ſame Account, and quitted his Eaſe, Preferments, and Hopes at Home, to enjoy the Liberty of his Conſcience in a foreign Country, and went to *Strasburgh*: And when the famous Troubles begun at *Frankfort*, about the Uſe of the *Engliſh* Service, where the Foundations were laid of the Diviſions that have ſince divided and rent the Church, he was ſo far from diſliking the *Engliſh* Method, that he went from *Strasburgh* to *Frankfort*, to encourage and perſuade the Congregation there to ſubmit to the *Engliſh* Eſtabliſhment; and he himſelf ſtuck cloſe to it all his Life-time. At his coming Home, in the Beginning of the Reign of Queen *Elizabeth*, he had a great Hand, and was very inſtrumental, in preparing the Liturgy and Book of Common-Prayer: And the firſt Time that the *Engliſh* Service-Book was produced at St. *Paul*'s in *London*, the Privy-Council, and great Officers of State, for the greater Solemnity, came to St. *Paul*'s; and *Grindall* was appointed to preach to that great Audience, upon that ſolemn Occaſion. He was one of the firſt five Biſhops made by Queen *Elizabeth*; and was firſt Biſhop of *London*, afterwards Archbiſhop of *York*, and laſt of all Archbiſhop of *Canterbury*. And when afterwards, by the Earl of *Leiceſter*'s Artifice, he was out of Favour, and under the Queen's Diſpleaſure; yet he had ſo great an Intereſt in the Clergy, and their Eſteem of him was ſo extraordinary, that even whilſt he was under Diſgrace at Court, and the Diſpleaſure of the Queen, a conſiderable Number of the Convocation, then met, preſented an elegant Petition in *Latin* to the Queen, to reſtore him; wherein they repreſented to her Majeſty, ‘ That the Archbiſhop had led a ‘ Life free, not only from all Crime, but even from the Suſpicion of ‘ a Crime: That he had preſerved his Religion from all, not only Corruption of Popery, but Schiſm; and had ſuffer'd Perſecution for ‘ Righteouſneſs ſake, having wander'd Abroad in other Countries for the ‘ Cauſe of the Goſpel: And therefore they moſt humbly beſought her Majeſty, not only to lift up the Archbiſhop broken with Grief, but to reſtore the Church to the Archbiſhop, and the Archbiſhop to the Church, ‘ to her Subjects, to his Brethren, to foreign Nations, and, in a Word, ‘ to all pious People.’ Theſe were the Thoughts of the Clergy of the Archbiſhop at that Time, even when he was under the Diſpleaſure of the Queen; ſo that there was no Reaſon for the Doctor to aſperſe him as a falſe Son of the Church, or a perfidious Prelate; for it appears on the contrary, that he was a Man univerſally eſteem'd for his Virtue, Piety, and Learning.

The laſt Charge of this Article is, that he aſſerts, “ That it is the Duty “ of Superior Paſtors to thunder out their Eccleſiaſtical *Anathemas* againſt “ Perſons intitled to the Benefit of the Toleration; and inſolently dares “ or defies any Power on Earth to reverſe ſuch Sentences.”

To which the Doctor gives this Anſwer; “ That the Perſons intitled “ to the Benefit of the Toleration, are not by him mentioned or intended: “ But if thoſe Expreſſions in his Sermon muſt be determin'd to any one “ Sort of Perſons, he conceives that the Connection of his Diſcourſe will “ determine them to thoſe Schiſmatical and Factious Perſons, who take “ Permiſſion for Power, and advance Toleration immediately into an “ Eſtabliſhment.”

Now be it ſo, that he means thoſe Schiſmatical and Factious Perſons; the next Queſtion, which will ſet this Matter in a clear Light, will be, Who thoſe Schiſmatical and Factious Perſons are, who take Permiſſion for Power, and advance Toleration immediately into an Eſtabliſhment? And it is plain from the Paſſage itſelf, which is in *Page* 25. of the Sermon, that he means the Diſſenters, thoſe which are intitled to the Benefit of the Toleration.

“ If our Diſſenters, ſaith he, had lived in the Times of St. *Paul*, they “ would have branded him as an intemperate, hot, furious Zealot, that “ wanted to be ſweeten'd by the gentle Spirit of Charity and Moderation, “ forſooth. Schiſm and Faction are Things of impudent and incroaching Natures; they thrive upon Conceſſions, take Permiſſion for Power, “ and advance a Toleration immediately into an Eſtabliſhment; and are “ therefore to be treated like growing Miſchiefs, or infectious Plagues, “ kept at a Diſtance, leſt their deadly Contagion ſpread. Let us therefore “ *have no Fellowſhip with* theſe *Works of Darkneſs, but rather reprove them.* “ Let our Superior Paſtors do their Duty, in thundering out their Eccleſiaſtical *Anathemas*; and let any Power on Earth dare reverſe a Sentence “ ratified in Heaven.” And indeed the Docter doth, in the following Part of his Anſwer, in effect own it: For, ſaith he,

“ As to the laſt Part of the ſecond Article, whereby the ſaid *Henry Sacheverell* is charged with inſolently daring, or defying any Power on “ Earth to reverſe the Eccleſiaſtical Sentences there mentioned: He the ſaid “ *Henry Sacheverell* ſaith, That the Sentence which he the ſaid *Henry Sacheverell* dares any Power on Earth to reverſe, is ſuch, and ſuch only, “ as is ratified in Heaven; and ſuch Sentence he ſtill affirms to be by any “ earthly Power irreverſible: And hopes it will not be thought inſolent “ in him to affirm, what he conceives would be Blaſphemy in any one to “ deny: And doth further acknowledge himſelf firmly to believe that ſome “ Sentences pronounced by the Paſtors of the Church are ratified in “ Heaven; and that ſome Perſons, exempted from Puniſhment by the particular Laws of the Land, may yet by the Laws of Chriſt be juſtly “ liable to ſuch Sentence; and that Schiſm, or a cauſeleſs Separation “ from a Church injoining no ſinful Terms of Communion, is a Sin, “ which expoſes the Perſon guilty thereof to the Cenſures of the Church.

The Houſe of Commons charge the Doctor with Inſolence, in daring or defying any Power on Earth to reverſe the Eccleſiaſtical Sentences mentioned in his Sermon; and he, by Inſinuation, retorts upon them the Charge of Blaſphemy. This the Houſe of Commons thought they had Reaſon to reſent, and to call upon your Lordſhips for immediate Puniſhment of him, for treating them in this Manner; but they leave it to your Lordſhips, in what Manner you will think fit to do them Juſtice, in vindicating them againſt ſuch a Charge. But as to this Paſſage now before you, he affirms, “ That ſome Sentences pronounced by the Paſtors of the “ Church are ratified in Heaven; That ſome Perſons exempted from Puniſhment by the Laws of the Land, may yet by the Laws of Chriſt be “ liable to ſuch Sentence: And that Schiſm, or a cauſeleſs Separation “ from a Church injoining no ſinful Terms of Communion, is a Sin, “ which expoſes the Perſon guilty thereof to the Cenſures of the Church.” Now what is this but to ſay, The Diſſenters cauſeleſly ſeparate from the Church, which impoſes no ſinful Terms of Communion, and ſo are guilty of Schiſm? Tho' the Law of the Land doth exempt them from Puniſhment for this Schiſm, yet for this Sin they are expos'd to the Cenſures of the Church; thoſe Cenſures, when inflicted, are ratified in Heaven: Therefore, notwithſtanding the Law of the Land hath given them this Exemption, let the Eccleſiaſtical Superiors know their Duty, in thundering out their *Anathemas* againſt them, and let any Power upon Earth dare to reverſe their Sentences if they can. As to the Power of the Church in cenſuring or excommunicating, it is not neceſſary for me to ſay any Thing of it upon this Occaſion: But the Doctor is a Miniſter of the Church of *England*, who hath ſubmitted to the Queen's Supremacy, and by the Canon is bound to maintain and preach the Queen's Supremacy; her Majeſty is Supreme over all Cauſes, and over all Perſons, as well Eccleſiaſtical as Civil; and by an Act of Parliament made ſince her Majeſty's happy Acceſſion to the Crown, *viz.* The Act relating to her Majeſty's Bounty for the Augmentation of the Maintenance of the poor Clergy, ſhe is owned and recognized to be the only Supreme Head on Earth of the Church of *England*: Her Majeſty hath by Law a Supreme controuling Power over all the Cenſures and Excommunications of the Church; this Power ſhe exerciſes according to the Rules of Law, by her ſeveral Officers and Miniſters of Juſtice. The Exerciſe of the Church's Cenſures, Juriſdiction and Power, muſt be according to Law; and if any Perſon be excommunicated againſt Law, the Queen's Courts may and will command the Eccleſiaſtical Judge to aſſoil ſuch excommunicated Perſon, and reſtore him to the Communion of the Church again: This is the Supremacy of the Queen, which is the Doctrine of the Church of *England*; and by Virtue of this Supremacy, if any Judge of the Spiritual Court ſhall pretend to excommunicate any of the Diſſenters for any Thing which by Law they are not obliged to do, or which by Law they are excuſed or exempted from, the Courts of Juſtice in *Weſtminſter-hall* will in ſuch Caſe award a Prohibition, and compel the Eccleſiaſtical Judge to abſolve him. Suppoſe that notwithſtanding the Toleration Act, a Diſſenter ſhould, for not coming to the Church, be ſentenced in the Spiritual Court by the Judge there, or be proceeded againſt there, in order to an Excommunication; a Prohibition will lie to that Judge from the Queen's Courts upon the ſaid Act, and the Courts of Common Law will prevent him from ſuch Proceeding; and if Sentence be paſs'd, will compel the Judge to annul the Excommunication, and receive the Party again. Now, for the Doctor to come and ſay, That though the Diſſenters are tolerated by this Act of Parliament, and though they are exempted by Law from Penalties, yet let the Law of the Land be what it will, let the Eccleſiaſtical Paſtors do their Duty, let them fulminate their Excommunications, and thunder out their *Anathemas*, and let the Civil Magiſtrate, the earthly Powers, dare to reverſe them, if they can: I ſubmit this to your Lordſhips, whether this is not directly impugning the Queen's Supremacy, as well as weakening and cenſuring the Toleration, which is what he is charg'd with in this Article.

My Lords, I will not take up more of your Lordſhips Time; there are other Gentlemen to come after me, who will abundantly ſupply my Defects, and offer to your Lordſhips ſome farther Conſiderations to make out the Charge contained in the ſecond Article.

Lord *William Paulett.* MY Lords, the Charge againſt the Doctor in this ſecond Article, is a Crime of a very heinous Nature: It has always been eſteem'd one of the happy Conſequences of the late Revolution, that her Majeſty's Proteſtant Subjects, by a legal Indulgence granted to Diſſenters, were united in Intereſt and Affection in the Defence of her Majeſty's Sacred Perſon and Government.

It is too well known, my Lords, how in former Times, when Popery had almoſt prevail'd in the Ruin of our State and Church, the Proteſtants of the Kingdom were, by the Artifice of Papiſts, ſet againſt each other, that by ſuch Diviſions Popiſh Tyranny might be eſtabliſhed among us.

The Act of Parliament made in the firſt Year of the Reign of their late Majeſties King *William* and Queen *Mary*, to exempt Proteſtant Diſſenters from the Church of *England* from the Penalties of certain Laws, was made to defeat any ſuch future Attempts of the Papiſts; the Preamble of the Act declares, That *ſome Eaſe to ſcrupulous Conſciences, in the Exerciſe of Religion, may be an effectual Means to unite her Majeſty's Proteſtant Subjects in Intereſt and Affection.*

We have ſeen, my Lords, the good Effects of the Wiſdom of the Legiſlature in making this Act; her Majeſty's Proteſtant Subjects are now all eaſy under her Adminiſtration; and how many Diſſenters have we ſeen, who, ſince the Toleration, are become ſincere Converts to the Church! And I may ſay, that by this Toleration the Prejudices of the Diſſenters in general wear off, and their Number daily decreaſes.

And yet with what odious Colours, and Language unbecoming a Divine, does the Doctor paint out this Toleration; and how does he factiouſly endeavour to excite and ſtir up People againſt it!

'Tis, my Lords, a poor Shift which the Doctor makes in his Anſwer, that he knows of no Toleration granted by Law; and yet in the ſame Anſwer he owns there is an Indulgence which the Government hath condeſcended to give Diſſenters. My Lords, the Word *Indulgence* is no more in the Act of Parliament than the Word *Toleration*; and it is well known that the Act of Parliament he alludes to is every where, not only in Courts of Juſtice, but even in Parliament, called *The Toleration-Act*; and is frequently ſo called by your Lordſhips in the Account of your Lordſhips Proceedings in Parliament, in Relation to the Bill againſt *Occaſional Conformity*, which Account was publiſh'd and printed by your Lordſhips Order.

When the Doctor ſays, that he has not been able to inform himſelf that a Toleration hath been granted by Law, it plainly ſeems to import, as if the Doctor doubted of the Authority of Parliament that made that Law; it looks like the common Sophiſtry of Papiſts and Jeſuits, who pretend to own the Church of *England* as by Law Eſtabliſhed; becauſe they diſown the Authority of all our Laws made ſince the Reformation.

My Lords, her Majeſty hath always been pleaſed graciouſly to declare ſhe will defend this Toleration; and this her gracious Reſolution has, among the innumerable Bleſſings of her Reign, united all her Proteſtant Subjects in their Loyalty and Duty to her.

The Commons reſt aſſured, that your Lordſhips will always aſſiſt theſe gracious Purpoſes of her Majeſty, and that as there can hardly be any Inſtance given of ſo ſeditious and barefaced an Attempt againſt the Peace and Quiet of the Kingdom, as the Doctor hath been guilty of, ſo your Lordſhips will, by an Exemplary Puniſhment ſuitable to ſo high a Crime, vindicate the Authority of Parliaments, and give an effectual Diſcouragement, for the future, to all ſuch turbulent and ſeditious Preachers.

Mr. *Cooper.* I Think, my Lords, it is unneceſſary at this Time to urge all the Arguments which might be made uſe of, to juſtify the Reaſonableneſs of the Toleration granted to Proteſtant Diſſenters, by exempting them from the Penalties of certain Laws. It may ſuffice to ſay, that this Indulgence is required from us as Chriſtians, and as we are Men profeſſing Humanity and good Will towards one another.

Whoever maintains, that the Toleration is unreaſonable, and the Allowance of it unwarrantable, ſeems neceſſarily to aſſert, that the Exemption granted to her Majeſty's Subjects from the Penalties of former Laws, ought to be reaſſumed; unleſs we are to ſuppoſe, that it can be reaſonable to allow what is unwarrantable.

This Aſſertion, therefore, evidently arraigns the Act of Toleration, a Law now in Being, a Law by which the People (throughout the whole Series of this dangerous War) have been more firmly united in Intereſt and Affection than formerly; I mean, in the Days when the Penalties of thoſe Laws were inflicted with intemperate Zeal.

My Lords, Before I proceed to make good the Charge contained in the ſecond Article of the Impeachment exhibited againſt the Priſoner by the Commons, I muſt beg Leave to take notice of the Introduction to his Anſwer: It ſeems he cannot, upon the moſt diligent Enquiry, be able to inform himſelf, that a Toleration has been granted by Law. I take it, the Stat. 1 *W. & M.* which exempts Diſſenters from the Penalties of former Laws, amounts to a legal Indulgence, or Grant of Liberty of Conſcience; for by that Repeal a Liberty is given, which was before reſtrained, ſo that without Impropriety it may be ſaid, that Toleration is granted by Law. Doctor *Sacheverell*, I find, had rather it ſhould be called an Exemption, for no other Reaſon, that I ſee, but becauſe he has not ſaid much, if any Thing, of the Word *Exemption* in his Sermon, how free ſoever he has made with the Toleration.

Now taking it for granted (as I think with Reaſon I may) that Indulgence, Toleration, or Exemption from Penalties, ſignifies one and the ſame Thing, (eſpecially as ordinarily made uſe of amongſt us) Can any thing be more plain, than that many Paſſages in this infamous Libel caſt black and odious Reflections upon the Toleration? They have been all read, and for fear (after what has been already ſaid) of being too tedious, I will mention one only. The Words are theſe.

What could not be gained by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church cannot be pulled down, it may be blown up; and no Matter with theſe Men how it is deſtroy'd, ſo it is deſtroy'd, &c.

Pray, my Lords, Is it reaſonable to allow Toleration? or rather, is not the Allowance of it unwarrantable, if it was the open and violent Means made uſe of to deſtroy the Church of *England?* And is not this a moſt uncharitable Cenſure, highly reflecting upon the Act of Toleration, and the Legiſlative Authority? Is not this maliciouſly and falſely ſuggeſted, with a wicked and ſeditious Purpoſe, to create Jealouſies and Miſunderſtandings amongſt her Majeſty's People?

Comprehenſion and Toleration are repreſented as open Violence; Moderation and Occaſional Conformity as ſecret Treachery, by which the Church may be blown up, though it could not be pulled down by the violent Means of Comprehenſion and Toleration.

I ſhould waſte too much Time unneceſſarily, if I ſhould take particular Notice (after what has been already ſo well urged in Maintenance of the ſecond Article) of all the Paſſages which ſeem to be equally liable to Cenſure.

The *Antiſtaſis* throughout this Paragraph is ſo very plain, that I hope it is not one of thoſe mentioned in the Doctor's Anſwer to carry a dubious Senſe. The Priſoner ſeems to have taken care to explain himſelf, for fear his Meaning ſhould have been doubtful; and therefore having ſaid,

What could not be gained by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity; then he adds, *that is, what they could not do by open Violence, they will not fail by Treachery to accompliſh.*

Having thus inveighed againſt the Toleration, with much Ill-nature and Bitterneſs of Spirit, he is pleaſed in the next Place to aſſert, That he is a Falſe Brother with Relation to GOD, Religion or the Church, who defends it.

The Anſwer to this Branch of the ſecond Article is long, and, as I apprehend, ſeems to be Evaſive. Firſt, there is a Difference again taken, between Toleration and Liberty of Conſcience, and an Exemption or Indulgence; and under this Diſtinction, which, for the Reaſons I have mention'd, is a Diſtinction without a Difference, the Doctor takes the Liberty to maintain and juſtify, that he is a Falſe Brother who defends Toleration and Liberty of Conſcience.

I muſt own he endeavours to evade the Charge, by ſaying he means thoſe only, who at the ſame Time they defend Univerſal Toleration and Liberty of Conſcience, do alſo excuſe the Separation, and lay the Fault upon the true Sons of the Church, by carrying Matters too high.

Whatever he is pleaſed to ſay he meant, in Anſwer to this Part of the Article, ſurely no ſuch Meaning can be collected from his Sermon. Throughout the whole Libel, I preſume to ſay there is not one Word of Univerſal Toleration, or Univerſal Liberty of Conſcience; this is another kind of Toleration, never heard of till it was new coined, in order to extenuate his vile and uncharitable Aſſertions.

Here he is pleaſed to ſum up the modiſh *Criterions*, as he terms them, of a true Church-Man, in a figurative and ironical Manner, and plainly aſſerts they are the ſeveral Characteriſticks of a Falſe Brother; amongſt the reſt, to defend Toleration is ſaid to be one; and under Pretence of Moderation to excuſe the Separation (*i. e.*) of the Diſſenters, of whom he had next before ſpoken, is another; and concludes the Paragraph with this pathetick Expreſſion, *God deliver us all from ſuch Falſe Brethren!*

Having thus treated thoſe who defend Toleration, his Superior Paſtors are in the next Place to be admoniſhed of their Duty, which is to thunder out their Eccleſiaſtical *Anathemas* againſt the Perſons intitled to legal Indulgence; which *Anathemas* are ſtiled Sentences ratified in Heaven, and ſuch as no Power on Earth dare reverſe.

Far be it from me to ſay, that Sentences ratified in Heaven can be reverſed by the Powers of this World. But if Doctor *Sacheverell* were a Superior Paſtor, and ſhould Anathematize, or, in plain *Engliſh*, Curſe and Sentence all thoſe who enjoy the Benefit of Toleration to Damnation, he muſt excuſe, if I could not believe that ſuch a Sentence would be ratified in Heaven.

And as to any Eccleſiaſtical Cenſure not ratified in Heaven, it is downright Inſolence to ſay, there is no Power upon Earth that can reverſe it.

But ſince our Superior Paſtors will exerciſe a truly Chriſtian and noble Spirit of Charity and Moderation, and indulge ſcrupulous Conſciences, the Doctor is pleaſed however to bear his Teſtimony againſt it, and is not contented with delivering over to Satan thoſe only who enjoy the Indulgence, but they who defend Toleration muſt alſo bear them Company.

His indeed is a very comprehenſive *Anathema*, and is conceiv'd in theſe Words; *viz. And as he choſe it in this World, appoints him in the next his Portion with Hypocrites and Unbelievers, with all Liars, that have their Part in the Lake which burns with Fire and Brimſtone, with the Grand-Father of Falſhood, the Devil and his Angels. And ſo here we leave our Falſe Brethren, in the Company they always kept Correſpondence with.*

This, my Lords, is a moſt dreadful unchriſtian Sentence, a Sentence ſo barbarous, ſo aſtoniſhing, that I am at a Loſs to imagine, how it could enter into the Mind of Man to conceive it.

Perhaps, my Lords, it may be equally dangerous to defend the Aſhes of the venerable Prelate Archbiſhop *Grindall*; he, it ſeems, was a falſe Son of the Church, and a perfidious Prelate, becauſe he deluded Queen *Elizabeth* to a Toleration of the *Genevian* Diſcipline. Here we may obſerve the Doctor's great Averſion to all kind of Toleration.

Methinks, for the Sake of the Reformation, better Language ſhould have been given, and more decent Expreſſions ſhould have been beſtow'd upon a Man we all know bore ſo conſiderable a Part in the Eſtabliſhment of it.

Here likewiſe we may obſerve the Doctor's Inclination to wholeſome Severities, ſuch as Queen *Elizabeth* made uſe of, which were ſuch as, I hope, will never be ſeen more in this Kingdom. And by the Way, what a Spirit is this Man of, who can find nothing to commend in the Reign of that glorious Queen, but the blackeſt and worſt Part of it?

I cannot agree, that theſe harſh Expreſſions, as the Anſwer owns they are, are the rather to be excuſed, becauſe the Remains of the Archbiſhop were ſo long ſince depoſited, eſpecially when we conſider that his Memory has been had in the higheſt Eſteem and Veneration by all the Reformed Churches in *Chriſtendom*, from that Time down to the Fifth Day of *November* laſt.

For my own Part, I think it very Immoral to caſt Reflections upon the Dead, how ill ſoever they may have deſerved from us; and the longer a Man has been ſo, in my Opinion, rather aggravates than leſſens the Immorality.

I am free to own, he whoſe Morals will permit him to reflect upon the Departed, is not therefore to be impeached for it, as for an High Crime and Miſdemeanor; but that is not the preſent Caſe. Archbiſhop *Grindall* is thus ſeverely treated upon a Suppoſition he deluded the Queen to a Toleration; and all the hard Words which are falſely and unreaſonably beſtowed upon him, are evidently levelled at the preſent Toleration, and deſigned maliciouſly to Aſperſe and Traduce it, by repreſenting it as injurious to the Character of all concern'd in it, dangerous to her Majeſty, and deſtructive to the Conſtitution both in Church and State.

By theſe Means, my Lords, and others (if poſſible worſe than theſe), one Part of the People, through groundleſs Fear and Jealouſy unreaſonably and maliciouſly inſtilled, are to be ſtirred up to Arms and Violence; others, upon the Peril of Damnation, are not ſo much as to utter one Word in Defence of Toleration; whilſt the third and laſt Part are to have the Doctor's wholeſome Severities executed upon them.

My Lords, 'Tis too Notorious that this Incendiary, for ſo the Articles of the Commons of *Great Britain* have called him, has already ſtirred up unaccountable Feuds and Quarrels throughout the Nation; the Commons are too ſenſible of it, and have therefore brought the Offender before your Lordſhips in Juſtice and Judgment.

Many are the Seeds of Sedition which he has ſown; and the Fruit to be expected is Civil Diſcord and Confuſion, unleſs ſome Remedy ſhall be applied to prevent it.

The Commons, for her Majeſty's Safety, and for the Security of the Conſtitution, have thought it abſolutely Neceſſary to bring him to anſwer for theſe High Crimes and Miſdemeanors before your Lordſhips Tribunal; conceiving his Offences to be of ſo exorbitant a Nature, that they deſerve the Solemnity of this Proceeding.

(And then the LORDS *adjourned to their Houſe above.)*

Wedneſday, *March* 1. The Third Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner before-mention'd, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel as before,

Lord Chancellor. Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr.*Thompſon*. MY Lords, Your Lordſhips having heard what has been produced in Maintenance of the two firſt Articles of this Impeachment, I ſhall take the Liberty to proceed, and endeavour to diſcharge the Truſt repoſed in me by the Commons, to ſupport the third Article, and the Accuſations contained in it. I will not waſte your Lordſhips Time, by making any Apology for my Inabilities, and being unequal to this Undertaking; not doubting but that I ſhall find from your Lordſhips a candid Interpretation of whatever I ſhall offer on this Occaſion.

This Article, my Lords, is founded on a Vote or Reſolution of your Lordſhips and the Commons, in Parliament aſſembled, which is recited in the Preamble of theſe Articles, and the Occaſion of which it may be neceſſary to mention to your Lordſhips. It was ſome few Years ago that there were many ſcandalous and ſeditious Rumours ſpread Abroad, of the Danger of the Church of *England*, as eſtabliſhed by Law. There were ſeveral Libels diſperſed over the Kingdom, reviling her Majeſty's Adminiſtration in Church and State; and among the reſt, one intitled, *The Memorial of the Church of* England. Her Majeſty was pleaſed to take Notice of theſe ſeditious Reports from her Throne to the Parliament; and thereupon your Lordſhips and the Commons, on the 17th of *December*, 1705, came to the Vote or Reſolution mentioned in the Preamble, and an Addreſs, which is recited to this Effect; “ That your Lordſhips “ and the Commons, in Parliament aſſembled, did addreſs and lay before “ her Majeſty a Vote or Reſolution, That the Church of *England*, as “ eſtabliſhed by Law, and which was reſcued from the extremeſt Danger “ by his late Majeſty, of glorious Memory, was, by GOD's Bleſſing, “ under her Majeſty, in a ſafe and flouriſhing Condition; and that whoever “ ſhould go about to ſuggeſt and inſinuate that the Church is in “ Danger under her Majeſty's Adminiſtration, is an Enemy to the Queen, “ the Church, and the Kingdom.

“ And that your Lordſhips and the Commons, by their ſaid Addreſs, “ did humbly beſeech her Majeſty to make the ſaid Vote or Reſolution “ publick, and to take effectual Meaſures for the puniſhing the Authors “ and Spreaders of ſuch malicious and ſeditious Reports. And that on the “ 20th of the ſame *December*, her Majeſty was pleaſed to iſſue her Royal “ Proclamation accordingly.”

Now, my Lords, this Article charges, “ That in Oppoſition to, “ and Defiance of, and in order to arraign and blacken that Vote or Re“ſolution, Doctor *Sacheverell*, in his Sermon preached at *St. Paul*'s, does “ ſuggeſt and aſſert the Church of *England* to be in a Condition of great “ Peril and Adverſity under her Majeſty's Adminiſtration.” The Article “ further ſays, “ That he wickedly and maliciouſly inſinuates, That the “ Members of Parliament, who paſſed that Reſolution, were themſelves “ conſpiring the Ruin of the Church, which they voted to be out of Dan“ger: And this by way of Parallel or Alluſion to that Aſſembly, who “ voted the Perſon of King *Charles* the Firſt to be out of Danger, at the “ ſame Time when they were conſpiring his Deſtruction.”

My Lords, I will now do the Doctor the Juſtice to take Notice of what he ſays in his Anſwer, and alledges as his Juſtification. He denies that he aſſerts the Church to be in Danger under her Majeſty's Adminiſtration; or otherwiſe than from Vice and Infidelity, Blaſphemy and Profaneneſs. And as to the Parallel in the Vote, and the Inſinuation of the Members conſpiring the Ruin of the Church; He ſays, he never mentions that Vote, nor did he deſign the Parallel as laid to his Charge. He only meant, That while ſome Men were conſpiring the Death of the King, others, not privy to this Deſign, voted him out of Danger: So, though the Members voted the Church to be out of Danger, yet others were conſpiring againſt the Church, and by their Vice and Infidelity were drawing down Vengeance on the Church and Kingdom. And as to that Vote made four Years ago, He ſays, it concerns only thoſe who did then inſinuate the Church of *England* to be in Danger under her Majeſty's Adminiſtration.

Now, my Lords, having ſtated the Charge, and the Defence, I ſhall proceed to acquaint your Lordſhips with the ſeveral Paſſages of the Sermon, which the Commons apprehend will make out their Accuſation. And here, my Lords, I ſhall take Leave to ſay, That no ſtrained or forced Conſtructions can be deſired by the Commons, or expected from your Lordſhips, or any Inferences to be deduced, but what naturally ariſe from a fair, impartial, and candid Interpretation.

My Lords, The firſt Paſſage which the Commons apprehend is for their Purpoſe, is in the 5th Page; the Doctor, juſt before, enumerates St. *Paul*'s Misfortunes that befel him whilſt he was propagating the Goſpel, and ſays, “ There is a very obſervable Gradation in his Sufferings; but that, “ of all his Calamities, the higheſt of them proceeded from Falſe Bre“thren:” And taking Notice of the Condition of the Church of *Corinth*, then follow theſe Words; “ Though it were very obvious to draw a “ Parallel here betwixt the ſad Circumſtances of the Church of *Corinth* “ formerly, and of the Church of *England* at preſent, wherein her holy “ Communion has been rent and divided by factious and ſchiſmatical Im“poſtors, her pure Doctrine has been corrupted and defiled; her primitive “ Worſhip and Diſcipline profaned and abuſed; her ſacred Orders denied “ and vilified; her Prieſts and Profeſſors (like St. *Paul)* calumniated, “ miſrepreſented and ridiculed; her Altars and Sacraments proſtituted to “ Hypocrites, Deiſts, Socinians and Atheiſts; and this done, I wiſh I “ could not ſay, without Diſcouragement, I am ſure with Impunity, not “ only by our profeſſed Enemies; but, which is worſe, by our pretended “ Friends, and Falſe Brethren.”

It may be obſerved, that the Doctor is very free in his Parallels; when either Church or State is to be repreſented by Compariſons, he is pleaſed to make uſe of the worſt he can find. He ſays, The Church of *Corinth* was in the utmoſt of Perils; and then it was to his Purpoſe to make the Alluſion, and bring the Church of *England* into the ſame Condition.

Here are many Particulars in this Paſſage, whereby the Church is ſaid to be in ſad Circumſtances, and I cannot tell how to apply them according to the Doctor's Way of Interpretation; for he ſays, all theſe Enormities are practiſed, not only without Diſcouragement, but with Impunity; not by profeſſed Enemies, but by Falſe Brethren: So he plainly ſhews who he aims at as the Authors of theſe Calamities. He excludes vicious Infidels, Blaſphemers, and Hereticks, who are profeſſed Enemies, and lays it upon Falſe Brethren: And he explains what Sort of Falſe Brethren he means; For who can proſtitute Altars and Sacraments to Deiſts, Atheiſts, and Socinians, but ſome of his own Order? And who are to puniſh ſuch Offences among the Clergy, but their ſpiritual Superiors? And whether they are not Part of her Majeſty's Adminiſtration, I ſubmit to your Lordſhips.

But, my Lords, ſuppoſing the Fact to be true, That there are erroneous Doctrines publiſh'd; to what End muſt the World be told in this Manner that they are vented with Impunity, but to reflect on thoſe who ſhould puniſh them? And can that be done without a Proſecution? If the Doctor had produced any of his undeniable and ample Proofs of theſe Matters, (which he mentions in his Anſwer) before any Court that had a proper Conuſance of them, and been denied Juſtice, he might have had more Reaſon for Complaint: But to blame his Superiors for not puniſhing what they might be ignorant of, and which, he ſays, he was not, (and for which he might have promoted a Proſecution) ſeems to retort the Guilt upon himſelf, which he would lay upon them.

My Lords, The ſecond Paſſage is in Page the 16th. He is talking of a Comprehenſion which was deſigned, not long ſince, to unite the Church and Diſſenters; and complains of the Perſons who were concerned in that heinous Intention; and then he aſſerts, “ That ſince this Model of an “ Univerſal Liberty and Coalition failed, and theſe Falſe Brethren could “ not carry the Conventicle into the Church, they are now reſolved to “ bring the Church into the Conventicle, which will more plauſibly and “ ſlily effect her Ruin. What could not be gained by Comprehenſion and “ Toleration, muſt be brought about by Moderation and Occaſional Con“formity; that is, What they could not do by open Violence, they will “ not fail by ſecret Treachery to accompliſh. If the Church can't be “ pull'd down, it may be blown up; and no Matter, with theſe Men, “ how it be deſtroyed, ſo that it is deſtroyed.” Now, my Lords, who were theſe Falſe Brethren that were concern'd in this Deſign of Comprehenſion, which failed, and who introduce worſe Miſchiefs? Do theſe Dangers proceed from Vice and Infidelity, from Blaſphemy and Erroneous Doctrines? No, my Lords; theſe Falſe Brethren are deſcribed in the Page before, under his Second General Head, to be in Church and State: Which muſt be Perſons in Power and Authority; the Expreſſion itſelf imports it; nor could they otherwiſe be capable of accompliſhing that Deſign, of uniting the Diſſenters and the Church: To which Deſign, and the Authors who intended it, he is pleaſed to give the moſt vile and ſcurrilous Names imaginable: and afterwards he lays to their Charge an Intention to blow up the Church by Moderation. And this, I ſuppoſe, is one of the Vices which the Doctor mentions in his Anſwer, as one Means of Danger to the Church. If Moderation be a Vice, I will do the Doctor the Juſtice to acquit him from the leaſt Tincture of it, in any of his Works that I have ever met with.

My Lords, The Third Paſſage is in Page the 18th. He is continuing his Obſervations of the Danger from the ſame Falſe Brethren in Church and State; and then his Words are, “ Falſhood always implies Treachery; “ and whether that is a Qualification for any one to be truſted, eſpecially “ with the Guardianſhip of our Church or Crown, let our Governors “ conſider.” This, my Lords, muſt relate to Perſons, who (as he would inſinuate) are not fit to be truſted with the Guardianſhip of the Church or Crown: And whether this Reflection does not ſeem to aim higher than the Adminiſtration, I ſubmit to your Lordſhips.

The next Paſſage is in Page the 20th: The Words are theſe; “ And “ now we are under no Danger in theſe deplorable Circumſtances? Muſt “ we lull ourſelves under this ſad Repoſe, and in ſuch a ſtupid Lethargick “ Security embrace our Ruin? When *Eliſha*, the Great Prophet of God, “ was ſurrounded with an Hoſt of Enemies that ſought for his Life, his “ blind Servant beheld not the Peril his Maſter was in, till his Eyes were “ opened by a Miracle, and he found himſelf in the midſt of Horſes “ and Chariots of Fire. I pray God we be out of Danger; but we may

“ remember, that the King's Perſon was voted to be ſo at the ſame Time “ that his Murderers were conſpiring his Death.”

Now, my Lords, the Doctor, to excuſe this Paſſage, ſays, The deplorable Circumſtances we are in, proceeds from the Maturity of National Sins, *&c.* as in his Anſwer. But who are mention'd in his Sermon as the Occaſion of the Maturity of National Sins but the Diſſenters, who, he ſays, are plotting the Ruin of the Church, and Falſe Brethren join with them? So that here neither is the Danger aſſerted from Vice and Infidelity, but as it is occaſioned by the Diſſention from the Church, which the Law has thought fit to apprehend as no Danger to the Church; and therefore it did not become him to aſſert the contrary. Then as to the Parallel of the Aſſembly who voted King *Charles* the Firſt out of Danger, and of the Members who made the Vote about the Danger of the Church Four Years ago, he ſays, He meant no Reflection on any of the Members who paſſed that Vote, becauſe he never mentioned that Vote; and as to the Vote about King *Charles*, others were conſpiring his Ruin than thoſe who voted him out of Danger; ſo while the Parliament voted the Church out of Danger, there were other Enemies conſpiring her Ruin. If the Doctor intended no Reflection upon that Vote, Why was Voting in any Caſe mention'd? Can any one imagine that the Doctor did not know of that Vote, ſince the Danger of the Church is ſo much his Topick? Nor can I preſume him ignorant of the Time when that Vote about King *Charles* was paſſed; which, as far as I can obſerve from the Hiſtory of that Time, was in *November* 1648, that he was voted out of Danger; and when he was Tried and Beheaded, I need not mention to your Lordſhips: And whatever Alteration might be made in that Aſſembly after the Vote, and before his Death, was done by thoſe Perſons who conſpired his Deſtruction, and who were Part of that Aſſembly who voted him out of Danger. So that it ſeems plain, that the Vote of Safety, and the Conſpiracy of Ruin, came from moſt of the ſame Perſons; and it does not ſeem very ſtrange to ſuppoſe the Doctor intended his Alluſion in the ſame Manner.

And as to the Scripture he quotes to this Purpoſe, “ That the blind “ Servant beheld not the Peril his Maſter *Eliſha* was in, till his Eyes were “ opened by Miracle, and he found himſelf in the midſt of Horſes and Cha- “ riots of Fire.” My Lords, theſe Horſes and Chariots of Fire were not the Prophet's Enemies but his Friends; nor was there any Danger to be feared from them; on the contrary, they were a Security from his Enemies; ſo that he plainly perverts the Senſe of that Text, to make a ſtronger Impreſſion, and more effectually to delude the People.

My Lords, The laſt Paſſage is in the laſt Page: He is ſtill talking of the Danger of the Church, and quotes a Text as in the *Lamentations*, (viz.) “ Though ſhe lies bleeding of the Wounds ſhe receiv'd in the Houſe of “ her Friends.” Indeed, my Lords, I can't find it there; therefore it ſeems to me to be a Lamentation of the Doctor's own making. Then he goes on, “ Tho' the Ways of *Sion* may mourn for a Time, and her Gates be “ deſolate, her Prieſts ſigh, and ſhe in Bitterneſs, becauſe her Adverſaries “ are Chief, and her Enemies at preſent proſper; tho' among all her Lo- “ vers ſhe has few to comfort her, and many of her Friends have dealt “ treacherouſly with her, and are become her Enemies.” My Lords, I mention theſe Paſſages only to ſhew, that the Doctor, by the moſt pathetic Expreſſions of his own, mix'd with theſe Texts of Scripture, endeavours to repreſent the Church of *England* to be in the utmoſt Danger.

I ſhall trouble your Lordſhips no further with the Paſſages in this Sermon; but ſhould not omit to take Notice, that there is a Suggeſtion in the Doctor's Anſwer, that the Vote four Years ago did not concern him; but that it related only to them that then did aſſert the Church to be in Danger: If he had minded the Words of the Vote, he would have found there was no Pretence for that Objection; for it is, “ Whoever ſhall go “ about to inſinuate, that the Church is in Danger under her Majeſty's “ Adminiſtration;” which muſt relate to any Time during the Continuance of her Majeſty's Reign.

And now, my Lords, I beg Leave to obſerve ſome Circumſtances attending this Offence, which give it the higheſt Aggravation. That Memorial which was publiſhed ſome Years ago, and was the chief Occaſion of the Vote in Parliament, was a Libel that reviled her Majeſty and her Adminiſtration, as the Occaſion of the Danger of the Church. The Author was pleaſed to conceal himſelf, and durſt not avow his Doctrine; but the Book had the Fate it deſerved: And from the Aſhes of that Phœnix aroſe another Memorial, with many of the ſame virulent Expreſſions againſt her Majeſty's Adminiſtration, agreeing in the whole Scope of it, as to the ſame ſcandalous Purpoſe; but far exceeding it in Malice and Inveteracy.

And this new Memorialiſt has preſumed to publiſh his Seditious Reflections in the moſt open Manner imaginable; firſt at the Aſſizes at *Derby*, and afterwards in the great Church of this Metropolis; and has thought fit to print and diſperſe about forty Thouſand of them over the Kingdom. From whence could this extraordinary Zeal proceed? Was it to exhort Men to revere their Governors, and to ſubmit to thoſe in Authority over them? Was it intended to preſerve Peace and Good-will amongſt Men? to promote Charity, Brotherly Love and Affection? No, my Lords, there is plain Evidence to the contrary, *Ex ore ſuo judicabitur.* He tells you the Reaſon of his Topicks in that Place; he ſays, he intended “ to open the “ Eyes of the deluded People in that great Metropolis; to ſet the rich and “ powerful Inhabitants right in their Notions of Government in Church “ and State.” They were obliged to him for his pious Deſign, and for inſtilling thoſe Doctrines, which, as your Lordſhips were told Yeſterday, would make their Religion, Liberty, Property, and all that is dear and valuable, Precarious: He tells you further, “ That our Conſtitution of “ Church and State is vigorouſly attack'd from without, and lazily defend- “ ed from within; that there are Attempts upon the Friends of the Church, “ to ſhut their Eyes and Mouths, in order to undermine and deſtroy them; “ that he thinks the Pulpit a proper Place for Politicks; and that it is “ the Buſineſs of a Clergyman to ſound a Trumpet in *Sion*, to cry aloud “ and ſpare not.” And in his Preface to the *Derby* Sermon he explains himſelf ſtill further upon this Topick, “ That the Church is ſhamefully “ betrayed and run down; that there are ſome ſtill who will defend it “ with their Lives and Fortunes.” And ſtates the Caſe as if there was an immediate Neceſſity to take up Arms for a Holy War upon this Occaſion.

My Lords, This Crime is more heinous, for that there is the leaſt Reaſon for theſe Seditious Murmurs, that has been in any Reign whatever. Is there any Invaſion or Attempt upon the Liturgy, even the leaſt Ceremony of the Church, or any Part of the Eccleſiaſtical Conſtitution? Are her Revenues impaired, or any of her Temporal Rights violated? No, my Lords; but our Royal Sovereign has diſtinguiſh'd her Care for this Church in a more peculiar Manner than any of her Predeceſſors; ſhe has given from her own Revenue to increaſe that of the Clergy, for their more creditable Support, and to enable them to preach ſound Doctrine for the Welfare of her Subjects; nor is her Majeſty wanting to promote Religion, Piety and Virtue, by her own Royal Example, the moſt effectual Encouragement. Theſe are the true Baſes of the Church, and the beſt Pillars to ſupport it. And what Occaſion was there for theſe Reflections on her Majeſty's Adminiſtration? Has not that venerable Bench given the World abundant Proof of their Care and Vigilance to preſerve that Church, of which they are the Guardians, by their Learning and unblameable Conduct; by their zealous and reſolute Defence of her in the worſt of Times, and againſt all her Enemies? It is very ſurprizing that a Gentleman, whoſe Education has been in the Fountain of Learning and Religion ſo many Years (who cannot be preſum'd to err through Ignorance), that he ſhould preſume in his private Capacity to contradict the Senſe of the whole Nation, and caſt ſuch Aſperſions on his Superiors. To what End could he ſo zealouſly diſperſe his Notions, if not to animate a deluded People to the Execution of ſeditious Deſigns?

It were to be wiſhed, that a Government could be ſupported by Mildneſs and Clemency; but ſuch is the State of depraved Nature, even theſe moſt Paſſive-Obedience Natures, that they are not contented to be only ungrateful for the Benefits they enjoy from the Church and State, but they muſt rebel againſt Principle, and fly in the Face of that Government from which they receive their Support and Protection.

The Doctor cries aloud, and there are many others that ſpare not: Some have preſumed to cenſure this very Proceeding before your Lordſhips, as a Perſecution of the Church. And what muſt be the Conſequence of tolerating ſuch bold and daring Spirits to go on in their ſeditious Practices!

If your Lordſhips do not vindicate your own Reſolutions, and exert your Power and Authority to ſuppreſs that audacious and unparallel'd Inſolence, that daily flies Abroad from the Pulpit and the Preſs, (which, as the Doctor ſays truly, are become the Mints of Faction and Sedition) I may take Leave to ſay, there will be too much Reaſon for his Aſſertions of Danger both to Church and State: But the Commons are ſo well ſatiſfy'd of your Lordſhips true Concern for the Preſervation of our Conſtitution, that they cannot imagine you will ſuffer any Attempts, that may be pernicious to the Welfare of the Government, to paſs without condign Puniſhment; and therefore they intirely rely on your Lordſhips Wiſdom and Juſtice.

Mr. *Compton*. MAY it pleaſe your Lordſhips, I am commanded by the Commons to aſſiſt in maintaining the third Article of their Impeachment againſt Doctor *Henry Sacheverell*, which has been fully opened to your Lordſhips by the learned Gentleman that ſpoke before me.

My Lords, The Commons think they have good Reaſon to aſſert, that Dr. *Sacheverell*, in his Sermon preach'd at St. *Paul*'s, doth falſely and maliciouſly contradict and arraign a Reſolution of both Houſes of Parliament, approved of by her Majeſty, and made publick by her Royal Proclamation.

My Lords, Your Lordſhips cannot but have obſerved, that it has been one of the conſtant Artifices of the Enemies of the preſent happy Eſtabliſhment, who very well know the juſt Value the People of this Nation have for the eſtabliſhed Church, to ſuggeſt and inſinuate, that this Church is in a Condition of great Peril and Adverſity, in order to foment Animoſities, and to cover Deſigns which they dare not publickly own. But how frequent ſoever this has been, I believe I may ſafely affirm, that this ſcandalous and ſeditious Aſſertion was never ſo boldly maintained, nor with ſuch invidious and aggravating Circumſtances, as by the Criminal at your Lordſhips Bar.

The learned Society, of which he is a Member, reaped ſuch ſignal, ſuch immediate Advantages from the Revolution, that he could not be unmindful, he could not be ignorant of the extreme Danger from which our Laws and Liberties, our Church and Conſtitution were reſcued by his late Majeſty. But ſuch is his Ingratitude to our Great Deliverer, ſuch is his Inveteracy to the Revolution, that he makes that very Revolution the Period of Time from whence the Enemies of our Church firſt had Hopes to deliver her up to her worſt Adverſaries. Nor does his Malignity ceaſe there; but he endeavours to perſuade the People, that from the Revolution to the preſent Time, there has been a continued Series of Contrivances to ruin and deſtroy the Church: At the Revolution, by open Violence; but *Now*, that is, under her Majeſty's Adminiſtration, *by ſecret Treachery*; and ſince neither the late nor the preſent Reign can eſcape his Invectives, for what Perſon he reſerves his Panegyricks, is ſubmitted to your Lordſhips to determine.

My Lords, I would not take up any of your Lordſhips Time unneceſſarily; but I muſt not conclude, without expreſſing the Indignation the Commons have at his traducing and vilifying the laſt Parliament, by that odious Parallel in the twenty-firſt Page of his Sermon preach'd at St. *Paul*'s.

My Lords, the Parliament he thus endeavours to blacken, was opened with ſo full an Appearance in both Houſes, that her Majeſty obſerv'd it with Satisfaction from the Throne; and at the ſame Time her Majeſty with Grief obſerved the Malice of ſuch Perſons who ſuggeſted the Church was in Danger; and deſired the Aſſiſtance of her Parliament to diſcountenance and defeat ſuch Practices. And in Duty to her Majeſty, to ſecure the Quiet and Peace of the Kingdom, and to diſappoint the Deſigns of the Enemies of our Church and Conſtitution, both Houſes of Parliament came to the Reſolution, ſet forth by the Commons in the Articles of the Impeachment which have been read to your Lordſhips. And the ſame Parliament proceeded in this and other Matters which were before them, with ſo much Vigour, as well as Prudence, that in leſs than ſix Weeks her Majeſty graciouſly took Notice, that their Proceedings had had a good Effect all over *Europe*. And at the Concluſion of the Seſſion, her Majeſty, with great Goodneſs, declares how much ſhe was pleaſed to obſerve their Unanimity and Zeal throughout the whole Seſſion, againſt every Thing that tended to Sedition. It was this Parliament that ſo chearfully concurr'd with her Majeſty in promoting and completing the Union of the two Kingdoms. And it was the Gentlemen that compoſed this Parliament, join'd by the Repreſentative of the other Part of the united Kingdom, who readily and unanimouſly aſſiſted her Majeſty in diſappointing the Attempt of the

Pretender to her Crown, whoſe chief Dependance was in the reſtleſs and arbitrary Principles of ſome of her Majeſty's Subjects, ill-affected to their Country.

And now, my Lords, is there any Ground to compare the dutiful Proceedings of ſuch a Parliament, with what was done in thoſe unhappy Times, with which he would maliciouſly draw a Parallel? No, my Lords. And I may ſafely venture to ſay, that 'tis impoſſible to find the leaſt Reſemblance between her Majeſty's glorious Reign and that unfortunate Adminiſtration, except that there were then, as there are now, *Miniſters of the Church, who by their Function, being Meſſengers of Peace, ſet up to be the Trumpeters of Sedition, and Incendiaries to Rebellion.* But, my Lords, the Commons hope, That the happy Period is now come, when even this Reſemblance ſhall have its Determination; for they entirely rely on your Lordſhips Juſtice to inflict ſuch an exemplary Puniſhment on this Offender, as may deter others from endeavouring to diſtract the Kingdom with ſuch groundleſs Diſtruſts and Jealouſies for the future.

Clar. Hiſt. of the Reb. *Vol.* 2. *p.* 18.

Lord *Coningſby.* MY Lords, I am commanded by the Commons of *Great Britain* to aſſiſt, and endeavour to make good, the important Charge they have exhibited againſt the Criminal at the Bar: And becauſe I am leaſt able among all the Gentlemen that have that Honour, out of Indulgence to me I am aſſigned to the third Article, that wants leaſt to be ſupported.

The Sermon preach'd by the Doctor at St. *Paul*'s, and which has been read to your Lordſhips, from the firſt Word in the Title Page to the laſt Line in the Concluſion, is one falſe, malicious, and ſeditious Aſſertion, That the Church of *England* was under the laſt Reign, and is under the preſent, in the utmoſt Peril and Danger.

The Proclamation which your Lordſhips have heard mentioned, and which was deſign'd by our glorious Queen, from whoſe Speech it took its Riſe, by your Lordſhips, and the Commons who concurr'd in it, to be a Warning to ſuch Incendiaries as the Criminal, not to trumpet amongſt the People Suggeſtions ſo ſeditious, in order to cover Deſigns more dangerous, and which, God be praiſed, they are not yet ſtrong enough, nor never I hope will be, publickly to own; ſhews this malignant Offender committed this Offence in Defiance of her Majeſty, your Lordſhips, and the Commons.

The Proofs, which almoſt every Gentleman has brought to the two preceding Articles; and thoſe particular Inſtances that have been ſo fully opened by theſe Gentlemen who have ſpoke before me to the preſent, ſhews that it would be vain in me, and miſpending your Lordſhips Time, to pretend to enforce thoſe Points, already ſo fully made good.

I ſhall therefore very ſhortly, tho' I hope very plainly, lay before your Lordſhips what are thoſe pernicious Deſigns the Doctor intends to cover, and at laſt hopes to bring to paſs, by his Preaching, Printing, and Publiſhing, not only round this Kingdom, but amongſt his Friends on the other Side of the Water, this ſeditious, I may ſay, rebellious Diſcourſe, for which he ſtands at preſent impeached by the Commons.

And as it has been ſhewn your Lordſhips, by the Gentlemen that made good the firſt Article, that the Doctor, by reflecting on the neceſſary Means to bring about the Revolution, the Foundation on which our preſent happy Eſtabliſhment is built; by aſſerting that her Majeſty ought to depend upon no other Title to the Crown but her Hereditary one; deſign'd, by ſuch deſtructive Poſitions, to bring back the Pretender, with Popery and *French* Tyranny attending him, to govern the State.

So it is as plain, from the whole Scope of his Sermon, that the Doctor, and all thoſe in Combination with him, have nothing more at Heart than to deſtroy the preſent Church, as eſtabliſh'd by the wholeſome Laws of this Land, and that becauſe 'tis moſt conſonant in its Doctrine and Diſcipline to that of the primitive Chriſtians, of any ſince the Time of the Apoſtles; and conſequently leſs agreeable with the flaming Opinions of ſuch Firebrands, who know not of what Spirit they are of: And this, in order to ſet up a Scheme of a Church, agreeable to the tyrannical one they have projected for the State: A Church, the Doctor's I mean, though in Pretence Proteſtant, that would be ready ſoon to be turned into a Monſter, by adding to itſelf a Popiſh Head.

A Church that will deſtroy all thoſe that brought about, and have ſince ſupported, the happy Revolution.

A Church, which upon Anti-Chriſtian Principles profeſſes Burning for Conſcience-ſake; which the Doctor, like thoſe wicked Men whoſe Mercies are cruel, calls wholeſome Severities.

A Church that will turn all the Bleſſings we enjoy under the preſent Adminiſtration, into all thoſe Miſeries we got rid of by the late glorious Revolution.

I cannot doubt, therefore, but your Lordſhips will, out of Duty to the beſt of Queens, and in Juſtice to your Lordſhips and the Commons, deter others from ever being guilty of the like heinous Offence.

Mr. *Dolben.* MY Lords, This Article of the Commons Impeachment contains one Criminal Poſition, That the Church of *England* is now in a Condition of great Peril and Danger under her Majeſty's Adminiſtration, aggravated by an odious Parallel that affords a Pregnant Proof of the true Spirit and Deſigns of this bold Offender.

The Accuſation has already been fully made out by plain and poſitive Words in his Sermon; from which, as well as from many other Paſſages, I ſhall beg Leave to ſubmit to your Lordſhips Judgment, whether that wicked Parallel may not juſtly be turn'd upon him? Whether there is not more than Suſpicion that he, and all his Abettors, are conſpiring the Ruin and Deſtruction of the Church, when under the Diſguiſe of a Falſe Zeal they proſtitute her ſacred Name, to carry on dark and deep Deſigns, fatal both to Church and State?

I ſhall only briefly take Notice to your Lordſhips, that the Guilt of this Offence ariſes from a plain Contempt of her Majeſty's Proclamation, and of the Reſolutions of both Houſes of Parliament; moved by no Inducement, but an Eagerneſs and Induſtry not to let any Shadow or Colour eſcape, that may contribute to his Part in the grand Deſign, to be only effected by fomenting Diviſions and Diſtractions amongſt us.

But, my Lords, in order to unveil the Doctor's Pretences, and to take away his trivial Excuſes, I beg Leave to repreſent to your Lordſhips, that if the whole Legiſlature had not, from a full Conviction of the Church's Security and Safety, laid a ſevere Injunction againſt the publiſhing ſuch a falſe and pernicious Suggeſtion, yet evident Truth ought to have taught him not to have tranſgreſs'd in ſo notorious a Manner.

My Lords, when it appears that the Church has the Sanction of ſo many and ſo good Laws to eſtabliſh and defend it; when the Veneration and Devotion to it, of ſo great a Majority of the People, is ſo viſibly fix'd in their Hearts, that the bad Examples and provoking Behaviour of this falſe Brother, and of ſeveral others of the ſame Stamp, have not made the leaſt Abatement, or Impreſſion to its Diſadvantage; when the Parliament, on all Occaſions, appears ſo forward and unanimous in their Zeal and Affection for it; when 'tis recommended and illuſtrated by the Learning, Piety, Wiſdom, Charity, and Chriſtian Moderation of ſo many of its chief Paſtors; but, above all, when 'tis under the Protection and Government of a Supreme Head, a true and conſtant Defender of its Faith and Diſcipline, who having already expoſed her Royal Perſon to Hardſhips and Dangers, to reſcue it in a Time of its utmoſt Peril, does continue daily to manifeſt the ſame Devotion, Piety, and tender Concern for it: Under this powerful Alliance for its Support, can aught but Malice and Envy at its Proſperity, can any one but an Incendiary or diſguis'd Enemy inſinuate, that the Church of *England* is not fenced and fortified with an impregnable Barrier againſt all Danger from open Attacks or Violations?

'Tis true, indeed, my Lords, that no human Care or Policy can prevent the Attempts and ſecret Conſpiracies of inteſtine Traytors. Vipers in the Boſom may ſting, though the Body be covered with the ſtrongeſt Armour. All that can be done is, to be watchful to diſcover and expoſe the Hypocrite, to detect and puniſh his Crimes. The Commons, on this Occaſion, are here exerting their Part of this Duty, fully aſſured of Succeſs from your Lordſhips equal zeal and Juſtice.

My Lords, You have now brought to your Bar a Clergyman, bound, by the ſtrongeſt Ties and Duty of his Function, to inſtruct and propagate the neceſſary Means for the People's true Happineſs in this World, as well as the next; yet your Lordſhips will find him proved to be a Trumpeter Itinerant of Sedition and Rebellion, firſt at *Derby*, then in *London*; an Agent detach'd from that dark Cabal, whoſe Emiſſaries appear in all Shapes, and almoſt in all Places; an Aſſerter of ſuch peſtilential and unparallel'd Doctrines, as at once overthrow the whole Conſtitution both of Church and State. He may perhaps urge a Precedent, in which it has been pleaded, and from the Pulpit, that an urgent Neceſſity can juſtify the Breach of Laws; and from others, that in particular Caſes they may be diſpenſed with; but this Gentleman muſt be allowed the Infamy, to have ſtretched and improved thoſe pernicious Tenets to the exalted Height of making all our Laws, Liberties, Religion, and Lives, held only at the precarious Pleaſure of any bold Invader; for nothing can be a plainer Expoſition or Conſequence, when 'tis taught, that no Oppreſſion, no Violation can juſtify an Oppoſition to it.

My Lords, the Commons have brought this Offender before you, with a View not only to detect and puniſh his Offence, but to obtain an Occaſion in the moſt publick and authentick Manner to avow the Principles, and juſtify the Means upon which the preſent Government and the Proteſtant Succeſſion are founded and eſtabliſhed; and this more out of a generous Concern for Poſterity, than for our own preſent Security. My Lords, we are ſo happy as to have a Sovereign on the Throne, whoſe Goodneſs, Juſtice, and Piety, leaves no Room for the leaſt Fear or Jealouſy; but we hope the Record of this Proceeding will remain a laſting Monument, to deter a Succeſſor, that may inherit her Crowns, but not her Virtues, from attempting to invade the Laws, or the People's Rights; and if not, that it will be a noble Precedent to excite our Poſterity to wreſtle and tug for Liberty as we have done. My Lords, I doubt not but her Majeſty will, with the greateſt Satisfaction, ſee the Government thus put upon a right and equal Foot, ſince thereby thoſe Bleſſings will be ſecured to future Ages which her happy Reign has planted amongſt us; ſince thereby ſhe will entail a laſting Felicity on her People; and prevent thoſe real Dangers both to Church and State, which at this Time are ſo falſly inſinuated. But, my Lords, if this ſhould not now be effectually obtained, and by ſuch wholeſome Severities as the Doctor applauds and recommends, give me Leave to conclude, with a juſter Complaint than that in his Anſwer, That hard is the Fate of that People, who after having been twenty Years in War, in Conjunction with ſo many great Allies, with the Expence of ſo much Blood and Treaſure, contending only againſt Tyranny and Oppreſſion, and which we may juſtly hope is at laſt ſubdued, ſhall then ſee all *Europe* enjoy the Fruits and Benefits of our Labours; and at the ſame Time, tho' her Majeſty's well-choſen General ſhall at laſt bring home Peace, as he has ſo often the Laurels of Victory, to lay with humble Duty at her Royal Feet; yet we, only we, muſt be rendered uncapable of the common Bleſſing, *betrayed at Home to a perpetual Condition of Bondage, by ſuch Falſe Brethren as are at your Lordſhips Bar.*

Then Lord *Haverſham* moved to adjourn to their Houſe above; and being returned, and ſeated as before, Proclamation for Silence was made by the Serjeant at Arms.

Lord *Chancellor.* Mr. *Dolben*, the Lords have taken Notice, that at the Concluſion of what you ſpoke, you us'd this Expreſſion, * *as are at your Lordſhips Bar*; which Words are ſo general, that their Lordſhips are of an Opinion that they want an Explanation.

Mr. *Dolben.* My Lords, thoſe Words had relation only to the Priſoner *at the Bar.*

Serjeant *Parker.* MY Lords, Your Lordſhips have heard the three firſt Articles of this Charge largely ſpoken to; it is my Duty, in Obedience to the Command I have been honoured with by the Commons, to make good the Charges in the Fourth. I am ſenſible how unequal I am to ſuch a Work, both from my want of Capacity, and my preſent Indiſpoſition; but however, in ſuch Manner as I can, I ſhall endeavour it.

This Article ſets forth, That *He the ſaid* Henry Sacheverell, *in his ſaid Sermon and Books, does falſly and maliciouſly ſuggeſt, that her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution; and that there are Men of Characters and Stations both in Church and State, who are Falſe Brethren, and do themſelves weaken, undermine, and betray, and do encourage and put it in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment: And chargeth her Majeſty, and thoſe in Authority under her, with a*

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* *Exception had been taken, that the Word* are *might carry the Reflection to the Counſel and Sollicitor aſſigned by the Lords to aſſiſt Dr.* Sacheverell, *who were alſo at the Bar.*

general Male-Adminiſtration ; and as a publick Incendiary, he perſuades her Majeſty's Subjects to keep up a Diſtinction of Factions and Parties, inſtills groundleſs Jealouſies, and foments deſtructive Diviſions among them, and excites and ſtirs them up to Arms and Violence: And, that his ſaid malicious and ſeditious Suggeſtions may make the ſtronger Impreſſions upon the Minds of her Majeſty's Subjects, he the ſaid Henry Sacheverell *does wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture.*

This Article in general, is a Charge of Sedition under ſeveral Aggravations, and made good by almoſt every Part of the Sermon and Dedications read before your Lordſhips in Evidence.

The avowed Deſign of the Sermon is, to repreſent the extreme Perils and Diſtreſſes of the Church and Conſtitution from Falſe Brethren, that are *in* the Adminiſtration, and countenanced *by it.*

He repreſents the *Church* in the utmoſt Extremity, thoſe *Fences* broken down, without which ſhe is *naked* and *unguarded, her Altars and Sacraments proſtituted,* herſelf *deſerted, betrayed, undermined,* and *perſecuted with open Violence, bleeding of her Wounds, her Enemies openly calling for her Deſtruction.*

The *Nation,* ſunk into the loweſt Degree of Corruption, ſwarming and over-run with *Atheiſts, Deiſts, Socinians, Hypocrites, Villains, Rebels, Traytors, Correſpondents with the Devil,* nay, with Men that are themſelves *the worſt of Dæmons.*

The *Government,* ſo far from applying a Remedy, that all this is done *openly, with Impunity, without Diſcouragement :* Nay, the Perſons from whom the Miſchiefs ariſe, are *ſuffer'd to form themſelves into Seminaries, to propagate Atheiſm and other helliſh Principles,* are let into the *Adminiſtration,* they are in *Places,* Places are given them as the *Reward of betraying their Parties,* they *engroſs all Places,* they are *Perſons of Characters and Stations,* nay, they are *Chief.*

Nor is this done in any Repreſentation to thoſe, that by making new Laws, or putting in Execution the old, might regularly cure the Miſchiefs; but in *a popular Harangue* from the *Pulpit:* Not in Terms of Lamentation, not as Grounds of Humiliation, or in a Language that might become one that thought the only *Arms* of the Church to be *Prayers and Tears* ; but with all Malice, Bitterneſs, Reviling, Inſolence, endeavouring to raiſe in his Auditors the Paſſions himſelf puts on, and pointing out (as far as he dares) to *Arms* and *Violence* for a Cure, and not ſo much as *offering* any other.

Theſe are the Colours in which he paints our Condition; and thus he chuſes to ſhew the Zeal and Duty he profeſſes to the beſt of Queens.

But ſince he pretends in great Meaſure to deny or evade the Charge, it may not be amiſs to look a little more particularly into his Sermon, and take a View of the *Scheme* of it, and of ſeveral Paſſages therein.

The *Crime* he profeſſes to ſhow the Miſchiefs of in his Sermon, is *falſe Brotherhood* : The *Method* he propoſes to treat it in is,

1. To deſcribe the *Crime,* and to ſhow who are *Falſe Brethren,* and *upon what Accounts* ; and he conſiders it both with Reſpect to the *Church* and to the *State.*

2. To ſhow the *Dangers :* And,

3. The *Guilt* and *Folly* of this Sin. And,

4. (That it may appear that all the Crimes and all the Treacheries he mentions are not mere Suppoſitions, but Realities, at this Time,) He undertakes, as a *Conſequence of all, to ſhew what mighty Reaſon we have at all Times, more eſpecially AT PRESENT, to ſtick to the Principles of our Church and Conſtitution, and to beware of, and mark all thoſe Falſe Brethren who deſert or betray them.*

I believe the firſt Clauſe of this Article will ſo clearly be prov'd from the Paſſages that more directly concern the Second and the Third, that I deſire, for ſaving your Lordſhips Time, to begin with thoſe two Clauſes, and then to return to the Firſt afterwards.

I begin therefore with the ſecond Clauſe, *That the ſaid* Henry Sacheverell, *in his Sermon and Books, doth falſly and maliciouſly Suggeſt, that there are Men of Characters and Stations in Church and State, who are Falſe Brethren, and do themſelves weaken, undermine, and betray, and do encourage and put it in the Power of others, who are profeſſed Enemies, to overthrow and deſtroy the Conſtitution and Eſtabliſhment.*

To make this out, I beg leave to obſerve, that in entering upon his ſecond Head, that is, to ſhew the great Peril and Miſchiefs of theſe Falſe Brethren both in Church and State, he aſſerts, *pag.* 15. *That they weaken, undermine and betray in themſelves, and encourage and put it in the Power of our profeſs'd Enemies to overturn and deſtroy the Conſtitution and Eſtabliſhment of both.* This, therefore, runs through his *whole* Diſcourſe; and, being affirm'd of Falſe Brethren *in general,* muſt be very applicable to *every ſort* of falſe Brother. If then there be any *Perſons of Characters and Stations* whom he repreſents as *Falſe Brothers,* then he has, in the Place mentioned, affirm'd of THEM, and undertaken to prove, that THEY *weaken, undermine and betray, and put it into the Power of others to overturn and deſtroy the Conſtitution and Eſtabliſhment.*

And as to that, he comes under his third Head, *pag.* 21. to ſhow the Malignity and Guilt of this Sin, in reſpect of the World, and begins it thus, (*pag.* 21, 22.) “ What a vaſt Scandal and Offence muſt it be to all
“ Perſons of Piety and Integrity, to ſee *Men of Characters and Stations*
“ thus ſhift and prevaricate with their Principles, and ſtarting from their
“ Religion, upon any Occaſion of Difficulty or Trial, and like the Diſ-
“ ciples flying from and forſaking our Saviour when his Life lay at
“ Stake; to ſee Men's Opinions ſit as looſe almoſt as their Garments, to
“ be put on or off for Convenience: what can unwary Perſons conclude
“ from this Tergiverſation and Hypocriſy, but that *all Religion is State-Craft*
“ and Impoſture? That all *Godlineſs* is Gain, and that the *Doctrines of*
“ *the Church* lie not ſo much in her *Articles,* as her *Honours* and *Re-*
“ *venues ?*”

This is a full Charge of *Falſe Brotherhood* upon thoſe *Perſons of Characters and Stations,* and *exemplifying* in them the Malignity of that Crime, which is the Subject of his Diſcourſe: The Conſequence is plain, that he here charges them with Falſe Brotherhood; and having before aſſerted, That *all ſuch Falſe Brothers weaken, undermine, and betray, and put it into the Power of others to overturn and deſtroy the Conſtitution and Eſtabliſhment* ; he has not only ſuggeſted, but maintained, *that there are Perſons of Characters and Stations that weaken, undermine and betray, and put it into the Power of others to deſtroy the Conſtitution and Eſtabliſhment.*

In his Anſwer, put in before your Lordſhips to the Articles of Impeachment, he would divide the Charge in this Clauſe; and (1). As to the ſuggeſting that there are ſuch *Perſons* who are *Falſe Brethren* ; he ſays, That if he had ſaid *there are Perſons of Characters and Stations* that are Falſe Brethren, not reſtraining it to the *higheſt,* it would not be either falſe, malicious, or highly criminal.

(2.) As to the weakening, undermining, and betraying in themſelves, and putting it into the Power of profeſſed Enemies to overturn and deſtroy the Conſtitution, he ſays, he has not ſuggeſted *that* of Perſons of Characters and Stations; but the Mention of thoſe *Perſons,* and the Expreſſion of *weakening and betraying in themſelves, and enabling others to deſtroy the Conſtitution,* are twelve Pages aſunder.

(3.) He mentions ſome, which he thinks do weaken and betray the Conſtitution, but has not ſaid any of *them* are Men of *Characters and Stations.*

In anſwer to theſe Gloſſes, I might ſay, that if this were meant, *not* of the *higheſt* Characters and Stations, nay though it were *true* too, the affirming this of them would be criminal, and in the Manner he does it, *highly* ſo. All ſubordinate Magiſtrates, of whatever Station, may be regularly complained of, and called to account; but the meaneſt are not to be traduced and libelled, nor the Government upon their Accounts.

But this I offer. The Words, if not *reſtrained* to thoſe of *higheſt* Characters and Stations, neither are they *reſtrain'd* to the *loweſt* ; and, in Truth, ſtrike *all,* and ſo were *intended,* as other Parts ſhow.

It is no Excuſe, if he ſcandalizes Perſons of the *higheſt* Characters and Stations, that he does not ſcandalize them *only.*

It is no Excuſe, when he ſpeaks opprobriouſly, in *general* Terms, of Men of Characters and Stations, without diſtinguiſhing *to his Auditory,* to diſtinguiſh *upon his Defence,* and pretend he meant only ſome few of the *meaner Sort* ; that is, that when he was ſpeaking of the Miſchief and Malignity of this Crime, and ſhowing how *Great* it was, his Aſſertion concerning Men of Characters and Stations *in general,* was meant *only* of *thoſe,* in whom the Miſchief and Malignity is *leaſt.*

No, it is a general Arraignment of the Government throughout, and as ſuch he muſt anſwer for it. And to put this out of Doubt, he has told us, *Page* 26. in Scripture Words, That *the Church's Adverſaries are Chief.*

For what he talks of ſeveral *Senſes,* in which he ſays he takes Falſe Brethren in the Sermon, 'tis not at all material in *what Senſe* he charges thoſe Perſons with Falſe Brotherhood, if *in Conſequence thereof* he charges them with *betraying* the Church, and empowering its Enemies to deſtroy it. The charging them with being Falſe Brethren had been a *Fault,* as *that* is a Term of Reproach, which, with him, carries juſt as much Malignity as he pleaſes, even to *ſomething analogous to the Sin againſt the Holy Ghoſt,* and rendering them the *worſt of Dæmons.* But the *Streſs* of this Accuſation, is the *Treachery* they are charged with *as Falſe Brethren.*

2. In the next Place, therefore, he denies that Part of the Charge; and for this *ſhrewd Reaſon,* that the two Expreſſions are twelve Pages aſunder: An Anſwer I admire to ſee put in upon ſo ſolemn an Occaſion! As though the Falſe Brotherhood he ſhows the *Danger of,* and the Falſe Brotherhood he ſhows the *Malignity of,* had no Relation to one another, becauſe twelve Pages aſunder.

3. He mentions *ſome* that he affirms to be *Weakners and Betrayers,* &c. but ſays he does not ſuggeſt *thoſe* to be *Men of Characters and Stations.* All the Inference to be drawn from that, is, either that there are, beſides *thoſe,* ſome *other* Weakners and Betrayers that are Men of Characters and Stations; or that *ſome* of *thoſe* are Men of Characters and Stations, though he hath not ſaid ſo; which is no Excuſe for him. For though he hath not deſcrib'd *every Sort* of Weakner or Betrayer, and though he hath not told us *which Sort* of Weakner or Betrayer he ranks the Men of Characters and Stations under; yet he has in general charg'd Men of Characters and Stations with Falſe Brotherhood, and as Falſe Brethren to be Weakners and Betrayers, *&c.*

IN the next Place, I would lay before your Lordſhips the Proof of the third Clauſe of this Article, which ſays, *That Dr.* Sacheverell *charges her Majeſty, and thoſe in Authority under her, with a general Male-Adminiſtration.* Every part of the Sermon makes out this, repreſenting the whole Nation in the utmoſt Diſorder and Confuſion, and the Magiſtrates, inſtead of *applying* a Remedy, rather *increaſing* the Diſtemper.

Page the 14th is a very home and direct Charge upon the Government. It comes under that Part of the Sermon, where he is deſcribing Falſe Brethren with relation to the State; and when he has declared very largely what they *do,* and what they *hold,* he goes then to what they are *ſuffer'd to do :* He ſays, “ Theſe falſe Brethren in our Government do not ſingly,
“ in private, ſpread their Poiſon ; but (what is lamentable to be ſpoken)
“ are *ſuffer'd* to combine into *Bodies and Seminaries,* wherein *Atheiſm,*
“ *Deiſm, Tritheiſm, Socinianiſm,* with all the helliſh Principles of *Fana-*
“ *ticiſm, Regicide* and *Anarchy,* are *openly profeſs'd* and taught, to corrupt
“ and debauch the Youth of the Nation in all Parts of it, down to Poſ-
“ terity, to the preſent *Reproach* and future *Extirpation of our Laws and*
“ *Religion.*”

The *ſuffering* theſe Things is a direct Charge upon the *Adminiſtration* ; and he in Effect *declares* it ſo, when he concludes, that this is to the *Reproach of our Laws and Religion* ; that is, of thoſe that do not *mend,* or do not *execute* the Law: And he brings it Home to the firſt Clauſe, when he declares the Conſequence to be the *Extirpation of our Laws and Religion.*

The Paſſage I before read, *Page* 22. concerning Perſons of Characters and Stations, likewiſe proves this: For what can be a greater Charge upon the Adminiſtration, than to accuſe the Miniſtry of putting into *publick Stations Falſe Brethren,* that *betray* the Church, and *impower* others to *deſtroy* it? That the Expreſſion there is ſo general, as to reach *all* in publick Stations, I have before obſerv'd; and that it is ſo *meant,* may be thus made plain. In the ſame Paſſage he is apprehenſive that thoſe Perſons Behaviour ſhould give Occaſion for believing *Religion to be but State Craft* ; that is, a Stratagem us'd by the State to ſerve its own Ends: “ *That the Doctrines*
“ *of the Church lie not ſo much in its Articles, as its Honours and Revenues* ;”
which Honours and moſt tempting Revenues are in the Hands of the Crown, and thoſe that are byaſs'd by them muſt be byaſs'd by the Crown and the Adminiſtration.

Page 23. “ *A Falſe Brother is repreſented as relinquiſhing his old Friends*
“ *and Principles, and betraying his own Party for the little ſordid Lucre of*
“ *Place*

“ *Place or Preferment.*” Here is a plain Repreſentation of a Villain ſelling his Conſcience; the Price is *Place* or *Preferment*, the Buyer that pays him that Price, muſt have the *Diſpoſal* of thoſe Places and Preferments; ſo that *thoſe* Falſe Brethren are not only *ſuffer'd*, but *made* ſuch by the Adminiſtration.

That the Falſe Brethren, which he mentions, as put into Places, are put in by our Governors, he plainly ſuggeſts, *Page* 18. when he bids *the Governors conſider* whether they are fit to be *intruſted, eſpecially with the Guardianſhip of our Church and Crown:* For to what Purpoſe is that *qualified* Admonition, if the Governors put ſuch Perſons into no Places at all? Admonitions to Temporal Governors, with reſpect to mere Matters of Government, tend only to affront 'em, if preſent, but *can* have no other Effect, when they are abſent.

Let the Preface to the *Derby* Sermon, without any Obſervation or Comment upon it, conclude this Head: “ Now, when the Principles and Intereſts of our Church and Conſtitution are ſo ſhamefully betray'd and run down, it can be no little Comfort to all thoſe, who wiſh their Welfare and Security, to ſee, that notwithſtanding the *ſecret Malice* and *open Violence* they are perſecuted with, there are ſtill to be found ſuch worthy Patrons of both, who dare own and defend them as well againſt the rude and preſumptuous Inſults of the one Side, as the baſe undermining Treachery of the other.” For I omit to repeat what has been obſerv'd upon the third Article, or upon the former Clauſe ſpoke to by myſelf.

I RETURN now to the firſt Clauſe of this Article, which runs thus: “ That he *ſuggeſts that her Majeſty's Adminiſtration, both in Church and State, tends to the Deſtruction of the Conſtitution.*”

This is made out from what has been ſaid on the other two; for, if Men of Characters and Stations in Church and State, that *betray* our Conſtitution, and *encourage and enable others to deſtroy it*, come into their *Places* through the *Adminiſtration*; if the general *Male-Adminiſtration of her Majeſty and thoſe in Authority under her*, conſiſt in Part, in *preferring* and *encouraging*, at leaſt *not diſcouraging* thoſe Perſons that *betray* and *deſtroy* the Conſtitution; the neceſſary Conſequence is, that all thoſe fatal Miſchiefs complain'd of *ariſe from the Adminiſtration*, which therefore plainly *tends to the Deſtruction of the Conſtitution.*

Beſides, having involv'd all thoſe, in this Deſcription of Falſe Brotherhood, who defend Toleration; and having declar'd the *Church's Adverſaries Chief:* Conſidering *who is Chief, and what Promiſes* have been made for Continuance of the *Toleration*; his Inſolence ought to be treated rather with Indignation and Contempt, and a juſt Puniſhment, than vouchſaf'd an Anſwer.

As to the next Clauſe; “ And as a *publick Incendiary*, he perſuades her Majeſty's Subjects to keep up a *Diſtinction* of *Factions and Parties*, inſtils groundleſs *Jealouſies*, and foments deſtructive *Diviſions* among them, and excites and ſtirs them up to *Arms and Violence*;” 'tis ſufficient in ſhort to ſay this:

What he advances againſt the Foundation of the *preſent Eſtabliſhment*, and againſt the *Adminiſtration*, is as an *Incendiary*.

That he perſuades Men to keep up *Diſtinctions*, and inſtils groundleſs *Fears and Jealouſies* among them, is plain, from the Drift of all he ſays; from his Language of *forſaking old Friends and Principles, betraying their Party*, which he makes to be the great Crime of *thoſe in Places*, and goes to ſhew the Folly of it, *pag.* 23.

And though he pretends, in his Anſwer, that he invites Schiſmaticks into the Church, it is only on thoſe Terms, that they comply with his Notions to a Tittle: He makes no Allowance for human Frailty, for Prejudice or Ignorance, and in ſome Inſtances expreſsly diſallows 'em; and thoſe who are ſo weak as to fancy the Church in *any* Particular not to be in the right, tho' in all others they would ſincerely and *conſtantly* conform to it, even *they* muſt continue Schiſmaticks ſtill: If, with theſe miſtaken Opinions, they communicate with the Church; they are *Falſe Brethren*, and as ſuch to be *abhorr'd:* And yet if they do not, they are not to be *tolerated*.

Nay, whoever has ſo much Compaſſion for ſuch a Caſe, as to think it might be tolerated, is a falſe Brother too, as defending Toleration, which is giving up *one Point of the Diſcipline of the Church*, and encouraging the Schiſm.

For, though he ſeems *in Words* to approve of an Indulgence to *Conſciences truly ſcrupulous*, yet *in Reality* he approves none; ſince he admits not any one to have a Conſcience *truly ſcrupulous* that differs from him, but all ſuch are *Falſe Brethren*, *Villains*, and to be ſtigmatiz'd with all the other Names of Reproach he is ſo liberal of.

As to *Fears and Jealouſies*, thoſe are naturally produc'd by theſe Repreſentations of the Dangers the Church and Conſtitution are in; and as thoſe Dangers are merely *imaginary*, thoſe Fears and Jealouſies are *groundleſs*.

As to his inciting her Majeſty's Subjects to *Arms and Violence*, that he does it is moſt manifeſt.

The ſpreading among the People ſuch hideous Repreſentations of an evil Government, ſuch Outcries *of the Church and true Religion being undermin'd, betray'd and expos'd by thoſe in the Adminiſtration, naturally* tend to Rebellion. And therefore at Common Law, as we find it expreſs'd in our Law Books, to * *bear the People in Hand* (I give the very Words), *that the King's Government was erroneous, heretical or unjuſt, whereby the Manner of the Government was arraign'd or impeach'd, was High-Treaſon.*

The Paſſion, Heat and Violence in this Sermon preach'd in publick, could be intended for nothing elſe but to raiſe the Paſſions of thoſe that heard it.

The People are call'd upon *to put on Reſolution and Courage*, they are aſſur'd the Cauſe *at preſent* requires the *braveſt Reſolutions*; he exhorts them to *contend earneſtly for the Faith*; having elſewhere ſhewn againſt whom, againſt *Falſe Brethren*, againſt the Enemies he had deſcrib'd, ſuch as have *Places and Preferments*, are *Men of Characters and Stations*; ſuch as are *Chief* and *at preſent proſper*, and denounces *Woe againſt the fearful Heart and faint Hands.*

The Expreſſion of *ſtanding by her Majeſty with Lives and Fortunes*, and of *ſacrificing them in her Service*, being now become a familiar Phraſe, for *aſſiſting her in War*, thoſe Expreſſions are affected.

In the Dedication of the *Derby* Sermon he extols thoſe, who are for maintaining what he calls *forſaken Truth*, with their *Lives and Fortunes.*

And in the Sermon at St. *Paul*'s, pag. 9, 10. the Readineſs to *ſacrifice Lives and Eſtates* in Vindication of the Church, is repreſented as ſo *Noble* a Reſolution, that in Compariſon to that, Obedience to her Precepts, that is, *a good Life*, is but as the *one thing neceſſary* in the Goſpel, only an extraordinary Pitch of Perfection, only as the ſelling all his Goods, and giving the Price to the Poor, was to an exact Obſervance of the whole Moral Law.

But in the Dedication of the St. *Paul*'s Sermon he ſeems to *avow* this Deſign; he pretends not his Sermon to be Chriſtianity, but *owns* it to be *Politicks*; not *preaching Peace*, but *ſounding a Trumpet*. For he ſtates the Objection, *That the Pulpit is not a Place for Politicks, and that 'tis the Buſineſs of a Clergyman to preach Peace, and not to ſound a Trumpet.* What's his Anſwer? Does he deny the Objection to extend to himſelf? No, he admits it, and juſtifies it by Pretence of a Divine Command, and treats the Maxim laid down in the Objection with Scorn, as contrary to the expreſs Word of God.

In his Anſwer to this laſt Part of this Clauſe, he ſeems firſt to repreſent it as *inconſiſtent* with his *Poſition* of the utter Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever, and with his *Profeſſions* of Loyalty to her Majeſty; and then attempts to *confute it* (as his Expreſſion is) by a Paſſage in the *Derby* Sermon.

As for the latter, I think it rather a Juſtification of the Charge; for the Paſſage aſſerts, *That every Man has, by God and Nature, a Commiſſion to ENGAGE the Enemies of the Conſtitution*; that is, (as he has painted them) the Queen and her Miniſtry.

The other is founded on a Suppoſition that he is never inconſiſtent; a very civil Compliment to himſelf, but as it happens, very falſe.

But to conſider this Part of the Anſwer a little more particularly. As he has here managed the Matter, I own there is *in this Particular* no Inconſiſtency. We ſay, *he has ſtirred up her Majeſty's Subjects to Arms and Violence:* He ſays, *he has declar'd all Reſiſtance unlawful*; yes———all Reſiſtance to the Supreme Power; but he has never declar'd Reſiſtance to her Majeſty unlawful. He maintains the utter Illegality of Reſiſtance on any Pretence whatſoever to the *Supreme Power*, but no where ſays, that in the Supreme Power he *includes her Majeſty*, or that it is *illegal to reſiſt her*. The utter *Illegality of Reſiſtance to the Supreme Power, upon any Pretence whatſoever*, her Majeſty's profeſſed Enemies will come into, and labour for; meaning only to condemn the Reſiſtance that *was* made againſt *King* James *the Second*, which brought about the Revolution, and any Reſiſtance that *ſhall be* made againſt the *Pretender*, whenever he comes; and Dr. *Sacheverell* goes no further.

Thoſe Enemies of her Majeſty have, ever ſince the Revolution, made it their Buſineſs to blacken it, to raiſe Scruples in People's Minds about it, and to make the Adminiſtration odious: The ſame Methods are advanced by Dr. *Sacheverell* into the Pulpit; and if thoſe Methods are to appear in the greateſt Aſſemblies, on the moſt ſolemn Occaſions; if the Revolution muſt be *attack'd* on a Day when her Majeſty has appointed it to be *Commemorated*; if her Majeſty's Reign is to be arraign'd in Publick, and an Appeal made to the Paſſions of the People; let it be attended with what *Profeſſions* it will, it equally ſtrikes at her Majeſty and the Eſtabliſhment; and the Commons could not but think themſelves oblig'd, in Duty and Gratitude to her Majeſty, and in Juſtice to the whole Nation, to call him that uſed 'em thus to a publick Account: And let this Gentleman commend his own Loyalty as much as he pleaſes, 'tis plain that in this Sermon he is doing the very ſame *Work*, and in the very ſame *Method*, with thoſe that *diſown Allegiance* to her Majeſty.

My Lords, Permit me to obſerve a little his Management of this Text: Suppoſing the Doctor to be *right* as to his *Doctrine*, and that he believes himſelf to be ſo; and that he is *ſincere* in his *Profeſſions* of Loyalty to the Queen. For I am not now going to diſpute or limit the Doctrine of Non-Reſiſtance, which was the Buſineſs of thoſe Gentlemen that ſpoke to the firſt Article.

By *Falſe Brethren* in the Text of this Sermon were meant, thoſe who *pretended* to be Chriſtians, but really *were not*. Dr. *Sacheverell* ſeems ſo to underſtand it; and therefore to declare thoſe to be *Falſe Brethren in the CHURCH*, that pretend to be of the Communion of the Church of *England*, but are not; that live in its Communion, but own not its Doctrines and Authority. By like Analogy, *Falſe Brethren in the STATE* are ſuch, that perhaps ſwallow the Oaths to the Queen; or if they go not ſo far, yet take the Benefit of her Laws, her Courts, her Protection, yet deny her Allegiance, and are for another Prince. A juſt and well-managed Reproof of theſe had been a noble Topick for one that pretends all this Zeal for the Queen. But they are wholly paſs'd by, *they* are not to be blam'd, there's no Danger from *them* either to Church or State. Who then, according to the Doctor, are *Falſe Brethren in the State?* (He was hard put to it to ſubſtitute ſome others in their Place.) They muſt be only thoſe who *one Way or other* oppoſe the Doctrine of *Non-Reſiſtance upon any Pretence whatſoever*, whom he deſcribes in ſeveral invidious Inſtances, and in all poſſible Terms of Reproach. This ſeems ſtrange.

1. This being, as he ſtates it, an Error in a Doctrine of the Church, the holding it is only one Branch, one Inſtance of *Falſe Brotherhood in the CHURCH*; and therefore not ſo proper to ſtand for a diſtinct Head of *Falſe Brethren in the STATE.*

2. The bare denying or not believing the Doctrine of Non-Reſiſtance, ſuppoſing it true, does not denominate a Man a *Falſe Brother in the STATE.*

Suppoſe then a Man own the Queen's Title, be ſatisfied with her Adminiſtration, in Love with her Reign, convinc'd that ſhe has principally at Heart his Intereſt, and the true Intereſt of all her Subjects; believes that upon the Continuance and Quiet of her Government depends the Preſervation of our Liberties, and thoſe of all *Europe*, and accordingly obeys and ſerves her with Sincerity and Zeal, and thinks all Reſiſtance to her utterly unlawful; is this Man a Falſe Brother in State, a Rebel, a Traitor, becauſe he thinks Reſiſtance *was* lawful at the Revolution, and *may* be ſo whenever the ſame Breaches of the Conſtitution are repeated?

Is he a Rebel to *THIS QUEEN*, becauſe there *poſſibly* may happen a Caſe, wherein he *may* reſiſt *another* Prince, if that Prince *ſhould* do what he's *ſure* SHE *never will?*

At moſt, that Miſtake only *expoſes* ſuch a Perſon more eaſily to be miſled: He *may* be in more *Danger* of becoming a Rebel to a Prince he ſhall be diſſatisfied with, but *is not* therefore a Rebel to a Queen he loves.

How then comes this ſingle Inſtance of Falſe Brotherhood in State to be inſiſted on, which at moſt ſhews, not that the Perſon *is*, but only that perhaps he *may become* a Falſe Brother; and thoſe Inſtances paſs'd over, where Perſons *plainly* are Falſe Brethren in State?

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* *In* William'*s Caſe in* 2 *Rolls Reports*, pag. 89, 90.

Further, This Doctrine being, as the Doctor ſays, *a fundamental Doctrine in State*, urged with *Warmth* and *Vehemence*, one would expect ſome *Inference* to de drawn from it: One would expect that he, who had ſo great a Zeal as the Doctor profeſſes for her Majeſty, and had ſo triumphantly eſtabliſhed abſolute Non-Reſiſtance, would have fallen in ſo far with the *Buſineſs of the Day*, and have made ſo much uſe of his *Favourite Doctrine*, as to *diſſuade* from Rebellion; and when he had taken Notice of theſe falſe Steps in the Adminiſtration, that he ſhould have perſuaded the People to make proper Applications for Redreſs, but to be careful not to let the *Faults of the Miniſtry* cauſe 'em to forget their *Duty to the Queen*. But there's not the leaſt Exhortation to that Purpoſe.

All this ſeems ſtrange, taking it for granted that the Doctor is ſincerely zealous for the Queen.

Give me Leave, therefore, to make another Suppoſition: Suppoſe this Zeal is but *pretended* to the Queen, but *really* for another, and that he thinks the other his rightful Prince; your Lordſhips will find all conſiſtent, every Expreſſion, and the whole Procedure exactly juſt.

In Conſequence of that *concealed* Sentiment, tho' he dare not directly commend thoſe who own the Pretender, yet neither will he reprove them as *Falſe Brethren in the State*; they being, according to his Opinion, the only Perſons who perform their Duty in it. Therefore the *true* Notion of Falſe Brotherhood muſt be dropt; and inſtead of it, they that hold Reſiſtance lawful in Caſes of *Extremity*, and particularly in that of the *Revolution*, are to be fallen upon; for they are really Rebels and Traitors in his Senſe, becauſe they directly overthrow all the Title which the Diſaffected here would fancy for the Pretender.

As long as the *Revolution* ſtands unimpeach'd, *that Perſon* can have no *Title*, let his Pretence be as favourable as he pleaſes: If the *Revolution* ſtands, the *Laws* which are founded upon it ſtand too; and thoſe Laws concerning the *Right and Succeſſion* of the Crown, are abſolutely binding; and therefore, whatever *Right* he *could wiſh* People to believe him to have, all *that* Right, all *that Pretence* of Right *is* as effectually barr'd, as all the Right which thoſe who ſtand in the Courſe of Deſcent before the Princeſs *Sophia* of *Hanover* would have had but for the Act of Settlement, *will be* bound, whenever GOD, for our Sins, ſhall take from us her Majeſty without Iſſue.

This Principle therefore *is fundamental* to the *Pretender*; and, taking the Matter thus, accounts for all that Rage againſt thoſe that diſpute this Doctrine, *as extended* to the Caſe of the *Revolution*, for his ſo often repeating this to be the *Baſis*, the *fundamental Principle* of the Conſtitution.

This ſhews clearly, why neither in the *Sermon*, nor *Defence*, he has once maintain'd the Illegality of *Reſiſtance* to *her Majeſty*.

This ſhews, why this *fundamental Principle* is ſo totally forgot to be *preſs'd* by him upon the People; no *Inference* from it, that thoſe Miſmanagements ought not to make them forget their Duty *to the Queen*; *not one Perſuaſive* to Obedience to *her*; not *one Admonition* againſt the Conſequence of Falſe Brotherhood in the State, that it was apt to make People rebel; *no cooling* the People, with telling 'em that Prayers and Tears were the only Arms of the Church; that they ought to do their *own Duty*, ſubmit *wholly to the Queen*, and *thoſe in Authority* under her, and leave the reſt *to GOD*. Theſe were the natural Conſequences of this Doctrine of Non-Reſiſtance ſo violently contended for, but not one of them purſu'd or mention'd.

And perhaps *this* made him chuſe to deſcribe the Caſe of *our Church*, p. 26. in the Words of the Prophet in the *Lamentations*, which are in *ch.* i. *ver.* 4, 5. (tho' not truly cited in his printed Sermons) *The Ways of Sion mourn for a time, and her Gates are deſolate, her Prieſts ſigh, and ſhe in Bitterneſs*, becauſe *her Adverſaries are chief, and her Enemies AT PRESENT proſper.*

My Lords, That Book was wrote juſt after *Nebuchadnezzar*'s taking *Jeruſalem*; and the Condition of the *Jews then*, which is thought proper by him to give an Image of *our's now*, was this:

They were inſlav'd, their *King* in a *Foreign* Country, *ſtripp'd of his Crown*, and the *Prince then Reigning* was an *Oppreſſor*, that had no other *Title* but *Poſſeſſion* and *Force*.

Thus has the Doctor, out of his *tender Concern for her Majeſty's Perſon and Government*, thought fit to expreſs his Sentiments.

THE laſt Part of this Charge is that of *Wreſting and Perverting divers Texts and Paſſages of Holy Scripture.* This may not perhaps ſeem ſo proper for me to ſpeak to; but being part of my Province, I ſhall apply to it without any Apology.

My Lords, As wicked and corrupt as Doctor *Sacheverell* would repreſent this Nation, he very well knew, that the Holy Scriptures are had in that juſt Veneration and Regard, that whatever is cited thence has a particular Influence upon the Minds of the People; whatever *Story* can be brought thence as a Parallel, whatever *Expreſſions* taken thence are made uſe of, to paint the Beauty, the Deformity, the Dangers of the Preacher's Subject, give a ſtrong *Impreſſion*, fire the *Zeal* of the People, alarm their *Paſſions*, and make 'em fancy they hear the *Voice of GOD*, when they hear *His Words* repeated.

This the Doctor *knew*, and your Lordſhips will ſee what uſe he makes of it.

When he ſpeaks of the *Perils of the Church*, which *her Majeſty*, your *Lordſhips*, and the *Commons* could not ſee, the *Scripture* is to be ſearch'd for a *Story*, that may be brought to match the Caſe, and to give an Opportunity under other Names, to ſpeak a *bold* Falſhood concerning all *theſe*.

It happens, there is *one remarkable Story* in the Holy Scripture about a *Miſtake of Danger*, but unfortunately it ſuits *not* the Caſe, as told *there*; however, it *gives a Handle*, and he can *make* from it a Story *to his Purpoſe*.

Accordingly he ſays, *pa.* 21. "When *Eliſha*, the *great Prophet of* GOD,
"was ſurrounded with an Hoſt of Enemies that ſought for his Life, his
"*blind Servant* beheld not the Peril his Maſter was in, 'till his Eyes were
"opened by a Miracle, and he found himſelf in the midſt of Horſes and
"Chariots of Fire."

This Story *thus* told is extremely happy for him; for hence the People are to underſtand *him* to be the *inſpired Prophet*; and the *Queen*, *Lords* and *Commons*, *blind* at leaſt, tho' not his Servants.

But the Story in Holy Writ is directly contrary; and it was only the *blind* Servant *fancied* they were in Danger, when *really* they were not.

The Story is in 2 *Kings*, Chap. vi. and, as told there, is thus: The King of *Syria*, at War with *Iſrael*, being inform'd, that what he ſaid in his Bed-Chamber was told to the King of *Iſrael* by *Eliſha* the Prophet, reſolved to ſeize *Eliſha*; and hearing he was at *Dothan*, Ver. 14. (I now give your Lordſhips the very Words) *He ſent thither Horſes and Chariots, and a great Hoſt, and they came by Night, and compaſs'd the City about.* Ver. 15. *And when the Servant of the Man of God was riſen early, and gone forth, behold an Hoſt compaſs'd the City both with Horſes and Chariots: And his Servant ſaid unto him, Alas, my Maſter, how ſhall we do?* [This is the *blind Servant*, that the Doctor ſays ſaw no Danger.] Ver. 16. *And he anſwer'd, Fear not, for they that be with us are more than they that be with them* Ver. 17. *And Eliſha pray'd, and ſaid, Lord, I pray thee open his Eyes, that he may ſee. And the Lord open'd the Eyes of the young Man, and he ſaw; and behold the Mountain was full of Horſes and Chariots of Fire.* The Doctor's Expoſition is, That this *Heavenly Guard*, theſe *Horſes and Chariots of Fire*, which were there only to *defend* the Prophet, were to deſtroy him; and from *them* ariſes the *Danger*, which the Doctor fancies the miraculous Opening the Servant's Eyes diſcloſed to him.

I think I may give the Doctor his *Choice*, what this proceeded from, whether from his *not knowing* this Paſſage, but taking it upon *Hearſay*, or his Reſolution *knowingly* to *pervert it?*

The next Paſſage is, *pa* 26. the Words of St. *Paul*, *Eph.* vi. with which, after a Diſcourſe where all the ſocial and good-natur'd Virtues are taught in the higheſt Perfection; where he had recommended, Chap. iv. ver. 2. *Lowlineſs*, *Meekneſs*, *Long-ſuffering*, *forbearing one another in Love*; *endeavouring to keep the Unity of the Spirit in the Bond of Peace*: Where he had commanded, Ver. 31. that *all Bitterneſs, and Wrath, and Anger, and Clamour, and Evil-ſpeaking be put away, with all Malice*: And *Ver.* 32. that thoſe to whom he writes ſhould be *tender-hearted*, *forgiving one another, even as God for Chriſt's ſake had forgiven them*: Ver. 27. That had forbidden *giving place to the Devil*, but not to any other. The Apoſtle concludes, That in this *Spiritual Warfare*, and that they *might be able to withſtand the Wiles of the Devil*, they ſhould *put on the whole Armour of God*; becauſe *they wreſtled not againſt Fleſh and Blood; but againſt Principalities, againſt Powers, againſt the Rulers of the Darkneſs of this World, againſt Spiritual Wickedneſs in High Places.*

This Gentleman, after a Diſcourſe full of *Bitterneſs*, *Reviling*, *Wrath*, *Clamour and Evil-ſpeaking*, *forbearing* no Man *in Love*, nor *forgiving* any that differs from him one little; and having ſhewn other *Devils* incarnate, (*page* 23, 25.) the *worſt of Dæmons*, other *Powers*, others *in Places and Stations*, againſt whom *his Auditors* were to *contend earneſtly*; repeats thoſe Words, not in the *Spiritual Senſe* the Apoſtle uſed them, but (as the whole *Subject and Drift* of his Diſcourſe ſhews) as an *odious Deſcription* of the *Government*, in Scripture Words: And whether he meant the *Armour* in the Apoſtle's Spiritual Senſe, any more than any of the other Words there, or whether he intended it a *Literal Earthly Armour*, which the *Cauſe* would make the *Armour of God*, I leave to your Lordſhips to determine. However, 'tis no Defence for him, what he ſays, That the *Arms of Reſiſtance to Princes, is no Part of the Spiritual Armour recommended by St.* Paul; becauſe he has plainly departed from St. *Paul*'s Spiritual Meaning.

And that this is his *Meaning*, to *paint* here our *preſent Circumſtances* in Scripture Language, is further plain from what follows; That the *Church is bleeding of the Wounds which ſhe has received in the Houſe of her Friends*; borrow'd from *Zach.* xiii. *Ver.* 6. That the *Ways of Sion may mourn for a Time, and her Gates be deſolate; though her Prieſts ſigh, and ſhe in Bitterneſs, becauſe her Adverſaries are Chief, and her Enemies AT PRESENT proſper.* I have before obſerv'd, from what Circumſtance of the *Jews* this Image is borrow'd; and your Lordſhips will take notice, what *Changes* in the Expreſſions he has made, to render them more *Emphatical*.

My Lords, There can be no greater Perverting of Scripture, than to make uſe of the Languge of the Holy Ghoſt, to revile our *Neighbours*, to ſcandalize the *Government*, and to raiſe *Wrath*, *Sedition*, and *Rebellion* in the *People*.

The laſt I ſhall mention, is that in the Dedication of the *St. Paul*'s Sermon; where propoſing it as an Objection, that *it is the Buſineſs of a Clergyman to preach Peace, and not to ſound a Trumpet in Sion*; he affirms that to be *expreſly contrary to the Command of God*; and to *prove* that Command, cites theſe Words, *Cry aloud, and ſpare not*, which are in *Iſa.* lviii. 1.

My Lords, This I apprehend to be not only *Perverting*, but that to Men of Underſtanding it will ſeem *ridiculing* Scripture. To infer, that becauſe they were to *ſpeak loud*, they were to *ſound a Trumpet*, ſeems ridiculous.

Or if he had cited the reſt of the Words, *Cry aloud, and ſpare not; lift up thy Voice like a Trumpet, and ſhew my People their Tranſgreſſion, and the Houſe of Jacob their Sins*; he had indeed found the Word Trumpet, but little to his Purpoſe: For becauſe the Prophet was to imitate a *Trumpet* in the *Loudneſs*, that the People might *hear*; was he to imitate it too, as it is an *Inſtrument of War*, that they might *prepare themſelves for Battle?* Becauſe he was *loudly to tell them* their *own Sins*, that they might *repent*; was he likewiſe to *trumpet* to them the Faults of the *Government*, that they might *take up Arms*, and *redreſs* them by *Rebellion?*

If he find any *other Place* in the Old Teſtament to command the Prieſts to ſound a Trumpet, I ſhall refer him to the 10th of *Exodus*, where he'll find the Prieſts were *literally* to ſound the ſilver Trumpets in the Army, *in the Field*; but he'll not find, they ever ſounded it from the *Pulpit*.

My Lords, I ſhall offer nothing further to your Lordſhips on this Head, though there is room for it.

But there are *Two* Things in the *Anſwer to this Article*, I cannot omit taking Notice of.

The *firſt* is in his Anſwer to the *firſt Part* of this Article, that charges him with *ſuggeſting*, *That her Majeſty's Adminiſtration, in Church and State, tends to the Deſtruction of the Conſtitution*; where he takes *great Comfort*, that in this Article he is charg'd not with Suggeſting *and Maintaining*, but Suggeſting *only*; and hopes that bare Suggeſtions, or Inſinuations, ſhall not involve an *Engliſh* Subject in the Guilt and Puniſhment of High Crimes and Miſdemeanors. I don't envy him his *Comfort*, nor ſhall labour to take it from him, tho' it ſeems *ſtrangely founded*: For tho' it is *expreſly* ſaid, that he charges *her Majeſty with a general Male-Adminiſtration*; tho' the Accuſation be *poſitive*, that *as a Publick Incendiary, he perſuades the Subjects to keep up Parties, foments Diviſions amongſt them, and ſtirs them up to Arms and Violence, and perverts divers Texts of Scripture*; notwithſtanding *all theſe* poſitive Charges, yet the *firſt Expreſſion* happening to be *only*, *Suggeſt*, and *not Maintain*, it ſeems he is very *happy* in it.

But, my Lords, this is an *extraordinary Step*; that let a Man caſt never ſo many *Scandals* and *Reproaches* on the *Government*, though in never ſo *public a Manner*, yet if it be done by way of *Suggeſtion* and *Inſinuation*, and the Charges not expreſly *maintain'd* and *avow'd*, there is no Crime in it, or not any *high* one. That is, in ſhort, *Sedition*, and expoſing the Government is lawful; only the *Manner* is to be taken Care of. Don't do it *directly and avowedly*, for that would be *dangerous*; but do it by *Suggeſtions*, that every Body will *underſtand*, and which will have their *full Effect*, and all's *ſafe:* For thoſe that come to judge you, are not to underſtand you, though every Body elſe does.

My Lords, Here are two extraordinary *Claims of Right* before your Lordſhips, and of great Conſequence, if you allow them; one, that the *Clergy* may ſound a Trumpet in *Sion* in a *Military Senſe*, and are not to be reſtrained to the preaching of Peace; the other, that every *Engliſhman* is at Liberty to *aſperſe the Government* at Pleaſure, by whatever *Suggeſtions* and *Inſinuations* he pleaſes; and theſe made by a *warm* Advocate for *Paſſive Obedience*, the moſt *peaceful* and *ſubmiſſive* Doctrine in the World.

My Lords, In the Caſe *de Libellis Famoſis*, in the Fifth Report, there was a Proſecution for a Libel, not indeed ſet forth at large in the printed Book, (as was not fit) but thus far particularly taken Notice of, that it traduced and ſcandalized one Perſon *dead*, and him an *Archbiſhop* too, by *Deſcriptions and Circumlocutions*, and not in *Expreſs Terms*; and nobody ever doubted but it was *Criminal*. But though there ſhould be a greater Strictneſs obſerved in reſpect of *private Perſons*, yet when the *Queen* and *Government* are concerned, when *All* lies at Stake, a Man ought to *guard* himſelf and his Expreſſions, not to touch in the leaſt there: And every Man that's *truly* loyal, and deſires the *Peace* of his *Country*, *will do* it. And knaviſh Deſigners againſt the Public Peace are not to be ſuffered to go on in overthrowing it, becauſe they have contrived *crafty Ways* of doing it.

I mention this only to oppoſe the *preſent Claim*; though, in our Caſe, the Reflections are *plain* and *full*.

The other is his Lamentation at the Cloſe, which I cannot but take Notice of, as an inſolent Reflection on the *Honour* and *Juſtice* of the *Houſe of Commons*. "Hard is the Lot of the Miniſters of the Goſpel, if, when "they cite the Word of God in their general Exhortations to Piety and "Virtue, or in the Reproofs of Men's Tranſgreſſions, or when they are "lamenting the Difficulties and Conflicts with which the Church of "Chriſt, while Militant here on Earth, muſt always ſtruggle, the ſeveral "Texts and Paſſages by them cited ſhall be ſaid to have been by them "meant of particular Perſons and Things, and ſhall be conſidered in the "moſt Criminal Senſe, and be made (by ſuch Conſtruction) one Ground "of an Impeachment for High Crimes and Miſdemeanors."

My Lords, This was put into the Anſwer, not by way of Defence, but to make that Uſe which has been made of it, to print it before it came to be conſidered, and lay hold of that as an Handle, as has been done, to ſay, Dr. *Sacheverell* has been proſecuted only for *doing his Duty as a Clergyman*; which is a ſcandalous Reflection.

Is the Story of *Eliſha*, *as told by him*, an *Honeſt* Citation of a Paſſage of Scripture?

Are *Enemies* that are *Chief*, and the *Adverſaries* that at *preſent Proſper*, no particular Perſons now in Being; though to the Scripture Expreſſion he has added the Words, *At preſent*, for fear the Application ſhould not be cloſe enough.

Is this Sermon an *Exhortation to Piety and Virtue?* Or is it not manifeſtly a *Trumpet to Rebellion?* Is it a ſhewing the Audience their *own Faults*, that they may *cure* them, and *amend their Lives?* Or is it not plainly the *Expoſing* the Faults of others, the *Faults of their Governors*, that they may *hate the Perſons?*

Even the Doctrine of *Paſſive Obedience*, is it here ſo warmly contended for, that People may be *dutiful* and *ſubmiſſive?* or that they may be *enraged* againſt thoſe that deny it? In ſhort, Is there *one Chriſtian Virtue* taught in it, except your Lordſhips will honour with that Name the ſticking, not to the *Church* and *Chriſtianity*, but (according to the Doctor's own Expreſſion in another Place) *to a Party?* and *Courage*, not only a *Paſſive*, (which he no where recommends) but an *Active* againſt the *Government*, to which the whole Diſcourſe *incites?*

My Lords, The *Commons* have the greateſt and juſteſt *Veneration* for the *Clergy* of the Church of *England*, who are *Glorious* through the whole *Chriſtian World* for their *Preaching* and *Writing*, for their *Steadineſs* to the Proteſtant Religion, when it was in the utmoſt Danger. They look upon the *Order* as a *Body of Men* that are the *Great Inſtruments*, through whoſe Aſſiſtance the Divine Providence conveys *ineſtimable Advantages* to us. They look upon the *Church Eſtabliſh'd* here as the beſt and ſureſt *Bulwark* againſt *Popery*; and that therefore all *Reſpect* and *Encouragement* is due to the *Clergy:* And it is with *Regret* and *Trouble*, that they find themſelves obliged to bring before your Lordſhips, in this Manner, *one of that Order*.

But when we conſider Dr. *Sacheverell ſtripping* himſelf of all the becoming Qualities *proper* for his *Order*, nay, of all that *peaceful* and *charitable* Temper which the Chriſtian Religion requires of *all* its *Profeſſors*, *deſerting* the Example of our *Lord* and *Maſter*, and of his Holy *Apoſtles*, and with *Rancour* and *Uncharitableneſs* branding all that differ from him, (though through *Ignorance*) with the Titles of *Hypocrites*, *Rebels*, *Traitors*, *Devils*; *reviling* them, *expoſing* them, *conducting* them to Hell, and *leaving* them *there*; *treating every Man* that falls in his Way, worſe than *Michael* the Archangel uſed the *Devil*; coming himſelf more near the Character in St. *Jude*, (Part of which he would apply to others) *deſpiſing Dominion*, *ſpeaking Evil of Dignities*; *like raging Waves of the Sea foaming out* his *own Shame*; *forgetting* (when his *Text* and his *Doctrine* led to it) to recommend the *Peace of his Country*, in a Time when all *Europe* is in *War*, and nothing can preſerve us from falling into the Hands of the *Grand Enemy and Oppreſſor*, but our Unanimity under *her Majeſty:* Then *labouring* to *ſap* the Eſtabliſhment, and *railing* and *declaiming* againſt the *Government*; crying *To Arms*, and *blowing a Trumpet* in *Sion*, to engage his *Country* in Seditions and Tumults, and overthrow the *Beſt Conſtitution*, and betray the *Beſt Queen* that ever made a People happy: and this with *Scripture* in his Mouth!

The Commons looked upon him, by this Behaviour, to have *ſever'd* himſelf from *all the reſt* of the Clergy, and thought it their Duty to bring to Juſtice ſuch a Criminal; and are in no Fear of being thought *Diſcouragers* of thoſe who preach *Virtue* and *Piety*, becauſe they, in the Supreme Court of Juſtice, *proſecute* him that preaches *Sedition* and *Rebellion*; or to have any *Deſign* to leſſen the *Reſpect* and *Honour* that's due to the *Clergy*, by bringing him to Puniſhment that diſgraces the *Order*.

Mr. Secretary Boyle. MY Lords, I am commanded by the Houſe of Commons to have a Share in maintaining the Articles of Impeachment againſt Doctor *Sacheverell*; and it falls to my Lot to ſpeak to this Fourth Article, which contains no leſs a Charge, than endeavouring to excite and ſtir up her Majeſty's Subjects to Arms and Violence.

The Ground of this Accuſation, is the Dedication of a Sermon preached at *Derby* at the laſt Aſſizes; and another Sermon preached at St. *Paul's* the Fifth of *November* laſt, a Day ſet apart to commemorate the Preſervation of the King and Parliament from the Gunpowder-Treaſon; and to give Thanks to Almighty God for the Deliverance wrought by his late Majeſty, in reſcuing theſe Kingdoms from Popery and Arbitrary Power.

The whole Nation doth now enjoy the Benefit of that happy Revolution, and all the good Subjects of her Majeſty are thankful for it. One would have thought, that on ſuch a Day, that Matter ſhould not have been ſo handled as only to be expoſed; and I am perſuaded, that whoever goes about to aſperſe and vilify the late Revolution, would rejoice to ſee another.

I ſhall not treſpaſs upon your Lordſhips Patience ſo far, as to repeat the many Paſſages in the Sermon that make good our Accuſation, they having been ſo fully laid before your Lordſhips already by a Gentleman that ſpoke before: And indeed there is the leſs Reaſon to deſcend into Particulars, ſince the whole Scope and Deſign of the Sermon is to inſtill groundleſs Jealouſies into the Minds of People, and to caſt the moſt virulent Reflections imaginable upon her Majeſty's Adminiſtration.

One might ſuppoſe, from the Doctor's Diſcourſe, that the Church of *England* was now ſuffering under the moſt ſevere Perſecution; that the Laws were no longer in Force; and that the whole Government was unhinged. Aſperſions more violent could not be uſed, if we lived in the Reign of the worſt of Heathen Emperors, while we are Partakers of ſo many Bleſſings under the Government of the beſt of Queens.

The Priſoner at the Bar lays ſome Streſs upon the Word *Suggeſt*, as expreſſed in the Fourth Article, which has already received an Anſwer; and would inſinuate, that there are no plain Words in the Sermon to ſupport the Charge. But if that Objection were true, which we are far from admitting, and the Conſequences drawn from it were allowed, I muſt ſay, hard would be the Caſe of the Government, if Men might make the moſt odious Suggeſtions againſt it, and caſt Reflections with Impunity, under the Shelter of ſome doubtful Expreſſions, and equivocal Sentences, at the ſame time that the Senſe and Malice of the Reflections are plain to be underſtood, and can hardly be miſtaken.

He doth indeed affect in his Anſwer, and in one Part of his Sermon, to profeſs great Duty to her Majeſty; but let thoſe Expreſſions be compared with the Calumnies that are heaped upon her Adminiſtration, and I conceive they will not mitigate his Crime, and will avail him no more than the Pretence that he makes to be for Liberty of Conſcience, when he condemns the Toleration. I believe theſe Excuſes will equally weigh with your Lordſhips, and his Sincerity in both will equally appear.

My Lords, It is no new Thing among thoſe who deſign to ſtir up Sedition, to beſtow great Encomiums on the Perſon of the Prince; it has been a common Practice, and the ſame Method was purſued in the late unhappy Times. The Incendiaries of thoſe Days pretended, that the Proteſtant Religion was in Danger under that Government, as the Enemies of our Conſtitution cry the Church is in Danger under this.

But, my Lords, every Thing is in Danger from ſuch ſeditious Diſcourſes. What a Scene of Diſtraction and Wickedneſs is here diſplayed to the Underſtandings of the People, to excite and inflame them to Sedition and Rebellion! Who can ſit ſtill, if they are perſuaded that *the Altars and Sacraments of our Church are proſtituted to Hypocrites, Deiſts, Socinians, and Atheiſts; and this done with Impunity, and without Diſcouragement?* What can be more provoking to all good Chriſtians and good Subjects, than to be told that *People are ſuffer'd to combine into Bodies and Seminaries, wherein Atheiſm, Deiſm, Tritheiſm, Socinianiſm, with all the Helliſh Principles of Fanaticiſm, Regicide, and Anarchy, are openly profeſſed and taught?*

No Man can think he is long to enjoy his Religion, Liberties, or Property, if he can be made to believe, that *the Foundations of the Church are undermined, and the Government endangered, by filling it with its profeſs'd Enemies.* What is the Meaning of all this, but only to make out, that her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution? And what muſt be the Conſequence of ſuch an Opinion inſtilled into the Minds of the People, but black and melancholy Thoughts, ſeditious Practices, and, at laſt, open Force and Violence?

The Prieſts muſt *cry aloud and ſpare not*, they muſt *blow the Trumpet in Sion*; and we are told, there are thoſe that have Lives and Fortunes to maintain ſuch Truths as Doctor *Sacheverell* has laid down. What thoſe Truths are, may be ſeen through the whole Courſe of the Sermon; they are ſuch, my Lords, as we apprehend do not at all tend to the ſtrengthening the preſent Government, though they may be ſerviceable towards ſetting up another.

This is not the Spirit of the Goſpel, nor agreeable to the Principles of the Church of *England*; and we ſubmit it to your Lordſhips Judgment, whether this Sermon is not ſeditious, and whether the Priſoner at the Bar is not guilty of High Crimes and Miſdemeanors?

Mr. Chancellor of the Exchequer. MY Lords, I am commanded by the Commons of *Great Britain* to bear any Part in the Management of the Impeachment againſt Doctor *Henry Sacheverell*, and particularly on this Article. My Lords, I believe, after what you have heard already, you will think there is little Need for me to ſay any thing on this Head; yet I ſhall take the Liberty to mention a few Particulars.

I cannot but take Notice, that in a Sermon preached on a Day appointed to commemorate the Bleſſings we enjoy by the late happy Revolution, there is not one particular Clauſe to ſhew forth thoſe Bleſſings, or the Miſchiefs that were then likely to come upon us. There is a little, indeed, upon the Gunpowder-Treaſon; but upon the Revolution there is nothing, nor doth he take Notice of the Dangers we were in before it, in order to raiſe the Devotion of the People, and their Thanks to God for their Deliverance. But all the Tenor of his Diſcourſe is to ſhow the Male-Adminiſtration of the Government, and the Dangers that have been coming upon the Church ever ſince the Revolution ; ſo that it is plain, that he had no Thoughts of the Bleſſings of that Deliverance, nor any Diſlike to the Conduct of thoſe Times.

My Lords, this Sermon was preached in a Place well choſen to attempt Miſchief in. He well knew, that if he could raiſe an evil Spirit in this great City, it would do more Miſchief than in another Place where he had often attempted it : But, God be thanked, he was diſappointed ; and he owned himſelf, in another Place, that he did not expect the Thanks of the Court of Aldermen for it.

I ſhall take Notice of his Dedication, where he carries on the ſame Deſign, and owns it on ſecond Thoughts. He's not only warm in preaching the Sermon ; but in his Dedication he ſhows with what Spirit he compoſed it : He ſays, That " if honeſt Gentlemen will ſit ſtill, and
" give up their Cauſe for Want of Courage, or a juſt Senſe of the dan-
" gerous Attempts of our Enemies, without the Spirit of Prophecy we
" may foretel what will become of our Conſtitution, when it is ſo vigo-
" rouſly attacked from without, and ſo lazily defended from within."

My Lords, I ſhall not explain the Meaning of thoſe Words, *Sitting ſtill, and Want of Courage* ; but I cannot but take Notice of theſe Words, *The vigorous Attack from without, and the lazy Defence from within.* I would deſire to know who the Doctor takes to be the Defender of the Faith ; and who under that Defender is to protect the Church ? It muſt neceſſarily be meant as a Reflection on her Majeſty, and upon thoſe that under her Authority are to take Care of the Church. The next Paſſage is a plain Confeſſion of his ſeditious Intentions. He tells us his Buſineſs was not to preach Peace, but to ſound the Trumpet. If a Miniſter will declare it not to be his Duty to preach Peace, your Lordſhips will eaſily judge what his Intentions were.

I know it is the Buſineſs of thoſe that are Proſelytes to this Gentleman, to give out that we deſign to narrow our Obedience to her Majeſty. But, my Lords, we are far from it ; and own the greateſt Duty and Submiſſion to our Sovereign : But we canot bear, that a Reflection ſhould be caſt upon the Reſiſtance that was us'd at the Revolution ; and we hope your Lordſhips will never admit a Queſtion to be raiſed of the Legality of it.

My Lords, the Acts of Settlement of the Crown depend upon that Legality : If that be illegal, the others in Conſequence are void ; and though her Majeſty has an hereditary Right to the Crown, yet I take thoſe Acts to be her great Security ; and I can make no Queſtion, but that if the Foundations of thoſe Acts were ſhaken, the Doctor would ſoon find another hereditary Right to reſort to.

My Lords, The Toleration is certainly grounded upon the beſt Principles, upon a Principle of Religion and a Principle of Policy. I think every Body will allow, that nothing can eſtabliſh Peace in a Kingdom ſo well, as the granting Eaſe and Quiet to Men's Conſciences. If they pay due Submiſſion to the Government, they ought not to be perſecuted for their Religion : It is for her Majeſty's Intereſt and Honour. For how can her Majeſty be the Head of the Proteſtant Intereſt Abroad, if Proteſtants are not protected at Home ?

It was the Obſervation of the Lord *Clarendon*, in his Hiſtory, that ſome eminent Clergymen preſſed King *Charles* the Firſt to make Diſtinctions among Perſons ; and that by their Advice, his Embaſſador in *France* was ordered not to go to the *Hugonot* Churches there, as he uſed to do. He lays it as an Imputation on thoſe that gave the Advice ; and makes this Remark, That it was with a Deſign of an Union with the Church of *Rome* ; which proved of very ill Conſequence to his Affairs at that Time.

My Lords, We take it, that it is contrary to the Duty of any private Man to find Fault with a Law in Being, or to declaim againſt the Reaſonableneſs of the ſame ; it is raiſing in the People an ill Opinion of the Lawgivers, and the Adminiſtration.

My Lords, There are ſome People, and I wiſh their Numbers do not increaſe, who will not allow the Church to be out of Danger, whilſt the Civil Magiſtrate has the Government of the Church. Theſe appear publickly, and in Print ; they cancel the Queen's Supremacy, deny the Authority of the Laws, and erect a Church independent on the Civil Government. Of this Church I take the Doctor to be, and very properly for his Purpoſe ; for here he may thunder out his Bulls and Anathemas without Controul : Here is a Field for him to open his Commiſſion in, where he may ſound his Trumpet, and not preach Peace.

But, my Lords, the Commons can never admit the Church, as eſtabliſhed by Law, to be in any Danger during her Majeſty's Adminiſtration ; it being guarded by her Majeſty's Piety and Care of it, by the Reverend Biſhops, who are ſo diligent and watchful in their Functions, and which will always have the utmoſt Aſſiſtance of the Commons and your Lordſhips, to ſupport and maintain. As for their independent Church, I hope it will ever be in Danger ; and cannot but think that wholeſome Severities were very proper to be applied to the Broachers of ſuch ſeditious Doctrines ; they are Popiſh Principles, and if they ſhould obtain here, would certainly bring in Popery along with them.

My Lords, I cannot conclude, without taking Notice of a very unjuſt Reflection made upon the Commons in the Doctor's Anſwer, wherein he charges them with deſigning to reſtrain the Miniſters of the Goſpel from doing their Duty, in recommending Piety and Virtue to their Auditors. Theſe are Doctrines ſo proper to come from the Pulpit, that thoſe that recommend them, will always meet with the Countenance and Encouragement of the Houſe of Commons. But when a Clergyman acts contrary to his Function, and inſtead of reproving Vice and Immorality, takes upon him to reproach the Government ; when inſtead of preaching Peace, and Charity, and other moral Virtues, he takes upon him to raiſe Jealouſies, foment Diviſions, and ſtir up Sedition, 'tis high Time for the Juſtice of the Nation to put a Stop to it : As ſuch a Perſon, we charge Dr. *Sacheverell*, and think we have made good our Charge, and cannot doubt your Lordſhips Juſtice upon the Offender.

And then the LORDS adjourned to their Houſe above.

Thurſday, March 2. The Fourth Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the Manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows :

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made : *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel as before :

Lord Chancellor. Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr. *Lechmere.* MY Lords, Your Lordſhips adjourned Yeſterday, when the Commons were proceeding on their fourth Article, a Share of which Service was appointed to me : The Proofs, we inſiſt on, in Maintenance of this Part of our Charge, have been laid before you with great Exactneſs ; and all the Enforcements they can well receive, have been already offer'd to you, by thoſe Gentlemen, that have gone before me ; ſo that I find myſelf acquitted from giving your Lordſhips much Trouble upon it.

The Charges contain'd in the precedent Articles, are particular and diſtinct ; of ſo high a Nature in themſelves, and of ſuch eminent Conſequence to her Majeſty and her Government, that we have held ourſelves obliged to treat each of them with all imaginable Clearneſs and Solemnity ; and this, my Lords, from that true Zeal and neceſſary Concern, with which the Commons, upon this great Occaſion, are ſo juſtly inſpired, for the Honour of her Majeſty, and the Proſperity of her Kingdoms.

The Subject of this Article is laid down in general Poſitions, ſome of which are the Reſult and Conſequence of the former Articles ; and this will make it neceſſary to remind your Lordſhips of the Paſſages produced in Support of them : The Application of them, to the ſeveral Branches of this Charge, is eaſy and obvious : The further Paſſages, that were Yeſterday pointed out to you, are many in number, and the Aſſertions poſitive, ſcarce liable to any Conſtructions more innocent in themſelves, or more favourable for the Priſoner, than what hath been put upon them : But tho' the more flagrant Parts of the Priſoner's Diſcourſes have been diſtinguiſh'd to you, your Lordſhips can't fail of diſcerning that implacable Enmity that runs through the Whole : How little will your Lordſhips find in it of the Spirit of the Goſpel, of the Temper of a Chriſtian, or a good Subject, much leſs of a Meſſenger of Peace ? No, my Lords, when the Heart is poiſoned, the Corruption will be diffuſed throughout ; when Principles are delivered from the Pulpit, that ſtrike at the Root of the preſent Government, and our future Eſtabliſhment, and are taught as fundamental Rules both of Law and Conſcience ; what Kind of Proofs, what Exhortations are to be expected from ſuch a Preacher ? Surely, ſuch only as you have heard from this Man, ſuch only as may create univerſal Diſſatisfaction, will diſquiet the Minds, and tend to pervert the Obedience of the Subjects ; ſuch only as ſhall be moſt likely to cheriſh and cultivate thoſe Seeds of Sedition, which, when ſufficiently propagated, and brought up to their full Growth, can terminate in nothing leſs than a total Deſtruction.

My Lords,

I am now to acquaint you, That the Commons have gone through their Charge, wherein they have been heard by you with great Candour and Patience : And that imperfect View, which was the beſt I was able to give you, in opening the Charge, has been amply ſupply'd by the great Sufficiency of what has follow'd : And from thence, I think, I have good Grounds to ſay to your Lordſhips, that this Impeachment of the Commons in every Part of it, is ſubſtantially and effectually maintain'd.

And now, my Lords, craving Leave of the Doctor to borrow a Phraſe which ſtands at the Head of the laſt Paragraph of his Sermon, *What is the Reſult* of this Proceeding hitherto ? In opening the Charge, we conſider'd him in the Condition of a Perſon accus'd ; but the Proofs having been produc'd, and the Evidence being unqueſtionable, even from his own Mouth, and by the Endeavours of other Gentlemen, to whoſe Provinces the ſeveral Tasks have fallen, the falſe Colours of his Diſcourſe being taken off, and his Scheme reduced to its true Conſiſtency, give me Leave to repreſent him to your Lordſhips in a true Light, and in his proper Colours.

Your Lordſhips now ſee this Gentleman, under the Reign of the greateſt and beſt of Princes that ever wore a Crown, whoſe Title to the Throne ſtands upon a more ſolid and indiſputable Foundation than that of any Prince upon Earth, guarded and defended by the beſt Laws in the World, and the intire Affection of all her true Subjects, and which none can draw in queſtion with any other Deſign than to weaken its Support :

You ſee him, under an Eſtabliſhment and Conſtitution excellently contrived and adapted to anſwer all the good Ends of Government, and which has withſtood the open Aſſaults of arbitrary Princes, and the more crafty Attempts of Papal Encroachments ; and which, ſince the true Religion was eſtabliſhed among us, has been preſerved in deſpite of the Dangerous Endeavours of Papiſts, by dividing Proteſtants, to make Way for its Deſtruction : A Conſtitution, which happily recovered itſelf at the Reſtoration, from the Confuſions and Diſorders which the horrid and deteſtable Proceedings of Faction and Uſurpation had thrown it into, and which, after many Convulſions and Struggles, was providentially ſaved at the late happy Revolution ; and by the many good Laws paſs'd ſince that Time, ſtands now upon a firmer Foundation : Together with the moſt comfortable Proſpect of Security to all Poſterity, by the Settlement of the Crown in the Proteſtant Line.

Your Lordſhips have found this Perſon, at a Time when the Church of *England* as by Law eſtabliſh'd is in perfect Proſperity and Safety at Home, and in higher Reputation Abroad, than in any Age that has gone before it ; at a Time when the Nation enjoys Peace and Tranquillity, and all the good Effects of a prudent and ſucceſsful Adminiſtration, demonſtrated by the Harmony and unanimous Endeavours of all her Majeſty's true Subjects to ſupport it :

In the moſt ſolemn and publick Manner, levelling the moſt virulent Diſcourſe againſt her Majeſty's Title to the Crown, and againſt our preſent Eſtabliſhment, and calculated to favour the Pretenſion of another.

Your Lordſhips find in it the ſame Principles reviv'd and avow'd in the ſame dangerous Extent by him, as in a late Reign by the profeſs'd Inſtruments of Popery and Arbitrary Power, and apply'd in Condemnation of the glorious Work of the late happy Revolution, which delivered us from them.

Your Lordſhips have found him arraigning the Honour of her Majeſty and her Parliament, aſperſing her Adminiſtration both in Church and State, and with all imaginable Ardour and Vehemence ſtirring up Sedition, and exhorting to Rebellion; and that in the Name of Almighty God, as a Perſon commiſſioned from Heaven to that End, and in the moſt profane and proſtitute Manner abuſing and wreſting Scriptures to thoſe impious Purpoſes.

'Tis on thoſe Grounds, that the Commons have charged the Crimes to have been committed by him with an Intent to undermine her Majeſty's Government, and to ſtir up Arms and Violence: And do your Lordſhips want further Evidence of this? Let us remind you of the Rebellion that has been rais'd, and that High-Treaſon that was committed, the laſt Night, by thoſe Perſons who abet the Priſoner!

I can't aggravate the Offence; your Lordſhips will duly conſider the Height and Quality of it; you will think of a Satisfaction ſuitable to that, and to the juſt Expectation of the Commons.

My Lords,

The Nature and Length of this Proceeding having occaſion'd many Interruptions, we are yet aſſur'd, that no Miſconſtruction will be permitted by your Lordſhips, of what may have fallen from any of us. We likewiſe take Notice to your Lordſhips, that the Commons have very readily acquieſced in your Appointment of Counſel to aſſiſt the Priſoner. Your Lordſhips informed us in the Beginning of the Cauſe, that you did this in great Benignity to him, in aſſigning him thoſe Counſel which he himſelf had aſk'd, and doubtleſs ſuch as are according to his own Heart's Deſire: And the Commons are aſſured, that thoſe Gentlemen will underſtand that Regard which is due to the Nature of this Cauſe, and to the Dignity of a Proceeding wherein the Commons of *Great Britain* appear as Proſecutors.

The Commons conceive, they have Reaſon to take great Satisfaction from this Proceeding, whereby they have the Opportunity in the moſt ſolemn Manner, before the moſt Auguſt Judicature in the World, to aſſert the Freedom and Excellency of our Government, and the Juſtice of the preſent Eſtabliſhment: This ſingle Conſideration ſhews your Lordſhips of what Malignity the Priſoner is capable, who has thus ſet himſelf to diſorder and deſtroy ſo happy and ſo beautiful a Conſtitution.

We deſire to put your Lordſhips in Mind of thoſe Felicities, which, in our Opinions, accompany this Proſecution; when we ſee ſo many of your Lordſhips the Judges of this great Cauſe, who had ſo great a Share in that Deliverance which we are now called upon to vindicate; ſo many others of your Lordſhips, the Sons of thoſe Fathers who joined in it; and who have the ſame Blood ſtill running in your Lordſhips Veins. And when we conſider that firm and ſteady Zeal which every one of your Lordſhips have ſhewn in Support of the preſent Settlement, what Doubt can we entertain of your moſt impartial Juſtice?

We further obſerve it, as the great Security of our Impeachment, That no Endeavours can prevail to prevent your Judgment upon it, nor any Means ſucceed to defeat its Effects.

And on t'other Hand, we have before our Eyes the many good Conſequences, which that Part which the Commons have taken on themſelves will certainly produce; that Strength and Vigour 'twill add to the great Affairs of the Kingdom, and of all *Europe*, at this critical Juncture, when the World ſhall ſee that the Commons of *Great Britain*, who have been ſo unanimous in Defence and Support of the common Cauſe of Peace and Liberty Abroad, are thus zealous to find out and extirpate that malignant Humour, which alone can endanger it at Home; that whilſt the common Oppreſſor feels the Effects of her Majeſty's Arms, the inteſtine Enemies of the Nation, and of her Government, (in the Inſtance of the Priſoner) may ſee and conſider the Force and Weight of the higheſt Reſentment of the Commons.

Thoſe good Effects will receive yet greater Enforcements from your Lordſhips Judgment; which, when it becomes publick, will be an effectual Confutation, or an unanſwerable Treatiſe againſt the peſtilent Doctrines advanc'd by the Priſoner.

The Firmneſs of your Proceedings will give the ſame Steadineſs and Vigour to all other Parts of the Adminiſtration, which will henceforward ſtrive to imitate your Lordſhips in ſo great an Example; and 'twill ſtrike due Terror on thoſe Minds, in which the ſame deſtructive Errors have taken Root.

And, my Lords, What Comfort and Peace muſt it bring to all her Majeſty's faithful Subjects, to ſee her Majeſty's undoubted Title, the Wiſdom of her Adminiſtration, and the Proteſtant Succeſſion, ſo effectually ſupported by your Lordſhips Judgment!

My Lords, We have thought it neceſſary, in Diſcharge of the great Truſt repoſed in us by the Commons, to go through the whole Charge together, that your Lordſhips might have it intire. I am now only to add, That they do reſerve to themſelves the Liberty of replying to what ſhall be offered on behalf of the Priſoner, and of every other legal Advantage that ſhall ariſe to them in the Progreſs of their Impeachment.

Lord Chancellor. Gentlemen of the Houſe of Commons, Have you gone through the Charge?---Mr. *Lechmere.* My Lords, we have.

Lord Chancellor. Then you that are appointed Counſel for Doctor *Sacheverell*, may proceed to his Defence.

Sir *Simon Harcourt.* My Lords, There having been already three whole Days ſpent by the Gentlemen of the Houſe of Commons in Maintenance of their Charge; and this Day being ſo far ſpent, I am bound in Duty humbly to repreſent to your Lordſhips, that it will be impoſſible for us to go through the very firſt Article, ſo as to finiſh in any reaſonable Time. My Lords, We humbly expect your Lordſhips Commands.

Lords. Go on, go on.

Sir *Simon Harcourt.* My Lords, we muſt receive your Lordſhips Commands. We think it of great Importance to go through the firſt Article at once, if your Lordſhips pleaſe to give us Leave.

[*Then the LORDS adjourned to their Houſe above.*]

Friday, March 3. Fifth Day.

THE Lords coming down into *Weſtminſter-hall*, and being ſeated in the Manner before-mention'd, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly charge and command all Manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel, as before:

Lord Chancellor. Gentlemen, you that are Counſel for the Priſoner, may proceed to his Defence.

Sir *Simon Harcourt.* MAY it pleaſe your Lordſhips, I am Counſel for Doctor *Sacheverell*, who ſtands impeached in the Name of all the Commons of *Great-Britain* of High Crimes and Miſdemeanors. The Crimes ſuppoſed to have been committed by him are contain'd in four Articles. I beg leave to poſtpone the three laſt, without mentioning any Thing of them, 'till we have all concluded what we have to offer and lay before your Lordſhips, as to the ſeveral Charges contain'd in the firſt; and endeavour'd to ſatisfy your Lordſhips, That notwithſtanding what has been objected by the Gentlemen of the Houſe of Commons againſt the Doctor, in Maintenance of that Article, he is an innocent Man. The firſt Article contains three diſtinct Charges; we ſhall proceed on them as they lie in Order. The firſt of them is, "That "he ſuggeſts and maintains, that the neceſſary Means uſed to bring about "the late happy Revolution were odious and unjuſtifiable." Your Lordſhips have been inform'd, that by this Expreſſion of, *The neceſſary Means*, mention'd in the firſt Article, the Gentlemen of the Houſe of Commons intend his late Majeſty's glorious Enterprize for delivering this Kingdom from Popery and arbitrary Power, and the Subjects of this Realm well affected to their Country, joining with, and aſſiſting him in that Enterprize. In a ſhorter Deſcription, it has been explain'd, that theſe *neceſſary Means* were the Subjects Reſiſtance to their unfortunate Prince then upon the Throne. Of this Reſiſtance the Doctor has made no Mention in his Sermon. He has, indeed, affirm'd the utter Illegality of Reſiſtance on any Pretence whatſoever to the Supreme Power; but it can't be pretended, there was any ſuch Reſiſtance uſed at the Revolution. The Supreme Power in this Kingdom is the Legiſlative Power; and the Revolution took Effect by the Lords and Commons concurring and aſſiſting in it. Whatever therefore the Doctor has aſſerted of the utter Illegality of Reſiſtance, his Aſſertion being applied to the Supreme Power, can't relate to any Reſiſtance uſed at the Revolution; and conſequently can't be an Affirmance, that ſuch Reſiſtance, or ſuch neceſſary Means, were odious and unjuſtiſiable. One of the learned Gentlemen, who ſpoke the third Day of this Trial, in Maintenance of the laſt Article, concurr'd with me in this; and objected it to the Doctor, That he had guarded himſelf, by confining his Aſſertion to the Supreme Power; and that he had not averr'd the utter Illegality of Reſiſtance to the Queen: But had he in expreſs Terms affirm'd the Unlawfulneſs of ſuch Reſiſtance, yet by the ſame Arguments which have been uſed, the Doctor would have been told, he had been preaching a ſlaviſh Doctrine. My Lords, another Gentleman of the Houſe of Commons (I think there were but two of them who took Notice of this Expreſſion of the Doctor's of *the Supreme Power*) obſerv'd, that the Doctor had aſſerted the Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever; which Power he admitted was the Legiſlative; and declared, if the Doctor had really meant that Power, he ſhould not have differ'd from him; and without doubt, your Lordſhips and all Perſons will concur with him in this, that 'tis utterly unlawful to reſiſt the Supreme Power. But that Gentleman being ſatisfy'd, that tho' the Doctor expreſly mention'd the Supreme Power, which is the Legiſlative, yet he certainly intended the Supreme executive Power, concluded he was guilty of this Charge in the firſt Article; and mention'd it as an Inſtance of the great Mercy and Lenity of the Houſe of Commons, that they had not proceeded againſt him for High-Treaſon, as a *Parſon* in one of the late Reigns was proſecuted for Words which he thought leſs offenſive and dangerous than this Aſſertion preached by Dr. *Sacheverell*. And yet that Gentleman was pleaſed to ſay, That had a Diſſenter, whoſe Affection to the Government was unſuſpected, expreſs'd himſelf as the Doctor did, the Gentlemen of the Houſe of Commons would not have thought fit to have proſecuted him. That Caſe which was alluded to, I take to be the Caſe of Mr. *Roſwell*, a Nonconformiſt Miniſter. He was indicted in the 36 *Car.* II. for Words ſpoke by him in a Sermon preach'd at a Meeting-houſe. 'Twas a Proſecution carried on through the Violence of thoſe Times, and generally deteſted. He was convicted: but on cooler Thoughts, and Conſideraaion of the Uncertainty in his Expreſſions, that they could not amount to ſuch a Crime as he ſtood charged with, Judgment was arreſted, and Mr. *Roſwell* was diſcharg'd. Another learned Gentleman who open'd the Charge, was of Opinion, that the Doctor, in his Aſſertion of the Illegality of Reſiſtance to the Supreme Power, does really neither mean the Legiſlative nor Executive Power, but that he had the Pretender in his View. This is diving into the Secrets of his Heart, and ſearching into his Thoughts, which God only knows. This was urg'd, to avoid the ſtrange Inconſiſtency, in concluding, that the Doctor was endeavouring to undermine the Government, by preaching up the utter Illegality of reſiſting it.

My Lords, If there be a double Senſe, in either of which thoſe Words are equally capable of being underſtood; if in one Senſe the Doctor's Aſſertion be undeniably clear, but in the other ſome Doubt might ariſe, whether his Words be criminal or not, the Law of *England* is more merciful than to make any Man a Criminal, by conſtruing his Words againſt the natural Import of them, in the worſt Senſe. This is the great Juſtice and Clemency of our Law, in every Man's Caſe. But ſome Perſons are intitled to have a more favourable Conſtruction put on all their Words and Actions, than others are; ſuch as Perſons acting in the Execution of their Offices, in Obedience to Authority, or by a Commiſſion from the Crown; ſuch Perſons are look'd upon as under the immediate Protection and Care of the Law: How much more reaſonable is it, that Miniſters of the Goſpel, who have their Commiſſion from God, and ſpeak in the Name of God, ſhould have the moſt candid Interpretation made of whatever they ſay? This, I am perſuaded, was one of the chiefeſt Reaſons which in the Caſe of Mr. *Roſwell* allay'd the Rage of that Reign; and at that Time obtained Mercy for him, though a Nonconformiſt Miniſter under a Conviction of High-Treaſon. 'Tis a hard Fate attends this unhappy Gentleman, if he muſt inevitably lie under the Imputation of being thought an Enemy to the Revolution, and to our preſent happy Eſtabliſhment on that Foundation. What Evidence will your Lordſhips expect he ſhould produce to clear himſelf? He has ſhown his Submiſſion to the Revolution, from the firſt Moment his Years made him capable of doing ſo. He has given all the publick Teſtimonies of his Fidelity and Affection to the laſt Reign, as well as the preſent, which the Government has at any Time requir'd from the moſt ſuſpected Perſons. He has taken the Oath of Allegiance, ſigned the Aſſociation, and took the Abjuration. 'Tis a miſerable Caſe any Man is in, if after he has taken the Abjuration, the utmoſt which is requir'd, he ſhall ſtill be told, he hath indeed abjur'd the Pretender, but hath not yet forgot him. If neither the Inoffenſiveneſs of the Doctor's Behaviour, neither his Words nor Oaths can ſatisfy; if after all theſe Demonſtrations the Doctor has given of his Fidelity he is ſtill liable to be cenſured, what Satisfaction is it poſſible for him to give?

My Lords, If the Manner of this ſolemn Proſecution has not alter'd the Nature of Things, I hope I may inſiſt, without putting in a Claim of Right in Behalf of all the factious and ſeditious People in the Kingdom to revile the Government at Pleaſure, That by the happy Conſtitution under which we live, a Subject of *England* is not to be made criminal by a labour'd Conſtruction of doubtful Words; or when that can't ſerve, by departing from his Words, and reſorting to his Meaning. Too many Inſtances there were of this Nature before the late happy Revolution; but that put an End to ſuch arbitrary Conſtructions.

I might trouble your Lordſhips on this Head with Multitudes of Authorities; but I ſhall mention only one: 'Tis an Authority of your Lordſhips, upon a Writ of Error, immediately after the Revolution; Sir *Samuel Barnardiſton*'s Caſe; and I beg Leave to refer to your Lordſhip's Journal, *May* 14, 1689. 'Twas that Gentleman's Miſfortune to be called in Queſtion in the Reign of King *Charles* the Second (*Hill. Term*, 1683.), for writing ſome Letters, ſuppoſed to be ſeditious, and highly reflecting on the Government, and the publick Juſtice of the Nation at that Time. Upon his Trial he was repreſented as a ſeditious Man, and one of a turbulent Spirit; and being ſo painted by the Chief Juſtice who try'd him, tho' his Actions were inoffenſive; notwithſtanding his Innocence, a Verdict was obtain'd againſt him; and when he came to receive Judgment, not being look'd upon as an inconſiderable Man, nor as a Tool of his Party, but as one of the Heads of it, a Fine of Ten thouſand Pounds was ſet on him. I beg Leave to lay before your Lordſhips what you did in that Caſe. Your Lordſhips reverſed that Judgment; and as a glorious Inſtance of your Juſtice, not contenting yourſelves with the Right you had done in the Caſe then before you, at the ſame Time provided, as far as was poſſible, that no innocent Perſon, in After-Ages, might ſuffer Wrong. Your Lordſhips, therefore, in an extraordinary Manner, order'd the Reaſons of your Judgment to be entered in your Journal, and they are enter'd in the following Words: "Firſt, The Information in this Caſe being grounded " upon Letters, which in themſelves were not criminal, but made ſo by " Innuendo's, your Lordſhips declared, That Innuendo's, or ſuppos'd or " forc'd Conſtructions, ought not to be allow'd; for all Accuſations " ſhould be plain, and the Crimes aſcertained." My Lords, I hope it's unneceſſary to my preſent Purpoſe, to read to you the ſecond Reaſon; but as it was another Inſtance of your Lordſhips Juſtice, which ought never to be forgot, I ſhall take the Liberty of doing it: It relates to the Fine of Ten thouſand Pounds. Tho' Sir *Samuel Barnardiſton* was a Gentleman of a very conſiderable Eſtate, your Lordſhips declared, "Secondly, That " this Fine of Ten thouſand Pounds is exorbitant, and exceſſive, and not " warranted by legal Precedent in former Ages; for all Fines ought to " be with a *Salvo contenemento ſuo*, and not to the Party's Ruin." Theſe were your Lordſhips Declarations in that Caſe. If there be any Uncertainty or Doubt in the Doctor's Expreſſions, your Lordſhips, I hope, will put the moſt favourable Conſtruction on them. What I have hitherto offer'd is, with *Relation* to theſe Words, *The Supreme Power*; but that which I take to be the main *Objection* in this Caſe is, that the Doctor's Aſſertion of the Illegality of Reſiſtance muſt be neceſſarily underſtood with Reference to the executive Power. And if it be utterly illegal in any Caſe, upon any Pretence whatſoever, then 'twas unlawful at the Revolution; and from thence the Conſequence is drawn, That the Doctor is guilty of this firſt Charge, *of maintaining, That the neceſſary Means uſed to bring about the happy Revolution were odious and unjuſtifiable.* This I take to be the Force of the Objection.

My Lords, I admit the Doctor has in general Terms aſſerted this Propoſition of the Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever; and yet I am not altogether without Hopes, but that I ſhall be able to ſatisfy even the Gentlemen of the Houſe of Commons, whether that Expreſſion be underſtood of the Legiſlative, or Executive Power, that he is an innocent Man notwithanding that Aſſertion.

My Lords, There is nothing farther from our Hearts, nor is any Thing leſs neceſſary to the Doctor's Defence, than for us to diſpute or to call in Queſtion the Juſtice of the Revolution. We are ſo far from it, that we look on ourſelves to be arguing for it, whilſt we are endeavouring to ſhow your Lordſhips, that the Reſiſtance uſed at the Revolution is not inconſiſtent with the Doctrine of the Church of *England*, and with the Law of *England*; and that the Doctor uſes no other Language than what they both ſpeak. When your Lordſhips have laid aſide what was urg'd the ſecond Day, to ſhow the Juſtice of the Revolution, and to aggravate the Doctor's Offence, ſuppoſing him guilty, this Matter will lie in a very narrow Compaſs; and I am in Hopes there will not appear to be ſo great a Difference as hath been repreſented, between the Doctor, in his Aſſertion concerning the Illegality of Reſiſtance, and ſome of the Gentlemen of the Houſe of Commons. I can't ſay that I differ from many of them in their Notions of Allegiance, as ſtated the ſecond Day of this Trial.

My Lords, The firſt Thing on which I humbly inſiſt, ſuppoſing this general Aſſertion to relate to the Supreme Executive Power, is, that the Doctor has not, in any Part of his Sermon, apply'd it to the particular Caſe of the Revolution.

'Twas inſiſted on the firſt Day, That he had not only aſſerted the utter Illegality of Reſiſtance to the Supreme Power, on any Pretence whatſoever; but alſo that he had expreſly affirm'd, that the Revolution was not ſuch a Caſe, as ought to be excepted out of his general Rule. This I deny: If ſuch an Expreſſion can be found in the Doctor's Sermon, I ſhall think no Puniſhment too great for him. 'Tis one Thing, expreſly to affirm the Revolution is ſuch a Caſe, as ought not to be excepted out of the general Rule; and another Thing, not to make the Exception. The Apoſtle, who in general Terms enjoins the Duties of Obedience and Non-Reſiſtance to the Higher Powers, makes no Exception when he lays down thoſe Precepts; nor (on the other Side) does he ſay, No ſuch Caſe can ever happen, wherein Obedience is not to be paid, or Reſiſtance not to be made. He is ſilent in that Matter, and the Doctor's Expreſſion, in this Caſe, is agreeable with that of the Apoſtle. To prove the Doctor guilty of this firſt Charge, and that he had directly applied his general Rule of the Illegality of Reſiſtance to the Supreme Power to the particular Caſe of the Revolution, a learned Gentleman, (whoſe Province it was to maintain the firſt Article) on the ſecond Day of this Trial, firſt ſtated to your Lordſhips the Page wherein the Doctor mentions the utter Illegality of Reſiſtance, and read that Paſſage in the following Words: "The grand Security of our " Government, and the very Pillar upon which it ſtands, is founded up- " on the ſteady Belief of the Subjects Obligation to an abſolute and un- " conditional Obedience to the Supreme Power in all Things lawful, and " the utter Illegality of Reſiſtance upon any Pretence whatſoever." And then, ſays he, the Doctor goes on, and ſays, "Our Adverſaries think they " effectually ſtop our Mouths, and have us ſure and unanſwerable on this " Point, when they urge the Revolution of this Day in their Defence." This might very reaſonably make an Impreſſion upon your Lordſhips, not comparing thoſe ſeveral Paſſages in the Doctor's Sermon, at the ſame Time that Objection was made. But I beg your Lordſhips will obſerve the Diſtance of theſe two Paſſages from each other, between twenty and thirty Lines, in which ſeveral diſtinct and entire Sentences are contain'd, to which that laſt Paſſage of, *Our Adverſaries*, &c. plainly relates. The next Method uſed to prove the Doctor guilty, was, by taking the Paſſage in itſelf, independently, from any other; and this I own to be the true way of conſidering it: And taking it thus, 'tis objected, If in no Caſe whatſoever 'tis lawful to reſiſt, 'twas then unlawful at the Revolution. Such a Doctrine muſt be a ſlaviſh Doctrine. An unlimited Paſſive Obedience and Non-Reſiſtance is a ſlaviſh Notion.

My Lords, Dr. *Sacheverell* does not contend for it; nor is there any Thing mentioned in his Sermon, of ſuch an Obedience or Non-Reſiſtance. There is but this ſmall Difference between the Gentlemen of the Houſe of Commons who think this Expreſſion ſo highly Criminal, and the Doctor, who ſtill conceives it to be otherwiſe; whether, when the General Rule of Obedience is taught, the particular Exceptions which may be made out of that Rule, are always to be expreſſed? or whether, when the General Rule is laid down, the particular Exceptions, which might be made out of that Rule, are not more properly to be underſtood or implied?

I humbly apprehend, my Lords, that extraordinary Caſes, Caſes of Neceſſity, are always implied, though not expreſs'd, in the General Rule. Such a Caſe undoubtedly the Revolution was, when our late unhappy Sovereign then upon the Throne, miſled by Evil Counſellors, endeavour'd to ſubvert and extirpate the Proteſtant Religion, and the Laws and Liberties of the Kingdom. The general Rule ought always to be preſſed; but the Exceptions of extraordinary Caſes, of Caſes of Neceſſity, are never particularly to be ſtated. To point out every ſuch Caſe before-hand, is as impoſſible, as it is for a Man in his Senſes not to perceive plainly when ſuch a Caſe happens.

Every Miniſter of the Goſpel is ſufficiently inſtructed from the Doctrine of his Church, from the written Laws of the Land, and the Law of God, to preſs the general Duty of Obedience; but ſuch extraordinary Caſes, wherein Reſiſtance is lawful, wherein it becomes an indiſpenſible Duty, are no where laid down. The ſame Apoſtle, who enjoins Obedience and Non-Reſiſtance to the Higher Powers, commands alſo Servants to obey their Maſters, and Children their Parents, in all Things: Notwithſtanding which general Precepts, many Caſes may happen, wherein it may be not only unfit, but ſinful for Servants to obey their Maſters, or Children their Parents. And yet the Apoſtle never thought it proper to ſtate, or mention thoſe Caſes, but contented himſelf to preſs the Duty of Subjection in general, leaving ſuch Caſes (when they happen'd) to juſtify themſelves.

Such Caſes, my Lords, with reſpect to Reſiſtance againſt the Supreme Power, are noway fit to be conſider'd, but in Parliament; and even the Parliament itſelf hath never yet thought fit otherways to conſider them than by way of Retroſpect, to juſtify what had of Neceſſity been done in thoſe Caſes; but never went ſo far as to enumerate the Caſes of that kind, which might happen for the future, wherein it might be lawful for the Subject to reſiſt; nothing being more evident, than that the Subjects would be, ſome time or other, thereby tempted to exceed their juſt Liberty.

I beg leave to cloſe what I have humbly offer'd to your Lordſhips on this Head, with an Obſervation I borrow from Mr. *Pym*, at his delivering the Charge againſt Dr. *Manwaring*. Mr. *Pym*, ſpeaking of the Dutchy of *Normandy*, obſerves, That that Dutchy having been oppreſſed with ſome Grievances, contrary to their Franchiſes, made their Complaint to *Lewis* the Tenth; who, by his Charter, acknowledging the Right and Cuſtom of the Country, and that they had been unjuſtly griev'd, did grant and provide, That from thenceforward they ſhould be free from all Subſidies and Exactions to be impoſed by him and his Succeſſors, yet with this Clauſe, *Unleſs when great Neceſſity required:* Which ſmall Exception, Mr. *Pym* obſerv'd, had devour'd all their Immunities granted by that Charter. I think I may as reaſonably conclude, That if Clergymen or others, in their Sermons, Writings, or publick Diſcourſes, inſtead of preaching up the general Rule of Obedience, are permitted to ſtate the ſeveral extraordinary Caſes which may ariſe, the ſeveral excepted Caſes which, notwithſtanding the general Rule, are implied; ſuch Exceptions will in time devour all Allegiance.

Having thus ſtated to your Lordſhips the Queſtion between us, Whether ſuch excepted Caſes as the Revolution was, are not more proper to be left as implied, than to be expreſs'd, when the general Duty of Obedience is taught? I ſhall endeavour to ſatisfy your Lordſhips, Firſt, That the Doctor's Aſſertion of *the Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever*, in general Terms, without expreſſing any Exception, or that any Exception is to be made, is warranted by the Authority of the Church of *England:* And, Secondly, That his Manner of Expreſſion is agreeable to the Law of *England*.

Firſt, That 'tis warranted by the Authority of the Church. Your Lordſhips were informed, on the firſt Day of this Trial, with how much Bravery even our Popiſh Anceſtors aſſerted the Legality and indiſpenſible Duty of Reſiſtance, whenever they thought the Liberty of their Country requir'd it; but that at the Reformation, when Truth began to ſhine out, then it became evident, that this Notion of the Illegality of Reſiſtance was a ſlaviſh Doctrine. The learned Gentleman undoubtedly pitch'd on a very proper Time to begin his Search after Truth; and from thence I ſhall endeavour to trace it.

One very early Authority I find; it was indeed in the Dawn of the Reformation, in a Book intitled, *A Neceſſary Doctrine and Erudition for any Chriſtian Man*; publiſh'd by the King's Command, 34 *H.* VIII. 'Twas a Treatiſe compoſed by the Direction of *Cranmer*, by *Ridley*, *Redmayn*, and other very great and learned Men. I find it highly commended in the *Hiſtory of the Reformation*, *Part* I. *Book* 3. *Page* 286. The Reverend Author of that Hiſtory gives an Account how well the Reformers were imploy'd, (*Ann.* 1540.) though not in the way of Convocation: That a ſelect Number of them ſat by Virtue of a Commiſſion from the King, confirmed in Parliament; and that their firſt Work was to draw up a Declaration of the Chriſtian Doctrine, for the neceſſary Erudition of a Chriſtian Man; and (*Pag.* 293.) that 'twas finiſh'd and ſet forth, with a Preface, written by thoſe of the Clergy who had been imploy'd in it, declaring with what Care they had examined the Scriptures, and the antient Doctors, out of whom they had faithfully gather'd that Expoſition of the Chriſtian Faith. In this Treatiſe I find theſe Paſſages. In the Expoſition of the Fifth Commandment: "And by this Commandment alſo, Subjects "be bound not to withdraw their Fealty, Truth, Love, and Obedience "towards their Prince, for any Cauſe whatſoever it be; nor for any Cauſe "they may conſpire againſt his Perſon, nor do any Thing towards the "Hindrance or Hurt thereof, nor of his Eſtate." In the Expoſition of the Sixth Commandment: "Moreover, no Subjects may draw their "Swords againſt their Prince, for any Cauſe whatſoever it be." The Reverend Father of our Church, to whom the Publick is ſo much indebted for that excellent Hiſtory of the Reformation, and who has receiv'd the juſt Thanks of both Houſes of Parliament for it, (*Page* 291.) declares thoſe Expoſitions of the Commandments to be very profitable.

My Lords, Tho' the Treatiſe, in which I find theſe Expoſitions, was publiſh'd in a Popiſh Reign, yet (as an undeniable Evidence that the Doctrine of Non-Reſiſtance, there taught, is a Proteſtant Doctrine) I ſhall ſhew your Lordſhips, the Reverend Author of the Hiſtory of the Reformation has himſelf aſſerted it, in much ſtronger Terms, than Doctor *Sacheverell* has done. In *Edward* the Sixth's Time, the glorious Light of the Goſpel ſhone out. The firſt Book of the Homilies, prepar'd by the Clergy, was then publiſhed by the Royal Authority; in which were three Parts of a Homily, or rather three diſtinct Homilies of Obedience: In one of which is the Paſſage mentioned in the Doctor's Anſwer. "Here, "good People, mark diligently: It is not lawful for Inferiors, and Sub-"jects, in any Caſe, to reſiſt and ſtand againſt the ſuperior Powers; for "St. *Paul*'s Words be plain, that whoſoever withſtandeth, ſhall get to "themſelves Damnation; for whoſoever withſtandeth withſtandeth the "Ordinance of God." In Queen *Mary*'s Reign, the Light of the Goſpel was eclipſed, and the Darkneſs of Popery again overſpread the Nation. Reſiſtance to Princes being a Doctrine of the Church of *Rome*, your Lordſhips will not expect any authentick Evidence to be produced out of that Reign, in Maintenance of the Doctrine of Non-Reſiſtance.

When Queen *Elizabeth* came to the Crown, the Truth of the Goſpel ſhone forth in its full Luſtre, and then ſix Homilies were added to the other three againſt Diſobedience and wilful Rebellion; in which your Lordſhips will find many Paſſages, wherein the Duty of Non-Reſiſtance is preſſed and inculcated, in much ſtronger Terms than it hath been aſſerted by Dr. *Sacheverell*. In that glorious Reign, the Thirty-nine Articles of our Religion were agreed upon by the Archbiſhops and Biſhops of both Provinces, and the Clergy in Convocation; by the 35th of which, the Homilies are declared to contain *a Godly and Wholeſome Doctrine*, and are order'd to be read in Churches, by the Miniſters, diligently and diſtinctly, that they may be underſtood of the People. In the thirteenth Year of that Reign, a further Sanction was given to the Homilies; the Thirty-nine Articles were then confirm'd, and every Perſon in Holy Orders, to be admitted to any Benefice with Cure, was required (by Act of Parliament made in that Year) to Subſcribe and Read them in the Church, and declare his unfeigned Aſſent thereto.

My Lords, We have now a moſt gracious Sovereign on the Throne, as far ſurpaſſing her renown'd Predeceſſor Queen *Elizabeth*, in the effectual Support ſhe gives to the Proteſtant Intereſt, and in her pious Care for the perpetual Security of the Church of *England*, as in all the other Succeſſes and Glories of her Reign. In this Reign, a perpetual Sanction is given to the Books of the Homilies, by inſerting in the Act of *Union* the Act made 13 *Eliz.* which confirms the Thirty-nine Articles; by the 35th of which, the Doctrine of the Church (taught in the Homilies) is approv'd; and declaring that Act, 13 *Eliz.* to be *an eſſential and fundamental Part of the Act of Union:* So that I may now conclude, the Doctrine of the Church of *England*, taught in her Homilies, muſt continue as long as the Union of the two Kingdoms, which I heartily pray may be to the World's End. On theſe Authorities do the Homilies of our Church ſubſiſt: And as they are thus ratified by the Articles and Acts of Parliament, the Doctor has the concurrent Authority of the Church and State, for what he has ſaid concerning the Illegality of Reſiſtance.

My Lords, Is this Doctrine of Non-Reſiſtance taught in the Homilies in general Terms, in the ſame manner as Doctor *Sacheverell* has aſſerted it, without expreſſing any Exception? Do the Articles of our Religion declare the Doctrine taught in the Homilies to be a Godly and Wholeſome Doctrine? and will your Lordſhips permit this Gentleman to ſuffer for Preaching it? Is it criminal in any Man to preach that Doctrine, which 'tis his Duty to read? The Doctor is not only required by the 35th Article to read this Doctrine diligently, and diſtinctly, that it may be underſtood by the People; but to ſhew your Lordſhips, the Doctrine taught in the Homilies did not die, nor was alter'd at the Revolution, I muſt obſerve to your Lordſhips, that the Rubrick of the Office appointed for the Fifth of *November*, by the late Queen of Bleſſed Memory, directs the Clergy on that Day, if there be no Sermon, to read one of theſe Homilies againſt Rebellion. Since the Doctor choſe rather to preach, than to read a Homily on that Day; how could he better comply with the Command of her late Majeſty, than by preaching the ſame Doctrine as was contain'd in thoſe Homilies he was commanded to read on that Day, if he did not preach? Does an Act of Parliament, inſerted in the Act of Union, injoin him to ſubſcribe to this Doctrine before the Ordinary, and declare his unfeigned Aſſent to it in his Pariſh Church? and ſhall he be condemn'd in Parliament, for aſſerting the Truth of it? I muſt admit, this 35th Article of our Religion is not by the *Toleration-Act* (I will give no Offence, by calling it by its true Name) required to be ſubſcribed by any Perſons diſſenting from the Church of *England*, to entitle them to their Exemption from the Penalties mentioned in that Act. But that Act of Parliament no way varies the Caſe with reſpect to the Clergy; ſo that whatever Duty was incumbent on them before, is ſo ſtill; and therefore I hope, your Lordſhips will not think this Gentleman has ſo highly offended.

As a further Proof that this Doctrine of Non-Reſiſtance, as laid down by the Doctor in general Terms, without making any Exception, is the Doctrine of the Church of *England*, I ſhall ſhew your Lordſhips, that it has been ſo preach'd, maintain'd and avow'd, and in much ſtronger Terms than the Doctor has expreſs'd himſelf, by our moſt Orthodox and able Divines from the Time of the Reformation. 'Twould be endleſs to offer your Lordſhips all the Authorities I might produce on this Occaſion; but we ſhall beg your Lordſhips Patience to lay before you ſome Paſſages out of the learned Writings of ſeveral Reverend Fathers of our Church, of nine Archbiſhops, above twenty Biſhops, and of ſeveral other very eminent and learned Men.

That your Lordſhips may not think this Doctrine died at the Revolution, I ſhall humbly lay before your Lordſhips the Opinions of three Archbiſhops, and eleven Biſhops, made ſince the Revolution, which will fully ſhew the Doctrine of Non-Reſiſtance is ſtill the Doctrine of our Church; I would not willingly give Offence in naming them; I am ſure I mean no Reflection, nor can it, as I think, be any Reproach to them; I find no other Doctrine in this Caſe taught by them, as far as I am able to judge, than what the Apoſtles taught before them. With your Lordſhips Leave, I will therefore preſume to name them; Archbiſhop *Tillotſon*, the two preſent Archbiſhops, Biſhop *Stillingfleet*, late Biſhop of *Worceſter*, the preſent Biſhops of *Worceſter*, *Rocheſter*, *Salisbury*, *Ely*, *Bath* and *Wells*, *Lincoln*, *Exeter*, *St. Aſaph*, *Carliſle* and *Chicheſter*. If I am able to ſhew your Lordſhips that all theſe Right Reverend Fathers of our Church have preached the ſame Doctrine the Doctor has, Are the ſame Words coming out of their Mouths to be received as Oracles of Truth, but ſpoke by the Doctor fit for Articles of Impeachment? I am ſure it's impoſſible to enter into the Heart of Man to conceive, that what theſe Reverend Prelates have aſſerted, that any general Poſition they have laid down concerning Non-Reſiſtance, is an Affirmance that neceſſary Means uſed to bring about the Revolution were *Odious* and *Unjuſtifiable:* Why then is Doctor *Sacheverell*, by having taught the ſame Doctrine, in the ſame Manner as they did, to be charged for having ſuggeſted or maintained any ſuch Thing?

My Lords, I dare not ſuppoſe this Doctrine, thus eſtabliſh'd by ſo many Reverend Fathers of our Church, to be erroneous. If an intemperate Expreſſion of one ſingle Archbiſhop above a Hundred Years ſince dead, is fit to be inſerted in an Article of Impeachment of High Crimes and Miſdemeanors, what Puniſhment ſhould I deſerve, could I ſuppoſe the Doctrine, taught by ſo many Archbiſhops and Biſhops, to be erroneous? But if I might hope to be excus'd, if I made the Suppoſition, that the Homilies of our Church contain falſe Doctrine, and that ſo many of the Right Reverend Fathers of our Church are capable of erring, or being ignorant in the Doctrine of their Church, I humbly propoſe it to your Lordſhips, whether a Clergyman who errs after ſuch great Examples, might not reaſonably have hop'd for a more moderate Correction, than an Impeachment! Had this ſlaviſh Doctrine of Non-Reſiſtance been firſt branded with its indelible Mark of Infamy, and the Right and indiſpenſible Duty of Reſiſtance to Princes plainly ſhewn; had all the ſlaviſh Notions of the Common Law which we find diſpers'd throughout our Law-Books, which give Countenance to this Doctrine of Non-Reſiſtance, been firſt weeded out of them, and ſome few Acts of Parliament, intirely agreeable with this ſlaviſh Doctrine, been firſt repealed; had the People been ſet right in the Notions of their Obedience, and the Miniſters of the Goſpel been inſtructed by Act of Parliament what Doctrine they ought to preach, and what not; had all theſe Things been firſt done, and the Doctor had afterwards err'd, your Lordſhips might have then look'd upon him as an obſtinate Offender.

The next Thing I beg Leave to conſider is, the Law of *England*; whether the Doctor's Aſſertion of *the utter Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever*, in general Terms, is agreeable to the Law of *England*. I hope I need not again explain myſelf as to this Particular; I mean, that as the general Rule is always taught and inculcated by the Church, ſo has it always been declared by the Legiſlature, without making any particular Exception; and if this Rule holds both in Church and State, this Gentleman is ſtrangely unfortunate, if he can't be comprehended under one or other of them.

My Lords, whatever may at any Time heretofore have been thought proper to be done by Parliament; whatever Meaſures, in Caſes of the laſt Neceſſity, may at any time have been taken by the People in general, for preſerving their Liberty, or aſſerting the Rights of their Country, and keeping themſelves from Slavery; yet in no Age can any Inſtance be ſhewed, not in the Reigns of thoſe Princes who have been depos'd, that this Doctrine, of the Right of Reſiſtance, as it has been term'd, was ever permitted to be aſſerted by any particular Perſon. A memorable Caſe to this Purpoſe happened in the Reign of King *Edward* the Second: An Act of Parliament paſs'd in the fifteenth Year of that Reign, intitled, *Exilium Hugonis de Spencer Patris, & Filii.* The two *Spencers* were baniſhed by that Act; and the firſt Article in that Act againſt them is, "That they "had affirm'd and publiſh'd in Writing, that Homage and Oath of Al-"legiance were due more by reaſon of the Crown, than by reaſon "of the Perſon of the King; and that if the King did not demean "himſelf according to Reaſon, in the Exerciſe of his Government, "his Subjects might remove him; And that ſince that Removal could "not be by Courſe of Law, they might therefore remove him by Force." The Time when this Act paſs'd, and what afterwards happened, is remarkable. The Act, very ſoon after the making it, was repeal'd, and 'twas thought neceſſary in that Reign the People ſhould aſſert that Right; and thereupon the King was depos'd. But your Lordſhips will find in his Succeſſor's Reign, they were ſo far from caſting any Blot on the Act of Exile, that in the 1 *Edw.* III. by one of their firſt Acts, the Repeal of the Exile was annulled, and the Act of Exile confirm'd. It is true, that in the 21ſt Year of *Rich.* II. the Act made the 1ſt *Edw.* III. for annulling the Repeal of the Exile, was repeal'd, and the Reverſal of the Act of Exile confirmed; but in the firſt of *Henry* IV. the whole Parliament held the 21ſt *Rich.* II. and all the Proceedings in it, for their Extravagance, were annulled, and from thence the Act of Exile of the two *Spencers* continued untouched. I muſt humbly obſerve to your Lordſhips, that though there were two Repeals of the Act of Exile, yet neither of them mention'd the Matter contain'd in the Articles as inſufficient; but the Reaſons aſſign'd in the Acts of Reverſal are, that "in the Proceedings againſt the *Spencers*, the great Charter was not "obſerv'd, that the Prelates were not preſent, and did not aſſent there- "to; and ſome other Defects in Form." What Opinion our greateſt Lawyers have ſince had of this Act of Exile, ſufficiently appears, *Co.* 7. 11. *Calvin*'s Caſe, the Words are theſe: "In the Reign of *Edw.* II. the *Spencers*, "the Father and the Son, to cover the Treaſon hatch'd in their Hearts, "invented this damnable and damn'd Opinion, That Homage and Oath "of Allegiance was more by Reaſon of the King's Crown (that is, of his "Politick Capacity) than by Reaſon of the Perſon of the King; upon "which Opinion, ſays the Lord Chief Juſtice *Coke*, they inferr'd moſt "execrable and deteſtable Conſequences. Firſt, If the King do not de- "mean himſelf by Reaſon in the Right of his Crown, his Lieges are bound "by Oath to remove the King. Secondly, Seeing that the King could "not be reformed by Suit of Law, that ought to be done by Force: All "which were condemned by two Parliaments, one in the Reign of *Edw.* II. "called *Exilium Hugonis le Spencer*; and the other 1 *Edw.* III. *cap.* 1." I barely mention theſe Acts to ſhew, that however applicable the Caſe of the Revolution might be to that of King *Edw.* II. yet that thoſe very Perſons, by whom the King was depos'd, thought it ſo high a Crime in the two *Spencers*, to take on them to publiſh ſuch Poſitions, as to deſerve Baniſhment. The next Law I beg Leave to mention, is the 25 *Edw.* III. *cap.* 2. By which *the levying War againſt the King in his Realm* is declared, in general Terms, to be *High-Treaſon*, without an Exception whatſoever: This is an Inſtance of what I am contending for, that the Law, in all Caſes concerning our Allegiance, lays down the general Rule, without making any Exception. So the Oath of Obedience (as injoin'd 3 *Ja.* I. 4.) all Perſons are to ſwear *to defend the King to the utmoſt of their Power, againſt all Conſpiracies and Attempts whatſoever, which ſhall or may be made againſt his Perſon, Crown or Dignity.* The Oath is in general, without any Exception, expreſs'd in it; and no Man will preſume to ſay, that Oath, which was taken from the 3 *Ja.* I. 'till after the Revolution, was not true. But the Anſwer to be given is, what I give in this Caſe, that Caſes of Neceſſity, ſuch as the Revolution, were implied, they are improper to be expreſs'd; and why ought not the like Implication equally to be allow'd in the general Aſſertion made by Dr. *Sacheverell?* By the Act made 12 *Car.* II. *c.* 30. for Attainder of the Regicides, it is declared, That *by the undoubted and fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People, collectively or repreſentatively, nor any other Perſons whatſoever, ever had, have, hath, or ought to have, any coercive Power over the Kings of this Realm.*

My Lords, I can't apprehend this Act to be repealed: If it be not, I beſeech your Lordſhips, let Dr. *Sacheverell* be tried by it; and that you will be pleaſed to conſider, whether the Doctor's Aſſertion, concerning Reſiſtance, hath out-gone the Declaration in this Law.

Your Lordſhips hear how fully the fundamental Law of the Kingdom is delared by this Act: The Doctor has only ſaid, *'Tis illegal to reſiſt the Supreme Power on any Pretence whatſoever.* The Expreſſion at the End of that Declaration may poſſibly be obſerved, that it extends only to a coercive Power over the Perſon of the King; I know not what Inference may be drawn from thence, but certainly there is nothing in the Doctor's Sermon but what may be abundantly juſtified by the Declaration in that Act.

The Militia Act, the 13th and 14th *Car.* II. *c.* 3. for ordering the Forces in the ſeveral Counties of this Kingdom, contains a Declaration a ſtrong as the former: By that Act 'tis declared, That *neither both or either of the Houſes of Parliament can, or lawfully may, raiſe or levy any War, offenſive or defenſive, againſt his Majeſty, his Heirs, or lawful Succeſſors.* When I peruſed this laſt Declaration in the Recital of the Acts, I read carefully to the End of it, to look for the Exception, but could find none. If there be no Exception in that Act, but that it ſtands as a general Declaration of the Law; if neither, nor both the Houſes of Parliament can or may raiſe or levy War, offenſive or defenſive, againſt the King, is it a high Crime and Miſdemeanor to aſſert in general Terms that Reſiſtance to our Prince is unlawful? Pray, my Lords, compare the Doctor's Aſſertion in his Sermon with the Declaration in this laſt Act of Parliament.

By the Corporation Act, 13 *Car.* II. *ſeſſ.* 2. *cap.* 1. all Mayors, Aldermen, Common-council Men, and other corporate Officers there enumerated, are required to take an Oath, That *it is not lawful upon any Pretence whatſoever to take Arms againſt the King.* By the Militia Act, which I have already mentioned, the ſame Oath, That *it is not lawful, on any Pretence whatſoever, to take Arms againſt the King*, is required to be taken by every Peer of the Realm, before he is capable of acting as a Lieutenant or Deputy-Lieutenant; and by every Commoner of *England*, before he can be capable of acting as a Lieutenant, Deputy-Lieutenant, Officer or Soldier in the Militia. By the Act of Uniformity, 13 & 14 *Car.* II. *cap.* 4. all Eccleſiaſtical Perſons, and many others under the ſeveral Denominations in that Act, are required to ſubſcribe to the Truth of that Aſſertion, That *it is not lawful, on any Pretence whatſoever, to take Arms againſt the King.* This is the Language of our Law, and the like do the Apoſtles uſe in their Precepts touching Obedience and Non-Reſiſtance to the Supreme Power.

But here I ought to obſerve, an Objection has been made to theſe ſeveral Acts, that by an Act made in the ſecond Year of the late King and Queen, 'tis enacted, "That from thenceforth the Oath injoined to be taken or "ſubſcribed, by the ſeveral Acts I have mentioned, ſhould not be required "to be taken by any Perſon whatſoever; and that the former Acts of Parlia- "ment, as to that Oath, are thereby repealed." 'Tis a very tender Repeal, my Lords, if it be one; but admit it to be one, it ſeems to have been argued from thence by a learned Gentleman, with whom in many Things he ſaid I no Way differ, that this Doctrine of Non-Reſiſtance was become the more unlawful, becauſe that Oath was not to be taken from thenceforward.

My Lords, As the Corporation Act required the Swearing 'twas not lawful to take up Arms againſt the King, ſo does it direct the Subſcribing to the Unlawfulneſs of the Solemn League and Covenant; now by the ſame Argument, the Solemn League and Covenant may be proved to have been a lawful Oath.

I beſeech your Lordſhips to conſider, whether the Repeal of this Oath can have any Weight with your Lordſhips. 'Twas a general Aſſertion, to which all the Peers and Commoners, in the Employments I have mentioned, were to ſwear; there is no Exception in the Oath, but what is implied in it. Was not the Propoſition as true before it was ſworn, as after? Was it therefore true becauſe 'twas ſworn; or was it ſworn becauſe it was true? Did the Swearing it make it true; or the Truth make it fit to be ſworn? If it was true when it was ſworn, the Propoſition was equally true before, and ſince. I believe, ſince the Oath was taken by ſo many Peers and Commoners, no Man will pretend to queſtion the Truth of the Propoſition.

My Lords, I have gone thro' the ſeveral Laws I ſhall lay before your Lordſhips on this Occaſion; and let me once more humbly beg your Lordſhips, that you will be pleaſed to compare the Doctor's Aſſertion in his Sermon, concerning the Illegality of Reſiſtance, with them; whether it be ſtronger than the Declaration of the undoubted and fundamental Law of the Kingdom, in the Act againſt the Regicides; than the Declaration in the Militia Act; than the Oath required to be taken by ſo many Acts of Parliament; than the Declaration in the 25th of *Edw.* III. All the Doctor has ſaid, is, That *Reſiſtance to the Supreme Power is illegal, on any Pretence whatſoever.* All the Peers and Commoners of *England*, under the Characters and Employments I have mentioned, have ſworn to the Truth of it; the 25th of *Edw.* III. declares it to be High-Treaſon; and your Lordſhips have heard what St. *Paul* ſays.

My Lords, I began this Diſcourſe, relating to the Doctrine of the Church and the Laws of the Land, with the moſt ſincere Proteſtation, that it was far from my Intention to offer any Thing inconſiſtent with the Juſtice of the Revolution: I think the Juſtice of it conſiſtent with our Laws, the Exceptions to be made being always implied. And ſurely none can ſhew themſelves truer Friends to the Revolution, than thoſe who prove that the Revolution may ſtand without impeaching the Doctrines of our Church, or any fundamental Law of the Kingdom. Dr. *Sacheverell* being impeached for not making the Exception, when he laid down the general Rule; I beg Leave to turn the Caſe, and ſuppoſe he had made it. Had he been ſtating the Caſe of a Revolution, on a Day when he preſs'd the Illegality of Reſiſtance, on a Day when, if he did not preach, he was obliged to read one of the Homilies againſt Rebellion, in which there is no Exception: Had he been picking Holes for the Subject to creep out of his Allegiance, and had he been cited before his Dioceſan; might he not have been queſtioned, by what Authority he preſumed to preach in that Manner? Whether he found ſuch Doctrine taught by the Apoſtles, by the Homilies, or by any of the Reverend Fathers of our Church? Might he not have been told, it was his Duty, in Imitation of thoſe great Examples, to preſs the general Duty of Obedience, and the Illegality of Reſiſtance, without making any Exception whatſoever? Had he been queſtioned before the Temporal Power, for preaching in the Manner he has done; had an Indictment been framed againſt him on his general Aſſertion, and brought before the Twelve Judges; I humbly apprehend, not one of them would have declared he went too far. But had he been making Exceptions out of the general Rule of Obedience, eſpecially if he had been tried by ſuch Judges as were before the Revolution; might he not have been told, 'Twas eaſy to diſcern what Spirit he was of, of what Party he was, and what he aimed at, what he intended: That he had not been preaching in Defence of the late Revolution, to ſhew the Juſtice of it; but that he was covering the Treaſon of his Heart, and under Pretence of juſtifying one Revolution, he was labouring to bring about another. He, who knew how far the Deſign had gone of landing the Pretender but two Years ſince; what elſe could he mean, by picking Holes in the Rules for our Obedience?

I have but a Word or two to add to the other Charges of this Article. The Gentlemen of the Houſe of Commons were pleaſed to obſerve, That tho' there were four Articles, the Subſtance of them all centered in the firſt. The ſecond Charge in this Article is, *That his late Majeſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance.* It is not, I hope, a ſufficient Ground for an Article of Impeachment, if the Doctor has expreſſed himſelf in an obſcure Manner. I muſt confeſs, I can't eaſily comprehend him myſelf; but it may be any Man's Misfortune to expreſs himſelf in ſuch a Manner, as to make it decent and fit for him to explain himſelf: And I hope the Doctor has explain'd himſelf, ſo as to ſhow, that tho' he may have ſpoken improperly, he has yet ſpoken innocently. The Gentlemen of the Houſe of Commons declare, by Reſiſtance they mean the Reſiſtance of the Subjects to their Sovereign: But Reſiſtance, where the Doctor mentions his late Majeſty to have diſclaimed it, cannot have that Meaning. He was a Sovereign Prince, and might reſiſt whom he pleaſed. Perhaps the Paſſage in the Doctor's Sermon may be capable of different Conſtructions; but the Doctor has taken Care to prevent all Manner of Miſtakes that might poſſibly ariſe from thence: He has not only (as was obſerved by one of the Gentlemen of the Houſe of Commons) made a marginal Reference, to ſhow what he meant, which might have been done when he apprehended that Expreſſion would be found fault with; but he has in the Sermon itſelf quoted what the Parliament did, in burning a Treatiſe which related to the King's having conquered the Kingdom.

My Lords, it was aſk'd, What had he to do to take Notice of that Matter? What led him to juſtify the late King? Was there ever any Body living that imputed any ſuch Thing as Conqueſt to him? My Lords, If there never was but that one Imputation endeavoured to be caſt on his Memory, as I never heard of any other, ſurely then he did well to wipe off that Imputation; and that this has been laid to his Charge, I muſt refer to the Journals of both Houſes of Parliament. Your Lordſhips reſolved the Aſſertion of King *William*'s and Queen *Mary*'s being King and Queen by Conqueſt, was injurious to their Majeſties rightful Title to the Crown, inconſiſtent with the Principles on which this Government is founded, and tending to the Subverſion of the Rights of the People: And on the 25th of *January* 1692, your Reſolution being communicated to the Commons, was unanimouſly agreed to.

The laſt Part of this Article is, ‘ That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours on his late Majeſty and the ſaid Revolution.’ My Lords, There are theſe Words in the Doctor's Sermon, of *caſting black and odious Colours on his late Majeſty and the Revolution*: They are in the Cloſe of a Sentence, which immediately precedes the Expreſſion of his late Majeſty's diſclaiming the leaſt Imputation of Reſiſtance. It is impoſſible to miſtake the Place; your Lordſhips will examine it; and from thence let him take his Fate, Whether that Paſſage is applicable to what went before it, or to what follows after? Thoſe Words of *caſting black and odious Colours*, are ſo far from referring to *his late Majeſty's diſclaiming the Imputation of Reſiſtance*, that they conclude the Sentence which went before it; in which the Doctor mentions ‘ New Preachers, and New Teachers, that broached abominable Poſitions, That the People have a Right to cancel their Allegiance at Pleaſure, to call their Sovereign to Account; and who pretend to juſtify the horrid Murder of the Royal Martyr King *Charles* the Firſt, and endeavour to ſkreen themſelves, and their vile Notions, under the Revolution.’ The Doctor having mentioned theſe New Preachers and their Doctrine, goes on: ‘ Our Adverſaries think they effectually ſtop our Mouths, and have us ſure and unanſwerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly they are the greateſt Enemies of that and his late Majeſty, and the moſt ungrateful for the Deliverance, who endeavour to caſt ſuch black and odious Colours upon both.’ I pray, my Lords, What does this refer to? Don't it clear the Revolution againſt the Venom of thoſe Miſcreants, who publiſh ſuch villainous Aſſertions as theſe? But 'twas objected by a learned Gentleman, What has a Miniſter to do to meddle with theſe Things? If any Man offend againſt the Temporal, or Eccleſiaſtical Law, the Courts are open; the Magiſtrates are to puniſh.

My Lords, I don't find, if this Doctrine holds, that he muſt preach againſt any Thing: If he muſt not preach againſt any Thing which may be proſecuted, either in the Temporal or Eccleſiaſtical Courts, he muſt not preach againſt any Offence that is forbid by the Ten Commandments. Perhaps it will be urged, that there are no ſuch People as theſe New Preachers, and New Teachers; that he is raiſing a Phantom, and then throwing it down; he is only imagining Caſes, of which there are no Inſtances; that there are no ſuch Men, who endeavour to juſtify the Murder of King *Charles*, or defend it by the Revolution. We will ſhow there are too many Inſtances of ſuch Perſons, who make no ſcruple to publiſh theſe Poſitions, and caſt Reflections on the Queen and her Government, whom the Doctor has been defending. He is not the Perſon he has been repreſented; he hath no diſloyal Thoughts about him: Sure I am, he would rather die in her Majeſty's Defence. We ſhall ſhow your Lordſhips, that there are ſuch as run moſt vile Compariſons between the Revolution and the moſt execrable Murder of King *Charles* the Firſt, and can find no better Difference between them, than this abominable Diſtinction of a *Wet Martyrdom* and a *Dry One*.

Mr. *Dodd*. MY Lords, I am likewiſe a Counſel for Dr. *Sacheverell*; and I cannot but think, by the ſame Arguments that have been uſed to maintain theſe Articles, any Book or Sermon, be it never ſo innocent, may be repreſented to be a Libel.

The Gentlemen Managers of the Houſe of Commons, with Submiſſion, have ſcarce any three of them agreed in any one principal Point; only in this moſt of them have agreed, That the Doctor is a Criminal before he is condemned. He has been in the whole Debate (generally ſpeaking) ſo called; the uſual Expreſſion having been, The Criminal at the Bar: This (as it is not uſual in other Places) would have been a great Diſcouragement to us that are his Counſel, and great Diſcouragement in his Defence, but that we conſider that the Judgment is your Lordſhips, and that by your Juſtice he muſt ſtand or fall. It has been repreſented, as if this Sermon had been peruſed and approved by Lawyers; but this is only ſuggeſted, (as other Matters have been) yet there is not the leaſt Proof thereof. We have had different Facts charged upon us; ſometimes we are taxed for having ſaid too much, and ſometimes for having ſaid too little, and not mentioning Things that were the proper Subject of the Day.

My Lords, we apprehend theſe Matters are objected for want of obſerving the Sermon itſelf; for as it was preached on the Fifth of *November*, ſo your Lordſhips will find an Account given for a Leaf together, ſetting forth the horrible Deſign of the Powder Plot. Your Lordſhips will alſo find, both in the Body and Concluſion of the Sermon, Notice taken of our Deliverance on this Day.

There have been ſome Acts of Parliament cited by the Gentlemen Managers for the Houſe of Commons; that of the 25th *Henry* VIII. about the Supremacy, which we apprehend is not to the preſent Purpoſe. It only aſſerts the Supremacy, that is, the Independency of the Crown, which was uſurp'd by the Papal Authority; for ſurely King *Henry* the Eighth was a Prince that would as little bear the Doctrine of Reſiſtance, as any Sovereign that ever wore the Crown of theſe Kingdoms.

There have been many Things ſaid by the Gentlemen of the Houſe of Commons that we heartily agree with them in. The Revolution was a Caſe, we all agree, out of the general Rule; and ſo in every Thing we ſay, we hope your Lordſhips will underſtand it. We neither do nor can underſtand it; it is againſt our Judgment and Intereſt to think otherwiſe. We are hearty Well-wiſhers to the Revolution, and to the Happineſs of *England*, that is in a great Meaſure built upon it. We agree the Law of the Land is the Meaſure of the Prince's Authority, and the People's Rights; that in the Caſe of the Revolution, when the Laws were overturned, Popery was coming in upon us, and Property ſignified nothing: The People of *England* being invited by his late Majeſty, did reſort to the laſt Remedy, even that of Neceſſity; and that Neceſſity did induce Reſiſtance, and juſtify 'em in it; and upon that Foot the Revolution ſucceeded. We totally deny that the Doctrine of Non-Reſiſtance, as laid down by the Doctor, and as aſſerted by him, was intended for the Pretender, or any other but her Majeſty and her Government; or can be conſtrued a thwarting the Revolution: His Aſſertions are general; thoſe general Aſſertions will have their particular Exceptions.

Sure it has not, nor can be made out, that we had an Eye in favour of the Pretender in any Part of this Diſcourſe. Now it has been by ſome of the Gentlemen admitted to us, that the Doctrine in the main is right; but, ſay they, you had your Thoughts, your Eyes on the Pretender. Now this is ſo very contrary to what the Doctor has aſſerted in his whole Sermon, that I hope there is no Ground for it: For the Doctor (as a dutiful Subject) takes Notice that her Majeſty is the laſt of the Lineal Deſcent, as the Relict of the Royal Family; which quite diſowns the Pretender and his Right. And can any one imagine, that in ſuch Expreſſions he could have an Eye to the Pretender? For if there be any Pretence of Title in the Pretender, it muſt be as a Deſcendant of that Family. But he takes Notice, that her Majeſty is the only one left of that Family in a Lineal Deſcent; and I think that is enough to acquit the Doctor of having an Eye to him beyond the Water.

Having, my Lords, made theſe Remarks, I ſhall now conſider the Articles as they lie before your Lordſhips. In the Preamble to the Articles, there is Notice taken of three Acts of Parliament: The firſt is the ‘ Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown.’ The ſecond is the ‘ Act for preventing Vexatious Suits againſt ſuch as acted in order to bring in their Majeſties, and for their Services.’ The third is the ‘ Act for paying the States General of the United Provinces their Charges for his Majeſty's Expedition into this Kingdom, and for other Uſes.’ Theſe are the three only Acts that are cited in the Preamble of theſe Articles: I ſhall ſay but a Word to each of them. As to the Act called *The Bill of Rights*, I don't find that that Act meddles with the Points of Reſiſtance or Non-Reſiſtance; the whole Ground and Tenor of that Act is upon the Abdication. It ſettles the Crown upon the Vacancy of the Throne. It is ſaid, ‘ Whereas the late King *James* the Second having abdicated the Government, and the Throne being thereby vacant, *&c.*’ There is no other Fact ſtated; there is no Mention of Reſiſtance. But the Throne being vacant, the next Head in that Act ſays, That ‘ King *James* having abdicated the Government, and their Majeſties having accepted the Crown, did become lawful King and Queen, *&c.*’ Theſe are the only Paſſages in that Act as to this Matter: It has preſerved the Liberties of the Subject; eſtabliſhed ſeveral Rights which are their ancient Inheritance; told the People that the Throne was vacant; and being ſo, that their late Majeſties were lawful and rightful King and Queen, as undoubtedly we all agree they were.

My Lords, The next Act mentioned, is the ‘ Act for preventing Vexatious Suits againſt ſuch as acted in order to the bringing in their Majeſties, or for their Service.’ This goes further than the Bill of Rights; but whoever reads it, will find, it is but the ſame Act in Effect, that was enacted in the Reign of *Edward* III. after *Edward* II. was depoſed. It is a mere Act of Indemnity, an Act of Pardon for Officers Civil and Military. It only exempts them from Proſecution, that having been Tranſgreſſors againſt the ſtrict Rules of the Law, were ſubject to private Actions; and no leſs could be done than to exempt them from ſuch Proſecutions; and therefore that Law pardons all Actions of Treſpaſs that were committed upon that Occaſion.

My Lords, The next Act taken Notice of is, That *for paying the States General*. That, I don't ſee, takes any other Notice; but is only for paying the *Dutch* 600,000 *l.* for their Aſſiſtance to his Majeſty at his coming into this Nation, for our Deliverance from Popery and Arbitrary Power.

Then the Preamble charges the Doctor with ‘ Preaching and Publiſhing the Sermon and Dedication; *and that is ſaid to be done* with a wicked, malicious and ſeditious Intention, to undermine and ſubvert her Majeſty's Government, and the Proteſtant Succeſſion as by Law eſtabliſhed; to defame her Majeſty's Adminiſtration; to aſperſe the Memory of his late Majeſty; to traduce and condemn the late happy Revolution; to contradict and arraign the Reſolutions of both Houſes of Parliament; to create Jealouſies and Diviſions among her Majeſty's Subjects; and to incite them to Sedition and Rebellion.’ Theſe are the Corollaries that are drawn from the Preamble of the Articles of Impeachment; and theſe are the Facts which muſt make theſe Articles criminal, or they can't be ſo at all. Theſe Facts we utterly abhor and deny, and ſay we are not guilty of them; and hope it will ſo appear to your Lordſhips.

My Lords, I ſhall now come to the firſt Article itſelf, and ſhall ſhortly ſpeak to the three Diviſions of this Article: It conſiſts of three Heads. The firſt is, That ‘ the Doctor ſuggeſts and maintains, that the neceſſary Means uſed to bring about the happy Revolution were odious and unjuſtifiable. *The ſecond is*, That his late Majeſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance. *And the third is*, That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the Revolution.’

As to the firſt, That ‘ he ſuggeſts, that the neceſſary Means uſed to bring about the Revolution were odious and unjuſtifiable;’ My Lords, we can't have a better Anſwer to this, than utterly to deny that we have made any ſuch Aſſertion: We have not done it in Words, nor in any Words that will bear that Conſtruction. We inſiſt, that as it can't be proved out of the Sermon, ſo neither out of any other Action of his Life, or any other Sermon by him preach'd. We ſay, that in no Part of his Sermon he has affirmed any Thing of the *neceſſary Means uſed to bring about the Revolution*; that was a Point not fit for the Doctor to meddle with, the Legiſlature had taken Care of that. On the contrary, we have all along endeavoured, in that Sermon, to clear the Revolution and his late Majeſty (and we hope we have done it effectually) from the black and odious Colours which their greateſt Enemies had endeavoured to caſt upon them. To this Part of the Article we have pleaded Not Guilty. We have denied the Fact; it has not been prov'd upon us; the Sermon don't prove it, nor does the Dedication prove it; but they prove quite the contrary, as by ſeveral Paragraphs of the Sermon compared together will appear.

The ſecond Diviſion of this Article is, *That his late Majeſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance.* This Fact we do acknowledge, if it be underſtood as the Doctor explains it, and proves it by the Declaration itſelf. We take it to be very juſt and true; the Reſiſtance the Doctor mentions, being ſuch a Reſiſtance as tends to Conqueſt only, as by the Words plainly appear, which are printed, and referred to in the Sermon. It can have no other Conſideration, or Meaning, as will appear to any that read that Part of the Sermon with any Candor, or any Ingenuity. The Doctor has taken Care to expreſs it in Words, that there might be no Room for Exception. ‘ His Highneſs declares in Oppoſition to thoſe who give it out, that we intend to conquer and inſlave theſe Nations, that we have thought fit to add a few Words to our Declaration: It is not to be imagined that either thoſe who have invited us, or thoſe who are already come to aſſiſt us, can join in a wicked At-

‘ tempt of Conqueſt, to make void their own lawful Titles to their Ho‑‘ nours, Eſtates and Intereſts.’ And undoubtedly it is ſo. He did not come to conquer and enſlave us, but to make us a free People; to preſerve and reſtore our Religion, Laws and Liberties; which, my Lords, with humble Submiſſion, has been the Senſe of the Nation; and Notions of a different Kind, and ſuch Aſſertions in printed Sermons, have been animadverted upon.

Now if the Doctor, having his Eye in that Expreſſion on the Matter of Conqueſt that others had inſinuated, and that the late King did diſclaim any ſuch Pretence, did expreſs the ſame by Reſiſtance, the Expreſſion, we hope, is applicable to the Subject-matter that was before him, and ought not to be wreſted or turned to any other Purpoſe. Nothing can ſhew more his Meaning than his own Quotation: He refers to King *William*'s Declaration, to juſtify him in that Matter.

The next Head is, That ‘ to impute Reſiſtance to the ſaid Revolution, ‘ is to caſt black and odious Colours upon his late Majeſty, and the ſaid ‘ Revolution.’ This we likewiſe utterly deny to have maintained; we have ſaid no ſuch Thing quite thro' the Sermon; we have not taken upon us to meddle with that Point: It was an improper Subject for him to meddle with. The Doctor neither affirms, nor ſays any Thing of thoſe that impute Reſiſtance to the Revolution; but thoſe which the Doctor intended, and which are plainly meant, if the preceding Words muſt be the Words to which the Subſequent and Concluſion of the Sentence relates, then they are Perſons of dangerous Diſpoſitions, that place the Power in the People; that pretend to a Power to call their Sovereign to an Account at their Will and Pleaſure; Poſitions that ſtand condemned by the Laws of the Church and State, and then vouch the Revolution in Defence of theſe Principles. Theſe are the Perſons mentioned and intended by the Doctor, whoſe Principles and Practices caſt black and odious Colours upon the Revolution.

My Lords, the Doctor, we own, in his Sermon, has aſſerted this general Propoſition, *viz.* ‘ Abſolute Obedience in all Things lawful to the ‘ Supreme Power; and the utter Illegality of Reſiſtance of the Supreme ‘ Power upon any Pretence whatſoever.’ And this being the Article, if we underſtand ſome of the Gentlemen of the Houſe of Commons aright, on which the whole Impeachment turns; and that if we were clear of this Article, there would be no Reaſon to follow us upon the others; it gives us an Occaſion to inlarge a little further upon this Point.

My Lords, Non-reſiſtance in general we do aſſert as a Rule; yet we agree there is an Exception implied in that Rule, and that Exception, we ſay, was the Caſe of the Revolution. When this general Rule has an Exception in it, it muſt be in a Caſe of the utmoſt Neceſſity implied, and is not expreſſed, ſtated, or determined in any Law or Act of Parliament that I know of, except in the Particular herein after-mentioned.

My Lords, This Doctrine is agreeable to the Scriptures; is taught by the Church of *England* in her Homilies, Articles and Injunctions; by her Biſhops and Fathers; and in all Admonitions we have had from the Biſhops and Paſtors of the Church, from Time to Time. I ſhall not name them, ſome of them have been named. We ſhall produce Sermons preached before her Majeſty, your Lordſhips, and the Houſe of Commons, on the moſt ſolemn Occaſions, where this Doctrine has been fully aſſerted, even beyond what the Doctor has laid down. Both your Lordſhips and the Commons have returned Thanks to the Biſhops and Clergy that have preach'd them; and therefore we can't apprehend ourſelves to be worthy of this Reprehenſion. We ſhall produce them in Evidence, and vouch Authorities before the Reformation, and in the Infancy of it: The Homilies which are allow'd by the Church, and eſtabliſh'd by ſeveral Acts of Parliament.

This we take to be agreeable to the Laws and Statutes of the Realm. The Law makes it High Treaſon for particular Perſons to reſiſt the Supreme Power.

The *Spencers* in *Edward* the Second's Time aſſerted, That if the King did not govern well, the People might remove him, and that by Force; but that was condemn'd by two Acts of Parliament, in *E.* II. and *E.* III.'s Reign. The Act of 25 *E.* III. that famous Act that has been the Standard for Treaſon for many Ages, is agreeable to the Doctor's Aſſertion; and when there were Breaches made in that Law in Queen *Mary*'s Time, thoſe Acts were again repeal'd: Now I need not repeat, that to reſiſt the executive Power, and the Perſon of the King, by that Act, is compaſſing his Death, and levying War againſt him. They have always looked upon it, that reſiſting the King is levying War, it is a compaſſing and imagining the Death of the King; I ſhall therefore ſay no more on that particular Act of Parliament, but come to later Times.

In the Act of 12 *Car.* II. *cap.* 30. it is declared, That ‘ it is the un‘ doubted and fundamental Law of this Kingdom, that neither the Peers ‘ of this Realm, nor the Commons, nor both together, in Parliament ‘ or out of Parliament, nor the People collectively or repreſentatively, ‘ nor any other Perſons whatſoever, ever had, have, or ought to have, ‘ any coercive Power over the Perſons of the Kings of this Realm.’ Here is a Declaration as full as can be, I am ſure as full as the Doctor's Sermon; and yet this Declaration, I do agree, muſt have an Exception in a Caſe of the utmoſt Neceſſity: And I hope there is as much Reaſon to allow the Doctor an Exception, as in this Act of Parliament.

The next Act is the Corporation Act, 13 *Car.* II. in which all the Officers of Corporations are directed to ſwear, ‘ That they do believe, that ‘ it is not lawful, upon any Pretence whatſoever, to take Arms againſt the ‘ King.’ Here is as full a Declaration to be made by all the Magiſtrates of Corporations, as general Words can carry; and yet I would be underſtood in every one of theſe, that there is an Exception of Neceſſity; but whether the Doctor was a proper Judge of that Neceſſity, I ſhall take Notice by and bye.

The next is the Militia Act, 13 and 14 *Car.* II. and there is the ſame Declaration to be made by every Lord Lieutenant, Deputy Lieutenant, Officer and Soldier, ‘ That it is not lawful, upon any Pretence whatſo‘ ever, to take Arms againſt the King.’ And the Preamble of that Act is ſtronger; for in the Preamble of that Act it is declared, ‘ That both or ‘ either of the Houſes of Parliament cannot nor lawfully may raiſe or levy ‘ any War, offenſive or defenſive, againſt his Majeſty, his Heirs, or law‘ful Succeſſors.’

The next Act is the Act of Uniformity 13 and 14 *Car.* II.

The next is the Act for Select Veſtries, which injoins all Deans, Parſons, *&c.* to make this Declaration, ‘ That it is not lawful, upon any ‘ Pretence whatſoever, to take Arms againſt the King.’

The next Act is the Act of Aſſociation, whereby ‘ all Perſons are en‘ gaged to ſtand by and aſſiſt one another againſt all his Majeſty's Enemies,’ without any Limitation.

The next is the Act which eſtabliſhes the Abjuration Oath, 13 & 14 *W.* III. which was taken in the late Reign, and the Acts of 1 & 6 of her Majeſty's Reign, whereby ‘ all Perſons in Office are to ſwear to defend the ‘ King and Queen, to the uttermoſt of their Power, againſt all traitorous ‘ Conſpiracies and Attempts whatſoever, which ſhall be made againſt her ‘ Perſon, Crown or Dignity.’ And that theſe Words may have the plain Senſe put upon them, ‘ They are to declare that they make that Recogni‘ tion, Acknowledgment, Abjuration, Renunciation, and Promiſe, hearti‘ ly, willingly, and truly, upon the true Faith of a Chriſtian.’ Now this Reſiſtance can't be agreeable to this Abjuration, for to reſiſt is not the Way to defend.

My Lords, We think that the Doctrine of Non-reſiſtance, as a general Propoſition, is warranted by the Laws of the Land; and when there is an Exception implied therein, muſt only be determined by the Wiſdom of the Nation, and not by any one Doctor or private Perſon whatſoever. The Doctor's Propoſition is about Non-reſiſtance of the Supreme Power, and we have no Reaſon to take a greater Weight upon us than the Words of our Sermon; and whatever Conſtruction may be put upon it, in relation to the Executive Power, yet the Propoſition holds as to the Supreme Power, which is all the Doctor has aſſerted. The Supreme Power is the Queen and Parliament, and to this Supreme Power the Doctor has preſſed the utter Unlawfulneſs of Reſiſtance; and I have not heard it ſaid by any, that it is lawful to reſiſt the Queen in Parliament. Here is the Strength of the Nation, and here there ought to be a ſtanding Obedience; otherwiſe it is ſetting up the People to be Judges, and not the Collective Body of the People aſſembled in Parliament.

My Lords, in a particular Caſe of the utmoſt Neceſſity, what Conſtruction muſt be made as an Exception out of the General Rule, muſt be left to Time and Circumſtances (when ſuch a Caſe ſhall happen) to determine, and muſt be determined by the Wiſdom and Strength of the Nation, if ever ſuch a Caſe ſhould happen, which I hope never will more.

There is indeed one Exception made in one particular Caſe in the Bill of Rights, where it is enacted, That ‘ if the King or Queen ſhall be re‘ conciled to the See of *Rome*, or profeſs the Popiſh Religion, or marry a ‘ Papiſt, then ſuch Perſon ſhall be excluded to inherit the Crown, or have ‘ Regal Power in the Realm, and that the People ſhall be abſolved of their ‘ Allegiance’ And this I take to be the firſt ſtated and determined Exception to this general Rule that ever was made in any Act of Parliament.

My Lords, We think the Government can ſcarce be juſt to itſelf, that don't encourage and command this Obedience, this Non-reſiſtance. This is a Rule profitable to all Governments, let the Nature of them be what they will; it is for the Peace and Quiet both of Church and State. It would be wiſe Work to have the Exception to this Rule ſtated by every one that comes into a Pulpit. I know not whether it would not be High-Treaſon in them to do it; ſure I am, it would be a high Crime: And if theſe Points are doubtful or diſputable (as at leaſt muſt be agreed), ſure they are no Grounds for an Impeachment.

What Doctrines ſhould a Miniſter of the Church of *England* preach, if not thoſe that are delivered in the Scriptures, and in the Doctrines of the Church? Muſt he ſearch another Rule than the Scriptures, the Laws and the Fathers of the Church, have laid down? Muſt he tell the People, that the Doctrine of Non-reſiſtance of the Supreme Power is the Doctrine of the Church of *England?* Or muſt he limit this Rule, and ſtate the Exceptions to it? Sure this would be very ſtrange for the Doctor to do: He muſt tell them Reſiſtance is unlawful, but there is an Exception to that Rule; but what that Exception is, I muſt not tell you, but you muſt find it out as you can. Is not this to pick Holes in the Duty and Allegiance of the Subject, and would look like the Blind leading the Blind?

My Lords, We think it would be a very ſtrange thing for a Miniſter of the Goſpel to diſtinguiſh in this Caſe: It would not be allowed him; it would be an Offence for any Preacher to do it. He muſt preach the general Propoſition, he muſt inculcate the general Rule, and he muſt preach in the Words that the Laws of God, and of this Land, have delivered it in; he muſt not vary it, to find Meanings to help the People, like a good Caſuiſt, to diſtinguiſh themſelves out of their Allegiance.

Now ſo far we apprehend is the whole Sermon of the Doctor's to be underſtood, as not raſing the Foundations of the Government, not inciting to Rebellion, but preaching Obedience to the Laws of GOD and Man. It is a great Misfortune for the Doctor to be repreſented as preaching this Doctrine for the Sake of the Pretender. We think, at leaſt, it may be a Comfort to him, that there is not a Syllable of Proof or Truth in it; and that, on the contrary, the Doctor diſclaims all Right in the Pretender, by aſſerting and acknowledging her Majeſty's Right, and expreſſing a paſſionate Concern, that her Majeſty is the Relict of the Royal Family.

We have given all the Aſſurance of our Fidelity the Law demands, we have taken the Oath of Abjuration, and been always ſubmiſſive to her Majeſty, and the Laws of the Nation, given all the Security of our Allegiance and Loyalty that the Government required.

The Doctor fully declares his Meaning in this Sermon: Does he not all along ſubmit to the Government, and pray for the Queen and Government? He has done it in ſeveral Places of his Sermon, particularly in one Place, which will carry a great Weight in it. ‘What (ſays he) I have thus ‘ freely ſpoken, I hope is as much without Offence, as it proceeds from a ‘ tender Concern for her Majeſty's Perſon, and a hearty Zeal for the Safety ‘ of our Church and Conſtitution.’ Surely after this Declaration, in common Juſtice, there ought to be no Conſtruction of a Man's Meaning made by Inference. Here is a full Declaration, that what he has done he has done in Service and Zeal to her Majeſty and the Conſtitution in Church and State.

When there is not thro' the whole Sermon any plain Words to ground ſuch a Conſtruction; when there is not the leaſt Proof offer'd, but only by ſuch forced Conſtructions; when different Words are pick'd out from different Places, and Words ſo diſtant are joined together to make up Sentences; and then Arguments framed, and Concluſions drawn from thoſe Sentences to make good the Impeachment, we think it is much too hard, and hope it never will be endured, to pick Part of a Line here, and ſix or eight Lines after to pick Part of another, and to join the Concluſions of one Sentence and the Beginning of another; this would be to confound all Reaſon and Underſtanding whatſoever. This we take not to be a right way of Reaſoning, nor a proper Evidence to maintain an Impeachment, and we hope your Lordſhips will therefore acquit the Doctor of this Article.

Mr. *Phipps*. MY Lords, I am alſo aſſigned by your Lordſhips to be one of the Counſel for Doctor *Sacheverell*, who, I beg Leave to ſay, I cannot yet think to be a Criminal; and, when we have been heard, I hope your Lordſhips will not think him ſuch.

I do admit, as the Caſe is ſtated by the Gentlemen who are the Managers for the Commons, that it is a Cauſe of very great Moment, and is worthy of your Lordſhips Determination, becauſe it deſerves the greateſt Deliberation; it being a Cauſe as conſiderable in its Conſequences to her Majeſty, the Church, and theſe Kingdoms, as ever came before your Lordſhips. And therefore, ſince it has been the Doctor's Misfortune to incur the Diſpleaſure of the Houſe of Commons, and to lie under the Weight of an Impeachment by that Great and Honourable Body, it is his greateſt Comfort (next to his being Innocent) that he has the Honour to have your Lordſhips for his Judges, and the Opportunity of ſo publick a Vindication of his Innocence; for he does not doubt to give your Lordſhips, and all by whom we have the Honour to be heard, full Satisfaction, that he is not guilty of any of the Crimes charged upon him in any or either of the Articles.

My Lords, we agree with the Managers, that his late Majeſty, when Prince of *Orange*, did, with an armed Force, undertake a glorious Enterprize for delivering the Kingdom from Popery and Slavery. We admit, that divers Subjects well affected to their Country joined with and aſſiſted him in that Enterprize; and that the Enterprize being crowned with Succeſs, the late happy Revolution took Effect, and was Eſtabliſhed. We alſo admit, that the bleſſed Conſequences of the Revolution are the Enjoyment of our Religion and Laws, the Preſervation of her Majeſty's Perſon, the many Advantages ariſing by her Majeſty's wiſe and glorious Adminiſtration, the Proſpect of Happineſs to future Ages by the Settlement of the Succeſſion, and the Union of the two Kingdoms.

But there are other Matters ſuggeſted in the Preamble, in which we differ with the Gentlemen of the Houſe of Commons; for it is therein alledged, 'That Doctor *Sacheverell* preached and publiſhed his two Sermons, 'with a malicious and ſeditious Intention to undermine the Government 'and Proteſtant Succeſſion, to defame her Majeſty's Adminiſtration, to 'Aſperſe the Memory of his late Majeſty, and Traduce and condemn the 'Revolution, to Arraign the Reſolution of both Houſes of Parliament, to 'create Jealouſies and Diviſions among her Majeſty's Subjects, and to incite them to Sedition and Rebellion.' And all this we totally deny.

The Offences charged upon the Doctor are of a very high and heinous Nature, and the greater the Crimes are with which a Man is charged, the clearer and plainer ought the Evidence to be to maintain and make good that Charge. And to make the Doctor a Criminal within theſe Articles, every Branch of the Articles muſt be proved as they are laid. It muſt be proved that he preach'd and publiſh'd theſe Sermons with ſuch wicked, malicious and ſeditious Intention, as is alledged in the Preamble; and the Proof ought to be plain and poſitive; for the Laws of *England* have ſo guarded the Perſons and Properties of the Subjects, that their Lives, Liberties, or Eſtates cannot be ſubject to Forfeiture, or Reſtraint, by uncertain or conjectural Evidence, by ſtrain'd or unnatural Inferences, Inſinuations, or Innuendo's. And altho' I could cite many Authorities and Determinations in the Courts of *Weſtminſter-Hall*, wherein the Judges have expreſs'd their Diſlike and Deteſtation of convicting Men of Offences, either Capital or Criminal, by Innuendo's or Inferences; yet I forbear to trouble your Lordſhips with any of them, becauſe I have an Authority Superior to them all to warrant what I have ſaid, and that is the Determination and Reſolution of your Lordſhips in Sir *Samuel Barnardiſton*'s Caſe, which having been read by Sir *Simon Harcourt*, I forbear to trouble your Lordſhips with a Repetition of it.

The next thing therefore to be conſidered is, Whether the Sermons were preached with ſuch malicious and ſeditious Intention as is aſſerted in the Preamble, and if there be ſuch plain, direct, and poſitive Proof, as is by your Lordſhips Determination, in Sir *Samuel Barnardiſton*'s Caſe, declared to be neceſſary.

But before I come to ſpeak to any particular Article, I beg Leave to obſerve ſomething, which though it hath not been made a particular Charge againſt the Doctor in any one Article, yet it has been urged and inſinuated almoſt by every one of the Managers of the Houſe of Commons to inforce every Article, and that is, That *notwithſtanding the Doctor's Expreſſion of Loyalty to the Queen, yet his Intention is to bring in the Pretender.*

It has been objected, as I apprehended (and I beg Pardon if I am miſtaken) "That the Doctor confines his Doctrine of Paſſive-Obedience and "Non-Reſiſtance to a *Jure Divino* King or Queen, and that from thence "it was eaſy to underſtand againſt what Queen the Doctor excites the "People to take up Arms." If the Queen, who has an Hereditary Right, and alſo a Right confirmed and eſtabliſhed by Act of Parliament, cannot be ſaid to be a *Jure Divino* Queen, I do not know who can. I did not think that the Doctor, who aſſerts the Hereditary Right of the Queen, could be charg'd with an Intention to bring in the Pretender. I am in your Lordſhips Judgment, whether the denying her Majeſty's Hereditary Right be not the moſt likely way to bring him in: For I ſubmit to your Lordſhips, whether the denying the Hereditary Right of the Queen, be not to ſuppoſe an Hereditary Right in ſomebody elſe; and whether that does not leave a Way open (when the Queen's Enemies are ſtrong enough) to bring in that Perſon in whom the Hereditary Right is ſuppoſed.

It is aſſerted, "That the Doctor's pretended Zeal is for her Majeſty, "but his real Zeal is for the Pretender: It is hard to ſay a Man means "contrary to what he ſpeaks; and that, though he declares that the Safety, "Rights and Eſtabliſhment of her Majeſty's Government, with thoſe "of the Church, are the things which he ſo earneſtly contends for, and are "his only Aim and Intention; and tho' he prays that God will preſerve "her Majeſty for the Comfort and Support of the Church and Nation, "yet it is ſuggeſted that his chief Aim and Deſign is to dethrone her Ma"jeſty, to ſet the Crown upon the Head of the Pretender, and to eſtabliſh "Popery, or at leaſt a Church independent on the State. And altho' he "preaches up Paſſive Obedience and Non-Reſiſtance under her Majeſty's "happy Adminiſtration, yet it is objected he ſtirs up the People to Rebel"lion, and means Non-Reſiſtance and Paſſive Obedience to the Gentle"man on the other Side of the Water."

I do agree theſe Things have been urged with great Ingenuity; but what Proof, what Evidence is there of any of theſe Matters thus ſuggeſted?

My Lords, by the Law of *England* Men are not to be harangued out of their Lives, Liberties or Eſtates; but, as I have obſerved, it muſt be plain and poſitive Proof alone that can ſubject them to a Forfeiture: And I ſubmit to your Lordſhips, where a Man affirms a Thing in his Sermon, if an Averment by any Body elſe that he means quite the contrary, be a ſufficient Evidence to convict a Man of High Crimes and Miſdemeanors?

There is another Matter which I confeſs puts me under a great Difficulty, to determine which way to apply our Defence to the firſt Article; and that is, the different Conſtruction which the Gentlemen of the Houſe of Commons have made of that Part of the Doctor's Sermon, on which the firſt Article is founded. The Gentlemen that ſpoke to the firſt Article (if I apprehend them right) affirm, "That the Doctor aſſerts an un"limited Obedience, and the utter Illegality of Reſiſtance to the Queen, "as the Supreme Executive Power, and that ſuch an Aſſertion was a Re"flection upon the Revolution, which was brought about by the Reſiſt"ance that was given to the late King *James*." And all their Arguments on the firſt Article were grounded on this Aſſertion. But a very learned Gentleman, who ſpoke Yeſterday to the fourth Article, was pleaſed to object, "That tho' the Doctor aſſerted the utter Illegality of Reſiſtance "to the Supreme Power, yet he had no where aſſerted the utter Illegality "of Reſiſtance to the Queen, thereby leaving himſelf at Liberty to reſiſt "the Queen, and bring in the Pretender."

Now the Queſtion is, Which of theſe Conſtructions we muſt believe? If the Conſtruction made by the Gentlemen who ſpoke to the firſt Article be true, then the Doctor has taken that Care of her Majeſty's Perſon which he ought, by aſſerting the utter Illegality of Reſiſting Her, and hath not left himſelf at Liberty to take up Arms againſt her Majeſty to bring in the Pretender; and ſo the great Objection made againſt the Doctor by the learned Gentleman who ſpoke to the fourth Article falls. But if his Conſtruction prevails, there is no Reflection on the Revolution, and the firſt Article falls to the Ground; for the reflecting on the Revolution can be only by aſſerting the Illegality of Reſiſtance to the Queen, as the Supreme Executive Power; becauſe the Reſiſtance which brought about the Revolution was made to the late King *James* only, and not againſt the Legiſlature: But whichſoever of theſe Gentlemen your Lordſhips ſhall be of Opinion is in the Right, I beg Leave to ſay, that this may certainly be concluded and inferred, That the Conſtruction of that Sentence muſt be very doubtful, in which ſuch learned Men differ, and conſequently cannot be a Charge ſufficient and certain enough to ground a Conviction for High Crimes and Miſdemeanors. Theſe Matters being ſubmitted to your Lordſhips Judgment, I come next to conſider the Articles themſelves, and ſhall humbly propoſe to your Lordſhips Conſideration what I have to offer in Anſwer to them; and ſhall take Notice of the ſeveral Branches of the reſpective Articles, which the Doctor mentions in his Anſwer to them.

As to the firſt Branch of the firſt Article, which charges, the Doctor does *Suggeſt and Maintain, That the neceſſary Means uſed to bring about the happy Revolution were Odious and Unjuſtifiable*; the Doctor denies there are any ſuch Expreſſions in his Sermon at *St. Paul*'s: And I beg Leave to ſay, that there is not one Paragraph or Sentence in his Sermon that can ſupport this Charge; the Neceſſary Means uſed to bring about the Revolution not being once mentioned in his Sermon; and therefore I at firſt doubted whether I had the right Sermon; for I could no more find that Sentence in the Doctor's Sermon at *St. Paul*'s, than one of the learned Managers could find a Text of Scripture, quoted by the Doctor, in his Bible.

One of the Gentlemen who ſpoke to this Article, was pleaſed to admit, that the Words charged in this Part of the Article are not in the Doctor's Sermon, but ſaid there are Words that are *tantamount*; ſo that this Branch is to be proved by Innuendo's, and yet they have not been pleaſed to let us know what thoſe Words are which do amount to the ſame Signification; and we deny there are any ſuch Words.

The laſt Part of the firſt Article (for I ſhall conſider that next, becauſe it relates to the Revolution) charges, that the Doctor *does Suggeſt and Maintain, that to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his Majeſty and the Revolution.* In Anſwer to which I muſt beg Leave to take Notice, that the Words of the Sermon are here tranſpos'd and miſplac'd: for the Doctor does not ſay, that *to impute Reſiſtance to the Revolution is to caſt black and odious Colours upon his Majeſty and the Revolution*; but he ſays, that *to urge the Revolution to juſtify the Doctrine of Dethroning and Murdering of Princes, is to caſt Black and Odious Colours on his Majeſty and the Revolution*; for the Doctor in Page 11. ſays, that "the New "Preachers and New Politicians pretend to have a Power to cancel their "Allegiance at Pleaſure, to call their Sovereign to an Account for High "Treaſon, to Dethrone and Murder him for a Criminal, as they did the "Royal Martyr by a Judiciary Sentence; and that to juſtify this Doctrine, "they urge the Revolution of this Day:" *But* (ſays he) *they are the greateſt Enemies of that, and his late Majeſty, and the moſt ungrateful for the Deliverance, who endeavour to caſt ſuch Black and Odious Colours upon both*; ſo that what he ſays is no more than that to juſtify the calling the Sovereign to an Account for High Treaſon, and the Dethroning and Murdering of him, by the Revolution, is to caſt Black and Odious Colours upon both. And is there any Body that has any Reſpect for the glorious and happy Revolution, that has any Regard for the Preſervation of our Conſtitution, can ſay leſs? Can there be a greater Reflection on the Revolution, than to urge That in Vindication of the Rebellion in Forty-one, as if the Caſes were alike?

I humbly ſubmit it to your Lordſhips, if there be any thing in his Sermon that can be conſtrued to reflect on the Revolution, if the Words be taken according to the Natural and Genuine Senſe of them; nor can it be thought the Doctor would caſt the leaſt Reflection upon it: Can it be imagined, that he who is a Member of *Magdalen* College in *Oxford*, ſhould ſo ſoon forget the Attempts that were made on their Liberties, and would reflect on the Revolution, by which not only he and the reſt of the Fellows of that College, but all the Colleges in both the Univerſities, nay, all her Majeſty's Proteſtant Subjects, now enjoy their Religion, Rights and Liberties?

That he who is a Church of *England*-Man ſhould Calumniate the Revolution, by which the beſt Eſtabliſhed Church in the World is preſerved from Popiſh Superſtition and Idolatry: That he who contends ſo earneſtly for the Preſervation of our Conſtitution, ſhould caſt Black and Odious Colours on that, by which alone the Succeſſion is ſettled and ſecured in the Proteſtant Line, and her Majeſty is now Lawfully and Rightfully ſeated on the Throne of her Royal Anceſtors; on which the Doctor prays, and I hope we all join with him, *that ſhe may long continue for the Support and Comfort of this Church and Nation.* No, my Lords, it is not the Revolution in 1688, but the Revolution in 1648, that he endeavours to blacken, and the Principles by which that was brought to paſs, thoſe Principles which made Rebellious Subjects take up Arms againſt one of the beſt Princes that ever ſwayed the Sceptres of theſe Kingdoms; thoſe Principles which brought that Pious Martyr to the Block, baniſhed the Royal Family, and ſet an Uſurper upon the Throne; this is the Dethroning, this is the Murdering which he means: And can any Colours be too Black, any Colours too Odious for ſuch Crimes? No doubt, my Lords, they cannot; and therefore, inſtead of charging the Doctor with reflecting on the late happy Revolution, I hope your Lordſhips will be of Opinion he vindicates it in the higheſt Degree, when he diſtinguiſheth it from that in 1648, and ſhews what a wide Difference there is between them.

As to that Part of the firſt Article which ſays, *That his late Majeſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance:* If the Doctor had not explained himſelf, it is humbly ſubmitted how far he is juſtified by his Majeſty's Declaration. The Declaration ſays, *We have thought fit to go over to* England, *and to carry with us a Force ſufficient, by the Bleſſing of God, to defend us from the Violence of evil Counſellors; and that his Expedition is intended for no other Deſign but to have a free and lawful Parliament:* So that this Expedition was to have a free Parliament, and his Forces were to defend him from the Violence of Evil Counſellors, in carrying on that glorious Deſign; and when the late King *James* Abdicated the Government, what Reſiſtance was it to ſupply the Vacancy, by ſettling his late Majeſty on the Throne?

In Conſtruction of Words and Sentences, if any Part be ambiguous, and may be taken in a double Senſe, it ought in Favour of Life and Liberty to be taken in the beſt Senſe. But the Author declares what his Senſe is, what he means by it; there it cannot be taken in any other Senſe than that: And this is the Doctor's Caſe: for he ſhews, both in his Sermon, and by a Note printed at the Bottom of the Page, that by Reſiſtance he means ſuch Reſiſtance as tended to a Conqueſt: And is he not juſtified in that by his Majeſty's Declaration, wherein he diſowns the wicked Attempt of Conqueſt? And by the Vote of both Houſes of Parliament, who ſo highly reſented the Deſign of making that Expedition a Conqueſt, that they ordered a Pamphlet, which attempted to prove it ſuch, to be Burnt by the Common Hangman?

And therefore, if the general Words would have carried ſuch a Reflection, yet the Clauſe which explains it, being printed with it, prevents ſuch a Conſtruction; for there is no Reaſon to apprehend any Danger from the Poiſon, when the Antidote is adminiſtered at the ſame Time. Thus, my Lords, I take it, I have anſwered every Branch of this Article, and ſhewn, that there are not any Expreſſions in the Sermon that can Warrant or Support any Part of it: But, from what I obſerved from the Gentlemen who are the Managers, and ſpoke to this Article, the great Foundation and Streſs upon which this Article depends, is in the Sentence in *Page* 11. of the Doctor's Sermon, where he ſays, *The Grand Security of our Government, and the very Pillar upon which it ſtands, is founded upon the ſteady Belief of the Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power in all things lawful, and the utter Illegality of Reſiſtance upon any Pretence whatſoever.* But I take it, the Charge in this Article can never be ſupported by any Words in this Sentence; for it is Evident, that the abſolute and unconditional Obedience, which he ſays Subjects are obliged to, is to the Supreme Power in all things lawful; and the utter Illegality of Reſiſtance upon any Pretence whatſoever, (being in one and the ſame Sentence), muſt be intended to be of the Supreme Power in all Things lawful; ſo that it is no more than if he had ſaid, 'Tis utterly Illegal, upon any Account whatſoever, to reſiſt the Supreme Power in Things lawful. Can any Aphoriſm be truer than this, viz. *That where the Thing commanded by the Supreme Power is lawful, the Reſiſtance given to it muſt be unlawful?* And this is all the Doctor hath aſſerted in this Paragraph.

If I may have Leave to cite a foreign Author, *Puffendorf* ſays, The Supreme Power is that in which the Legiſlature is veſted; for he ſays, *Human Laws are the Decrees of the Supreme Power, concerning Matters to be obſerved by the Subjects for the Good of the State.* And one of the learned Managers, who ſpoke to this Article, admits it to be ſo. And then the Doctor's Aſſertion is, That the Security of our Government, and the very Pillar on which it ſtands, is founded upon the ſteady Belief of the Subjects Obligation to an Abſolute and Unconditional Obedience to the Laws made by the Queen, Lords and Commons, in Parliament aſſembled, and the utter Illegality of Reſiſting ſuch Laws on any Pretence whatſoever. And if this be not ſo univerſal a Truth, as not to admit any Exception, is humbly ſubmitted to your Lordſhips: And this is an Anſwer to all that hath been ſaid againſt us on the firſt Article. For all the Gentlemen have founded their Diſcourſe on a Suppoſition, that the Doctor preached up an Abſolute Unconditional Obedience to, and the utter Illegality of, Reſiſtance of the Queen; whereas he preaches up the Illegality of Reſiſting the Supreme Power, and that in all Things lawful.

Suppoſe it could be collected, that by the Supreme Power the Doctor meant the Supreme Executive Power, which is the Queen; yet the Doctor cannot be thought by this to reflect on the Revolution, or to condemn that Oppoſition given to King *James.*

For can it be imagined, that he condemns the Oppoſition given to that Prince in the Diſpenſing Power, in committing the Biſhops, depriving Men of their Freeholds and Liberties, by Eccleſiaſtical and other unlawful Commiſſions, and endeavouring to eſtabliſh Popery, by introducing a foreign Power? I ſay, Can it be imagined the Doctor condemns that Oppoſition, when he urges the Illegality of Reſiſtance to the Supreme Power in all Things lawful? If thoſe Proceedings of King *James* were lawful, then the Doctor condemns the Oppoſition given to them; but thoſe Proceedings being Illegal, the Oppoſition given to them is nowhere condemn'd by the Doctor, nor hath this Paragraph in his Sermon any Relation to it.

To carry this yet further; ſuppoſe that the urging the Illegality of Reſiſtance on any Pretence whatſoever had been a Subſtantive Clauſe, and had no Relation to, or Dependance upon, any other Clauſe or Sentence; or ſuppoſe ſuch a general Aſſertion can be collected from any Part of the Doctor's Sermon, yet it muſt be taken only for a general Propoſition: And if ſuch general Propoſitions are true in the General, and to a common Intent, tho' they are ſubject to particular Exceptions, yet it is ſubmitted, whether the Doctor is not well warranted in aſſerting ſuch a general Propoſition, without mentioning the particular Exception? For all general Rules have Exceptions; and yet the Perſon that cites them, ſeldom or never mentions the Exceptions; for whenever ſuch general Propoſitions are urged, the Exceptions are always underſtood and implied. And there was leſs Reaſon to mention the Exception in this Caſe, becauſe it is ſo univerſally known: It had the Concurrence of the whole Nation, and was ſo often eſtabliſhed and approved by the Legiſlature.

And the Doctor intirely concurs with the Gentlemen of the Houſe of Commons, that the Revolution is an Exception; and is not Adverſary to one of the learned Managers, who was pleaſed to admit, it was the only Exception from this general Rule. And I ſubmit to your Lordſhips, if the naming that Exception would not be a greater Reflection on the Revolution, than the Preaching that Doctrine in general Terms, without naming it; for to name it now, ſince the Revolution, would be to ſuppoſe, that it was not implied and underſtood as an Exception out of that general Propoſition, before the Revolution; and then the Exception is to be warranted by the Revolution; which is to infer, that no Reſiſtance was lawful 'till the Revolution: Whereas we ſay, that ſuch an extraordinary Caſe as that of the Revolution, was always implied as an Exception out of that general Doctrine, and ſo the Doctrine juſtifies the Revolution.

And therefore, the Doctor urging this Doctrine of Non-Reſiſtance in ſuch general Terms, as all other general Propoſitions are uſually urged, it is humbly ſubmitted, whether he can for this be eſteem'd guilty of High Crimes and Miſdemeanors? eſpecially ſince this very Doctrine hath been affirm'd in ſuch general Terms, by learned Men in all Ages, by our Church, and by the Legiſlature; of which I'll beg Leave to give ſome few Inſtances.

When the Duke of *Monmouth* was to be executed, his preſent Grace the Archbiſhop of *Canterbury*, the preſent Lord Biſhop of *Bath* and *Wels*, the then Biſhops of *Ely* and *Bath* and *Wells*, were appointed by the King to attend his Grace. They preſs'd him to make a particular Confeſſion of his Crime, and to acknowledge himſelf guilty of Rebellion: His Anſwer was, *He died a Proteſtant of the Church of* England. They replied, *My Lord, If you be of the Church of* England, *you muſt acknowledge the Doctrine of Non-Reſiſtance to be true.*

Archbiſhop *Tillotſon*, in his Letter writ to my Lord *Ruſſel, July* 20, 1683. offers theſe Conſiderations concerning the Point of Reſiſtance. "(1.) "That the Chriſtian Religion doth plainly forbid the Reſiſting of Autho-"rity. (2.) That in the ſame Law which eſtabliſhes our Religion, it is "declared, It is not lawful upon any Pretence whatſoever to take up "Arms againſt the King."

Biſhop *Saunderſon*, in his Works, *Pag.* 522. ſays, *No Conjuncture of Circumſtances whatſoever, can make that Expedient to be done at any Time, that is of itſelf, and in the Kind, unlawful. For a Man to take up Arms (offenſive or defenſive) againſt a lawful Sovereign, being a Thing in its Nature ſimply, and* de toto genere *unlawful, may not be done by any Man, at any Time, in any Caſe, upon any Colour or Pretence whatſoever.*

Thus your Lordſhips obſerve, how much higher theſe great and learned Men carried this Doctrine, than Doctor *Sacheverell* hath done in his Sermon. And Multitudes of Inſtances there are, which ſhew, that it hath been the concurrent and univerſal Opinion of all the learned Men of our Church, in all Ages, that Reſiſtance of the Sovereign Power is not lawful upon any Pretence whatſoever. And what Puniſhment, what Cenſures have been inflicted upon, nay, what Fault has been found with any of them to this Day? One of the learned Gentlemen, to inforce the Legality of Reſiſtance, was pleaſed to urge the original Contract, as the Foundation of the Prerogative of the Crown, and the Liberties of the People; and to aſſert, that if the Supreme Executive Power invaded the Rights of the People, the Contract was diſſolv'd, and the People diſcharg'd from their Allegiance. I will not be poſitive, as to the very Words, but I take this to be the Purport of them.

When the original Contract was made, that learned Gentleman did not think fit to inform us. Was it before *Magna Charta?* If ſo, why not compriz'd in it? All the Liberties the Subjects then laid Claim to, being included in that Act; and 'tis much, a Thing of that Moment, and which was the Source and Spring of all their Liberties, ſhould not be ſo much as mentioned in it. I never met with it in any of our Law Books, in my little Experience.——I never heard it urg'd in any Court before. Was it before the Statute of 25 *Edw.* III.? I never knew it pleaded to any Indictment for High Treaſon, nor objected to enervate or take off the Force of that Statute: And our Law Books being ſilent in it, I think it is too tender a Point for us, who are no Members of any Part of the Legiſlature, to meddle with. And therefore, 'till the Legiſlature have declar'd what the original Contract is, and determin'd what Act of the Supreme Executive Power ſhall amount to a Diſſolution of that original Contract, and diſcharge the Subjects from their Allegiance; I muſt beg Pardon, if I think, that as to Reſiſtance in general, the Law ſtands ſtill upon the Foot of the 25th of *Edward* III. and that all Reſiſtance, except in the Caſe of the Revolution, is ſtill Treaſon within that Act.

But to give ſome further Inſtances, in Vindication of the Doctrine of Paſſive Obedience and Non-Reſiſtance. Archbiſhop *Tillotſon*, in his Letter to the Lord *Ruſſel*, ſays, *The Doctrine of Non-Reſiſtance is the Doctrine of all Proteſtant Churches:* I may add, it was the Doctrine of Chriſt and his Apoſtles: It was the Doctrine in *David*'s Time; for it was this Doctrine that reſtrained *David* from offering Violence to King *Saul*, tho' that King ſought to take away his Life. It was that holy Man's Opinion, that he could not *lift up his Hand againſt the Lord's Anointed, and be guiltleſs.* Can it be done now with greater Innocence than it could then? Is the Perſon of the Lord's Anointed now leſs ſacred than it was then? Or have the People now a greater Liberty to reſiſt, than *David* had then? My Lords, one of the learned Gentlemen ſaid, that in Reſpect of the Patriarchal

Right, it is a Doctrine as old as *Adam*, and I will not pretend to carry it further.

The next Thing therefore to be conſider'd, is, Whether this Doctrine, that is of ſo great Antiquity, has had any Alteration, whether it hath been preach'd, or urg'd in any other Terms ſince the Revolution, than it was before. Biſhop *Beveridge*, in a Book call'd *Private Thoughts upon Religion*, Pag. 247, 249, 250. ſays, ‘Upon any ſeeming real Default or Defect of our Sovereign, we are to be more earneſt in our Prayers and Interceſſion for him; but upon no Account to fight or rebel againſt him.’ This Book had her Majeſty's Royal Licence, and was counterſigned by a noble Lord, eminent for Learning, and her Majeſty's principal Secretary of State; I mean, the Right Honourable the Earl of *Sunderland*.

I beg Leave to cite next a learned Gentleman, whoſe Affection to the Government, and Underſtanding in Antiquity, Nobody can doubt: 'Tis Dr. *Kennet*, who in his Sermon preach'd before the Houſe of Commons, *January* 30, 1705, ſays, ‘This is the true Foundation of that common Axiom, The King can do no Wrong; becauſe there is no Right nor Remedy againſt his Royal Perſon.’ And in the ſame Sermon he ſays, ‘It was declarative of our original Conſtitution, (which one would think ſhould be the original Contract, unleſs the original Contract and the original Conſtitution differ) that our Legiſlature upon Occaſion of this Day would have it expreſs'd, that by the undoubted and fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People, collectively or repreſentatively, nor any other Perſons whatſoever, ever had, have, or ought to have, any coercive Power over the Perſons of the Kings of this Realm.’ And I think it is evident, where there can be no coercive Power, there cannot be any Reſiſtance. This was but in the Year 1705. And was the original Contract found out ſince? If not, then it is plain, the Commons did not think this Doctrine to derogate from that Contract, or to reflect upon the Revolution; for the Doctor had the Thanks of the Commons for his Sermon, and their Order to print it.

I do moſt readily concur with the learned Gentlemen of the Houſe of Commons, that that Reverend Bench is fill'd with Fathers of the Church, who are as great an Ornament to it for Learning and Piety as any of their Predeceſſors, *and are moſt juſtly famed for their religious Moderation*; and therefore Inſtances of their aſſerting this Doctrine ſince the Revolution, will have the greateſt Weight with your Lordſhips, and tend the moſt to the Satiſfaction of that Honourable Houſe, upon whoſe Impeachment the Doctor is brought hither.

The Biſhop of St. *Aſaph*, in his Sermon on the 30th of *January*, 1699, preached before the Lord-Mayor, Pag. 18, ſays, ‘It is plain, that a Government can't poſſibly ſubſiſt for any Time, where any Kind of Violence is allow'd againſt the Magiſtrate: Government is at an End, where Rulers are expos'd to popular Aſſaults.’

The Biſhop of *Lincoln*, in his Sermon preach'd before your Lordſhips the 30th of *January*, 1708, Pag. 15, 16, 17, ſays, ‘Where-ever that Supreme Power and Authority is lodg'd, or in whomſoever it reſides, we are bound to pay either an active or paſſive Obedience; muſt either do what it requires, or ſuffer what it inflicts. This is, without Controverſy, the ſtanding Doctrine of Chriſtianity, and has been confirm'd by the Practices of the beſt Chriſtians in all Ages of the Church.’ My Lord Biſhop likewiſe cites the Words of the Statute of the 12th of *Charles* II. which were mentioned by Dr. *Kennet*; your Lordſhips were pleaſed to thank my Lord Biſhop for this Sermon, and deſired him to print it.

My Lord Archbiſhop of *York*, in his Sermon preached before your Lordſhips in 1700, has ſtated this Doctrine ſo fully and clearly, that it is not capable of the leaſt Contradiction or Doubt: His Grace expreſſes himſelf thus: ‘That there is ſuch a Submiſſion due from all Subjects to the Supreme Authority of the Place where they live, as ſhall tie up their Hands from oppoſing or reſiſting it by Force, is evident from the very Nature and Ends of Political Society; and I dare ſay, there is not that Country upon Earth, let the Form of their Government be what it will, (Abſolute Monarchy, Ariſtocracy, or Commonwealth) where this is not a Part of the Conſtitution. Subjects muſt obey Paſſively, where they cannot obey Actively, otherwiſe the Government would be precarious, and the publick Peace at the Mercy of every Malecontent; and a Door would be ſet open to all the Inſurrections, Rebellions, and Treaſons in the World. Nor is this only a State-Doctrine, but the Doctrine alſo of Jeſus Chriſt; and that a neceſſary and indiſpenſible one too, as ſufficiently appears from thoſe famous Words of St. *Paul*, *Rom.* xiii. 1, 2. which are ſo plain that they need no Comment: So that ſo long as this Text ſtands in our Bibles, the Doctrine of Non-Reſiſtance or Paſſive Obedience muſt be of Obligation to all Chriſtians.’

Is not this Doctrine confirm'd by our Church in her Homilies, and injoin'd to be read on certain Days in the Church? Are not theſe Homilies allow'd by the Articles? Are not theſe Articles eſtabliſh'd by the 13th of *Eliz.* Chap. xiv.? And is not that very Act confirm'd and made perpetual by the Act of Union made in the fifth Year of her Majeſty? Is it not likewiſe ratify'd and eſtabliſh'd by the Legiſlature, by the Act of the 12th of *Charles* II. cited in the Sermons of the Biſhop of *Lincoln* and Dr. *Kennet*; by the Act of the 13th of *Charles* II.? For that Act of the 13th of *Charles* II. *Chap.* iv. obliges all Miniſters, *&c.* to ſubſcribe a Declaration: The firſt Part whereof was this, ‘I *A. B.* do declare that it is not lawful upon any Pretence whatſoever to take up Arms againſt the King.’ Was not that Declaration to be ſwore to by all Officers of Corporations, by the Corporation Act; by all Lieutenants, Deputy Lieutenants, and all Officers and Soldiers of the Militia, by the Militia Act? And can any Man doubt the Truth of that Doctrine, which the Legiſlature has obliged the greateſt Part of the Nation ſo ſolemnly to ſubſcribe and ſwear to? We have collected many more Inſtances of this Kind, which we will offer to your Lordſhips in the Courſe of our Evidence.

Thus your Lordſhips obſerve how this Doctrine has been preach'd and maintain'd by Archbiſhops, Biſhops, and eminent Divines, confirm'd and eſtabliſh'd by the Church, and by the Legiſlature: And is this Doctrine alter'd; or hath it receiv'd any Diminution or Reſtriction by the Revolution? I will not preſume to ſay, but am in your Lordſhips Judgment, on the Conſideration of the ſeveral Sermons before-mention'd, preach'd and publiſh'd with the reſpective Approbation of both Houſes of Parliament ſince the Revolution. I beſeech your Lordſhips, How many Revolutions have there been in this Kingdom, and yet this Doctrine always continued the ſame; and I ſubmit, whether we have not the Authority of your Lordſhips on this very Point; for in a Sermon preach'd before your Lordſhips on the 30th of *January*, 1702, by my Lord Biſhop of *Carliſle*, his Lordſhip expreſſes himſelf thus: ‘Our Foundations, 'tis to be hoped, are not ſhaken by the Weight of thoſe many great and extraordinary Revolutions that have paſſed upon us. The All-wiſe Providence of God has frequently of late (and, as ſome of us always thought, very graciouſly) exchang'd our Governors; but if we ungratefully alter our Notions of the Divine Right of Government, and throw off our antient and primitive Rules of Obedience, we ſhall make an unworthy Return for the Mercies we have received.’ I hope I may have your Lordſhips Leave to conclude your Lordſhips are of the ſame Opinion, ſince my Lord Biſhop had your Lordſhips Thanks for his Sermon, and your Deſire to print it. I alſo preſume to offer it to your Lordſhips Conſideration, whether this very Doctrine be not eſtabliſh'd and injoin'd under the Obligation of an Oath, by the Legiſlature, in the Reign of his late Majeſty, and of her preſent Majeſty; I mean in the Abjuration Oath, in which Oath there is this Clauſe, *viz.* ‘And I do ſwear that I will bear Faith and true Allegiance to her Majeſty, and her will defend to the utmoſt of my Power againſt all traitorous Conſpiracies whatſoever, which ſhall be made againſt her Perſon, Crown and Dignity.’ I believe it will not be deny'd by any Lawyer, that taking up Arms againſt her Majeſty is High-Treaſon, by the Statute of the 25th of *Edw.* III. and therefore the Parliament having injoin'd all Perſons in Office, *&c.* to defend her Majeſty againſt all traitorous Conſpiracies and Attempts, ſhew, that it was their Opinion, that the taking up Arms and reſiſting her Majeſty, upon any Pretence whatſoever, is unlawful, becauſe whereſoever Reſiſtance is lawful the Defence muſt be unlawful.

I would only beg Leave to add, that the Puniſhment inflicted by our Law in this World for Reſiſtance, and the Judgment denounc'd againſt it in the next, ſufficiently evinces the Illegality of it. Taking up Arms and reſiſting againſt the Queen, by the Statute of the 25th of *Edw.* III. is High-Treaſon; the Puniſhment of which is to be Drawn, Hang'd and Quarter'd. And in what Condition they are to be in a future State, St. *Paul* informs us: For he ſays, ‘They that reſiſt ſhall receive to themſelves Damnation.’ And ſurely Nobody will conteſt the Truth of that Doctrine, the Breach of which is attended with ſuch diſmal Conſequences. I hope, therefore, ſince this Doctrine has been ſo univerſally preached and approved, the Preaching of it now ſhall not be thought to reflect on the Revolution, more than it has done hitherto, ſince her Majeſty's happy Acceſſion to the Throne; and more than it did in the Reign of his late Majeſty, who was the glorious Inſtrument of that happy Revolution. Was not his Majeſty appriz'd of the neceſſary Means by which the Revolution was brought about? Had not his late Majeſty as tender a Regard for the Honour of the Revolution, as any Body elſe can be ſuppos'd to have? Nobody can doubt it: And yet this Doctrine was preach'd in his Time, in as general Terms as the Doctor has preach'd it; and not only without Objection, but with the Approbation of his Majeſty, and both Houſes of Parliament. And if all this will not vindicate the Doctrine; yet, I hope, it will at leaſt excuſe the Doctor from being a Criminal.

Can he be a Criminal for preaching that Doctrine which has been aſſerted by ſo many Archbiſhops, Biſhops and other eminent Divines, not only with Impunity, but even with the Approbation of both Houſes of Parliament? That Doctrine which is injoin'd by our Church, ratify'd, confirm'd and eſtabliſh'd by the Legiſlature, and which is the Doctrine of all the Proteſtant Churches in the World, which was the Doctrine of our Saviour himſelf, and which hath been the Doctrine ever ſince *Adam*, and will continue ſo as long as there is a Bible upon Earth?

Can a Man be a Criminal for preaching the Doctrine of Paſſive Obedience and Non-Reſiſtance, tho' without Reſtriction and Limitation, while we are ſo happy as to have her Majeſty to reign over us, upon whoſe Life the Welfare and Happineſs of theſe Nations depend, as much (I hope I may be excus'd if I ſay more) than the Welfare of any Nation ever did upon the Life of any Prince whatſoever ſince the Foundation of the World? And therefore we are ſure your Lordſhips will not leſſen her Security; and the rather, becauſe it is impoſſible, during her Majeſty's Life, any Invaſion or the leaſt Attempt ſhould be made upon that Religion, that Liberty and Property, for the Preſervation of which ſhe run ſo great a Hazard.

This is what I humbly offer to your Lordſhips, on Behalf of my Client, on this Head. And tho' I have mention'd theſe Inſtances, to ſhow in what general Senſe the Doctrine of Paſſive-Obedience has been preached, and that if the Doctor had aſſerted it in ſuch general Terms, he could be no more a Criminal than others; yet it muſt be always underſtood, that he does not aſſert it in ſuch general Terms, but only aſſerts the utter Ilegallity of Reſiſtance to the Supreme Power in all Things lawful.

Before I quit this Article, I would take Notice, it has been objected, that it is highly improper and unſeaſonable for Divines in their Pulpits to meddle with Matters of this Nature: In Anſwer to which, I would (beſides the Injunction that the Apoſtles have laid on their Succeſſors, to put People in Mind of being ſubject to Principalities and Powers) humbly offer to your Lordſhips Conſideration, a bold and ſeditious Paragraph in a Pamphlet printed in 1705, call'd *The Review*; which hath this Paragraph, ‘If the next Parliament ſhould purſue the Steps of the laſt, the Nation, in my Opinion, will be ſo much nearer that Criſis of Time, when *Engliſh* Liberty, being brought to the laſt Extremity, muſt open the Magazine of original Power.’ The ſame Author, ſpeaking of the Family of the *Stuarts*, calls it ‘the Line of all the World, fam'd for Blood, and that had ravaged the beſt Families of the Kingdom.’ And in another Paragraph he ſays, ‘In ſhort, if *Jure Divino* comes upon the Stage, the Queen has no more Title to the Crown than my Lord-Mayor's Horſe: All the People are bound by the Laws of God to depoſe her as an Uſurper, and reſtore their rightful and lawful King *James* III.’ If therefore to defame the whole Line of her Majeſty; to aſſert that the Pretender has an hereditary Right to the Crown; if telling the People, if they do not like the Parliament, they muſt have Recourſe to the Magazine of original Power, be not ſounding a Trumpet to Rebellion, and does not make this Doctrine ſeaſonable and neceſſary to be preach'd at this Time, we ſubmit it to your Lordſhips. And therefore, I humbly hope, that inſtead of laying a Brand of indelible Infamy on this Doctrine, your Lordſhips, for the Preſervation of her Majeſty, and her Succeſſors, and for the ſecuring the Peace of the Kingdom, will convey this Doctrine as intire, and in as full Force, down to Poſterity, as it was tranſmitted to your Lordſhips by your Noble Progenitors.

And as to what one of the Honourable Gentlemen concluded with, *viz.* That your Lordſhips would direct what Doctrine the Miniſters ſhould preach:

If there be any Doctrine in the Bible not proper to be preach'd; if there be any Doctrine except that of the Deity, of greater Antiquity than this, which commences from *Adam*, or is more uſeful or neceſſary for the Preſervation of the Government, then we ſubmit this Doctrine ſhould be let alone. Upon the whole Matter, I am in your Lordſhips Judgment, if, upon Conſideration of what hath been ſaid, your Lordſhips can be of Opinion, that the Doctor is guilty of the High Crimes and Miſdemeanors contain'd in the firſt Article.

Mr. *Dee.* MAY it pleaſe your Lordſhips, After ſo much has been ſaid, and ſo well preſſed by the Gentlemen that have gone before me, of the Doctrine of Non-Reſiſtance (which is ſo well eſtabliſhed by the Opinion of the Fathers of the Church, and founded on the Laws of the Land) I ſhould think myſelf very unmannerly to ſpend your Lordſhips Time in repeating it in worſe Words. I beg Leave only to make a few Remarks: Firſt, on ſome Generals, and then to add a few Words, and draw an Inference or two from one Law that has not yet been taken Notice of.

My Lords, We readily join with the Gentlemen who managed on Behalf of the Houſe of Commons, in deſiring your Lordſhips to aſſert Fundamentals; and deſire your Lordſhips to conſider the antient legal Conſtitution of the Kingdom. This we readily comply with them in, and doubt not but your Lordſhips will do it.

My Lords, There was ſome Notice taken of the Time and Place where this Sermon was preach'd; and it was ſaid by one of the Gentlemen, that it was an improper Time, becauſe it was a Doctrine fit only to be preach'd in the Reign of a bad Prince, but not of a good one. My Lords, indeed I am at a Loſs to underſtand that: I think, if at any Time, it is ſeaſonable when we have ſo gracious a Princeſs upon the Throne, much rather than in the Reign of a Tyrant or Uſurper.

My Lords, This Doctrine has been made appear to your Lordſhips to be conſonant to the Laws of God, and the Laws of the Land; and when we have laid before your Lordſhips our Proofs that have been opened, I hope your Lordſhips will allow we have proved our Caſe.

The Gentlemen on the other Side ſaid, they had proved their Articles: But how? In no other Way than by reading the Sermon, which we hope ſhall be permitted to ſpeak for itſelf.

My Lords, It was ſaid, that the Municipal Laws of the Land ſignify nothing only in Times of Peace. What the Meaning of that is, I know not, unleſs that the Laws muſt be ſilent in the Time of War; but the Way to maintain Peace, and to prevent Blood and Wars at Home, is to preſerve our Laws.

My Lords, It has been likewiſe urg'd as a Maxim, 'That there can be 'no Right, but there muſt be a Remedy to preſerve it.' And thereupon it was hinted, as if there was ſome ſecret Right veſted in the People to do ſomething they did not think fit to name. That Saying, My Lords, I take to be a Maxim in the Law, and to relate only to legal Matters; and the Meaning of it to be, That when any Man has a Property, the ſame Law that gives Property, gives a Remedy, if the ſame be invaded. But I never underſtood that Maxim to be meant of a Remedy by Force; and I am ſure, in moſt Caſes, ſuch a Remedy is worſe than the Diſeaſe.

My Lords, We would not be thought (I am ſure no Gentleman of our Side would be thought) in the leaſt to reflect on the Revolution mentioned in the Impeachment; nor does any Thing, as we think, that the Doctor has ſaid in his Sermon, in the leaſt look that Way. The general Poſition of the utter Illegality of reſiſting the Supreme Power, does (as it has been obſerv'd already) imply in it a Condition, (which perhaps may extend to ſome other Caſes) and, as we ſay, extends to that of the Revolution.

One of the Managers inſtanced in the fourth Command, which in general forbids any Work to be done on the Lord's Days; and yet, ſays he, Works of Neceſſity and Mercy are allowed to be done on that Day, and are an implied Exception. The like we ſay of the implied Exception to the general Doctrine laid down by the Doctor of the Illegality of Reſiſtance.

My Lords, Certainly there is no Room to ſuppoſe any Reflection to be made on his late Majeſty; for ſurely his Majeſty, wanted no Excuſe for his coming hither; nor could he be guilty of any Thing that we properly call Reſiſtance. He was a Sovereign Prince, and might do what he thought fit. He owed no Allegiance to any one, ſo could not be ſaid to reſiſt, in the Senſe Reſiſtance bears in the Doctor's Sermon, which is the Reſiſtance by Subjects to the Supreme Power.

My Lords, I now beg Leave to mention the Act of the ſecond Year of King *William* and Queen *Mary*, intitled, 'An Act for a general Pardon;' by the laſt Clauſe whereof it is provided, 'That nothing in that Act ſhall extend 'to pardon, or diſcharge any one for counſelling or procuring the raiſing 'War againſt their Majeſties after the 13th Day of *February*, 1688, unleſs 'ſuch Perſon ſhall before the 26th of *July* take the following Oath.' Then follows the Oath of Allegiance. From hence I beg Leave to make an Inference or two: Firſt, That it was the Senſe of the Legiſlature at that Time, that thoſe Perſons that contrived or abetted the raiſing War againſt their Majeſties, after they came to the Crown, were guilty of a High Crime, and ſtood in need of a Pardon. So that if any Thing had ſhaken the Doctrine of the Illegality of Reſiſtance, here Reſiſtance is made as criminal as it was before. Secondly, It appears by that Clauſe to be the Opinion of the Legiſlature, that by the Oath of Allegiance, as it is now framed, this Doctrine of the utter Illegality of Reſiſtance is firmly eſtabliſhed. For, my Lords, To what Purpoſe ſhould that Oath be made the Condition of a Pardon for having reſiſted, unleſs they thought that Oath laid an Obligation on the Perſons taking it not to do ſo again?

My Lords, That Conſtruction which ſome of the Managers for the Commons put on the Doctor's Sermon, that this Notion of Non-Reſiſtance could only be applied to ſome Body beyond Sea, we think to be very hard and ſtrained: I am ſure it don't appear from any Thing the Doctor has ſaid in his Sermon; but the contrary plainly appears; for the Doctor doth aſſert her Majeſty's hereditary Right, and yet doth not reflect on the Revolution; for though he ſpeaks of her Majeſty's hereditary Right, he does not any where ſay, that ſhe has no other than an hereditary Right in her. And it was owned by one of the Gentlemen that managed for the Houſe of Commons, that his late Majeſty had a ſingle Right by the Act of Settlement; but that her Majeſty has a twofold Right, a Right according to the Act of Settlement, and an Hereditary Right too.

My Lords, There has been a great deal of Time ſpent, therefore I ſhall only make this one Remark further, that is, That the learned Managers for the Houſe of Commons have drawn very many Inferences, by their Skill and Ingenuity, from Paſſages in the Doctor's Sermon, which I believe none of your Lordſhips can think the Doctor ever thought of, when he was compoſing his Sermon, or delivering it in the Pulpit.

Doctor *Henchman.* MY Lords, I am likewiſe aſſign'd Counſel for Doctor *Sacheverell*; but if he has been repreſented by the learned Managers in his proper Colours, if he has been ſet before your Lordſhips in a true Light, and with his Maſk off, I muſt beg Leave to ſay, that nothing leſs than the Commands of this Honourable Houſe could prevail with any one to appear in his Defence. If he is a Mover of Sedition, and an Underminer of the Proteſtant Succeſſion and preſent Eſtabliſhment; if he has fomented deſtructive Diviſions, and excited his Fellow-Subjects to Arms and Violence, and has taken all Advantages to vent his Seditious Notions in the moſt publick Manner, I muſt humbly think that Nobody would dare to open his Mouth in his Behalf in the Face of the Government, and before the united Legiſlature of the whole Kingdom. I proteſt for myſelf, I would not do it, and I believe I may ſay the ſame for all the Gentlemen that have ſpoken before me.

My Lords, the general Part of theſe Articles has been already largely ſpoken to, and I ſhall therefore apply myſelf directly to the firſt Article, and the firſt Branch of that Article, which has been made the Ground of this whole Accuſation, *viz.* 'That he does ſuggeſt and maintain that the neceſſary Means uſed to bring about the late happy Revolution were Odious and Unjuſtifiable.' I muſt own this is a Charge of a very high Nature, and has been aggravated to the utmoſt by the great Pains that the Gentlemen of the Honourable Houſe of Commons have taken, and the elaborate Speeches that have been made on this Head.

My Lords, The Juſtice of the Revolution is too plain to need any Vindication, every one of us is ſenſible of the happy Effects of it; and therefore for any one to caſt black and odious Colours on it, would be, as has been truly ſaid by the honourable Managers, 'A Reflection on his late 'Majeſty, and muſt bring a foul Imputation on her preſent Majeſty and 'Government;' which, if the Revolution be Unjuſtifiable, muſt be an Uſurpation, and all her Subjects Rebels.

My Lords, the Clauſe made uſe of to prove this Part of the Article, is in the 11th Page of the Sermon at St. *Paul*'s, and has been often read; 'The 'grand Security of our Government, and the very Pillar on which it ſtands, 'is founded upon the ſteady Belief of the Subjects Obligation to an abſolute 'and unconditional Obedience to the Supreme Power in all Things lawful, and the utter Illegality of Reſiſtance upon any Pretence whatſoever.' This, my Lords, is the Ground of the Commons Impeachment, becuſe here they ſay the Doctor condemns all Reſiſtance, and in that the Reſiſtance which was neceſſary to be made uſe of at the Revolution.

Whether what is here laid down be agreeable to the Doctrine of the Church of *England*, is not my Province to determine, neither ſhall I now miſ-ſpend your Lordſhips time in eſtabliſhing this Doctrine; that has been already ſufficiently done, and the Doctor himſelf abundantly vindicated, from the Doctrine of St. *Paul* himſelf, from the expreſs Doctrine of the Church of *England* ſet forth in her Homilies, from the Writings of Biſhops and Divines dead and living, from the known and repeal'd Laws of the Land, and from the Reaſonableneſs of laying down a general Rule without any Exception. What farther Vindication can be neceſſary? Or how can a good Subject of the Realm, and a true Son of the Church, better make his Defence than from the Laws of the one, and the Doctrine of the other? But becauſe the great Objection has been, That this Doctrine is here laid down without any Limitation or Exception at all; and being myſelf of a different Profeſſion from the Gentlemen that have ſpoken before me, I ſhall take a different Way in Vindication of this Paſſage, and beg Leave to follow the Method preſcrib'd by one of the learned Managers of the Houſe of Commons. It was ſaid by one of them, *Ex ore ſuo judicabitur*. My Lords, let him ſpeak for himſelf, and then it will be ſeen if this Paſſage may not be juſtified by the very ſame Methods that have been made uſe of to accuſe him. If nothing will ſatisfy the Gentlemen of the Houſe of Commons but an Exception, an Exception they ſhall have, and that out of his own Mouth. It is in the 10th Page, and the Beginning of that very Paragraph where the whole Foundation of this Acuſation is laid. But I don't well know whether I may venture to mention it, leſt it ſhould ſubject him to a Proſecution in the Spiritual Court, or the Cenſure of his Dioceſan; but if it may help to acquit him from this Impeachment, I will ad- him to run the Riſque of any Proſecution elſewhere.

The Clauſe is this: 'But, Secondly, Men may be denominated Falſe 'Brethren, with relation to the State, Government, or Society of 'which they are Members. The Conſtitutions of moſt Governments 'differing according to their ſeveral Frames and Laws upon which 'they are built and founded, it is impoſſible to lay down any one univerſal Rule, as the Scheme and Meaſure of Obedience, that may ſquare to 'every one of them.'

My Lords, This is an obſervable Inſtance of this Gentleman's good Temper and Moderation; nothing can be ſaid more like a good Chriſtian, and a good Subject, and a Man of Temper: He is not here for bringing all Things to his own Rule, but every Government muſt ſtand upon its own Foundation, and be govern'd according to its own Rules. But he goes on; 'Only this Maxim in general, I preſume, may be eſtabliſhed for 'the Safety, Tranquillity, and Support of all Governments, That no Innovation whatſoever ſhould be allowed in the Fundamental Conſtitution 'of any State, without a very preſſing, nay, unavoidable Neceſſity for it.'

My Lords, In theſe Words there is a plain Exception made, whenever the Caſe of an unavoidable Neceſſity ſhall happen. Nobody will deny but that the Revolution was ſuch an unavoidable Caſe, and of Neceſſity, and what can't be reflected on, but with great Satisfaction and Thanks to GOD for bringing it about. But it ſeems very ſtrange that this Exception ſhould ſtand ſo very full and plain in the very Front of that Paragraph from which the learned Managers have chiefly drawn this Accuſation, and yet never be ſo much as once taken Notice of by them. Paſſages at a much greater

Diſtance have been connected in order to Accuſe him; and there can be no Reaſon given why the ſubſequent Paſſage in the ſame Paragraph ſhould not be explained by this; why, what in the Beginning is ſaid of all Governments in general, ſhould not be extended to that Part where he ſpeaks particularly of our own Conſtitution. This, no doubt of it, he had in his Thoughts, and will, I hope, ſufficiently vindicate him from this Charge.

I ſhall trouble your Lordſhips no longer on this Head, but only obſerve, that the Doctor in his Anſwer has put himſelf upon his Defence, That this Doctrine is agreeable to the Doctrine of the Church of *England* and the Laws of the Land, and we are ready to produce his Vouchers, and make it evident to your Lordſhips.

Sir *Simon Harcourt*. My Lords, If we have not already tired your Lordſhips, there is this wide Difference between the Managers for the Houſe of Commons and us; they deſire your Lordſhips to truſt them, and to take their Words in every thing; we humbly beg your Lordſhips to take our Words in nothing, but that you will give us Leave to lay before you the Teſtimonies for every thing we have open'd; but they being very long, we humbly ſubmit it to your Lordſhips, whether it will be proper for us now to produce them? The firſt Evidence we deſire to read is, Some godly and wholeſome Doctrine contained in the Homilies; we have, my Lords, for your Lordſhips Eaſe, collected them by a Perſon that is ready to ſwear to them. We humbly ſubmit it to your Lordſhips, whether it ſhall be read out of the Writing, or whether the Books themſelves ſhall be produced; we ſhall obſerve your Lordſhips Commands, and proceed which way your Lordſhips pleaſe.

Mr. *Dodd*. My Lords, We are ready to obſerve your Lordſhips Directions in this Matter: We have collected the Paſſages out of the Homilies, the Articles, the Sermons, and Acts of Parliament; and have a Perſon ready to make Oath that they are truly collected. But if there be any Objection, we are ready to refer to the Books themſelves, and have them all here ready to produce.

Mr. *Phipps*. If your Lordſhips pleaſe, the Witneſs may be ſworn.

(*Then Mr*. Trapp *was Sworn*.)

Lord Chancellor. If you offer any Thing in Evidence, you muſt take the ſame Method that the Gentlemen of the Houſe of Commons did; it muſt be proved, and then delivered in at the Table, and there read.

Sir *Joſeph Jekyll*. My Lords, we have given the Gentlemen that are Counſel for the Priſoner no Diſturbance in any thing they have ſaid during their Defence, ſo that we might come to a Determination as ſpeedily as poſſible in this Trial; otherwiſe every body muſt think, we had Reaſon to object to ſome Things that have been ſaid by the Counſel. That which they are now going to do, is what we think proper to deliberate upon; and, according to former Precedents, we deſire to withdraw, and we will attend your Lordſhips again preſently.

Mr. *Smith*. My Lords, I beg Leave to ſpeak one Word. We have endeavoured to behave ourſelves before your Lordſhips, according to the Duty we owe to the Houſe of Commons, and to your Lordſhips: We think there is ſomething offered, that is fit for us to conſider of. We don't propoſe more, than for the Managers to withdraw for a few Minutes; for we think we have ſomething to offer to your Lordſhips.

[*Accordingly the Managers withdrew; and then the Lords adjourned to their Houſe above: And in a ſhort time their Lordſhips being returned, and ſeated as before, and the Managers being returned to the Place appointed for them at their Lordſhips Bar; Proclamation for Silence was made by the Serjeant at Arms.*]

Sir *Joſeph Jekyll*. My Lords, the Managers withdrew for two Reaſons; the one, to conſider of ſeveral Expreſſions that fell from the Counſel at the Bar, which we had Reaſon to take Exceptions to; the other was, to conſider of the Evidence they offer to your Lordſhips. For the firſt; The Managers are ſo deſirous that no Interruption ſhould be given to the Doctor's Counſel in his Defence, that they at preſent take no notice of it, but reſerve that Matter to be taken notice of at ſuch other Time as they ſhall think proper. As to the Second, The Managers being unwilling the Doctor ſhould be depriv'd of any Thing that his Counſel can fancy is material for his Defence, they are contented to let them go on in the Way they propoſed; but, to ſave your Lordſhips Time, we admit the Books, Sermons and Pamphlets, to be as they have open'd them.

Sir *Simon Harcourt*. My Lords, We humbly pray they may be read; but we have not open'd the tenth Part of them.

Mr. *Dodd*. We have collected them, to ſave your Lordſhips Time; but we have not open'd them, becauſe we reſerv'd them to be read.

Mr. *Phipps*. My Lords, the Witneſs is ſworn. Is that a true Copy of what it refers to?

Mr. *Trapp*. I did compare them with the Originals: It is a Tranſcript from the Original.

Mr. *Phipps*. Are they entire Paragraphs?

Mr. *Trapp*. They are moſt of them intire Paſſages.

Lord Chancellor. Gentlemen of the Houſe of Commons, do you object to the Evidence?

Sir *Joſeph Jekyll*. No, my Lords.

[*Then the* LORDS *adjourned to their Houſe above.*]

Saturday, *March* 4. The Sixth Day.

THE Lords being ſeated as uſual, and the Commons in a Committee of the whole Houſe, and the Managers at their Lordſhips Bar; the uſual Proclamations being alſo made;

And Dr. *Sacheverell* appearing at the Bar;

Lord Chancellor. Gentlemen, You who are Counſel for Doctor *Sacheverell* were proceeding to your Evidence, and had offered ſome Papers which you deſired to be read in Evidence; and the Gentlemen of the Houſe of Commons did agree to let them be read, as you deſired.

Mr. *Dodd*. My Lords, We pray thoſe Papers may be read.

Mr. *Phipps*. My Lords, The Defendant does in his Anſwer aſſert, "That the Doctrine of the Illegality of Reſiſtance to the Supreme Power "is contained in the Homilies, and approved by many of the Divines of "the Church of *England*:" We deſire now to have thoſe Homilies, and the Sermons of thoſe Divines, read.

Sir *Joſeph Jekyll*. My Lords, The Gentlemen that open'd for the Doctor, were pleaſed to mention ſome Homilies, and other Books, one intitled, *A Neceſſary Doctrine and Erudition for any Chriſtian Man*; which they deſir'd might be read; and ſaid, They had collected the Paſſages out of them, in a Paper which they offered to your Lordſhips. We have look'd into that Paper, and find Extracts out of *Gazettes*, and other Papers. We are willing to let them read the Homilies, and that other Book called, *The Erudition of any Chriſtian Man*; but when they come to the others, we pray they may produce the Books or Papers themſelves.

Mr. *Dodd*. My Lords, we ſhall obſerve it accordingly.

Mr. *Phipps*. We pray we may begin with the Book intitled, *The Erudition for any Chriſtian Man.*

Clerk reads the Paper Abſtract.

'A Neceſſary Doctrine and Erudition for any Chriſtian Man; ſet further by the King's Majeſty of *England*, &c. *Anno* 34 *H*. VIII.'

In the Expoſition of the Fyfthe Commandment.

'And by this Commandment alſo, Subjects be bounde not
'to withdrawe their ſaid Fealtie, Trouth, Love, and Obe- *Fol.* 113.
'dience towards their Prince, for any Cauſe whatſoever it be;
'ne for any Cauſe they may conſpire againſt his Perſon, ne do any Thing
'towards the Hindrance or Hurt thereof, nor of his Eſtate.'

In the Expoſition of the Syxte Commandment.

'Moreover, no Subjects may draw their Swords againſt *Fol.* 187. 9.
'their Prince; for any Cauſe, whatſoever it be.'

Mr. *Dodd*. If your Lordſhips pleaſe, that we may now read ſeveral Paſſages in the Homilies.

Clerk reads.] *The Second Part of the Sermon of Obedience*, Pag. 110.

'Whereby Chriſt taught us plainly, that even the wicked Rulers have 'their Power and Authority from God; and therefore it is not lawful for 'their Subjects to withſtand them, altho' they abuſe their Power.

'But neverthe leſs, in that Caſe we may not in any wiſe
'withſtand violently, or rebel againſt Rulers, or make any *Ibid. p.* 183.
'Inſurrection, Sedition or Tumults, either by Force of
'Arms, or otherwiſe, againſt the Anointed of the Lord, or any of his
'Officers; but we muſt in ſuch Caſe patiently ſuffer all Wrongs and In-
'juries, referring the Judgment of our Cauſe only to God.'

The Third Part of the Sermon of Obedience, Page 114.

'Yee have heard before, in this Sermon of good Order and Obedience, 'manifeſtly prov'd, both by the Scriptures and Examples, that all Subjects 'are bounden to obey their Magiſtrates, and for no Cauſe to reſiſt, or 'withſtand, or rebel, or make any Sedition againſt them, yea altho' they 'be wicked Men.'

Firſt Part of the Sermon againſt wilful Rebellion, Page 589.

'What ſhall Subjects do then? Shall they obey valiant, ſtout, wiſe and 'good Princes; and contemn, diſobey, and rebel againſt Children being 'their Princes, or againſt undiſcreet and evil Governors? God forbid! 'For, firſt, What a perilous Thing were it to commit unto the Subjects 'the Judgment, which Prince is wiſe and godly, and his Government 'good, and which is otherwiſe? As tho' the Foot muſt judge of the Head! 'An Enterprize very heinous, and muſt needs breed Rebellion.

'And whereas, indeed, a Rebel is worſe than the worſt
'Prince, and Rebellion worſe than the worſt Government *Ibid.* p. 590.
'of the worſt Prince that hitherto hath been.'

Second Part of the Sermon againſt wilful Rebellion, Page 600.

'Now, let *David* anſwer to ſuch Demands, as Men deſirous of Rebellion 'do uſe to make: Shall not we, eſpecially being ſo good Men as we are, 'riſe and rebel againſt a Prince hated of God, and God's Enemy; and 'therefore like not to proſper either in War or Peace, but to be hurtful and 'pernicious to the Commonwealth? No, ſaith good and godly *David*.

'But ſay they, we ſhall not riſe and rebel againſt ſo unkind
'a Prince, nothing conſidering or regarding our true, faith- *Ibid.* 601.
'ful and painful Service, or the Safeguard of our Poſterity?
'No, ſaith good *David*.

'Shall we not riſe and rebel againſt our known, mortal, and *Ibid.*
'deadly Enemy, that ſeeketh our Lives? No, ſaith godly *David*.

'Shall we not aſſemble an Army of ſuch good Fellows as we
'are, and by hazarding of our Lives, and the Lives of ſuch as *Ibid.*
'ſhall withſtand us, and withal hazarding the whole Eſtate of
'our Country, remove ſo naughty a Prince? No, ſaith godly *David*.

'What ſhall we then do to an evil, to an unkind Prince, an
'Enemy to us, hated of God, hurtful to the Commonwealth, *Ibid.*
'&c? Lay no violent Hand upon him, ſaith good *David*; but
'let him live, until God appoint and work his End, either by natural
'Death, or in War, by lawful Enemies, not by traiterous Subjects.'

'If King *David* would make theſe Anſwers, as by his
'Deeds and Words recorded in the Holy Scriptures indeed *Ibid.* p 602.
'he doth make, unto all ſuch Demands concerning Re-
'belling againſt evil Princes, unkind Princes, cruel Princes, Princes that be
'to their good Subjects mortal Enemies, Princes that are out of God's
'Favour, and ſo hurtful, or like to be hurtful for the Commonwealth.'

Mr. *Dodd*. If your Lordſhips pleaſe now, that we may read the thirty-fifth Article of the Church of *England*, which approves theſe Homilies.

Mr. *Phipps*. We open'd, that theſe Homilies were approv'd of by the Articles of the Church of *England*, as containing ſound and wholeſome Doctrine: We pray the thirty-fifth Article may be read.

Clerk reads.) *Article the thirty-fifth. Of Homilies.*

'The Second Book of Homilies, the ſeveral Titles whereof we have 'joined under this Article, doth contain a godly and wholeſome Doctrine, 'and neceſſary for theſe Times; as doth the former Book of Homilies, 'which were ſet forth in the Time of *Edward* the Sixth. And therefore 'we judge them to be read in Churches by the Miniſters, diligently and 'diſtinctly, that they may be underſtanded of the People. The Names of 'the Homilies. 1. Of the right Uſe of the Church. 2. Againſt Peril of 'Idolatry. 3. Of repairing and keeping clean of Churches. 4. Of

‘ good Works; Firſt, of Faſting. 5. Againſt Gluttony and Drunkenneſs. 6. Againſt Exceſs of Apparel. 7. Of Prayer. 8. Of the Place and Time of Prayer. 9. That Common Prayers and Sacraments ought to be miniſtred in a known Tongue. 10. Of the Reverend Eſtimation of God's Word. 11. Of Alms-doing. 12. Of the Nativity of Chriſt. 13. Of the Paſſion of Chriſt. 14. Of the Reſurrection of Chriſt. 15. Of the worthy receiving the Sacrament of the Body and Blood of Chriſt. 16. Of the Gifts of the Holy Ghoſt. 17. For the Rogation-Days. 18. Of the State of Matrimony. 19. Of Repentance. 20. Againſt Idleneſs. 21. Againſt Rebellion.’

Mr. *Phipps.* By the Statute of 13 *Eliz.* theſe Articles are confirmed: I believe the Gentlemen of the Houſe of Commons will allow of it.

Mr. *Dodd.* They are confirmed by the Act of Uniformity; and we think we need not ſpend your Lordſhips Time in reading it.

Sir *Joſ. Jekyll.* My Lords, we told them, that we were willing to admit all they open'd; and then we admit this.

Mr. *Dodd.* If your Lordſhips pleaſe, we will go on with the Abſtract.

Mr. *Phipps.* The Gentlemen ſay, that they admit us to read what we open'd. Now what we are going to read next, we did not open; and therefore we ſubmit it to your Lordſhips, whether we ſhall read out of the Abſtract, or produce the Book itſelf?

Sir *Joſ. Jekyll.* My Lords, We deſire to know what it is they would read?

Mr. *Phipps.* It is Biſhop *Overall*'s Convocation-Book.

Mr. *Dee.* If your Lordſhips pleaſe, we ſhall produce the Book; becauſe there are ſome broken Paſſages collected, and there may be ſome Objection, if the Book be not produced.

Mr. *Phipps.* My Lords, We hope the whole Canon which is mentioned in this Book, tho' it is recited by Parcels, ſhall be read.

Clerk reads.] ‘ And therefore———

Sir *Joſ. Jekyll.* My Lords, They are reading a Paſſage out of this Book. We might object, That a Printed Book is no Proof of a Canon: and that they ought to make a Legal Proof of it. But that which we object, is, That they begin in the Middle of a Sentence: Your Lordſhips obſerve, the Clerk begins with the Words, *And therefore.* I pray, he may read at the Beginning of a Sentence.

Mr. *Phipps.* My Lords, Where the Clerk began, was the Beginning of that Canon; but it being at the End of another Canon, is the Reaſon that it begins *And therefore.*

Biſhop Overall, *p.* 107. *Can.* 1.

Clerk reads.]. ‘ And therefore, if Man ſhall affirm under Colour of any thing that is in the Scriptures, either that the Doctrine of Grace in the *New Teſtament* doth more aboliſh the Rules of Nature, or Moral Law of God, than it did in the *Old*; or, that thro' Faith the ſaid Law was not rather eſtabliſhed, than in any ſort impeach'd; or, that becauſe as many as believe are redeem'd, and made free from the Curſe of the Law, they are therefore exempted, and free from the Obedience of the Law; or, that by the Incarnation of our Saviour Chriſt, Obedience to the fifth Commandment, touching Honours due to Parents and Princes, was in any Sort impeached, the reſt of the Law being eſtabliſhed; or that our Saviour Chriſt having undertaken the Fulfilling of the whole Law, (as far forth, at the leaſt, as ever Mankind was bound to have fulfilled it) came ſhort in this one Law, by exempting himſelf from any Obedience due to the Civil Magiſtrate; or, that he, having tied himſelf according to the ſaid Commandment, as well to the Obedience of the Civil Magiſtrate, as the Obedience which was due to his Parents, did not, whilſt he liv'd in the World, fulfil the Law wholly concerning them both; or, that he did any way, or at any Time, encourage the *Jews*, or any other, directly or indirectly, to Rebel, for any Cauſe whatſoever, againſt the *Roman* Emperor, or any of the Subordinate Magiſtrates; or, that he did not very willingly, both himſelf pay Tribute to *Cæſar*, and alſo adviſe the *Jews* ſo to do; or, that when he willed the *Jews* to pay Tribute to *Cæſar*, including therein their Duty of Obedience unto him, he did not therein deal plainly and ſincerely, but meant ſecretly that they ſhould be bound no longer to be obedient unto him, but until by Force they ſhould be able to reſiſt him; or, that he did not utterly and truly condemn all Devices, Conferences and Reſolutions whatſoever, either in his own Apoſtles, or in any other Perſons, for the uſing of Force againſt Civil Authority; or, that it is, or can be more lawful for any private Perſons, either of St. *Peter*'s Calling, or of any other Profeſſion, to draw their Swords againſt Authority, though in their raſh Zeal they ſhould hold it lawful ſo to do, for the Preſervation of Religion, than it was for St. *Peter* for the Preſervation of his Maſter's Life; or, that by Chriſt's Words above-mentioned, all Subjects (of what ſort ſoever) without Exception, ought not, by the Law of God, to periſh with the Sword, that take and uſe the Sword, for any Cauſe, againſt Kings and Sovereign Princes, under whom they were born, or under whoſe Juriſdiction they do inhabit; or, that ſeeing our Saviour Chriſt would not have the *Samaritans* to be deſtroyed with Fire from Heaven, altho' they were at that time divided in Religion from the *Jews*, and refuſed to receive him in Perſon, it is not to be aſcribed to the Spirit of Satan for any private Men to attempt by Gunpowder, and Fire from Hell, to blow up and deſtroy their Sovereigns, and the whole State of the Country where they were born and bred, becauſe in their Conceits they refuſed ſome Part of Chriſt's Doctrine and Government; or that Chriſt did not well, and as the ſaid Fifth Commandment did require, in ſubmitting himſelf as he did to Authority, although he was firſt ſent for with Swords and Staves, as if he had been a Thief, and then afterward carried to *Pilate*, and by him (albeit he found no Evil in him) condemn'd to Death; or, that by any Doctrine of Example which Chriſt ever taught, or hath left upon good Record, it can be prov'd Lawful to any Subjects, for any Cauſe of what Nature ſoever, to decline either the Authority and Juriſdiction of their Sovereign Princes, or of any their lawful Deputies and inferior Magiſtrates ruling under them: He doth greatly err'.

Matt. xxvi. 55.

Mr. *Phipps.* My Lords, We opened, that from the Time of the Reformation this had been the Doctrine of the Church. We deſire to begin, and ſhew it was Archbiſhop *Cranmer*'s Opinion: In *Strype*'s Memo-Trial of Archbiſhop *Cranmer.*

Clerk reads.] ‘ The ſecond Exhortation is, That next unto God you obey your King and Queen willingly and gladly, without Murmur or Grudging, and not for Fear of them only, but much more for the Fear of God. Knowing that they be God's Miniſters, appointed by God to rule and govern you; and therefore whoſo reſiſteth them, reſiſteth God's Ordinance.’

Lond. *Edition, p.* 387. *Folio.*

Mr. *Phipps.* My Lords, We now offer a Declaration of Biſhop *Ferrar*, Biſhop *Hooper*, Biſhop *Coverdale*, and about nine other Biſhops, which is in *Fox*'s Hiſtory.

Clerk reads.] ‘ Humbly requiring, and in the Bowels of our Saviour Jeſus Chriſt, beſeeching all that fear God, to behave themſelves as obedient Subjects to the Queen's Highneſs, and the ſuperior Powers which are ordained of God, under her; rather, after our Example, to give their Heads to the Block, than in any Point to rebel, or once to Mutter againſt the Lord's Anointed.’

Vol. III. *p.* 101.

Mr. *Dodd.* If your Lordſhips pleaſe, he may read the Names of thoſe Perſons that have ſubſcribed it at the End of it.

Clerk reads.] *The* 8*th Day of* May, Anno Dom. 1554.

‘ The Names of the priſon'd Preachers ſubſcribing to this Declaration, *Robert Menaven*, alias *Robert Ferrar*, *Rowland Taylor*, *John Philpott*, *John Bradford*, *John Wigorne*, and *Glouc. Epiſcopus*, alias *John Hooper*, *Edward Crome*, *John Rogers*, *Laurence Saunders*, *Edmund Lawrence*, J. P. T. M.——To theſe Things aboveſaid do I *Miles Coverdale*, late of *Exon*, conſent and agree with theſe nine afflicted Brethren, being Priſoners, mine own Hand.’

Mr. *Phipps.* My Lords, The next we offer is the Opinion of Biſhop *Jewell*, in his Defence of the Apology for the Church of *England*, in Anſwer to Mr. *Harding.*

Clerk reads.] ‘ We teach the People, as St. *Paul* doth, to be ſubject to the higher Powers, not only for Fear, but alſo for Conſcience. We teach them, that whoſo ſtriketh with the Swerde by private Authority, ſhall periſh with the Swerde. If the Prince happen to be wicked, or cruel, or burthenous, we teach them to ſay with St. *Ambroſe*, *Arma noſtra ſunt Preces & Lachrymæ: Tears and Prayers be our Weapons.*’

Printed *Ann.* 1568. *Fol.* 19.

Mr. *Dodd.* My Lords, The next is Mr. *Hooker* in his Eccleſiaſtical Polity.

Clerk reads.] ‘ That Subjection which we owe to lawful Powers, doth not only import, that we ſhould be under them by Order of our State, but that we ſhew all Submiſſion towards them, both by Honour and Obedience. He that reſiſteth them reſiſteth God. And reſiſted they be, if either the Authority itſelf, which they exerciſe, be denied; as by Anabaptiſts all ſecular Juriſdictions; or if Reſiſtance be made but only ſo far forth as doth touch their Perſons, which are inveſted with Power; (for they which ſaid *Nolumus hunc regnare*, did not utterly exclude Regiment; nor did they wiſh all kind of Government clearly removed, which would not at the firſt have *David* to govern;) or if that which they do by virtue of their Power, namely their Laws, Edicts, Services, or other Acts of Juriſdiction, contrary to the bleſſed Apoſtles moſt holy Rule, *Obey them who have the Overſight of you*, Heb. xiii. 17. be not ſuffered to take Effect, or if they do take Effect, yet is not the Will of God thereby ſatisfied neither, as long as that which we do is contemptuouſly or repiningly done, becauſe we can do no otherwiſe. In ſuch ſort the *Iſraelites* in the Deſart obey'd *Moſes*; and were, notwithſtanding, deſervedly plagued for Diſobedience. The Apoſtle's Precept therefore is, *Be ſubject even for God's Sake; be ſubject not for Fear, but of mere Conſcience, knowing, that he which reſiſteth them, purchaſeth to himſelf Condemnation.*’

Fol. 470. Lond. *Edit.* 1705.

M. Gen. *Stanhope.* My Lords, ſince *Hooker's Eccleſiaſtical Polity* is before your Lordſhips, and they have read that Part, I pray that from *page* 444. to the latter End of *page* 446. may likewiſe be read.

Mr. *Dodd.* We ſubmit it to your Lordſhips, whether it is proper to break into our Defence? or whether the Gentlemen of the Houſe of Commons will read what they think proper when they come to reply? Your Lordſhips know the Courſe in other Courts is to give our Evidence intire.

Sir *J. Jekyll.* My Lords, the Indulgence of the Managers, to let the Doctor's Counſel go into this Evidence, is very great; (for I believe ſuch ſort of Evidence was never known before in any Court of Juſtice whatſoever;) but ſurely, as they have called this Witneſs, for ſo I may term the Book they were reading, we may be at Liberty to croſs-examine that Witneſs; perhaps the Place we deſire to have read, may explain the Paſſages read by them.

Mr. *Phipps.* My Lords, We ſubmit to it.

M. Gen. *Stanhope.* Pray, what Edition is that Book?

Clerk. It is printed in 1705.

M. Gen. *Stanhope.* My Lords, If we ſhould be miſtaken in the Edition, I hope we ſhall not be hindred in our Reply from reading thoſe Paſſages in the Edition which I have conſulted.

Clerk reads.] ‘ Again, on whom the ſame is beſtowed at Men's Diſcretions, they likewiſe do hold it by divine Right. If God in his revealed Word hath appointed ſuch Power to be, altho' himſelf extraordinarily beſtow it not, but leave the Appointment of Perſons to Men; yea, albeit God do neither appoint nor aſſign the Perſon; nevertheleſs when Men have aſſigned and eſtabliſhed both, who doth doubt but that ſundry Duties and Affairs depending thereupon, are preſcribed by the Word of God, and conſequently by that very Right to be exerted? For Example ſake, the Power which *Roman* Emperors had over foreign Provinces, was not a Thing which the Law of God did ever inſtitute; neither was *Tiberius Cæſar* by eſpecial Commiſſion from Heaven therewith inveſted; and yet Payment of Tribute unto *Cæſar*, being now made Emperor, is the plain Law of Jeſus Chriſt unto Kings by human Right; Honour by very divine Right is due. Man's Ordinances are many

Fol. 444.

Times propoſed as Grounds in the Statutes of God. And therefore, of what Kind ſoever the Means be whereby Governors are lawfully advanc'd to their States, as we by the Laws of God ſtand bound meekly to acknowledge them for God's Lieutenants, and do confeſs their Power his; ſo by the ſame Law they are both authoriz'd and requir'd to uſe that Power, as far as it may be in any State available to his Honour. The Law appointeth no Man to be a Husband; but if a Man hath betaken himſelf unto that Condition, it giveth him Power and Authority over his own Wife. That the Chriſtian World ſhould be ordered by the Kingly Regiment, the Law of God doth not any where command; and yet the Law of God doth give them, which once are exalted unto that Place of Eſtate, Right to exact at the Hands of their Subjects general Obedience in whatſoever Affairs their Power may ſerve to command; and God doth ratify Works of that Sovereign Authority, which Kings have received by Men. This is therefore the Right whereby Kings do hold their Power; but yet in what Sort the ſame doth reſt and abide in them, it ſomewhat behoveth farther to ſearch; where, that we be not enforced to make over large Diſcourſes about the different Conditions of Sovereign or Supreme Power, that which we ſpeak of Kings ſhall be in reſpect of the State, and according to the Nature of this Kingdom, where the People are in no Subjection, but ſuch as willingly themſelves have condeſcended unto for their own moſt Behoof and Security. In Kingdoms therefore of this Quality, the higheſt Governor hath indeed univerſal Dominion, but with Dependency upon that whole intire Body, over the ſeveral Parts whereof he hath Dominion; ſo that it ſtandeth for an Axiom in this Caſe, the King is *Major ſingulus, univerſis Minor.* The King's Dependency we do not conſtrue as ſome have done, we are of opinion, that no Man's Birth can make him a King; but every particular Perſon advanced to ſuch Authority hath, at his Entrance into his Reign, the ſame beſtowed on him as an Eſtate, in Condition, by the voluntary Deed of the People in whom it doth lie, to put by any one, and to prefer ſome other before him better liked of, or judged fitter for the Place; and that the Party ſo rejected hath no Injury done unto him; no, altho' the ſame be done in a Place where the Crown doth go δια γένος by Succeſſion, and to a Perſon which is capital, and hath apparently, if Blood be reſpected, the neareſt Right. They plainly affirm, in all well appointed Kingdoms, the Cuſtom evermore hath been, and is, that Children ſucceed not their Parents 'till the People, after a Sort, have created them a-new; neither that they grow to their Fathers as natural and proper Heirs, but are then to be reckoned for Kings, when at the Hands of ſuch as repreſent the King's Majeſty, they have by Sceptre and a Diadem received, as it were, the Inveſtiture of a Kingly Power: Their very Words are, “That where ſuch Power is ſettled into a Family or Kindred, the Stock itſelf is thereby choſen, but not the Twig that ſpringeth of it. The next of the Stock unto him that reigneth, are not through Nearneſs of Blood made Kings; but rather ſet forth to ſtand for the Kingdom: Where regal Dominion is hereditary, it is notwithſtanding (if we look to the Perſons which have it) altogether elective.” To this Purpoſe are ſelected Heaps of Scriptures concerning the ſolemn Coronation or Inauguration of *Saul*, *David*, of *Solomon*, and others, by the Nobles, Antients, and People of the Commonwealth of *Iſrael*: As if theſe Solemnities were a Kind of Deed, whereby the Right of Dominion is given; which ſtrange, untrue, and unnatural Conceits, ſet Abroad by Seedſmen of Rebellion, only to animate unquiet Spirits, and to feed them with Poſſibility of aſpiring to Thrones, if they can win the Hearts of the People, what hereditary Title ſoever any other before them may have; I ſay, unjuſt and inſolent Poſitions, I would not mention, were it not thereby to make the Countenance of Truth more orient; for unleſs we will openly proclaim Defiance unto all Law, Equity and Reaſon, we muſt (there is no Remedy) acknowledge, that in Kingdoms, hereditary Birth gives Right unto Sovereign Dominion; and the Death of the Predeceſſor puts the Succeſſor by Blood in Seiſin. Thoſe publick Solemnities before ſpecified, do but ſerve for an open Teſtification of the Inheritor's Right, or belonging unto the Form of inducting him into Poſſeſſion of that Thing he hath Right unto. Therefore, in caſe it doth happen, that without Right of Blood, a Man in ſuch wiſe be poſſeſſed, all theſe new Elections and Inveſtings are utterly void; they make him no indefeaſible Eſtate, the Inheritor by Blood may diſpoſſeſs him as an Uſurper. The Caſe thus ſtanding, albeit we judge it a Thing moſt true, that Kings, even Inheritors, do hold their Right in the Power of Dominion, with Dependency upon the whole Body Politick over which they have Rule as Kings; yet ſo it may not be underſtood, as if ſuch Dependency did grow; for that every Supreme Government doth perſonally take from thence his Power, by way of Gift, beſtow'd of their own free Accord upon him at the Time of his Entrance into the ſaid Place of his Sovereign Government. But the Caſe of Dependency is that firſt original Conveyance when Power was deriv'd from the whole into one; to paſs from him unto them, whom out of him, Nature, by lawful Births, ſhould produce, and no natural or legal Inability make uncapable. “Neither can any Man with Reaſon think, but that the firſt Inſtitution of Kings is a ſufficient Conſideration; wherefore their Power ſhould always depend on that from which it always flows: By original Influence of Power from the Body unto the King, is the Cauſe of King's Dependency in Power upon the Body.” By Dependency we mean Subordination and Subjection; a manifeſt Token of which Dependency may be this: As there is no more certain Argument that Lands are held under any as Lords, than if we ſee that ſuch Lands, in Defect of Heirs, fall unto them by Eſcheat: In like Manner, it doth follow rightly, that ſeeing Dominion, when there is none to inherit it, it returneth into the Body; therefore they which before were Inheritors thereof, did hold it with Dependency upon the Body: So that by comparing the Body with the Head, as touching Power, it ſeemeth always to reſide in both; fundamentally and radically in the one, in the other derivatively; in one the Habit, in the other the Art of Power. May a Body Politick then at all Times, withdraw in whole or in part, the Influence of Dominion, which paſſeth from it, if Inconveniencies do grow thereby? It muſt be preſumed, that Supreme Governors will not in ſuch Caſe oppoſe themſelves, and be ſtiff in detaining that, the Uſe whereof is with publick Detriment. But ſurely without their Conſent, I ſee not how the Body by any juſt Means ſhould be able to help itſelf, ſaving when Dominion doth eſcheat; ſuch things, therefore, muſt be thought upon beforehand, that Power may be limited ere it be granted; which is the next Thing we are to conſider.'

Mr. *Dodd.* We now produce Biſhop *Andrews*'s Sermons.

Clerk reads.] ‘To deprive or depoſe them? Sure where the worſt is reckoned that can be of them, *Clamabunt ad Dominum* is all I find, 1 *Sam.* viii. 18. No *Per* to do it but he. By him, and by none but by him, they be; by him, and by none but by him, they ceaſe to be.'

London *Edition*, *Fol.* 1632. *p.* 939.

Mr. *Phipps.* We deſire to read another Paſſage out of Mr. *Hooker*, in a Treatiſe of Church Government.

Clerk reads.] ‘A Treatiſe of Church Government: To which is added a Treatiſe of the Regal Power, and of the Novelty of the Doctrine of Reſiſtance, publiſh'd by Dr. *Bernard* in his *Clavi Trabales.*'

Lord Chancellor. This is a Collection of the Works of ſeveral Perſons; ſo that it don't appear whoſe Works theſe are that you are reading.

Mr. *Phipps.* That which we offer to be read is Mr. *Hooker*'s, and is left out of the Book which was printed before.

Clerk reads.] ‘There is a Supreme Head of Juſtice whereunto all are ſubject, but itſelf in Subjection to none; which Kind of Pre-eminence, if ſome ought to have in a Kingdom, who but the King ſhall have it? Kings therefore no Man can have lawful Power and Authority to judge; if private Men offend, there is the Magiſtrate over them, which judgeth; if Magiſtrates, they have their Prince; if Princes, there is Heaven, a Tribunal before which they ſhall appear; on Earth they are not accountable to any.'

Lon. *Edit.* 1601. *4to. p.* 49, 50.

Mr. *Phipps.* My Lords, We offer Doctor *Jackſon*'s, and Biſhop *Uſher*'s Opinion in this Matter. And firſt Doctor *Jackſon.*

Clerk reads.] ‘He that is a King or Supreme Magiſtrate, by juſt and lawful Title, may not be thus reſiſted, albeit he exerciſe his Power tyrannically.'

Tom. 3. *Pag.* 965.

Mr. *Phipps.* The next is Archbiſhop *Uſher*, in a Treatiſe called, *The Power communicated by God to the Prince, and the Obedience required of the Subject*, &c.

Clerk reads.] ‘But if Men's Hands be thus tied (will ſome ſay) no Man's State can be ſecure: Nay, the whole Frame of the Commonwealth would be in Danger to be ſubverted and utterly ruin'd by the unbridled Luſt of a diſtemper'd Governor.'

Pag. 157. *Lon.* 1683. *8vo.*

I anſwer, God's Word is clear in the Point, ‘*Whoſoever reſiſteth the Power, reſiſteth the Ordinance of God, and they that reſiſt, ſhall receive to themſelves Damnation*; and thereby a Neceſſity is impoſed upon us, of being ſubject even for Conſcience ſake, which may not be avoided by the Pretext of any enſuing Miſchief whatſoever.

Mr. *Phipps.* My Lords, We offer next the Authority of Mr. *Chillingworth*, and we need ſay no more of him, than to mention that it is Mr. *Chillingworth*; and his Character is ſo eſtabliſhed by the Lord *Clarendon*, that we need ſay no more of it.

Clerk reads.] ‘They that make no Scruple at all of fighting with his Sacred Majeſty, and ſhooting Muſkets and Ordnance at him (which ſure have not the Skill to chuſe a Subject from a King) to the extreme Hazard of his Sacred Perſon, whom by all poſſible Obligations they are bound to defend, do they know, think you, the general Rule without Exception or Limitation left by the Holy Ghoſt for our Direction in all ſuch Caſes, *Who can lift up his Hand againſt the Lord's Anointed, and be innocent?* 1 Sam. xxvi 9. Or do they conſider his Command in the *Proverbs of Solomon, My Son, fear God and the King, and meddle not with them that deſire Change?* Prov. xxiv. 21. Or his Counſel in the Book of *Eccleſiaſtes, I counſel thee to keep the King's Commandment, and that in regard of the Oath of God?* Eccleſ. viii. 2. Or becauſe they poſſibly may pretend that they are exempted from, or unconcerned in the Commands of Obedience delivered in the Old Teſtament: Do they know and remember the Precept given to all Chriſtians by St. *Peter*, *Submit yourſelves to every Ordinance of Man for the Lord's Sake, whether it be to the King as Supreme, or unto Governors, as unto them that are ſent by him?* Or that terrible Sanction of the ſame Command, *They that reſiſt ſhall receive to themſelves Damnation*, left us by St. *Paul* in his *Epiſtle* to the *Romans*, who then were the miſerable Subjects of the worſt King, the Worſt man, nay, I think, I may add truly, the worſt Beaſt in the World; that ſo all Rebels Mouths might be ſtopt for ever, and left without all Colour or Pretence whatſoever to juſtify the Reſiſtance of Sovereign Power?'

Fol. 330. *Lond.* 1704. *Folio.*

Mr. *Phipps.* My Lords, The next we offer is Archbiſhop *Bramhall*, ſometime Biſhop of *Armagh.*

Clerk reads.] ‘The ſame Oath binds us to defend him againſt all Conſpiracies and Attempts whatſoever, which ſhall be made againſt his Perſon or Crown; to defend him, much more therefore not to offend him, againſt all Conſpiracies and Attempts whatſoever. That Oath which binds us to defend him againſt all Attempts whatſoever, preſuppoſeth that no Attempt againſt him can be juſtified by Law, whether theſe Attempts be againſt his Perſon or his Crown.'

Page 581. *Dubl.* 1678. *Folio.*

Clerk reads.] ‘If a Sovereign ſhall perſecute his Subjects for not doing his unjuſt Commands, yet it is not lawful to reſiſt by raiſing Arms againſt him: *They that reſiſt ſhall receive to themſelves Damnation.* But they aſk, Is there no Limitation? I anſwer, *Ubi Lex non diſtinguit, nec nos diſtinguere debemus.* How ſhall we limit where God hath not limited, or diſtinguiſh where he hath not diſtinguiſh'd?'

Ibid. fol. 542.

Mr. *Dodd.* My Lords, The next is Biſhop *Sanderſon.*

Clerk reads.] ‘No Conjuncture of *Circumſtances* whatſo-
Fol. 522. ever can make them *expedient* to be done at any Time, that is, of itſelf and in the Kind *unlawful*. For a Man to *blaſpheme* the holy Name of God, to *ſacrifice* to Idols, to give *wrong Sentence* in Judgment, by his Power to *oppreſs* thoſe that are not able to withſtand him, by Subtilty to *over-reach* others in bargaining, to *take up Arms* (offenſive or defenſive) againſt a *lawful Sovereign*: None of theſe, and ſundry other Things of the like Nature, being all of them ſimply, and *de toto genere*, unlawful, may be done by any *Man*, at any *Time*, in any *Caſe*, upon any *Colour* or Pretenſion whatſoever; the expreſs *Command of God* himſelf only excepted, as in the Caſe of *Abraham* for ſacrificing his Son. Not for the avoiding of *Scandal*, not at the Inſtance of any *Friend*, or Command of any *Power* upon *Earth*; not for the Maintenance of the *Lives* or *Liberties* either of ourſelves or others; nor for the Defence of *Religion*; nor for the Preſervation of a *Church* or *State*; no, nor yet, if that could be imagin'd poſſible, for the Salvation of *a Soul*; no, not for the Redemption of the *whole World*.’

Mr. *Phipps*. My Lords, Doctor *Sacheverell* being educated in the Univerſity of *Oxford*, we offer the Decrees of that Univerſity touching this Matter. They were publiſh'd in the *Gazette* the 26th of *July* 1683, by Authority.

Clerk reads.] *Numb.* 1845.

The London Gazette. Publiſh'd by Authority. From *Monday July* 23, to *Thurſday July* 26, 1683.

‘*Whitehall, July* 24. This Day was preſented to his Majeſty the following Judgment and Decree of the Univerſity of *Oxford*, paſs'd in their Convocation, on *Saturday* the 21ſt Inſtant.

‘The Judgment and Decree of the Univerſity of *Oxford*, paſs'd in their Convocation, *July* 21, 1683. againſt certain pernicious Books, and damnable Doctrines, deſtructive to the Sacred Perſons of Princes, their State and Government, and of all Human Society.

‘Altho' the barbarous Aſſaſſination lately enterprized againſt the Perſon of his Sacred Majeſty, and his Royal Brother, engage all our Thoughts to reflect with utmoſt Deteſtation and Abhorrence on that execrable Villainy, hateful to God and Man; and pay our due Acknowledgements to the Divine Providence, which by extraordinary Methods brought it to paſs, That *the Breath of our Noſtrils, the Anointed of the Lord, is not taken in the Pit which was prepared for him*; and that under his Shadow we continue to live, and enjoy the Bleſſings of his Government; yet notwithſtanding we find it to be a neceſſary Duty at this Time to ſearch into, and lay open thoſe impious Doctrines, which having of late been ſtudiouſly diſſeminated, gave Riſe and Growth to theſe nefarious Attempts, and paſs upon them our ſolemn publick Cenſure and Decree of Condemnation.

‘Therefore, to the Honour of the Holy and undivided Trinity, the Preſervation of Catholick Truth in the Church, and that the King's Majeſty may be ſecured both from the Attempts of open bloody Enemies, and Machinations of treacherous Hereticks and Schiſmaticks; We the Vice-Chancellor, Doctors, Proctors, and Maſters, Regent and not Regent, met in Convocation, in the accuſtomed Manner, Time and Place, on *Saturday* the one-and-twentieth Day of *July*, in the Year one thouſand ſix hundred and eighty-three, concerning certain Propoſitions contain'd in divers Books and Writings, publiſh'd in the *Engliſh*, and alſo the *Latin* Tongue, repugnant to the Holy Scriptures, Decrees of Councils, Writings of the Fathers, the Faith and Profeſſion of the Primitive Church; and alſo deſtructive of the Kingly Government, the Safety of his Majeſty's Perſon, the publick Peace, the Laws of Nature, and Bonds of Human Society, by our unanimous Aſſent and Conſent, have decreed and determined in Manner and Form following:

The Firſt Propoſition.

‘All Civil Authority is derived originally from the People.’

The Second.

‘There is a mutual Compact, tacit or expreſs, between a Prince and his Subjects; and that if he perform not his Duty, they are diſcharged from theirs.’

The Third.

‘That if lawful Governors become Tyrants, or govern otherwiſe than by the Laws of God and Man they ought to do, they forfeit the Right they had unto their Government.’ *Lex Rex. Buchanan de Jure Regni. Vindiciæ contra Tyrannos Bellarmine de Conſiliis. De Pontificie Milton. Goodwin. Baxter. H. C.*

The Fourth.

‘The Sovereignty of *England* is in the three Eſtates, *viz.* King, Lords and Commons. The King has but a Co-ordinate Power, and may be over-rul'd by the other two.’ *Lex Rex; Hunton* of a limited and mixed Monarchy. *Baxter H. C. Polit. Catechiſ.*

The Fifth.

‘Birth-right and Proximity of Blood give no Title to Rule or Government; and it is lawful to preclude the next Heir from his Right and Succeſſion to the Crown.’ *Lex Rex. Hunt*'s Poſtſcript. *Doleman*'s Hiſtory of Succeſſion. *Julian* the Apoſtate. *Mene Tekel.*

The Sixth.

‘It is lawful for Subjects, without the Conſent, and againſt the Command of the Supreme Magiſtrate, to enter into Leagues, Covenants and Aſſociations, for Defence of themſelves and their Religion.’ *Solemn League and Covenant. Late Aſſociation.*

The Seventh.

‘Self-preſervation is the fundamental Law of Nature, and ſuperſedes the Obligation of all others, whenſoever they ſtand in Competition with it.’ *Hobbs de Cive Leviathan.*

The Eighth.

‘The Doctrine of the Goſpel concerning patient Suffering of Injuries, is not inconſiſtent with violent reſiſting of the higher Powers, in caſe of Perſecution for Religion.’ *Lex Rex. Julian* Apoſtate. *Apolog. Relat.*

The Ninth.

‘There lies no Obligation upon Chriſtians to Paſſive Obedience, when the Prince commands any Thing againſt the Laws of our Country; and the Primitive Chriſtians rather choſe to die than reſiſt, becauſe Chriſtianity was not ſettled by the Laws of the *Empire*.’ *Julian* Apoſtate.

The Tenth.

‘Poſſeſſion and Strength give a Right to govern; and Succeſs in a Cauſe or Enterprize, proclaims it to be lawful and juſt. To purſue it, is to comply with the Will of God; becauſe it is to follow the Conduct of his Providence.’ *Hobbs. Owen*'s Sermon before the Regicides, *Jan.* 31, 1648. *Baxter. Jenkins*'s Petition, *Octob.* 1651.

The Eleventh.

‘In the State of Nature there is no Difference between Good and Evil, Right and Wrong. The State of Nature is a State of War, in which every Man hath a Right to all Things.’

The Twelfth.

‘The Foundation of Civil Authority is this National Right, which is not given, but left to the Supreme Magiſtrate upon Men's entering into Societies; and not only a Foreign Invader, but a Domeſtick Rebel, puts himſelf again into a State of Nature, to be proceeded againſt, not as a Subject, but an Enemy; and conſequently, acquires by his Rebellion the ſame Right over the Life of his Prince, as the Prince (for the moſt heinous Crimes) has over the Life of his own Subjects.’

The Thirteenth.

‘Every Man, after his entring into a Society, retains a Right of defending himſelf againſt Force, and cannot tranſfer that Right to the Commonwealth, when he conſents to that Union whereby a Commonwealth is made: And in caſe a great many Men together have already reſiſted the Commonwealth, for which every one of them expecteth Death; they have Liberty then to join together, to aſſiſt and defend one another. Their bearing of Arms, ſubſequent to the firſt Breach of their Duty, tho' it be to maintain what they have done, is no new unjuſt Act; and if it be only to defend their Perſons, is not unjuſt at all.’

The Fourteenth.

‘An Oath ſuperadds no Obligation to Pact, and a Pact obliges no farther than it is credited; and conſequently, if a Prince gives any Indication that he does not believe the Promiſes of Fealty and Allegiance made by any of his Subjects, they are thereby free from their Subjection; and notwithſtanding their Pacts and Oaths, may lawfully rebel againſt, and deſtroy their Sovereign.’ *Hobbs de Cive Leviathan.*

The Fifteenth.

‘If a People, that by Oath and Duty are oblig'd to a Sovereign, ſhall ſinfully diſpoſſeſs him, and (contrary to their Covenants) chuſe and covenant with another; they may be obliged by their later Covenants, notwithſtanding their former.’ *Baxter. H. C.*

The Sixteenth.

‘All Oaths are unlawful, and contrary to the Word of God.’ *Quakers.*

The Seventeenth.

‘An Oath obligeth not in the Senſe of the Impoſer, but the Takers.’ *Sheriffs Caſe.*

The Eighteenth.

‘Dominion is founded in Grace.’

The Nineteenth.

‘The Powers of this World are Uſurpations upon the Prerogative of Jeſus Chriſt; and it is the Duty of God's People to deſtroy them, in order to the ſetting Chriſt upon his Throne.’ *Fifth Monarchy-Men.*

The Twentieth.

‘The Preſbyterian Government is the Sceptre of Chriſt's Kingdom, to which Kings as well as others are bound to ſubmit; and the King's Supremacy in Eccleſiaſtical Affairs, aſſerted by the Church of *England*, is injurious to Chriſt, the ſole King and Head of his Church.’ *Altare Damaſcenum. Apolog. Relat. Hiſt. Indulg. Cartwright. Travers.*

The Twenty-firſt.

‘It is not lawful for Superiors to impoſe any Thing in the Worſhip of God, that is not antecedently neceſſary.’

The Twenty-ſecond.

‘The Duty of not offending a weak Brother, is inconſiſtent with all Human Authority of making Laws concerning indifferent Things.’ *Proteſtant Reconciler.*

The Twenty-third.

‘Wicked Kings and Tyrants ought to be put to Death; and if the Judges and inferior Magiſtrates will not do their Office, the Power of the Sword devolves to the People: If the major Part of the People refuſe to exerciſe this Power, then the Miniſters may excommunicate ſuch a King; after which it is lawful for any of the Subjects to kill him, as the People did *Athaliah* and *Jehu*.’ *Jezebel. Buchanan. Knox. Goodman. Gilby. Jeſuits.*

The Twenty-fourth.

‘After the Sealing of the Scripture Canon, the People of God in all Ages are to expect new Revelations for a Rule of their Actions; and it is lawful for a private Man, having an inward Motion from God, to kill a Tyrant.’ *Quakers and other Enthuſiaſts. Goodman.*

The Twenty-fifth.

‘The Example of *Phineas* is to us inſtead of a Command; for what God hath commanded or approved in one Age, muſt needs oblige in all.’ *Goodman. Knox. Napthali.*

The Twenty-ſixth.

‘King *Charles* the Firſt was lawfully put to Death, and his Murderers were the bleſſed Inſtruments of God's Glory in their Generation.’ *Milton. Goodwin. Owen.*

The Twenty-ſeventh.

‘King *Charles* the Firſt made War upon his Parliament; and in ſuch a Caſe the King may not only be reſiſted, but he ceaſeth to be King.’ *Baxter.*

‘We Decree, Judge, and Declare all and every of theſe Propoſitions to be falſe, ſeditious, and impious, and moſt of them to be alſo heretical and blaſphemous, infamous to Chriſtian Religion, and deſtructive of all Government in Church and State.

‘We farther Decree, That the Books which contain the aforeſaid Propoſitions and impious Doctrines, are fitted to deprave Good Manners, corrupt the Minds of unwary Men, ſtir up Seditions and Tumults, overthrow States and Kingdoms, and lead to Rebellion, Murder of Princes, and Atheiſm itſelf: And therefore we interdict all Members of the Univerſity from the Reading of the ſaid Books, under the Penalties in the Statutes expreſs'd. We alſo order the ſaid recited Books to be publickly burnt by the Hand of our Marſhal, in the Court of our Schools.

‘Likewiſe we order, That in perpetual Memory hereof, theſe our Decrees ſhall be entered in the Regiſtry of our Convocation; and that Co-

‘ pies of them being communicated to the ſeveral Colleges and Halls within this Univerſity, they be there publickly affix'd in the Libraries, Refectories, or other fit Places, where they may be ſeen and read of all.

‘ Laſtly, We command, and ſtrictly injoin, all and ſingular the Readers, Tutors, Catechiſts, and others to whom the Care and Truſt of Inſtitution of Youth is committed, that they diligently inſtruct and ground their Scholars in that moſt neceſſary Doctrine, which in a Manner is the Badge and Character of the Church of *England*; Of *ſubmitting to every Ordinance of Man for the Lord's Sake*; *whether it be to the King as Supreme, or unto Governors as unto them that are ſent by him, for the Puniſhment of evil Doers, and for the Praiſe of them that do well.* Teaching that this Submiſſion and Obedience is to be clear, abſolute, and without Exception of any State or Order of Men. Alſo that they, according to the Apoſtle's Precept, exhort, That *firſt of all, Supplications, Prayers, Interceſſions, and giving of Thanks be made for all Men, for the King and all that are in Authority*; *that we may lead a quiet and peaceable Life, in all Godlineſs and Honeſty*; *for this is good and acceptable in the Sight of God our Saviour.* And in eſpecial Manner, that they preſs and oblige them humbly to offer their moſt ardent and daily Prayers at the Throne of Grace, for the Preſervation of our Sovereign Lord King *Charles* from the Attempts of open Violence, and ſecret Machinations of perfidious Traitors; that the Defender of the Faith, being ſafe under the Defence of the Moſt High, may continue his Reign on Earth, till he exchange it for that of a late and happy Immortality.’

Mr. *Phipps*. My Lords, To ſhew that this was likewiſe at the ſame Time Archbiſhop *Tillotſon*'s Opinion, we deſire to read his Letter which he wrote to my Lord *Ruſſel*, when he was under his Condemnation in *Newgate*, *July* 20, 1683.

Clerk reads.] ‘ My Lord, I was heartily glad to ſee your Lordſhip this Morning in that calm and devout Temper at receiving of the bleſſed Sacrament; but Peace of Mind, unleſs it be well grounded, will avail little: And becauſe tranſient Diſcourſe many Times hath little Effect, for want of Time to weigh and conſider it; therefore, in tender Compaſſion of your Lordſhip's Caſe, and from all the good Will that one Man can bear to another, I do humbly offer to your Lordſhip's deliberate Thoughts theſe following Conſiderations concerning the Points of Reſiſtance, if our Religion and Rights ſhould be invaded, as your Lordſhip puts the Caſe; concerning which, I underſtand by Dr. *B.* that your Lordſhip had once received Satisfaction, and am ſorry to find a Change.

Firſt, ‘ That the Chriſtian Religion doth plainly forbid the Reſiſtance of Authority.

Secondly, ‘ That tho' our Religion be eſtabliſh'd by Law, (which your Lordſhip urges as a Difference between our Caſe and that of the Primitive Chriſtians) yet in the ſame Law which eſtabliſhes our Religion, it is declar'd, That it is not lawful, upon any Pretence whatſoever, to take up Arms, *&c.* Beſides that there is a particular Law, declaring the Power of the Militia to be ſolely in the King; and that ties the Hands of Subjects, tho' the Law of Nature, and the general Rules of Scripture had left us at Liberty, which I believe they do not, becauſe the Government and Peace of Human Society could not well ſubſiſt upon theſe Terms.

Thirdly, ‘ Your Lordſhip's Opinion is contrary to the declared Doctrine of all Proteſtant Churches; and tho' ſome particular Perſons have taught otherwiſe, yet they have been contradicted herein, and condemn'd for it, by the Generality of Proteſtants. I beg your Lordſhip to conſider, how it will agree with an avow'd aſſerting of the Proteſtant Religion, to go contrary to the general Doctrine of Proteſtants. My end in this is, to convince your Lordſhip that you are in a very great and dangerous Miſtake; and being ſo convinc'd, that which was before a Sin of Ignorance, will appear of much more heinous Nature, as in Truth it is, and call for a very particular and deep Repentance; which if your Lordſhip ſincerely exerciſe upon the Sight of your Error, by a penitent Acknowledgment of it to God and Men, you will not only obtain Forgiveneſs of God, but prevent a mighty Scandal to the Reform'd Religion. I am very loth to give your Lordſhip any Diſquiet in the Diſtreſs you are in, which I commiſerate from my Heart, but am much more concern'd that you do not leave the World in a Deluſion and falſe Peace, to the Hindrance of your eternal Happineſs. I heartily pray for you; and beſeech your Lordſhip to believe that I am, with the greateſt Sincerity and Compaſſion in the World,

‘ *My Lord*,
‘ *Your Lordſhip's moſt faithful*
‘ *and afflicted Servant*,
‘ J. TILLOTSON.’

Mr. *Phipps*. My Lords, We next offer the Opinion of Biſhop *Stillingfleet*.

Clerk reads.] ‘ A Vindication of the Anſwer to ſome late Papers, concerning the Unity and Authority of the Catholick Church, and the Reformation of the Church of *England*.

Page 89. Lond. 1687.

‘ But it hath been ſaid by Somebody, *That we had our Government and Ceremonies from his Church, our Doctrine from* Luther *and* Calvin; *and that we had nothing peculiar to our Church, but our Doctrine of Non-Reſiſtance, and much good may it do us*; and we hope we ſhall never fare the worſe for it. This might give Occaſion to inquire, Whether the Church, which pretends to be infallible, doth teach it ſo orthodoxly, or not? Or whether thoſe who do think themſelves obliged to believe what ſhe teaches, are thereby oblig'd to the ſtricteſt Principles of Loyalty? But I forbear. It is ſufficient to my Purpoſe, to ſhew that our Church doth not only teach them, as her own Doctrine, but (which is far more effectual) as the Doctrine of Chriſt and his Apoſtles, and of the Primitive Church.’

Mr. *Phipps*. My Lords, the ſame Biſhop, in a *Diſcourſe of the Unreaſonableneſs of a new Separation*, takes Notice of ſome Objections made by thoſe who are Friends to the Government, as if Non-Reſiſtance were not conſiſtent with the Revolution.

Lord Chancellor. There is no Name of an Author to theſe Books which you now produce.

Mr. *Dodd*. The Book is generally known by all learned Men to be Biſhop *Stillingfleet*'s. Mr. *Chiſwell*, who printed it, attended here three Days to prove it, but is ill now; but he has left a Certificate that he printed it, and all learned Men know it to be his.

Page 8. *Lond.* 1689.

Clerk reads.] ‘ I come to the particular Examination of the Difficulties which relate to the preſent Oaths [to King *William* and Queen *Mary*]; and becauſe we are charg'd with Apoſtacy from the Principles of the Church of *England*, and that is made the main Ground of the deſign'd Separation, I would fain know what this Charge is built upon, with reſpect to the Oaths, for that is all we are concern'd in. If any particular Perſons have advanc'd new Hypotheſis of Government, contrary to the Senſe of our Church, let them anſwer for themſelves. The Caſe of the Oath is quite of another Nature; here is no renouncing the Doctrine of Paſſive Obedience, or aſſerting the Lawfulneſs of Reſiſtance.’

Mr. *Phipps*. Your Lordſhips obſerve, that ſince the Revolution, that general Doctrine of Obedience is aſſerted by him.

Mr. *Dodd*. My Lords, The next we offer is Dr. *Sherlock* in his *Caſe of Allegiance ſtated.*

Page 37. *Lond.* 1691. *Quarto.*

Clerk reads.] ‘ And Biſhop *Overall*'s Convocation-Book, which is lately publiſh'd, the principal Deſign of which is to aſſert the irreſiſtible Authority of Sovereign Princes, does as plainly aſſert this too, that all ſettled Governments, whatever their Beginnings were, have God's Authority, and muſt be obey'd; of which more above: For thoſe wiſe Men who ſat in that Convocation, plainly ſaw the neceſſary Connexion between Non-Reſiſtance, and Obedience to the preſent Powers; both which were equally reſolv'd into the Authority of God, in removing Kings and ſetting up Kings: So that Obedience and Allegiance to the preſent Powers, when they are once well ſettled among us, is ſo far from being a renouncing of the Doctrine of Non-Reſiſtance and Paſſive Obedience, that thoſe who refuſe to comply, muſt renounce the only Principle whereon that Doctrine is reaſonably founded, and conſequently renounce the Doctrine itſelf.’

Mr. *Phipps*. My Lords, We now offer a Book publiſh'd by the late Biſhop *Beveridge*, which was publiſh'd by her Majeſty's Licenſe, counterſign'd by the Earl of *Sunderland*.

Clerk reads.] *ANNE* R.

‘ Whereas our Truſty and Well-beloved *Richard Smith*, of our City of *London*, Bookſeller, hath humbly repreſented unto us, that he has with great Labour and Expence, prepar'd for the Preſs, a new Edition of the Sermons and other Works written in *Engliſh* by the Right Reverend Father in God, Dr. *William Beveridge*, Biſhop of St. *Aſaph*, deceaſed: And has therefore humby beſought us to grant him our Royal Privilege of Licenſe for the ſole Printing and Publiſhing thereof, for the Term of fourteen Years: We being willing to give all due Encouragement to Works of this Nature, tending to the Advancement of Piety and Learning, are graciouſly pleaſed to condeſcend to his Requeſt; and do therefore, by theſe Preſents, grant to him the ſaid *Richard Smith*, his Executors, Adminiſtrators, and Aſſigns, our Royal Licenſe for the ſole Printing and Publiſhing the *Engliſh* Works of the ſaid late Biſhop of St. *Aſaph* for the Term of fourteen Years, from the Date hereof; ſtrictly forbidding all our Subjects, within our Kingdoms and Dominions, to reprint the ſame, either in Whole or in Part, or to import, buy, vend, utter, or diſtribute any Copies thereof reprinted beyond Seas, during the aforeſaid Term of fourteen Years, without the Conſent and Approbation of the ſaid *Richard Smith*, his Heirs, Executors, and Aſſigns, under his, or their Hands and Seals firſt had and obtain'd, as they will anſwer the contrary at their Peril; whereof the Maſter, Wardens and Company of Stationers are to take Notice, that the ſame may be enter'd in their Regiſter, and that due Obedience be render'd thereunto. Given at our Court at *Kenſington*, the fifth Day of *June* 1708, in the ſeventh Year of our Reign.

‘ *By her Majeſty's Command*, SUNDERLAND.’

Private Thoughts upon Religion, digeſted into twelve Articles, with practical Reſolutions form'd thereupon. By the Right Reverend Father in God, William Beveridge, *D. D. late Lord Biſhop of St.* Aſaph.

RESOLUTION I.

Page 251, 252, 253, 254. *Lon.* 1709. 8*vo.*

‘ I am reſolv'd, by the Grace of God, to honour and obey the King, or Prince, whom God is pleaſed to ſet over me; as well as to expect he ſhould ſafe-guard and protect me, whom God is pleaſed to ſet under him.

‘ The King of Kings, and Lord of Lords, the great and glorious Monarch of all the World, having enacted many gracious Laws, is pleaſed to ſet over every Kingdom and Nation ſuch Perſons as may put them in Execution: So that I cannot but look upon a lawful King as truly a Repreſentative of the moſt high God, as a Parliament is of the People. And am therefore perſuaded, that whoſoever rebels againſt him, rebels againſt God himſelf; not only in that he rebels againſt the Ordinance of God, and ſo againſt the God of that Ordinance; but becauſe he rebels againſt him whom God hath ſet up as his Vicegerent, to repreſent his Perſon and execute his Laws, in ſuch a Part of his Dominions.

‘ Hence it is, that theſe two Precepts, *Fear God, and Honour the King*, are ſo often join'd together in Holy Writ; for he that fears God's Power, cannot but honour his Authority; and he that honours not the King that repreſents God, cannot be ſaid to fear God, who is repreſented by him. And hence likewiſe it is, that God hath been as ſtrict and expreſs in injoining us Obedience to our Governors, as to himſelf: For, thus ſaith the Lord of Hoſts, *Rom.* xiii. 1. *Let every Soul be Subject to the higher Powers.* Why? Becauſe *there is no Power but of God*; *the Powers that be, are ordain'd of God.*

‘ And he hath denounced as great a Judgment againſt ſuch as rebel againſt the Magiſtrate he hath ordain'd, as againſt thoſe that rebel againſt himſelf: For, *Whoſoever reſiſteth the Power, reſiſteth the Ordinance of God*; *and they that reſiſt ſhall receive to themſelves Damnation*, ver. 2. So that the Wrath of *God* ſhall as certainly fall upon thoſe that riſe up againſt the King, as upon thoſe that fight againſt God. And no wonder, that the Puniſhment ſhould be the ſame, when the Fault is the ſame. For he that fights againſt the King, fights againſt God himſelf, who hath inveſted him with that Power and Authority to govern his People, repreſenting his own Glorious Majeſty before them.

‘ Upon this Ground it is, that I believe the Wickedneſs of a Prince cannot be a ſufficient Plea for the Diſobedience of his Subjects; for it is not the Holineſs, but the Authority of God that he repreſents, which the moſt wicked, as well as the moſt holy Perſon may be endowed with. And therefore when the Goſpel firſt began to ſpread itſelf over the Earth, tho' there was no Chriſtian King, or Supreme Magiſtrate, of what Title ſoever, to cheriſh and protect it; nay, tho' the Civil Powers were then the greateſt Enemies to it, yet, even then, were the Diſciples of Chriſt injoined *to ſubmit themſelves to every Ordinance of Man, for the Lord's ſake.*

‘ Inſomuch, that did I live among the *Turks*, *I* ſhould look upon it as my Duty to obey the *Grand Signior* in all his lawful Edicts, as well as the moſt Chriſtian and pious King in the World. For, ſuppoſe a Prince be never ſo wicked, and never ſo negligent in his Duty of protecting me, it doth not follow, that I muſt neglect mine of obeying him. In ſuch a Caſe, I have another Duty added to this, and that is, to pray for him, and to intercede with God for his Converſion: For, thus hath the King of Kings commanded, That *Prayers, Supplications, Interceſſions, and giving of Thanks be made*, as *for all Men*, ſo more eſpecially *for Kings, and thoſe that are in Authority, that we may live a quiet and peaceable Life, in all Godlineſs and Honeſty.* 1 Tim. ii. 1, 2. So that whenſoever I addreſs to the Court of Heaven, I muſt be ſure to remember my Sovereign on Earth, as himſelf doth in Heaven, in Righteouſneſs and Mercy. But eſpecially, in caſe of any ſeeming or real Default or Defect; tho' I do not think it a Subject's Duty to judge or cenſure his Sovereign's Actions: I am to be the more earneſt in my Prayers and Interceſſions for him; but upon no Account to fight and rebel againſt him.'

Mr. *Dodd.* My Lords, the next Book we offer is his Grace the Archbiſhop of *Canterbury*'s Treatiſe, intitled, *The Creed of Mr.* Hobbs *examined.*

Pag. 158. *Lond.* 1670.

Clerk reads.] ‘ There is no Tie ſo ſtrong as that of Religion, which eternally bindeth a conſcientious Subject in Allegiance to his Sovereign.

*Ibid. p.*160, 161.

‘ Woe to all the Princes upon the Earth, if this Doctrine be true, and becometh popular. If the Multitude believe this, the Prince not arm'd with the Scales of the *Leviathan*, that is, with irreſiſtible Power, can never be ſafe from the Spears, and barbed Irons, which their Ambition and preſumed Intereſt will provide, and their Malice will ſharpen, and their paſſionate Violence throw againſt him. If the Beaſt we ſpoke of come but to know its own Strength, it will never be manag'd. Wherefore ſuch as own theſe pernicious Doctrines, deſtructive to all Societies of Men, may be ſaid to have Wolves Heads, as the Laws of old were wont to ſpeak concerning excommunicated Perſons; and are like thoſe ravenous Beaſts, ſo far from deſerving our Love and Care, that they ought to be deſtroyed at the common Charge.'

Mr. *Phipps* My Lords, there is a farther Account of the Opinion of the ſame Archbiſhop of *Canterbury* in a printed Paper, intitled, *An Account of what paſſed at the Execution of the late Duke of* Monmouth, *on* Wedneſday *the* 15*th of* July, 1685, *on* Tower-Hill.

Clerk reads.] ‘ The late Duke of *Monmouth* came from the *Tower* to the Scaffold, attended by the Biſhop of *Ely*, the Biſhop of *Bath* and *Wells*, Doctor *Tenniſon*, and Dr. *Hooper*; which four the King was graciouſly pleaſed to ſend him, as his Aſſiſtants to prepare him for Death; and the late Duke himſelf intreated all four of them to accompany him to the Place of Execution, and to continue with him to the laſt. The two Biſhops going in the Lieutenant's Coach with him to the Bars, made ſeaſonable and devout Applications to him all the Way; and one of them deſir'd him not to be ſurpriz'd, if they to the very laſt, upon the Scaffold, renewed thoſe Exhortations to a particular Repentance, which they had ſo often repeated before.

‘ At his firſt coming upon the Scaffold, he look'd for the Executioner; and ſeeing him, ſaid, *Is this the Man to do the Buſineſs? Do your Work well.*

‘ Then the late Duke of *Monmouth* began to ſpeak, ſome one or other of the Aſſiſtants, during the whole Time, applying themſelves to him.

Mon. ‘ I ſhall ſay but very little; I come to die; I die a Proteſtant of the Church of *England.*

Aſſiſt. ‘ My Lord, if you be of the Church of *England*, you muſt acknowledge the Doctrine of Non-Reſiſtance to be true.

Mon. ‘ If I acknowledge the Doctrine of the Church of *England* in general, that includes all.

Aſſiſt. ‘ Sir, it is fit to own that Doctrine particularly, with reſpect to your Caſe. Here he was much urg'd about that Doctrine of Non-Reſiſtance; but he repeated in Effect his firſt Anſwer.

Aſſiſt. ‘ My Lord, it is fit to be particular; and conſidering the publick Evil you have done, you ought to do as much Good now as poſſibly you can, by a publick Acknowledgment.

Mon. ‘ What I have thought fit to ſay of publick Affairs, is in a Paper which I have ſign'd; I refer to my Paper.

Aſſiſt. ‘ My Lord, there is nothing in that Paper about Reſiſtance, and you ought to be particular in your Repentance, and to have it well grounded. God give you true Repentance.

Mon. ‘ I die very penitent, and die with great Chearfulneſs, for I know I ſhall go to God.

Aſſiſt. ‘ My Lord, you muſt go to God in his own Way: Sir, be ſure you be truly penitent, and aſk Forgiveneſs of God for the many you have wronged.

Mon. ‘ I am ſorry for every one I have wronged; I forgive every Body; I have had many Enemies, I forgive them all.

Aſſiſt. ‘ Sir, your Acknowledgement ought to be publick and particular.

Mon. ‘ I am to die; pray, my Lord——I refer to my Paper.

Aſſiſt. ‘ They are but a few Words that we deſire: We only deſire an Anſwer to this Point.

Mon. ‘ I can bleſs God that he hath given me ſo much Grace, that for theſe two Years laſt paſt I have led a Life unlike to my former Courſe, and in which I have been happy.

Aſſiſt. ‘ Sir, Was there no Ill in theſe two Years? In theſe Years theſe great Evils have happen'd; and the giving publick Satisfaction is a neceſſary Part of Repentance; be pleaſed to own a Deteſtation of your Rebellion.

Mon. ‘ I beg your Lordſhips that you will ſtick to my Paper.

Aſſiſt. ‘ My Lord, as I ſaid before, there is nothing in your Paper about the Doctrine of Non-Reſiſtance.

Mon. ‘ I repent of all Things that a true Chriſtian ought to repent of. I am to die; pray, my Lord——

‘ *Aſſiſt.* ‘ Then, my Lord, we can only recommend you to the Mercy of God; but we cannot pray with that Chearfulneſs and Encouragement as we ſhould, if you had made a particular Acknowledgement.'

This is a true Account, Witneſs our Hands.

Francis Ely, *Thomas Tenniſon*,
Thomas Bath and *Wells*, *George Hooper.*

William Goſtlin, } Sheriffs.
Peter Vandeput, }

Mr. *Phipps.* My Lords, We pray we may read the Sermon of his Grace the preſent Archbiſhop of *York*, preached before your Lordſhips on the 30th of *January*, 1700.

Clerk reads.] ‘ And in caſe it ever happen that we cannot with a ſafe Conſcience obey, there we are patiently to ſuffer the Penalties of our Diſobedience; but by no means either to affront their Perſons, or to diſturb their Government, by raiſing or partaking in any Tumult, or Inſurrection, or Rebellion. *Pag.* 13.

‘ That there is ſuch a Submiſſion due from all Subjects to the Supreme Authority of the Place where they live, as ſhall tie up their Hands from oppoſing or reſiſting it by force, is evident from the very Nature and Ends of Political Society. And, I dare ſay, there is not that Country upon Earth, let the Form of their Government be what it will (Abſolute Monarchy, legal Monarchy, Ariſtocracy, or Commonwealth), where this is not a Part of the Conſtitution. Subjects muſt obey paſſively, where they cannot obey actively: Otherwiſe the Government would be precarious, and the public Peace at the Mercy of every Male-content, and a Door would be ſet open to all the Inſurrections, Rebellions and Treaſons in the World. Nor is this only a State-Doctrine, but the Doctrine alſo of *Jeſus Chriſt*, and that a neceſſary, indiſpenſible one too, as ſufficiently appears from thoſe famous Words of St. *Paul*, *Rom.* xiii. 1, 2. which are ſo plain that they need no Comment: “ Let every Soul, (ſaith he) be ſubject to the higher Powers, for there is no Power but of God, and the Powers that be, are ordained of God; whoſoever therefore reſiſteth the Power, reſiſteth the Ordinance of God; and they that reſiſt ſhall receive to themſelves Damnation.” So that, ſo long as this Text ſtands in our Bible, the Doctrine of Non-Reſiſtance and Paſſive Obedience muſt be of Obligation to all Chriſtians.' *Ibid. p.* 19, 20.

Mr. *Dodd.* Pray, ſee whether there is any Thing purporting the Thanks of the Houſe to be given to the Archbiſhop for his Sermon.

Clerk reads.] ‘ *Die Jovis*, 1 *Februarij*, 1699. It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Thanks of this Houſe be and are hereby given to his Grace the Lord Archbiſhop of *York*, for his Sermon preach'd before this Houſe the thirtieth of *January* laſt; and he is hereby deſired to print and publiſh the ſame.

‘ *Matth. Johnſon*, Cl' Parliamentor.'

Mr. *Walpole.* My Lords, I preſume the Counſel have offered all they think proper to offer out of this Sermon: But that your Lordſhips may have a Specimen of the Candour of the Doctor's Quotations, I pray the Clerk may read the two next Paragraphs of that Sermon, and that he may read them as diſtinctly as he did the others.

Clerk reads.] ‘ But then after I have ſaid this, Care muſt be taken, that this general Doctrine be not miſapplied in particular Countries. Tho' Non-Reſiſtance, or Paſſive Obedience, be a Duty to all Subjects, and under all Governments; yet it is not expreſſed the ſame Way in all Places, but both the Objects and the Inſtances of it do vary in different Nations, according to the different Models of their Government. *Fol.* 20.

‘ To ſpeak this as plainly as I can: As the Laws of the Land are the Meaſures of our Active Obedience, ſo are alſo the ſame Laws the Meaſures of our Submiſſion; and as we are not bound to obey, but where the Laws and Conſtitution require our Obedience, ſo neither are we bound to ſubmit, but as the Laws and Conſtitution do require our Submiſſion.'

Mr. *Walpole.* Before we part with that Sermon, I deſire one Paragraph more may be read; it begins with theſe Words, *If indeed a Preacher.*

Clerk reads.] ‘ If indeed a Preacher ſhould in the Pulpit preſume to give his Judgment about the Management of publick Affairs, or to lay down Doctrines as from Chriſt about the Forms and Models of Kingdoms or Commonwealths, or to adjuſt the Limits of the Prerogative of the Prince, or of the Liberties of the Subject in our preſent Government; I ſay, if a Divine ſhould meddle with ſuch Matters as theſe in his Sermons, I do not know how he can be excuſed from the juſt Cenſure of meddling with Things that nothing concern him: This is indeed a *practiſing* in *State Matters*, and is uſurping an Office that belongs to another *Profeſſion*, and to Men of another *Character*; and I ſhould account it every whit as undecent in a Clergyman to take upon him to deal in theſe Points, as it would be for him to determine *Titles* of *Land* in the *Pulpit*, which are in diſpute in *Weſtminſter-Hall.*' *Fol.* 6.

Mr. *Phipps.* My Lords, If your Lordſhips pleaſe, as to the two Paragraphs read next after what we read, we intirely concur in what is laid down in them; and if we ſhew that this Doctrine is agreeable to the Laws of the Land, then it is agreeable to what is there laid down: As to the other Part, if he has taken upon him to treat of the Model of Government, he will be under the Cenſure of the Archbiſhop; but we deſire to read a little before the Beginning of that Paragraph.

Clerk reads.] ‘ Titus iii. 1. *Put them in Mind to be ſubject to Principalities and Powers, to obey Magiſtrates.*

‘ You all know what Kind of Argument this *Day* calls for: For by the Deſign of keeping it, the Buſineſs that the *Preacher* hath to do, is to preſs *Obedience* and *Subjection* to the Government we live under; and to preach againſt *Faction* and *Rebellion*; and accordingly it is preſcribed in the *Rubrick* of this *Day's Service*, that if there be a *Sermon* at all, and not a *Homily*, it ſhall be upon this Argument.

‘ It is very well that *Authority* hath taken Care that at ſome ſolemn Times we ſhould *preach* upon this Subject in a more ſolemn Manner; becauſe, though it be as needful as any, yet there are ſome among us think it a very improper *Theme* for the *Pulpit.* I muſt confeſs I had an Eye to this Suggeſtion, when I pitched upon theſe Words which I have now read to you: Becauſe I think there is ſomething to be obſerved in them which will effectually confute it.

‘ St. *Paul* here lays his Charge upon *Titus*, that he ſhould put the People that were under his Care *in Mind, to be ſubject to Principalities and Powers, and to obey Magiſtrates.*

‘ Two Things I would here conſider, *Firſt*, The *Perſon* that is ordered thus to *put* the People *in Mind:* And, *Secondly*, The *Thing* that he is to put them in Mind of, which is *Subjection* and *Obedience* to *Principalities*, and *Powers*, and *Magiſtrates.*

‘ I begin with the firſt Thing, the *Perſon* to whom St. *Paul* writes this *Epiſtle*, and to whom he gives it in Charge, that he ſhould *put the People in Mind to be ſubject.*

‘ Who was this *Perſon?* Why, it was *Titus*, an Eccleſiaſtick, Biſhop, a Preacher of the Goſpel, not a *Layman*, not a *Magiſtrate*, but a pure *Churchman.* What can be more plainly gathered from hence than this, That it is not foreign to a Clergyman's Office to preach *Obedience* and *Subjection* to the Government; but on the contrary a Part of his Function, a neceſſary Duty incumbent upon him to do it; If any Man affirm otherwiſe, he muſt either ſay that St. *Paul* did not rightly inſtruct *Titus* in his Office, but injoined him to do that which he had nothing to do with; or he muſt ſhew that the Caſe of *Titus* was different from that of the Miniſters of the Goſpel at this Day: Neither of which Things can, I believe, be eaſily made out.

‘ And yet into ſuch Times are we fallen, that it is taken ill by many, that Miniſters ſhould in their Pulpit-Diſcourſes meddle with theſe Matters: I muſt confeſs, I think, that of all Men it moſt concerns a Miniſter of Religion not to be a *Buſy-Body*, or a Meddler in other Men's Matters; for in Truth he hath Work enough to do of his own, and ſuch Kind of Work too, as, let him behave himſelf as inoffenſively as he can, will create him Difficulties and Enemies enough. And therefore it would be very imprudent in him to uſurp other Men's Provinces, and to *burn* his *Finger* were he needs not, eſpecially conſidering that the Succeſs of his Labours and Endeavours among the People doth in a great Meaſure depend upon the good liking they have of him.

‘ But what is it that gives Offence? Or what is it that renders this Argument we are ſpeaking of ſo improper a Subject for a Clergyman to treat of? Why, ſeveral things are pretended, and I ſhall name ſome of them.

Firſt, It is ſaid, ‘ That the Work of a Clergyman is to inſtruct Men in Chriſt's Religion, to preach againſt *Vice* and *Sin*, and to preach up *Holineſs* and *Good Life*, and mutual *Love* and *Charity*; but what hath he to do with *State-Affairs*, as Matters of Government are?

‘ I anſwer, He hath nothing indeed to do with them: But his only Work is to make Men good Chriſtians, by endeavouring to poſſeſs them with a hearty Belief of our Saviour's Doctrines and Promiſes, and perſuading them to a Conformity in their Lives to his Precepts. This is our proper Work, and this is what we ought to attend to all the Days of our Life; and with *Government* and *State-Affairs* we ought not to meddle, in our *Sermons* eſpecially.

‘ But then, after all this, it doth not follow but that we are all bound, as we have Occaſion, to preach up *Loyalty* and *Obedience* to our *Governors*; for this is no *State-Affair*, but an *Affair* of the *Goſpel.* We cannot inſtruct Men in Chriſt's Religion, without inſtructing them in this.

‘ If, indeed, it was an indifferent Thing to a Man's Chriſtianity, or to his Salvation, whether he was a *good* or a *bad* Subject, then indeed it would be as indifferent to a Preacher, whether he inſiſted on theſe Things to the People; but it is not ſo.

‘ One great Branch of Chriſtian Holineſs, as it is declared in the *New Teſtament*, is, That every Man demean himſelf quietly and peaceably, and obedient to the Government he lives under; and that not only for *Wrath*, or Fear of Puniſhment, but alſo for *Conſcience-ſake:* And this is made as neceſſary a Condition of going to Heaven, as any other particular Virtue is. And therefore if we will inſtruct Men in Chriſt's Religion, and in the indiſpenſible Points of Holineſs required thereby, we muſt inſtruct them in this alſo.

‘ One great *Vice* and *damnable Sin* that the Religion of our Lord has cautioned againſt, is the Sin of *Factiouſneſs* and *Rebellion*; and therefore, if it be our Duty to declare againſt the Sins and Vices that are contrary to Chriſtianity, it is our Duty to declare and caution againſt this alſo.

‘ *Laſtly*, We do readily grant, that a great Part of our Office conſiſts in moſt affectionately recommending and preſſing the Neceſſity of *mutual Love* and *Charity*; but if this be neceſſary, is it not more ſo to recommend and preſs *Obedience* to *Authority*, without which *mutual Love* and *Charity* cannot poſſibly ſubſiſt? That being the common Ligament of them; and take away that, we ſhould be no better than *Bears* and *Tygers* one to another.

‘ But it is ſaid in the *Second* Place, That Preachers ought not to meddle with theſe Points, becauſe they are not competent Judges of them: They do not know the Meaſures and Limits of *Loyalty* and *Diſloyalty*, of being a *good* and a *bad Subject*; theſe depending altogether upon the Conſtitution of the Government we live under, and the determining of them belongs to the Civil Courts, and not to their Profeſſion.

‘ To this I anſwer, That in all thoſe Inſtances wherein this Argument falls under the Cognizance and Determination of *Parliament*, or *Judges*, or *Lawyers*, we do not pretend to meddle with it; and if any Man do, let him anſwer for himſelf: All that we pretend to, is to preſs the plain, general, indiſpenſible Duties of *Obedience* to *Laws*, and of *Peaceableneſs* and *Subjection* to the *Higher Powers*, which Chriſt and his Apoſtles have every where taught in the Bible.'

Mr. *Phipps.* My Lords, We do not deſire to read any more; we think we have juſtified our Quotations, and ſhewed, that it is the Opinion of that Great and Learned Archbiſhop, That the Doctrine of Paſſive Obedience and Non-Reſiſtance is the Doctrine of our Church; and that it is a Duty incumbent upon the Clergy to preach it to the People.

Mr. *Dodd.* The next we offer to your Lordſhips, is the Opinon of the preſent Biſhop of *Worceſter*, in a Sermon preached before the late Queen, the 29th of May 1692, when he was Biſhop of St. *Aſaph.*

Clerk reads.] ‘ They had brought Things to that Paſs, that our Laws ſignified nothing but what they pleaſed; our Religion was held at the Curteſy of them that were the bloody Enemies of it. Our Obedience was made uſe of as a perfect Snare to us; we muſt not reſiſt; that our Religion would not allow.——It was God that infatuated our Oppreſſors, to join the Injuries of a People that could not lawfully reſiſt, with thoſe of a Prince that could not lawfully paſs them by without Reſiſtance.'

Page 18, 19.

Mr. *Phipps.* We ſhall now offer to your Lordſhips a Sermon preached by the Biſhop of *Rocheſter* before the *Artillery-Company*, upon the 29th of *May*, 1692.

Clerk reads.] ‘ *Put up thy Sword*, ſays he, O *Peter!* ſubmit with Patience. Oppoſe not Authority. Do not then break the Laws of thy Country, though for Kindneſs and Love of me. *Put up thy Sword.* He that uſes the Sword unlawfully, though on a Pretence never ſo pious, *ſhall periſh by the Sword*; ſhall either be deſtroyed by it here, or puniſhed hereafter by God himſelf for having ſo uſed it.

Page 5.

‘ Wherefore we are not to conclude, that our Bleſſed Lord, by this Check given to St. *Peter*, did abſolutely prohibit all Manner of uſing the Sword among Chriſtians, but only that he taught us the great Duty of Chriſtian Submiſſion. For if St. *Peter* was, then certainly all other Chriſtian Subjects are, forbidden to unſheath the Sword againſt their lawful Sovereign, or his Miniſters, as they are commiſſioned by him, tho' they do it on a Pretext ſo ſpiritual, as the Cauſe of Chriſt himſelf.

‘ Though they could not be induced by Fear or Favour to rank their Princes equal with their God, yet they preſerved them in the next Place: Though they would never worſhip them as Gods upon Earth, yet they religiouſly obeyed them as God's Deputies and Repreſentatives. They judged thoſe who rebelled againſt them worthy of Death, as if they had actually rebelled againſt God himſelf. What elſe Means St. *Paul*, when in ſo many Words he declares, *That whoſoever reſiſteth the Power reſiſteth the Ordinance of God; and they that reſiſt ſhall receive to themſelves Damnation?* Rom. xiii. 2. Out of all Doubt he there ſpeaks of the Temporal Power, and of Eternal Damnation to enſue upon reſiſting it; than which, what more grievous Puniſhment could have been inflicted, had they immediately reſiſted God himſelf?

Page 25, 26.

‘ And recollect, I intreat you, the Time when this was ſo poſitively pronounced by St. *Paul.* It muſt have been writ under the Reign of *Claudius* or *Nero.* So that 'tis evident, all that reſiſted them were, without Repentance, in a damnable State. Can there be any Colour ſo ſpecious, any Cauſe ſo juſt, in which, inſtead of Damnation, a Chriſtian Subject may juſtly expect to receive to himſelf Salvation, on the Account of reſiſting?'

Mr. *Phipps.* We ſhall next offer to your Lordſhips Conſideration the Authority of the Lord Biſhop of *Sarum*; where he ſhews, that this is not only the Doctrine of the Church of *England*, but of the Church of *Scotland*, and of all Chriſtian Churches.

Clerk reads.] ‘ *A Vindication of the Authority, Conſtitution, and Laws of the Church and State of* Scotland, *&c. By* Gilbert Burnet.

‘ But theſe Words of St. *Paul*, being as at firſt addreſſed to the *Romans*, ſo alſo deſigned by the Holy Ghoſt to be a Part of the Rule of all Chriſtians, do prove, that whoever hath the ſupreme Power, is to be ſubmitted to, and never reſiſted.

Printed at Glaſgow, 1673. *Page* 41, 42.

‘ *Iſot.* If you were not in too great a Haſte, you would not be ſo forward; conſider therefore the Reaſon St. *Paul* gives for Submiſſion to Superior Rulers, is, *becauſe they are the Miniſters of God for good.* If then they ſwerve from this, they forſake the End for which they are raiſed up, and ſo fall from their Power and Right to our Obedience.

‘ *Bazil.* Truly what you have ſaid makes me not repent of any Haſte I ſeemed to make; for what you have alledged proves indeed that the Sovereign is a Miniſter of God for good, ſo that he corrupts his Power groſly when he purſues not that Deſign: But in that he is only accountable to God, whoſe Miniſter he is. And this muſt hold good, except you give us good Ground to believe, that God hath given Authority to the Subjects to call him to Account for his Truſt; but if that be not made appear, then he muſt be left to God, who did impower him, and therefore can only coerce him. As one having his Power from a King, is accountable to none for the Adminiſtration of it but to the King, or thoſe on whom the King ſhall devolve it: So except it be proved, that God hath warranted Subjects to call their Sovereigns to Account, they being his Miniſters, muſt only be anſwerable to him. And, according to theſe Principles of yours, the Magiſtrates Authority ſhall be ſo enervated, that he ſhall no more be able to ſerve theſe Deſigns for which God hath veſted him with Power: Every one being thus taught to ſhake off his Yoke when they think he acts in Prejudice of Religion. And here I ſhall add one Thing, which all *Caſuiſts* hold a ſafe Rule in Matters that are doubtful, that we ought to follow that Side of the Doubt which is freeſt of Hazard. Here then Damnation is at leaſt the ſeeming Hazard of Reſiſtance; therefore except upon as clear Evidence you prove the Danger of abſolute Submiſſion to be of the ſame Nature that it may balance the other, then abſolute Submiſſion, as being the ſecureſt, is to be followed.'

Mr. *Phipps.* There is another Sermon preached by the Biſhop of *Saliſbury*, intitled, *Subjection for Conſcience-ſake aſſerted, in a Sermon preached at* Guildhall, 1689.

Printed at London, Page 30. *Clerk reads.*] ‘ Bleſſed be God, our Church hates and condemns this Doctrine from what Hand ſoever it comes, and hath eſtabliſhed the Rights and Authority of Princes, on ſure and unalterable Foundations; injoining an intire Obedience to all the lawful Commands of Authority, and an abſolute Submiſſion to that Supreme Power God hath put into our Sovereign's Hands. This Doctrine we juſtly glory in; and if any that had their Baptiſm, and Education in our Church, have turn'd Renegades from this, they prov'd no leſs Enemies to the Church herſelf, than to the Civil Authority: So that their Apoſtacy leaves no Blame on our Church, which glories in nothing more than a well-temper'd Reformation from the later Corruption which the dark Ages brought into the Pure a d Primitive Doctrines which our Saviour and his Apoſtles taught, and the firſt Chriſtians retain'd, and practiſed for many Ages.’

Mr. *Phipps.* My Lords, I only obſerve, That the abſolute Submiſſion to the Supreme Power, are the Words in the Doctor's Sermon.

Sir *Peter King.* My Lords, Before your Lordſhips go on to any other, I pray the 17th Page of the Book which they read, intitled, ‘ The Vindication of the Authority, Conſtitution and Laws of the Church and State of *Scotland*,’ may be read.

Page 17. ‘ The Caſe varies very much when the Abuſe is ſuch that it tends to a total Subverſion, which may be call'd juſtly a *Phrenſy*, ſince no Man is capable of it, 'till he be under ſome Leſſon of his Mind; in which caſe, the Power is to be adminiſtered by others, for the Prince and his People's Safety: But this will never prove that a Magiſtrate governing by Law, though there be great Errors in Government, ought to be coerced: Otherwiſe you muſt open a Door to perpetual Broils, ſince every one by theſe Maxims becomes Judge; and where he is both Judge and Party, is not like to be caſt in his Pretenſions; And even few Malefactors die, but they think hard meaſure is given them. If then forcible Self-defence be to be followed, none of theſe ſhould yield up their Lives without uſing all Attempts for reſcuing them.’

Mr. *Dee.* My Lords, the next we offer is a Sermon preached by the Biſhop of *Ely* before the Lord-Mayor and Aldermen at *Guildhall*, the 26th of *January* 1648.

Page 19. *Clerk reads.*] ‘ The patient Chriſtian cannot but condemn thoſe, who under the Pretence of defending their Rights or Religion, reſiſt lawful Authority: It being a Blaſphemy againſt the Divine Wiſdom and Power, to ſuppoſe God can ever ſtand in need of our Sins to bring to paſs his moſt glorious Deſigns. He then in whom this Virtue of Patience dwells, keeps a due Regard to the Commands laid upon him, to ſubmit himſelf to the Supreme Powers; and he dares not lift up his Hand againſt the Lord's Anointed, or levy War upon the moſt plauſible Account whatſoever; nay, to him it cannot but ſeem a Wonder, that the Doctrine of Reſiſtance ſhould have gone down ſo glibly with any who have read the New Teſtament, and are baptiz'd into the Chriſtian Faith.

Ib. P. 20, 21. ‘ There is an univerſal abſolute Command in the Holy Scripture laid upon all Chriſtians, to be ſubject to the Supreme Powers in all Caſes. Now nothing is Plainer, than that if we be required to be ſubject in all Caſes, Reſiſtance in any will be ſinful. *Let every Soul be ſubject to the Higher Power*; to which Chriſtian Precept there is no Exception to be found for any Perſon, in any Inſtance, from one End of the Chriſtian Inſtitution to the other.—Subjection is a Duty, than which there is hardly any oftner repeated in the Chriſtian Law, ſo we cannot plead Ignorance of it; it is preſs'd with ſuch Evidence of Reaſon, that cuts off all Pretences of evading it; it is ſet down in ſuch plain, eaſy, and full Expreſſions, as that there can be no Colour to doubt about the right Underſtanding of it. The Holy Scripture gives Permiſſion no more to the People collected into one Body to rebel, than it does to each of them, by himſelf ſingly conſidered. Every Chriſtian, in all Circumſtances, is requir'd to conform to the Laws of the Supreme Authority, if they have no Repugnancy to God's Laws, and to ſuffer patiently where Obedience would be a Sin.’

Mr. *Dee.* My Lords, the next we beg Leave to offer, is a Sermon of the Biſhop of *Bath* and *Wells*, preached before the King at *Whitehall* the 5th of *November* 1681.

Page 11. *Clerk reads.*] ‘ Is he not the Vicegerent of God? Whereever therefore his Sovereign the Almighty has not prevented him by any precedent Commands, there he has a Right and Liberty to put forth his; in theſe Caſes to expect an active chearful Obedience, and that we ſhould in no Caſe, and for no Reaſon reſiſt.

Ib. Pa. 19. ‘ The Church, of which we have the Bleſſing to be Members, where ſhe can't obey, is ready to endure, expecting her Reward in Heaven. Not ignorant how much ſhe ſuffers now from the Contradiction of diſloyal Men, for the Truth of this Doctrine, and how much (for its Meekneſs) ſhe ſtands expoſed to future Proſecution.’

Mr. *Dee.* The next we offer to your Lordſhips, is a Sermon preached by the Biſhop of *Lincoln* before your Lordſhips, on the 30th of *January* 1708, which was publiſhed by your Lordſhips Commands.

Clerk reads.] ‘ *Die Sabbati*, 31 *Januarii*, 170$\frac{7}{8}$. Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Thanks of this Houſe be, and are hereby given to the Lord Biſhop of *Lincoln*, for his Sermon preach'd before this Houſe Yeſterday, in the Abby Church in *Weſtminſter*; and that he be deſir'd to Print and Publiſh the ſame.

Matth. Johnſon, Cler' Parliamentor.’

Page 15, 16, 17, 18. ‘ And if neither the *Malice* of the *Jews*, nor the *Innocence* of our *Lord*; if neither the *Truth* of our *Religion* perſecuted in its *Founder*, nor the apparent Marks of *Malice* and *Envy*, of *Violence* and *Oppreſſion*, which appeared in the whole Courſe of their Proſecution of Him; were ſufficient to warrant St. *Peter* to *draw the Sword* in his *Defence*, againſt that *Legal Authority* by which they acted; We muſt conclude, that neither will any of theſe Pretences ſuffice to juſtify any other Chriſtians, in the like Circumſtances, now. But if it ſhall pleaſe God at any time to permit the *Lawful Powers* to be againſt Us, and make them that hate us to rule over us; We muſt follow the Example of our Bleſſed *Maſter*, and ſubmit patiently to their *Authority*; and not, with this warm *Apoſtle*, “ take the Sword againſt thoſe to whom God has committed the Power of the Sword.”

‘ Let this then ſuffice to ſhew, what the true Chriſtian Doctrine of *Submiſſion* to the *Civil Magiſtrate*, is. I ſhall not here inquire, whether ſome may not poſſibly have miſapplied theſe *Principles*, or have ſtretched them further than they ought to have done, and by that means have led both themſelves and others into great Miſtakes, and no leſs Inconveniencies. What that *Authority* in every *State* or *Country* is, to which ſuch a *Subjection* (as I have now been ſpeaking of) is due, and againſt which no *Reſiſtance* (no not to defend the *Beſt Cauſe*, or the moſt *Innocent Perſon* in the World) may be uſed by *any* of the *Community*, is a Point which the Municipal Laws and Conſtitution of every *State* and *Country* muſt determine: But that wherever that *Supreme Power* and *Authority* is lodged, or in whomſoever it reſides, to which God has commanded us to be *ſubject not only for Wrath, but* alſo *for Conſcience Sake*; concerning which St. *Paul* has laid down this Rule, *Let every Soul be ſubject to the Higher Powers*; and St. *Peter* himſelf declared, that we muſt *ſubmit to it for the Lord's Sake:* We are bound to pay either an Active, or Paſſive Obedience to it; muſt either do what it requires, or ſuffer what it inflicts: This is without Controverſy the ſtanding *Doctrine of Chriſtianity*, and has been confirmed by the *Practice* of the *beſt Chriſtians* in all Ages of the *Church*.

‘ Which being ſo, let us go on finally (upon theſe Principles) to conſider,

‘ III. What we are to judge of Thoſe, who, notwithſtanding ſo plain an Amonition, not only *took the Sword*, (tho' that had been too much) but *cut off* with it that *Royal Perſon*, who alone had the *Rightful Power* of it.

‘ And here I cannot follow either a plainer or a ſurer Guide, than our *Laws* themſelves, which ſpeak not only with *Authority*, but with *Approbation* too; and tell us, in effect, what the *Senſe* of the whole *Nation* is, or at leaſt ought to be, both of *Them* and their *Proceedings*. The *Fact* itſelf they call a *Horrid*, *Execrable*, *Deteſtable Murder*; an *impious Fact*, *an unparalleled Treaſon:* The *Court*, which decreed it, a *Traiterous Aſſembly*, a *prodigious* and *unheard-of Tribunal*. The *Perſons* who thus unwarrantably drew the *Sword* againſt their own Sovereign, they brand as a Parcel of *wretched Men*, *deſperately wicked*, *hardened in their Impiety*. And laſtly, As to the Principles upon which they proceeded, the ſame *Laws* declare, “ That *by the Undoubted and Fundamental Laws of this Kingdom*, *neither the* Peers *of this Realm*, *nor the* Commons, *nor* both *together in* Parliament, *or out of* Parliament, Collectively *or* Repreſentatively, *nor any* other Perſons *whatſoever*, *ever had*, *have*, *hath*, *or ought to have*, any Coercive Power *over the* Perſon *of the* Kings *of this Realm*.”

[*Clerk reads on by Direction of the Managers.*]

‘ Such is the Cenſure which our Laws have paſſed upon the Murder of our Royal Sovereign, and the Perſons who committed it: And the ſame is the Senſe which both the Word of God, and the Laws of all other Nations, teach us to have of both.

‘ For to allow that ſome Things had been done under the Authority of that Unfortunate Prince leſs regularly than were to have been wiſh'd; That the Prerogative had been ſtrained to an Exorbitant Height, and the Subject too much provoked to complain, if not of the King himſelf, yet of thoſe who were about him, and ſhould have adviſed, and acted more moderately than they did. To grant that when the Parliament met, with which our Troubles began, it was excuſable, or even fitting for it to have redreſſed thoſe Grievances, and reduced the Prerogative within its juſt Bounds; and that thoſe therefore who entered upon the proper Methods of doing this in a Parliamentary way, without any ill Deſigns, either againſt the Perſon or Government of the King, were not to be blamed. Yet certainly, when this was done, and thereupon ſuch Acts were paſſed, as not only abundantly repair'd whatever the Subject had ſuffered before, but ſufficiently ſecur'd him againſt any more Invaſions, either of his Liberty or Property, for the Time to come; for Men to proceed farther ſtill, and without any lawful Authority, or evident Neceſſity, enter into a War againſt their Sovereign, who had ſo far condeſcended to all their juſt Deſires, muſt needs have been as illegal as it was unreaſonable, and beſpeak thoſe who did it, to have taken the Sword in that Senſe which our Saviour here forbad, and all good Men have ever condemned.

‘ Had that Excellent Prince indeed never called his laſt Parliament at all, nor given any Opportunity to his People to redreſs their Grievances by the proper Methods of it; had he not only continued to inſiſt upon thoſe Pretenſions which ſome had ſet up under the Shelter of his Authority, but ſo far improved them as utterly to ſet aſide the Laws of the Realm, and to act arbitrarily, not only without Law, but againſt it; and when nothing elſe would do, had he choſe rather to deſert the Government, than to rule according to his own Oath, and the Fundamental Laws and Limitations of it; this might have warranted an oppreſſed People to take the Sword for the neceſſary Defence of their Laws and Conſtitution, and their Religion and Liberties founded thereupon. But to take up Arms againſt a King, whoſe Exceſſes had been moderate, and whoſe Neceſſities preſſed him, contrary to his own Inclinations, to run into the moſt of them; but eſpecially, who had already, without Force, not only freely redreſſed the Grievances of his People, but abundantly repaired them, and ſecured them againſt the like Attempts for the future: This muſt needs have been an unwarrantable Enterprize: a War as unjuſtifiable in its Riſe, as it proved fatal in its Conſequences.’

Mr. *Dodd.* The next we ſhall offer to your Lordſhips, is the Biſhop of *Exeter*'s Sermon preached before her Majeſty, on her Majeſty's Acceſſion to the Throne.

Clerk reads.] ‘ Nay, though the Laws of our Earthly Governors ſhould in ſome Inſtances be contrary to the Divine Laws, (upon *Page* 13, 14.

‘ which Suppoſition the Magiſtrate does certainly exceed the Bounds of his Commiſſion) yet this does not void their Authority, they are the Miniſters of God for all this; or elſe there were none that were ſo, there were none that could be call'd ſo, when the Apoſtle wrote this Epiſtle: And there is a Duty lying on Subjects even in this Caſe, *viz.* not to oppoſe, nor reſiſt the Power, but quietly and patiently to ſuffer the Penalty of thoſe Laws, which they cannot, without ſinning againſt God, yield an active Obedience to.’

Mr. *Dodd.* The next we ſhall offer to your Lordſhips, is the Biſhop of St. *Aſaph*'s Sermon, preach'd before the Lord Mayor, on the Thirieth of *January* 1699.

Clerk reads.]

CHILD MAYOR.

Jovis nono Die Februarii 1698. *Annoque Reg. Regis Willielmi Tertii, Angliæ, &c. decimo.*

‘ This Court doth deſire Mr. *Fleetwood* to Print his Sermon, preach'd at the Cathedral Church of St. *Paul*, the Thirtieth of *January* laſt, before the Lord Mayor, Aldermen, and Citizens of this City.

Goodfellow.

Page 18. ‘ It is plain, that a Government can't poſſibly ſubſiſt for any Time, where any Kind of Violence is allowed againſt the Magiſtrate. We ſee what wicked Work is made in ſome unhappy States, where private Executions of Revenge betwixt Particulars are indulg'd, or frequently connived at. But Government is at an end, where *Rulers* are expoſed to popular Aſſaults.’

Mr. *Phipps.* My Lords, We ſhall now produce a Sermon, preach'd by the Biſhop of *Carliſle* before your Lordſhips, upon the Thirtieth of *January*, 1702.

Clerk reads.] ‘ *Die Lunæ*, 1 *Februarii* 1702. It is order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That the Thanks of this Houſe ſhall be (and are hereby) given to the Lord Biſhop of *Carliſle*, for his Sermon preached before this Houſe on the Thirtieth of *January* laſt, in the Abby Church at *Weſtminſter*: And he is hereby deſired to Print and Publiſh the ſame.

‘ *Matth. Johnſon*, Cler' Parliamentor.’

Page 31. ‘ Our Foundations, 'tis to be hoped, are not ſhaken by the Weight of thoſe many great and extraordinary Revolutions that have paſs'd upon us. The All-wiſe Providence of God has frequently of late (and as ſome of us always thought very graciouſly) exchanged our Governors: But if we ungratefully alter our Notions of the Divine Right of Government, and throw off our Antient and Primitive Rules of Obedience, we ſhall make an unworthy Return for the Mercies we have received.’

Mr. *Phipps.* We beg Leave to offer to your Lordſhips Three Sermons preached before the Houſe of Commons: one preach'd before them by Doctor *Eyre*, upon *January* 30, 1707.

Clerk reads.] ‘ *Sabbat.* 31 *Die Jan.* 1707. *Ordered*, That the Thanks of this Houſe be given to Dr. *Eyre*, for the Excellent Sermon by him preach'd before this Houſe at St. *Margaret*'s *Weſtminſter*, Yeſterday, being The Day appointed for a Solemn Faſt and Humiliation, for the Murder of King *Charles* the Firſt; And that he be deſir'd to Print the ſame; and that Mr. *Bridges*, Mr. *Chandler*, the Lord *William Powlett*, and Mr. *Eyre*, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

‘ Let no Seditious and Antimonarchical Principles be ſo much as once named among us, as becometh good Subjects and good Chriſtians: Let no ſly Inſinuations of Male-Adminiſtration be ſuggeſted, no new Doctrines advanced, nor any old ones revived, whereby to leſſen the Security of the Crown, under the ſpecious Pretence of maintaining the Rights and Liberties of the People.’

Mr. *Dee.* The next is Dr. *Kennet*'s Sermon, preached before the Commons, the 30th of *January*, 1705.

Clerk reads.] ‘ *Jovis* 31 *Die Januarii* 1705. *Ordered*, That the Thanks of this Houſe be given to Dr. *Kennet*, Archdeacon of *Huntingdon*, for the Sermon by him preached before this Houſe Yeſterday, at St. *Margaret*'s *Weſtminſter*: And that he be deſired to Print the ſame. And that Sir *Thomas Littleton*, Mr. *Worſley*, and Mr. *King*, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

‘ This is the true Foundation of that common Axiom, *The King can do no wrong*; becauſe there is no Right nor Remedy againſt his Royal Perſon.

‘ It was declarative of our Original Conſtetution, that our Legiſlature, upon Occaſion of this Day, would have it expreſs'd, “ That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People Collectively, or Repreſentatively, nor any other Perſons whatſoever, ever had, have, or ought to have, any Coercive Power over the Perſons of the Kings of this Realm.”

Mr. *Dee.* My Lords, The next is Dr. *Delaune*'s Sermon, preached before the Houſe of Commons, upon the 30th of *January* 1702.

Clerk reads.] ‘ *Lunæ*, 1 *die Feb.* 1702. *Ordered*, That the Thanks of this Houſe be given to Dr. *Delaune*, Vice-Chancellor of the Univerſity of *Oxford*, for the Sermon by him preach'd before this Houſe on *Saturday* laſt, at St. *Margaret*'s *Weſtminſter*: And that he be deſir'd to Print the ſame. And that Mr. *Bridges*, Mr. *Bromley*, and Mr. *Rowney*, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

Page 10. ‘ The Civil Laws of a Country are in the Nature of Articles of Agreement between the Rulers and their Subjects; Duty and Obedience are ſecured on one Hand, and on the other, Protection in Civil Rights. If the Subject breaks his Part of the Covenant, (as I may call it) his Puniſhment is at Hand: and if the Supreme Power breaks his, his Puniſhment is no leſs certain, tho' more remote; for he is guilty before God, who is his Ruler; tho' it is impoſſible he ſhould be accountable for it in his own Dominions, for that would infer a Power Superior to the Supreme, which is a flat Contradiction.’

Mr. *Dodd.* Your Lordſhips obſerve by all theſe Sermons, how generally this Point is laid down, without making any Exception; and yet I don't doubt, but that there is an Exception included in every one of theſe; yet it is always laid down in general Terms: And we deſire that the ſame Exception may be allowed to the Doctor, as is to all theſe: And if he has erred, he can only be ſaid *Errare cum Patribus.*

Mr. *Phipps.* My Lords, We have thus far made good our Defence, That this is the Doctrine of the Church of *England*; That the Fathers of the Church have always avow'd it; That it has been preach'd in the ſame Terms in which the Doctor has preach'd it, ever ſince her Majeſty's Acceſſion to the Throne, and no Objection has been made to it till now; and that it has been approved by both Houſes of Parliament, and by her Majeſty. We will now proceed to ſhew, that it is confirm'd by ſeveral Acts of Parliament: The firſt is in the 12th of *Charles* II. *cap.* 30.

Clerk reads.] ‘ And be it hereby declared, That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People Collectively or Repreſentatively, nor any other Perſons whatſoever, ever had, hath, or ought to have, any Coercive Power over the Perſons of the Kings of this Realm.’

Mr. *Dodd.* The next Act of Parliament we ſhall read to your Lordſhips, is the Corporation-Act, 13 *Car.* II. *Stat* 2. §. 5.

Clerk reads.] “ I *A. B.* do declare and believe, That it is not Lawful, upon any pretence whatſoever, to take up Arms againſt the King; and that I do abhor that Traitorous Poſition, of taking Arms by his Authority againſt his Perſon, or againſt thoſe that are commiſſioned by him. So help me, GOD.”

Mr. *Dodd.* This is a General Oath, to be taken by all the Officers of Corporations.

Sir *Joſ. Jekyll.* I can't but obſerve, my Lords, that it is a little extraordinary, the Doctors Counſel ſhould open this Act of Parliament, and offer it to be read, and not inform your Lordſhips that it is repealed.

Mr. *Dodd.* My Lords, We did open it that it is repealed; but we did inſiſt, That as this Oath had been taken by all Officers of Corporations ſo many Years, ſo it was then a true Propoſition, and ſtill remains ſo, altho' it be repealed: That Repeal don't make the Propoſition falſe.

Mr. *Phipps.* We admit, my Lords, that in the Act for abrogating the Oaths, and appointing others, this Paragraph was omitted. But what we offer it for, is to ſhew that this Doctrine has been ſworn to by moſt of the Great Men, and all the Great Officers of *England*, for ſo many years together.

Mr. *Dodd.* My Lords, The next is the *Militia* Act, 13 & 14 *Car.* II. *cap.* 3. We deſire to read the Preamble of that Act, and then the Oath appointed to be taken.

Clerk reads.] ‘ Foraſmuch as, within all his Majeſty's Realms and Dominions, the Sole and Supreme Power, Government, Command and Diſpoſition of the *Militia*, and of all Forces by Sea and Land, and of all Forts and Places of Strength, is, and (by the Laws of *England*) ever was the undoubted Right of his Majeſty, and his Royal Predeceſſors, Kings and Queens of *England*; And that both, or either of the Houſes of Parliament, cannot, nor ought to pretend to the ſame; nor can, nor lawfully may, raiſe or levy any War, Offenſive or Defenſive, againſt His Majeſty, his Heirs or Lawful Succeſſors: And yet the contrary thereof hath of late Years been practiſed, almoſt to the Ruin and Deſtruction of this Kingdom: And during the late uſurped Governments, many evil and rebellious Principles have been inſtilled into the Minds of the People of this Kingdom, which may break forth, unleſs prevented, to the Diſturbance of the Peace and Quiet thereof.

§. 18. “ I *A. B.* do declare and believe, That it is not lawful, upon any Pretence whatſoever, to take up Arms againſt the King: And that I do abhor that Traitorous Poſition, That Arms may be taken by his Authority againſt his Perſon, or againſt thoſe that are commiſſioned by him, in Purſuance of ſuch Military Commiſſions. So help me GOD.”

Mr. *Dee.* My Lords, The next is the Act of Uniformity, 13 & 14 *Car.* II. *cap.* 4.

Clerk reads.] ‘ And be it further enacted by the Authority aforeſaid, That every Dean, Canon, and Prebendary of every Cathedral or Collegiate Church, and all Maſters and other Heads, Fellows, Chaplains, and Tutors of or in any College, Hall, Houſe of Learning, Hoſpital, and every Publick Profeſſor and Reader in either of the Univerſities, and in every College elſewhere, and every Parſon, Vicar, Curate, Lecturer, and every other Perſon in Holy Orders, and every School-maſter keeping any publick or private School, and every Perſon inſtructing or teaching any Youth in any Houſe or private Family as a Schoolmaſter, who upon the Firſt Day of *May*, which ſhall be in the Year of our Lord God 1662, or at any Time thereafter, ſhall be incumbent, or have Poſſeſſion of any Deanry, Canonry, Prebend, Maſterſhip, Headſhip, Fellowſhip, Profeſſor's Place, or Reader's Place, Parſonage, Vicarage, or any other Eccleſiaſtical Dignity or Promotion, or any Curate's Place, Lecture or School, or ſhall inſtruct or teach any Youth as Tutor or Schoolmaſter, ſhall before the Feaſt-Day of St. *Bartholomew*, which ſhall be in the Year of our Lord 1662, or at or before his or their reſpective Admiſſion to be incumbent, or have Poſſeſſion aforeſaid, ſubſcribe the Declaration or Acknowledgment following; (*ſcilicet*)

“ I *A. B.* do declare, That it is not lawful, upon any Pretence whatſoever, to take Arms againſt the King; and that I do abhor that Traitorous Poſition, of taking Arms by his Authority againſt his Perſon, or againſt thoſe that are commiſſioned by him: And that I will Conform to the Liturgy of the Church of *England*, as it is now by Law eſtabliſhed. And I do declare, That I hold there lies no Obligation upon me, or any other Perſon, from the Oath commonly call'd *The Solemn League and Covenant*, to endeavour any Change or Alteration of Government either in Church or State; and the ſame was in itſelf an unlawful Oath, and impoſed upon the Subjects of this Realm, againſt the known Laws and Liberties of this Kingdom.”

Mr. *Phipps.* The Reaſon of our Reading this, is to let your Lordſhips ſee, what Obligations were on all Clergymen to ſubſcribe this Declaration; and then we ſubmit it to your Lordſhips Judgment, whether the Doctor is Criminal for Preaching that which all Parſons were (before that Act was repeal'd) oblig'd to Subſcribe, in order to qualify themſelves for Preaching. And I beg Leave juſt to obſerve to your Lordſhips, That by 16 *Car.* II. the Act for Select Veſtries, all Veſtrymen were oblig'd to Subſcribe the ſame Declaration.

Mr. *Dodd.* My Lords, there are Two other Acts, but I think we need not read them, becauſe they were ſo lately made: The one is for the Aſſociation, the other for the Abjuration, which is taken almoſt every Day in *Weſtminſter-Hall.*

Mr. *Phipps.* If your Lordſhips pleaſe, we ſhall offer nothing more on this Article, but only ſome Part of his late Majeſty's Declaration, to ſhew that there was ſome Reaſon for what the Doctor ſaid of his late Majeſty's diſclaiming all manner of Reſiſtance.

Sir *Joſeph Jekyll.* My Lords, I perceive they are going to read ſome Part of his late Majeſty's Declaration: We ſhould have offered ſome Part of that Declaration as a material Proof againſt the Doctor; but we would not produce any Papers as Evidence, which are not ſo; tho' we allow that to the Doctor. But ſince it is produced as Evidence for the Doctor, I deſire it may be read quite through.

Clerk reads.] ‘*The Declaration of his Highneſs,* William Henry, *by the Grace of God Prince of* Orange, &c. *of the Reaſons inducing him to appear in Arms in the Kingdom of* England, *for preſerving of the Proteſtant Religion, and for reſtoring the Laws and Liberties of* England, Scotland, *and* Ireland.

1. ‘IT is both certain and evident to all Men, That the Publick Peace and Happineſs of any State or Kingdom cannot be preſerv'd, where the Laws, Liberties, and Cuſtoms Eſtabliſhed by the Lawful Authority in it are openly tranſgreſſed and annulled: More eſpecially, where the Alteration of *Religion* is endeavoured, and that a *Religion* which is contrary to Law, is endeavour'd to be introduced: Upon which thoſe who are moſt immediately concerned in it, are indiſpenſibly bound to endeavour to preſerve and maintain the Eſtabliſh'd Laws, Liberties and Cuſtoms, and above all, the Religion and Worſhip of God that is eſtabliſhed among them; and to take ſuch an effectual Care, that the Inhabitants of the ſaid State or Kingdom, may neither be depriv'd of their Religion, nor of their Civil Rights. Which is ſo much the more neceſſary, becauſe the Greatneſs and Security, both of Kings, Royal Families, and of all ſuch as are in Authority, as well as the Happineſs of their Subjects and People, depend in a moſt eſpecial manner upon the exact Obſervation and Maintenance of theſe their Laws, Liberties and Cuſtoms.

‘2. Upon theſe Grounds it is, that we cannot any longer forbear to declare, That to our great Regret, we ſee that thoſe Counſellors, who have now the Chief Credit with the King, have over-turned the Religion, Laws and Liberties of thoſe Realms, and ſubjected them in all Things relating to their Conſciences, Liberties and Properties, to Arbitrary Government; and that not only by ſecret and indirect Ways, but in an open and undiſguiſed Manner.

‘3 Thoſe evil Counſellors, for the advancing and colouring this with ſome plauſible Pretexts, did invent and ſet on foot the King's *Diſpenſing Power*; by virtue of which, they pretend, that, according to Law, he can *ſuſpend* and *diſpenſe* with the Execution of the Laws that have been enacted by the Authority of the King and Parliament, for the Security and Happineſs of the Subject, and ſo have rendered thoſe Laws of no Effect: Tho' there is nothing more certain, than as no Laws can be made, but by the joint Concurrence of King and Parliament; ſo likewiſe Laws ſo enacted, which ſecure the Publick Peace and Safety of the Nation, and the Lives and Liberties of every Subject in it, cannot be repealed or ſuſpended but by the ſame Authority.

‘4. For tho' the King may pardon the Puniſhment that a Tranſgreſſor has incurred, and to which he is condemned, (as in the Caſes of *Treaſon* or *Felony*) yet it cannot be with any Colour of Reaſon inferr'd from thence, that the King can intirely ſuſpend the Execution of thoſe Laws relating to Treaſon or Felony; unleſs it is pretended, that he is cloathed with a Deſpotick and Arbitrary Power; and that the Lives, Liberties, Honours and Eſtates of the Subjects depend wholly on his good Will and Pleaſure, and are intirely ſubject to him which muſt infallibly follow, on the Kings having a Power to *ſuſpend* the Execution of the Laws, and to *diſpenſe* with them.

‘5. Thoſe Evil Counſellors, in order to the giving ſome Credit to this ſtrange and execrable Maxim, have ſo conducted the Matter, that they have obtained a Sentence from the Judges, declaring, That this *Diſpenſing Power* is a Right belonging to the *Crown*: As if it were in the Power of the Twelve Judges to offer up the Laws, Rights, and Liberties of the whole Nation to the King, to be diſpoſed of by him arbitrarily, and at his Pleaſure; and expreſly contrary to Laws enacted for the Security of the Subjects. In order to the obtaining this Judgment, thoſe Evil Counſellors did before-hand examine ſecretly the Opinion of the Judges, and procur'd ſuch of them as could not in Conſcience concur in ſo pernicious a Sentence, to be turned out, and others to be ſubſtituted in their Rooms, 'till by the Changes which were made in the Courts of Judicature, they at laſt obtained that Judgment. And they have raiſed ſome to thoſe Truſts, who make open Profeſſion of the Popiſh Religion, though thoſe are by Law rendered incapable of all ſuch Employments.

‘6. It is alſo manifeſt and notorious, That as his Majeſty was, upon his coming to the Crown, received and acknowledged by all the Subjects of *England*, *Scotland*, and *Ireland*, as their *King*, without the leaſt Oppoſition, tho' he made then open Profeſſion of the *Popiſh Religion*; ſo he did then promiſe, and ſolemnly ſwear at his Coronation, That he would maintain his Subjects in the free Enjoyment of their Laws and Liberties; and in particular, that he would maintain the *Church of* England *as it was eſtabliſh'd by Law.* It is likewiſe certain, that there have been at divers and ſundry Times ſeveral Laws enacted for the Preſervation of thoſe Rights and Liberties, and of the Proteſtant Religion; and among other Securities, it has been enacted, That all Perſons whatſoever, that are advanced to any Eccleſiaſtical Dignity, or to bear Office in either Univerſity, as likewiſe all other that ſhould be put in any Employment, Civil or Military, ſhould declare that they were not Papiſts, but were of the Proteſtant Religion, and that by their taking of the Oaths of *Allegiance* and *Supremacy*, and the *Teſt*; yet theſe Evil Counſellors have in effect annulled and aboliſhed all thoſe Laws, both with Relation to Eccleſiaſtical and Civil Employments.

‘7. In order to Eccleſiaſtical Dignities and Offices, they have not only without any Colour of Law, but againſt moſt expreſs Laws to the contrary, ſet up a Commiſſion, of a certain Number of Perſons, to whom they have committed the Cognizance and Direction of all Eccleſiaſtical Matters; in the which Commiſſion there has been, and ſtill is, one of his Majeſty's Miniſters of State, who makes now publick Profeſſion of the Popiſh Religion, and who at the Time of his firſt profeſſing it, declared, that for a great while before he had believed that to be the only true Religion. By all this, the deplorable State to which the Proteſtant Religion is reduced, is apparent, ſince the Affairs of the Church of *England* are now put into the Hands of Perſons who have accepted of a Commiſſion that is manifeſtly illegal, and who have executed it contrary to all Law; and that now one of their chief Members has abjur'd the *Proteſtant Religion*, and declared himſelf a *Papiſt*; by which he is become uncapable of holding any publick Employment. The ſaid Commiſſioners have hitherto given ſuch Proof of their Submiſſion to the Directions given them, that there is no Reaſon to doubt, but they will ſtill continue to promote all ſuch Deſigns as will be moſt agreeable to them. And thoſe Evil Counſellors take Care to raiſe none to any Eccleſiaſtical Dignities, but Perſons that have no Zeal for the *Proteſtant Religion*, and that now hide their Unconcernedneſs for it under the ſpecious Pretence of *Moderation.* The ſaid Commiſſioners have ſuſpended the Biſhop of *London*, only becauſe he refuſed to obey an Order that was ſent him to ſuſpend a worthy Divine, without ſo much as citing him before him to make his own Defence, or obſerving the common Forms of Proceſs. They have turned out a Preſident choſen by the Fellows of *Magdalen* College, and afterwards all the Fellows of that College, without ſo much as citing them before any Court that could take legal Cognizance of that Affair, or obtaining any Sentence againſt them by a competent Judge. And the only Reaſon that was given for turning them out, was, their refuſing to chuſe for their Preſident, a Perſon that was recommended to them by the Inſtigation of thoſe Evil Counſellors; tho' the Right of a Free Election belonged undoubtedly to them. But they were turn'd out of their Freeholds contrary to Law, and to that expreſs Proviſion in the *Magna Charta, That no Man ſhall loſe Life or Goods, but by the Law of the Land.* And now theſe Evil Counſellors have put the ſaid College wholly into the Hands of Papiſts, tho', as is abovesaid, they are incapable of all ſuch Employments, both by the Law of the Land, and the Statutes of the College. Theſe Commiſſioners have alſo cited before them all the Chancellors and Archdeacons of *England*, requiring them to certify to them the Names of all ſuch Clergymen as have read the King's Declaration for *Liberty of Conſcience*, and of ſuch as have not read it; without conſidering that the reading of it was not injoined the Clergy by the Biſhops, who are their Ordinaries. The Illegality and Incompetency of the ſaid Court of the Eccleſiaſtical Commiſſioners was ſo notoriouſly known, and it did ſo evidently appear that it tended to the Subverſion of the *Proteſtant Religion*, that the moſt Reverend Father in God, *William* Archbiſhop of *Canterbury*, Primate and Metropolitan of all *England*, ſeeing that it was raiſed for no other End but to oppreſs ſuch Perſons as were of eminent Virtue, Learning and Piety, refuſed to ſit, or to concur in it.

‘8. And though there are many expreſs Laws againſt all Churches or Chapels for the Exerciſe of the Popiſh Religion, and alſo againſt all Monaſteries and Convents, and more particularly againſt the Order of the *Jeſuits*; yet thoſe Evil Counſellors have procured Orders for the building of ſeveral Churches and Chapels for the Exerciſe of that Religion. They have alſo procured divers Monaſteries to be erected; and in Contempt of the Law, they have not only ſet up ſeveral Colleges of *Jeſuits* in divers Places for the corrupting of the Youth, but have raiſed up one of the *Order* to be a Privy-Counſellor, and a Miniſter of State. By all which they do evidently ſhew, that they are reſtrained by no Rules of Law whatſoever; but that they have ſubjected the Honours and Eſtates of the Subjects, and the eſtabliſh'd Religion to a Deſpotick Power, and to Arbitrary Government. In all which they are ſerved and ſeconded by thoſe Eccleſiaſtical Commiſſioners.

‘9. They have alſo follow'd the ſame Methods with relation to Civil Affairs; for they have procured Orders to examine all Lords-Lieutenants, Deputy-Lieutenants, Sheriffs, Juſtices of Peace, and all others that were in any Publick Employment, if they would concur with the King in the Repeal of the *Teſt* and *Penal Laws*; and all ſuch whoſe Conſciences did not ſuffer them to comply with their Deſigns were turned out, and others were put in their Places, who, they believed, would be more compliant to them in their Deſigns of defeating the Intent and Execution of thoſe Laws which had been made with ſo much Care and Caution for the Security of the *Proteſtant Religion.* And in many of theſe Places they have put profeſſed Papiſts, tho' the Law has diſabled them, and warranted the Subjects not to have any Regard to their Orders.

‘10. They have alſo invaded the Privileges, and ſeized on the Charters of moſt of thoſe Towns that have a Right to be repreſented by their Burgeſſes in Parliament, and have procur'd Surrenders to be made of them, by which the Magiſtrates in them have delivered up all their Rights and Privileges, to be diſpoſed of at the Pleaſure of thoſe Evil Counſellors, who have thereupon placed new Magiſtrates in thoſe Towns, ſuch as they can moſt intirely confide in; and in many of them they have put Popiſh Magiſtrates, notwithſtanding the Incapacities under which the Law has put them.

‘11. And whereas no Nation whatſoever can ſubſiſt without the Adminiſtration of good and impartial Juſtice, upon which Men's Lives, Liberties, Honours and Eſtates do depend, thoſe Evil Counſellors have ſubjected theſe to an Arbitrary and Deſpotick Power. In the moſt important Affairs, they have ſtudied to diſcover, before-hand, the Opinion of the Judges, and have turned out ſuch as they found would not conform themſelves to their Intentions, and have put others in their Places, of whom they were more aſſured, without having any Regard to their Abilities. And they have not ſtuck to raiſe even profeſſed Papiſts to the Courts of Judicature, notwithſtanding their Incapacity by Law, and that no Regard

‘ is due to any Sentences flowing from them. They have carried this ſo far, as to deprive ſuch Judges, who in the common Adminiſtration of Juſtice, ſhewed that they were governed by their Conſciences, and not by the Directions which the others gave them. By which it is apparent, that they deſign to render themſelves the abſolute Maſters of the Lives, Honours and Eſtates of the Subjects, of what Rank or Dignity ſoever they may be; and that without having any Regard either to the Equity of the Cauſe, or to the Conſciences of the Judges, whom they will have to ſubmit in all Things to their own Will and Pleaſure; hoping by ſuch Ways to intimidate thoſe who are yet in Employment, as alſo ſuch others, as they ſhall think fit to put in the Rooms of thoſe whom they have turned out; and to make them ſee what they muſt look for, if they ſhould at any Time act in the leaſt contrary to their good liking; and that no Failings of that Kind are pardoned in any Perſons whatſoever. A great deal of Blood has been ſhed in many Places of the Kingdom, by Judges governed by thoſe evil Counſellors, againſt all the Rules and Forms of Law, without ſo much as ſuffering the Perſons that were accuſed to plead in their own Defence.

‘ 12. They have alſo, by putting the Adminiſtration of Juſtice in the Hands of Papiſts, brought all the Matters of Civil Juſtice into great Uncertainties; with how much Exactneſs and Juſtice ſoever that theſe Sentences may have been given. For ſince the Laws of the Land do not only exclude Papiſts from all Places of Judicature, but have put them under an Incapacity, none are bound to acknowledge or to obey their Judgments, and all Sentences given by them are null and void of themſelves: So that all Perſons who have been caſt in Trials before ſuch Popiſh Judges, may juſtly look on their pretended Sentences, as having no more Force than the Sentences of any private or unauthoriz’d Perſon whatſoever. So deplorable is the Caſe of the Subjects who are obliged to anſwer to ſuch Judges, that muſt in all Things ſtick to the Rules which are ſet them by thoſe evil Counſellors, who, as they raiſed them up to thoſe Employments, ſo can turn them out of them at Pleaſure, and who can never be eſteemed lawful Judges; ſo that all their Sentences are in the Conſtruction of the Law of no Force and Efficacy. They have likewiſe diſpoſed of all military Employments in the ſame Manner; for tho’ the Laws have not only excluded Papiſts from all ſuch Employments, but have in particular provided, that they ſhould be diſarm’d; yet they, in Contempt of theſe Laws, have not only arm’d the Papiſts, but have likewiſe raiſed them up to the greateſt military Truſt both by Sea and Land; and that Strangers as well as Natives, and *Iriſh* as well as *Engliſh*; that ſo by thoſe Means, having rendred themſelves Maſters both of the Affairs of the Church, of the Government, of the Nation, and of the Courts of Juſtice, and ſubjected them all to a deſpotick and arbitrary Power, they might be in a Capacity to maintain and execute their wicked Deſigns by the Aſſiſtance of the Army, and thereby to inſlave the Nation.

‘ 13. The diſmal Effects of this Subverſion of the eſtabliſh’d Religion, Laws, and Liberties in *England*, appear more evidently to us, by what we ſee done in *Ireland*; where the whole Government is put into the Hands of Papiſts, and where all the Proteſtant Inhabitants are under the daily Fears of what may be juſtly apprehended from the arbitrary Power which is ſet up there; which has made great Numbers of them leave that Kingdom, and abandon their Eſtates in it, remembring well that cruel and bloody Maſſacre which fell out in that Iſland in the Year 1641.

‘ 14. Thoſe evil Counſellors have alſo prevailed with the King to declare in *Scotland*, that he is cloathed with *abſolute Power*, and that all the Subjects are bound *to obey him without Reſerve*: Upon which he has aſſum’d an arbitrary Power both over the Religion and Laws of that Kingdom; from all which it is apparent, what is to be looked for in *England*, as ſoon as Matters are duly prepared for it.

‘ 15. Thoſe great and inſufferable Oppreſſions, and the open Contempt of all Law, together with the Apprehenſions of the ſad Conſequences that muſt certainly follow upon it, have put the Subjects under great and juſt Fears; and have made them look after ſuch lawful Remedies as are allowed of in all Nations; yet all has been without Effect. And thoſe evil Counſellors have endeavoured to make all Men apprehend the Loſs of their Lives, Liberties, Honours, and Eſtates, if they ſhould go about to preſerve themſelves from this Oppreſſion by Petition, Repreſentations, or other Means authoriz’d by Law. Thus did they proceed with the Archbiſhop of *Canterbury*, and the other Biſhops, who having offer’d a moſt humble Petition to the King, in Terms full of Reſpect, and not exceeding the Number limited by Law; in which they ſet forth in ſhort, the Reaſons for which they could not obey that Order, which, by the Inſtigation of thoſe evil Counſellors, was ſent them, requiring them to appoint their Clergy to read in their Churches the Declaration for *Liberty of Conſcience*; were ſent to Priſon, and afterwards brought to a Trial, as if they had been guilty of ſome enormous Crime. They were not only obliged to defend themſelves in that Purſuit, but to appear before profeſs’d Papiſts, who had not taken the *Teſt*, and by Conſequence were Men whoſe Intereſt led them to condemn them; and the Judges that gave their Opinions in their Favours, were thereupon turned out.

‘ 16. And yet it cannot be pretended, that any Kings, how great ſoever their Power has been, and how arbitrary and deſpotick ſoever they have been in the Exerciſe of it, have ever reckon’d it a Crime for their Subjects to come in all Submiſſion and Reſpect, and in a due Number, not exceeding the Limits of the Law, and repreſent to them the Reaſons that made it impoſſible for them to obey their Orders. Thoſe evil Counſellors have alſo treated a Peer of the Realm as a Criminal, only becauſe he ſaid, That the Subjects were not bound to obey the Orders of a Popiſh Juſtice of Peace; tho’ it is evident, that they being by Law rendered incapable of all ſuch Truſts, no Regard is due to their Orders. This being the Security which the People have by the Law for their Lives, Liberties, Honours, and Eſtates, that they are not to be ſubjected to the arbitrary Proceedings of Papiſts, that are contrary to Law put into any Employments Civil or Military.

‘ 17. Both We ourſelves, and our deareſt and moſt intirely beloved Conſort the Princeſs, have endeavoured to ſignify, in Terms full of Reſpect to the King, the juſt and deep Regret which all theſe Proceedings have given us; and in Compliance with his Majeſty’s Deſires ſignified to us, We declared both by Word of Mouth, to his Envoy, and in Writing, what our Thoughts were, touching the Repealing of the *Teſt and Penal Laws*; which We did in ſuch a Manner, that We hoped We had propoſed an Expedient, by which the Peace of thoſe Kingdoms, and a happy Agreement among the Subjects of all Perſuaſions, might have been ſettled: But thoſe evil Counſellors have put ſuch ill Conſtructions on theſe our good Intentions, that they have endeavoured to alienate the King more and more from us; as if We had deſign’d to diſturb the Quiet and Happineſs of the Kingdom.

‘ 18. The laſt and great Remedy for all thoſe Evils, is *the Calling of a Parliament*, for ſecuring the Nation againſt the Evil Practices of thoſe wicked Counſellors: But this could not be yet compaſſed, nor can it be eaſily brought about. For thoſe Men apprehending, that a lawful Parliament being once aſſembled, they would be brought to an Account for all their open Violations of Law, and for their Plots and Conſpiracies againſt the *Proteſtant Religion*, and the Lives and Liberties of their Subjects; they have endeavoured, under the ſpecious Pretence of *Liberty of Conſcience*, firſt to ſow Diviſions among Proteſtants, between thoſe of the *Church* of *England* and the *Diſſenters*: The Deſign being laid to engage Proteſtants, that are all equally concerned to preſerve themſelves from Popiſh Oppreſſion, into mutual Quarrellings, that ſo by theſe, ſome Advantages might be given to them to bring about their Deſigns; and that both in the Election of Members of Parliament, and afterwards in the Parliament itſelf. For they ſee well, that if all Proteſtants could enter into a mutual good Underſtanding one with another, and concur together in the preſerving of their Religion, it would not be poſſible for them to compaſs their wicked Ends. They have alſo required all Perſons, in the ſeveral Counties of *England*, that either were in any Employment, or were in any conſiderable Eſteem, to declare before-hand, that they would concur in the Repeal of the *Teſt and Penal Laws*; and that they would give their Voices in the Elections to Parliament, only for ſuch as would concur in it. Such as would not thus pre-engage themſelves, were turned out of all Employments; and others who enter’d into thoſe Engagements, were put in their Places, many of them being Papiſts. And contrary to the Charters and Privileges of thoſe Boroughs that have a Right to ſend Burgeſſes to Parliament, they have ordered ſuch Regulations to be made as they thought fit and neceſſary, for aſſuring themſelves of all the Members that are to be choſen by thoſe Corporations: And by this Means they hope to avoid that Puniſhment which they have deſerved; tho’ it is apparent, that all Acts made by Popiſh Magiſtrates are null and void of themſelves. So that no Parliament can be lawful, for which the Elections and Returns are made by Popiſh Sheriffs and Mayors of Towns; and therefore, as long as the Authority and Magiſtracy is in ſuch Hands, it is not poſſible to have any lawful Parliament. And tho’, according to the Conſtitution of the *Engliſh* Government, and immemorial Cuſtom, all Elections of Parliament-Men ought to be made with an intire Liberty, without any Sort of Force, or the requiring the Electors to chuſe ſuch Perſons as ſhall be named to them; and the Perſons thus freely elected, ought to give their Opinions freely upon all Matters that are brought before them; having the Good of the Nation ever before their Eyes, and following in all Things the Dictates of their Conſcience; yet now the People of *England* cannot expect a Remedy from a *Free Parliament*, legally called and choſen. But they may, perhaps, ſee one called, in which all Elections will be carried by Fraud or Force; and which will be compoſed of ſuch Perſons, of whom thoſe evil Counſellors hold themſelves well aſſured; in which all Things will be carried on according to their Direction and Intereſt, without any Regard to the Good or Happineſs of the Nation. Which may appear evidently from this, that the ſame Perſons tried the Members of the laſt Parliament, to gain them to conſent to the Repeal of the *Teſt and Penal Laws*; and procured that Parliament to be diſſolved, when they found that they could not, neither by Promiſes nor Threatnings, prevail with the Members to comply with their wicked Deſigns.

‘ 19. But to crown all, there are great and violent Preſumptions, inducing us to believe, that thoſe evil Counſellors, in order to the carrying on of their ill Deſigns, and to the gaining to themſelves the more Time for the effecting of them, (for the encouraging of their Complices, and for the diſcouraging of all good Subjects) have publiſhed, that the *Queen* hath brought forth a *Son*; though there have appeared, both during the *Queen*’s pretended Bigneſs, and in the Manner in which the Birth was managed, ſo many juſt and viſible Grounds of Suſpicion, that not only we ourſelves, but all the good Subjects of thoſe Kingdoms, do vehemently ſuſpect, that the pretended Prince of *Wales* was not born by the *Queen*. And it is notoriouſly known to all the World, that many both doubted of the *Queen*’s Bigneſs, and of the Birth of the Child; and yet there was not any one Thing done to ſatisfy them, or to put an End to their Doubts.

‘ 20. And ſince our deareſt and moſt intirely-beloved Conſort the Princeſs, and likewiſe we ourſelves have ſo great an Intereſt in this Matter, and ſuch a Right (as all the World knows) to the Succeſſion to the Crown: Since alſo the *Engliſh* did in the Year 1672, when the *States General* of the *United Provinces* were invaded in a moſt unjuſt War, uſe their utmoſt Endeavours to put an End to that War, and that in Oppoſition to thoſe who were then in the Government; and by their ſo doing, they run the Hazard of loſing both the Favour of the Court, and their Employments. And ſince the *Engliſh* Nation has ever teſtified a moſt particular Affection and Eſteem, both to our deareſt Conſort the Princeſs, and to ourſelves, We cannot excuſe ourſelves from eſpouſing their Intereſts, in a Matter of ſuch high Conſequence; and from contributing all that lies in Us, for the maintaining both of the *Proteſtant Religion*, and of the Laws and Liberties of thoſe Kingdoms, and for the ſecuring to them the continual Enjoyment of all their juſt Rights. To the doing of which, We are moſt earneſtly ſollicited by a great many Lords, both Spiritual and Temporal, and by many Gentlemen, and other Subjects of all Ranks.

‘ 21. Therefore it is, that We have thought fit to go over to *England*, and to carry over with us a Force, ſufficient, by the Bleſſing of God, to defend us from the Violence of thoſe evil Counſellors. And We being

‘ deſirous that our Intentions in this may be rightly underſtood, have, for this End, prepared this *Declaration*, in which, as we have hitherto given a true Account of the Reaſons inducing us to it; ſo, We now think fit to declare, that this our Expedition is intended for no other Deſign, but to have a free and lawful Parliament aſſembled, as ſoon as is poſſible: and that in order to this, all the late Charters, by which the Election of Burgeſſes are limited contrary to the antient Cuſtom, ſhall be conſidered as null and of no Force: And likewiſe all Magiſtrates who have been unjuſtly turned out, ſhall forthwith reſume their former Employments, as well as all the Boroughs of *England* ſhall rerurn again to their antient Preſcriptions and Charters: And more particularly, that the ancient Charter of the great and famous City of *London* ſhall again be in Force: And that the Writs for the Members of Parliament ſhall be addreſſed to the proper Officers, according to Law and Cuſtom. That alſo none be ſuffer'd to chuſe, or to be choſen Members of Parliament, but ſuch as are qualified by Law: And that the Members of Parliament being thus lawfully choſen, they ſhall meet and ſit in full Freedom; that ſo the two Houſes may concur in the preparing of ſuch Laws, as they, upon full and free Debate, ſhall judge neceſſary and convenient, both for the confirming and executing the Law concerning the *Teſt*, and ſuch other Laws as are neceſſary for the ſecurity and Maintenance of the *Proteſtant Religion:* as likewiſe for making ſuch Laws as may eſtabliſh a good Agreement between the *Church of England* and all *Proteſtant Diſſenters*; as alſo for the covering and ſecuring of all ſuch who will live peaceably under the Government, as becomes good Subjects, from all Perſecution upon the Account of their Religon, even *Papiſts* themſelves not excepted; and for the doing of all other Things, which the two Houſes of Parliament ſhall find neceſſary for the Peace, Honour and Safety of the Nation, ſo that there may be no more Danger of the Nation's falling at any Time hereafter under *Arbitrary Government*. To this Parliament we will alſo refer the Enquiry into the Birth of the pretended Prince of *Wales*, and of all Things relating to it, and to the Right of Succeſſion.

‘ 22. And We, for our Part, will concur in every Thing that may procure the Peace and Happineſs of the Nation, which a free and lawful Parliament ſhall determine; ſince we have nothing before our eyes in this our Undertaking, but the Preſervation of the *Proteſtant Religion*, the Covering of all men from Perſecution for their Conſciences, and the ſecuring to the whole Nation the free Enjoyment of all their Laws, Rights and Liberties under a juſt and legal Government.

‘ 23 This is the Deſign that we have propoſed to ourſelves, in appearing upon this Occaſion in Arms: In the Conduct of which, We will keep the Forces under our Command, under all the Strictneſs of Martial Diſcipline; and take a ſpecial Care, that the People of the Countries, through which we muſt march, ſhall not ſuffer by their Means; and as ſoon as the State of the Nation will admit of it, We promiſe that We will ſend back all thoſe foreign Forces that we have brought along with us.

‘ 24. We do therefore hope that all People will judge rightly of us, and approve of theſe our Proceedings: But we chiefly rely on the Bleſſing of God for the Succeſs of this our Undertaking, in which We place our whole and only Confidence.

‘ 25. We do, in the laſt Place, invite and require all Perſons whatſoever, all the Peers of the Realm both Spiritual and Temporal, all Lords-Lieutenants, Deputy-Lieutenants, and all Gentlemen, Citizens, and other Commons of all Ranks, to come and aſſiſt us, in order to the executing of this our Deſign, againſt all ſuch as ſhall endeavour to oppoſe us; that ſo we may prevent all thoſe Miſeries which muſt needs follow upon the Nations being kept under Arbitrary Government and Slavery: And that all the Violences and Diſorders which have overturned the whole Conſtitution of the *Engliſh* Government, may be fully redreſſed in a *free and legal Parliament*.

‘ 26. And We do likewiſe reſolve, that as ſoon as the Nations are brought to a State of Quiet, We will take Care that a Parliament ſhall be called in *Scotland*, for reſtoring the antient Conſtitution of that Kingdom, and for bringing the Matters of Religion to ſuch a Settlement, that the People may live eaſy and happy, and for putting an End to all the unjuſt Violences, that have been in a Courſe of ſo many Years committed there.

‘ We will alſo ſtudy to bring the Kingdom of *Ireland* to ſuch a State, that the Settlement there may be religiouſly obſerved; and that the Proteſtant and *Britiſh* Intereſt there may be ſecured. And we will endeavour by all poſſible Means to procure ſuch an Eſtabliſhment in all the three Kingdoms, that they may all live in a happy Union and Correſpondence together; and that the Proteſtant Religon, and the Peace, Honour and Happineſs of theſe Nations, may be eſtabliſh'd upon laſting Foundations.'

Given under our Hand and Seal, at our Court in the Hague, *the tenth Day of* October, *in the Year of our Lord* 1688.

WILLIAM HENRY, PRINCE *of* ORANGE.

By his Highneſs's Special Command,
C. HUYGENS.

His Highneſs's Additional Declaration.

‘ AFter We had prepared and printed this our Declaration, We have underſtood, that the Subverters of the Religion and Laws of thoſe Kingdoms, hearing of our Preparations to aſſiſt the People againſt them, have begun to retract ſome of the Arbitrary and Deſpotic Powers that they had aſſumed, and to vacate ſome of their unjuſt Judgments and Decrees. The Senſe of their Guilt, and the Diſtruſt of their Force, have induced them to offer to the City of *London* ſome ſeeming Relief from their great Oppreſſions; hoping thereby to quiet the People, and to divert them from demanding a Re-eſtabliſhment of their Religion and Laws under the Shelter of our Arms: They do alſo give out, that we do intend to conquer and enſlave the Nation; and therefore it is that We have thought fit to add a few Words to our Delaration.

‘ We are confident, that no Perſons can have ſuch hard Thoughts of us, as to imagine that We have any other Deſign in this Undertaking, than to procure a Settlement of the Religion, and of the Liberties and Properties of the Subjects, upon ſo ſure a Foundation, that there may be no Danger of the Nations relapſing into the like *Miſeries* at any Time hereafter. And as the Forces that we have brought along with us, are utterly diſproportionate to that wicked Deſign of conquering the Nation, if We were capable of intending it; ſo the great Numbers of the principal Nobility and Gentry, that are Men of eminent Quality and Eſtates, and Perſons of known Integrity and Zeal both for the Religion and Government of *England*, many of them alſo being diſtinguiſhed by their conſtant Fidelity to the Crown, who do both accompany us in this Expedition, and have earneſtly ſollicited us to it, will cover us from all ſuch malicious Inſinuations: For it is not to be imagined, that either thoſe who have invited us, or thoſe that are already come to aſſiſt us, can join in a wicked Attempt of Conqueſt, to make void their own lawful Titles to their Honours, Eſtates and Intereſts. We are alſo confident, that all Men ſee how little Weight there is to be laid on all Promiſes and Engagements that can be now made; ſince there has been ſo little Regard had in Time paſt, to the moſt ſolemn Promiſes. And as that imperfect Redreſs that is now offered, is a plain Confeſſion of thoſe Violations of the Government that We have ſet forth; ſo the Defectiveneſs of it is no leſs apparent: For they lay down nothing which they may not take up at Pleaſure; and they reſerve entire, and not ſo much as mentioned, their Claim and Pretences to an Arbitrary and Deſpotick Power; which has been the Root of all their Oppreſſion, and of the total Subverſion of the Government. And, it is plain, that there can be no Redreſs, no Remedy offer'd but in Parliament; by a Declaration of the Rights of the Subjects that have been invaded, and not by any pretended Acts of Grace, to which the Extremity of their Affairs has driven them. Therefore it is that We have thought fit to declare, that We will refer all to a free Aſſembly of the Nation, in a lawful Parliament.'

Given under our Hand and Seal, at our Court in the Hague, *the twenty-fourth Day of* October, *in the Year of our Lord* 1688.

WILLIAM HENRY PRINCE *of* ORANGE.

By his Highneſs's Special Command,
C. HUYGENS.

Mr. *Phipps.* My Lords, The Reaſon why we humbly offer this Declaration, is with Relation to that Paſſage in the Sermon, which ſays, that the Prince of *Orange* diſclaimed all Manner of Reſiſtance. All we obſerve is, that it don't appear that he came over with an Army with any other Intent than to defend himſelf againſt evil Counſellors: And if the Doctor has made a wrong Inference, we ſubmit it to your Lordſhips, whether ſuch a Miſapprehenſion of his Highneſs's Meaning, ſhall ſubject him to a Charge of High Crimes and Miſdemeanors?

Mr. *Dodd.* My Lords, We have finiſhed what we have to offer on this Article, and ſubmit it to your Lordſhips whether we have not made good our Defence. We are ready to go on to the Second Article, if it be your Lordſhips Pleaſure.

(Then the LORDS adjourned to their Houſe as above.)

Monday, March 6. The Seventh Day.

THE Lords coming down into *Weſtminer-Hall*, and being ſeated in the Manner before-mention'd, Proclamation was made by the Serjeant at Arms, as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel as before.

Lord Chancellor. Gentlemen, you that are Counſel for the Priſoner, may proceed in his Defence.

Mr. *Dodd.* MY Lords, We who are Counſel for Doctor *Sacheverell*, beg the Favour that we may enter on the Doctor's Defence as to the Second Article: This Article is divided into three Heads. 1. *That the Toleration is unreaſonable, and the Allowance of it unwarrantable.* 2. *That he is a Falſe Brother who defends Toleration and Liberty of Conſcience.* 3. *That it is the Duty of the Chief Paſtors to thunder out Anathemas*, &c.

The firſt Head I ſhall ſpeak to is, as to the Toleration. My Lords, we ſay there is no ſuch Thing as a Toleration granted by Law; the Word is not to be found in the Act of Parliament; there is an Act (which we ſuppoſe is intended) *to exempt Proteſtant Diſſenters from the Penalties of certain Laws* therein mentioned: However, in this Debate, we ſhall take Notice of it as a Toleration; although we think, when there is a legal Proceeding, the Act ſhould have been called by its own proper Name: Now, my Lords, this Act of Parliament hath ſeveral reſtrictions and Limitations in it, and (amongſt others) not to exempt any Perſons from the Penalties, that do not frequent ſome religious Aſſembly thereby allowed. The Doctor no where finds Fault with a legal Toleration, or a Toleration granted by Law, within the Deſcription and Meaning of this Act of Parliament. My Lords, we think the Doctor has taken ſuch Care, leſt any Expreſſion ſhould undergo a wrong Conſtruction, as if he were uneaſy at the Toleration, that he explains himſelf very particularly about it: We ſhall read the Words out of the Sermon, which I think will clear the Doctor as to this Objection; the Doctor ſays, ‘ Pray, do not miſunderſtand me, as if I reflected upon that Indulgence the Government has given the Diſſenters, which I am ſure all Well-wiſhers to our Chruch are ready to grant; nor do I intend to caſt the leaſt Reflection on that Indulgence, which the Law has given to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law has preſcribed.'

Now, after ſuch a Declaration, ſo plain a Confeſſion, ſo full in the Caſe, in Words as ſignificant as can be to ſhew his Meaning, we hope there is no Room to tax him with this Part of the Article by any incoherent Words or Inferences, when it is directly contrary to what he has in Words at length expreſs'd.

My Lords, this being conſider'd, we think it is too hard to draw Inferences, and Conſequences, that the Doctor is againſt the Toleration allowed by Law; it is not be done with Candor, by any one that reads the Sermon without Prejudice, and conſiders the Care he takes to avoid giving any Offence in this Caſe.

As to the ſecond Part of this Article, we think it may receive the ſame Anſwer; *That he is a Falſe Brother who defends Toleration and Liberty of Conſcience.* The Doctor does not ſay they are Falſe Brethren that defend a legal Toleration; Nobody complains of that; but the Perſons intended, are thoſe that defend an unlawful Toleration, and not a legal Exemption; which legal Exemption the Doctor admits to be good and juſt, in the Paſſage I have before repeated. We apprehend, the Doctor means thoſe are Falſe Brethren, and blameable, that excuſe the Separation from the Church, not on account of the Toleration, but *by laying the Faults on the true Sons of the Church, for carrying Matters too high*; theſe are the People, the Falſe Brethren, that cry out againſt the Church upon all Occaſions.

As to the Doctor's Expreſſions about Archbiſhop *Grindall*, the Doctor thought he had good Grounds for them; but at leaſt they were but unwary Expreſſions, and we hope not criminal. The Toleration he mentions Archbiſhop *Grindall* to be blamed for, was quite another Thing from the preſent Indulgence now granted; the firſt was by Q. *Elizabeth* alone, or by the Archbiſhop's Authority under her, and without the Parliament; the Diſſenters were then few, and it had been no great Difficulty to have prevented that Schiſm at the Beginning. But now the Diſſenters are a conſiderable Part of the Nation, have great Riches and Properties amongſt us, and it became the Wiſdom of the Legiſlature, to give them an Indulgence according to the Reſtrictions in the Act of Parliament: But this is a different Caſe, and by a different Authority, from what was in Archbiſhop *Grindal*'s Time. The Story of that Archbiſhop, as related by one of the Gentlemen Managers, does indeed acquit the Archbiſhop, but how far it clears Queen *Elizabeth*, we muſt leave to your Lordſhips; for ſhould a great Favourite Attempt to procure a Grant of the Archbiſhop's Palace, or a chief Revenue of that See or Church, and that the Archbiſhop's oppoſing the Favourite herein (as was by the Gentleman ſuggeſted) ſhould be the Reaſon of his Diſgrace; or, if the Archbiſhop did proſecute or puniſh a Man in the Spiritual Court for having two Wives at the ſame Time; (which Proſecution or Puniſhment was highly commendable in the Archbiſhop, and was his Duty to do) it would be hard to think, that Queen *Elizabeth* ſhould ſuſpend him from the Archbiſhoprick for ſuch a Proceeding, for thus diſcharging his Duty; therefore we cannot give Credit to that Hiſtory as it is related; but we ſhall ſhew your Lordſhips, from the Archbiſhop's Letter to the Council, and Letters from *Beza* and *Calvin* at that Time, that it was his Indulgence to the Diſſenters of that Time, that drew the Anger of Queen *Elizabeth* on him; and that this was the Reaſon of it, we ſhall make out by undeniable Proof. Now, my Lords, we apprehend the Fault the Docter finds in his Sermon is againſt an univerſal general Toleration, that tends to a Diſſolution of all Things; and ſuch a Toleration, would make Religion, like that of the *Samaritans*, a Mixture of all Sorts, that was odious to the World, and an Abomination to the *Jews*; and indeed, my Lords, we apprehend ſuch a Toleration the Doctor had great Reaſon to find Fault with. Surely ſuch a Toleration is not to be defended, nor would be of any Service to either Church or State: This is the Toleration which we think the Doctor intended, and not againſt a legal or particular Exemption, which the Wiſdom of the Nation hath thought to give. Indeed he thinks, that Occaſional Conformiſts do attempt to hoiſt the Toleration into an Eſtabliſhment, and come into the Communion of the Church to ſerve a particular Purpoſe; and this at moſt can only be ſaid to be the Doctor's Opinion of that Matter, and whether true or falſe, cannot be criminal. To ſpeak againſt a Law, or to break a Law, is not to be juſtified: Nor has he ſpoke againſt this Law; but if he had, ſurely he had been puniſhable in the ordinary Methods of Juſtice, and not in a Proceeding of this Nature.

As to the next Head, that is, as to that Part of the Charge about thundering out *Anathemas*; the Diſcourſe is general, and not determined to any Perſons, nor pointed at the Diſſenters, but properly intended againſt Irreligion; and the Sentence that he dares any power on Earth to reverſe, is ſuch, and ſuch only, as is ratified in Heaven. He believes ſome Sentences of the Church to be ratified in Heaven; and if that Sentence which is pronounced here on Earth be ratified in Heaven, it is, beyond all Diſpute, out of the Power of Man to reverſe it. He ſuppoſes ſome Perſons exempt from Puniſhment by particular Laws, may yet, by the Law of Chriſt, be liable to ſuch a Sentence: But from hence, or his Anſwer to the Articles, to draw a Concluſion, that he aſſerts the State had not Power to reverſe the Sentence of the Spiritual Court, (of which there can be no doubt but that the Legiſlature has ſuch a Power) or that the Legiſlature is guilty of Blaſphemy, (as has been objected by one of the Gentlemen Managers) is neither true Reaſon nor Logick.

That Schiſm is a Sin puniſhable by the Laws of the Church, will not be diſputed, if it be a Separation without a juſt Cauſe; and how far this is ſuch a Separation, or that the Act of Parliament has taken away this Schiſm, this Sin, we ſubmit to your Lordſhips.

Mr. *Phipps*. MY Lords, We are come now to the ſecond Article, and we humbly apprehend, ſhall give your Lordſhips as full Satisfaction of the Doctor's Innocence, as to that Crime charg'd in this Article, as we hope we did as to thoſe contain'd in the firſt Article.

As to that Part of the ſecond Article which ſays, "That the Doctor does ſuggeſt and maintain, that the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable:" He conceives there is nothing in his Sermon can warrant that Charge. The Toleration Act is not what the Doctor finds Fault with, but the Perſons that abuſe it; and I beg Leave to ſay, that the ill Uſe which is made of it, is unreaſonable and unwarrantable. But, that the Doctor aſſerts the Toleration itſelf to be unreaſonable, or the Allowance of it unwarrantable, will appear to be a great Miſtake, when the Paragraphs in the Doctor's Sermon, upon which this Article is founded, are conſider'd.

My Lords, The firſt Paſſages is in Page the 8th, where the Doctor ſays thus: "If upon all Occaſions to comply with the Diſſenters, both in publick and private Affairs, as Perſons of tender Conſciences and Piety, to promote their Intereſts in Elections, to ſneak to them for Places and Preferment, to defend Toleration and Liberty of Conſcience, and under the Pretence of Moderation, to excuſe their Separation, and lay the Fault upon the true Sons of the Church for carrying Matters too high, *&c.*" Theſe are ſome of the Characters which the Doctor gives of Falſe Brethren: But, is there any Thing in this Paſſage that avers Toleration to be unreaſonable, or the Allowance of it unwarrantable?

Page the 10th, the Doctor hath theſe Words, which were urged to prove this Article: "Our Conſtitution, both in Church and State, has been ſo admirably contrived, with that Wiſdom, Weight and Sagacity, and the Temper and Genius of each ſo exactly Suited and Modell'd to the mutual Support and Aſſiſtance of one another, that 'tis hard to ſay, whether the Doctrines of the Church of *England* contribute more to authorize and enforce our Civil Laws, or our Laws to maintain and defend the Doctrines of our Church. The Natures of both are ſo nicely correſpondent, and ſo happily intermixed, that 'tis almoſt impoſſible to offer a Violation to the one, without breaking in upon the Body of the other. So that in all thoſe Caſes before-mentioned, whoever preſumes to innovate, alter, or miſrepreſent any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traitor to the State; Heterodoxy in the Doctrines of the one, naturally producing, and almoſt neceſſarily inferring Rebellion and High-Treaſon in the other; and conſequently a Crime that concerns the Civil Magiſtrate as much to puniſh and reſtrain, as the Eccleſiaſtical." Can this be meant of the Toleration? Is the Toleration ſo much as mentioned here? Does he not here ſpeak againſt ſuch as innovate, alter, or miſrepreſent the Articles of our Faith? Is there any Innovation, Alteration, or Miſrepreſentation of any Article of our Faith by the Proteſtant Diſſenters? The Diſſenters do not differ from us in Matters of Faith but in Matters of Form and Ceremony; if they differ'd from us in Matters of Faith, they would be Hereticks, and Hereſy was never intended to be tolerated by the Act of Indulgence: And therefore what the Doctor ſays in this Paragraph, can never be taken to be a Reflection on the Toleration.

I ſhall next humbly offer to your Lordſhips Conſideration another Clauſe, which was cited by the Gentlemen of the Houſe of Commons to ſupport this Article, which is *Page* 14. where 'tis ſaid, "Theſe Falſe Brethren in our Government, do not ſingly, and in private, ſpread their Poiſon, (but what is lamentable to be ſpoken) are ſuffer'd to combine into Bodies, and Seminaries, wherein Atheiſm, Deiſm, Tritheiſm, Socinianiſm, with all the helliſh Principles of Fanaticiſm, Regicide and Anarchy, are openly profeſs'd, and taught, to corrupt and debauch the Youth of the Nation, in all Parts of it, down to Poſterity, to the preſent Reproach, and future Extirpation of our Laws and Religion. Certainly the Toleration was never intended to indulge and cheriſh ſuch Monſters and Vipers in our Boſom, that ſcatter their Peſtilence at Noon-day, and will rend, diſtract, and confound, the firmeſt and beſt ſettled Conſtitution in the World." Is there any Thing in this Clauſe that can maintain this Article? The Doctor ſays, Certainly the Toleration was never intended to indulge and cheriſh ſuch Monſters and Vipers in our Boſom, as Atheiſts, Tritheiſts, Socinians, *&c.* And the Doctor is well warranted in ſaying that, becauſe thoſe enormous Crimes are particularly excepted in the Act of Toleration, and for this we refer to the Act itſelf.

The next Clauſe that was urg'd to maintain this Article is in the 16th Page, where the Doctor expreſſeth himſelf in theſe Words: "But ſince this Model of an univerſal Liberty and Coalition fail'd, and theſe Falſe Brethren could not carry the Conventicle into the Church, they are now reſolv'd to bring the Church into the Conventicle, which will more plauſibly and ſlily effect her Ruin: What could not be gain'd by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church can't be pull'd down, it may be blown up; and no Matter with theſe Men how 'tis deſtroy'd, ſo that it is deſtroy'd." Does this ſuggeſt the Toleration to be unreaſonable, or the Allowance of it unwarrantable? It rather excuſes it from having hurt the Church: For he ſays, "What could not be gain'd by Toleration, muſt be brought about by Moderation and Occaſional Conformity;" ſo that the Injury which is done to the Church is aſcribed by him to ſome other Cauſe. Thus your Lordſhips obſerve there is not any Paſſage in the Doctor's Sermon, whereby he ſuggeſts that the Toleration granted by Law is unreaſonable, or the Allowance of it unwarrantable, and conſequently no Foundation for this Article, unleſs it is to be ſupported by Inferences contrary to the Doctor's expreſs Words: For the Doctor in his Sermon, *Pag.* 20. ſays, "I would not here be underſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give them, which I am ſure all thoſe that wiſh well to our Church are very ready to grant to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law has preſcrib'd." By which 'tis evident, he allows the Indulgence given by the Act to Diſſenters, and is very far from ſuggeſting, that it is unreaſonable, or the Allowance of it unwarrantable. He wiſhes with all his Heart they may enjoy it in the full Limits of the Law. And therefore if there be any other Expreſſions concerning Toleration, which may ſeem to carry a dubious Senſe, 'tis humbly conceiv'd they ought not to be apply'd to the Exemption granted by Law, but will be ſo interpreted as may conſiſt with his avowed Approbation of that Law. For in all Writings, ſuch Expoſition is to be made, that one Part may not contradict or be inconſiſtent with the other. But to ſtrain the Senſe of any ambiguous Clauſe, and to put ſuch a Conſtruction upon it, as to make it contradict a plain and poſitive Aſſertion in the ſame Writing, was never allow'd, and I am ſure will not be permitted by your Lordſhips, who have ſhew'd ſuch a juſt Abhorrence of ſtrain'd and foreign Inſinuations and *Innuendos*. And therefore, where he ſeems to blame thoſe who defend Toleration, he cannot be thought to condemn the Indulgence granted by Law, becauſe he hath in ſuch poſitive and expreſs Terms allowed and approved of it.

But it muſt have ſome other Meaning, and I think his Meaning is very plain. For, by condemning ſuch as defend Toleration, 'tis evident he means ſuch as maintain, that the Act of Indulgence is a Juſtification of their Separation, and excuſeth them from the Sin of Schiſm: For the Defence of Toleration

ration, and Excuſe of Separation, are mentioned in one and the ſame Clauſe of the Sentence, and in one and the ſame Branch of their Character of Falſe Brethren. So that the true and genuine Senſe of what he hath ſaid in his Sermon concerning Toleration is,

1. That he entirely approves of the Exemption by the Act of Indulgence of Proteſtant Diſſenters from the ſeveral Penalties inflicted by the ſeveral Statutes for their Non-Conformity.

2. That tho' they are exempt from the Penalties, yet that does not excuſe their Separation from the Sin of Schiſm *in foro Conſcientiæ*. And is the Doctor alone in this Notion? Is not he juſtified in it by the Opinion of many learned Men who have writ on that Subject? Nay, I appeal to your Lordſhips, whether it be not the concurrent Opinion of the greateſt Part, if not all the learned Men of our Church, at this Day.

And ſince the Act of Uniformity is in Force, and is not repeal'd or enervated by the Act of Indulgence, ſince the Doctrine and Worſhip of the Church of *England* is the eſtabliſh'd Religion of this Kingdom, whether a Separation from the Church, ſince the Act of Indulgence, is not as much a Schiſm *in foro Conſcientiæ*, as it was before, is humbly ſubmitted?

But ſuppoſe that Separation from the Church by Diſſenters, ſince the Act of Indulgence, ſhould not be thought a Schiſm; yet he having the Opinion of ſo many learned Men on his Side, his Aſſertion cannot be ſaid to be wicked, malicious, and ſeditious, nor to be ſo high a Crime and Miſdemeanor, as to be the ſubject Matter of an Impeachment.

But the Paſſages in the Doctor's Sermon, which are ſuppoſed to condemn the Toleration, or to reflect on the Diſſenters, are open to another plain and natural Conſtruction. For ſince he poſitively, and in expreſs Terms, allows Liberty of Conſcience to Conſciences truly ſcrupulous, and which are intitled to the Benefit of the Act: Where he condemns or ſpeaks againſt Toleration, it muſt be intended as to ſuch Diſſenters who are not intitled to the Benefit of the Act, but are excepted out of it: And thoſe are ſuch as by Printing or Writing deny the Trinity, ſuch as do not come to ſome Aſſembly of Religious Worſhip allowed by that Act; and no Aſſembly of Religious Worſhip is allow'd by that Act 'till the Place of Meeting be certified to the Biſhop, Archdeacon, or Juſtices at the Quarter-Seſſions, and recorded, and a Certificate thereof given: And what Multitudes frequent Religious Aſſemblies which are not allow'd by that Act? Nay, how few Religious Aſſemblies are qualified according to the Act? What vaſt Numbers go to no Religious Worſhip at all? And how many there are who deny the ſecond Perſon of the Trinity, is too evident: And againſt every one of theſe, all the Laws for frequenting Divine Service on the Lord's Day are ſtill in Force, by the expreſs Words of that Act. Therefore all thoſe who defend a general Toleration, who maintain that the Act extends to all ſuch Diſſenters, are juſtly cenſur'd by the Doctor; and all the Expreſſions in the Doctor's Sermon againſt Toleration muſt be intended againſt thoſe excepted in the Act, ſince he ſo expreſly approves the Indulgence allow'd to thoſe that conform to the Terms preſcribed by the Act.

My Lords, As to that Branch of this ſecond Article, which charges the Doctor with aſſerting, *That Queen* Elizabeth *was deluded by Archbiſhop* Grindal *to the Toleration of the* Genevian *Diſcipline*; whether he be not warranted in this Aſſertion, is humbly ſubmitted to your Lordſhips, when 'tis conſider'd That Archbiſhop was once in the higheſt Eſteem with the Queen, She made him Biſhop of *London*, then Archbiſhop of *York*, and afwards promoted him to the See of *Canterbury*; and that after this he was in Diſgrace, and died in her Majeſty's Diſpleaſure, cannot be deny'd. The Reaſon aſſign'd for his Diſgrace was, that he was a great Encourager of unlawful Conventicles, or Prophſeyings, as they were then called. Whether that Charge againſt him was true, or whether it was only a falſe Suggeſtion of the Earl of *Leiceſter*, to remove him from the Queen's Favour, I will not preſume to determine. The learned Manager who ſpoke firſt to this Article, was pleaſed to acquit the Archbiſhop, and lay the Fault upon the Queen; though, whoever reads *Calvin*'s and *Beza*'s Letters to him, when Biſhop of *London*, whoever reads Queen *Elizabeth*'s Letter to the Biſhops, dated the thrd of *May*, 1577, and the Archbiſhop's own Letter to the Lords of the Council the 25th of *November* 1577, will be fully ſatisfied that he was not innocent; for he confeſſes he was commanded by the Queen and Council to ſupreſs the Propheſyings, and that he refuſed, and could not comply with that Command; and acknowledged it to be an Act of great Clemency in her Majeſty, that ſhe carried her Reſentment no higher. So I think, that pious good Queen is intirely acquitted by the Archbiſhop himſelf.

All Hiſtorians admit, that in his Time the Puritans were very numerous, and their Party very ſtrong; and it is evident they grew ſo dangerous, that the Statute of the 35th of *Elizabeth* was made to ſuppreſs their Conventicles, and compel them to come to Church. And at his Death the Affairs of the Church were in ſo great Confuſion, that his Succeſſor, Archbiſhop *Whitgift* was put to great Trouble to check that growing Faction, and reduce Things into good Order again. If therefore the Doctor was of Opinion the Puritans receiv'd too great Encouragement by the Countenance of that great Man, and if it was his Zeal for the Church, and the Reſentment he had that it ſhould receive any Prejudice by the Connivance of one at the Head of it, that provoked him to uſe a harſh Expreſſion of that Archbiſhop, 'tis humbly to be hoped that is not a ſufficient Ground for an Impeachment of High Crimes and Miſdemeanors.

The Gentleman that ſpoke firſt to this Article, was pleas'd to admit, that what the Doctor ſaid in relation to that Archbiſhop, was not an Offence, as it was a Reflection on the Archbiſhop; but that uſing ſuch Expreſſions of the Archbiſhop for his Moderation to the Puritans, was a Reflection on the late Act of Toleration granted to Proteſtant Diſſenters; and that calling the Proſecutions againſt the Propheſyings in Queen *Elizabeth*'s Time *Wholeſome Severities*, is an Encouragement to uſe ſuch Severities againſt the Proteſtant Diſſenters now.

Can what was done in Queen *Elizabeth*'s Time reflect on the Toleration? Can calling the Proſecutions by Queen *Elizabeth* againſt ſuch as frequented Conventicles againſt the Law, and for which there was no Toleration; I ſay, can the calling ſuch Proſecutions *Wholeſome Severities*, reflect on this Toleration granted by Law? Or can it encourage a Proſecution againſt the Diſſenters, who are intitled to the Benefit of the Toleration, and are exempt from the Penalties of the Laws?

The only Thing that can be inferr'd from what the Doctor ſays in relation to the Wholeſome Severities is, That he intended to excite the Magiſtrates to put the Laws in Execution againſt ſuch Diſſenters as were excepted out of the Act of Toleration; and I am at a Loſs to find how that can make him an Offender. For ſurely the Parliament never intended that any Perſon ſhould have the Benefit of the Act of Toleration, that did not comply wiih the Terms and Conditions of it: And therefore, when the Doctor preſſeth the Execution of the Laws againſt ſuch as are not intitled to the Benefit of the Act, he ſeems to me rather to Vindicate than Reflect upon the Toleration. Great Offence hath been taken at the Words *Wholeſome Severities* in the Doctor's Sermon; yet, my Lords, I cannot think the Word *Wholeſome* an improper Epithet for the Severities uſed by Queen *Elizabeth* againſt the Puritans; for Faction was then in its Infancy, Schiſm did but juſt begin to diſturb the Church; and by the Severities of the Laws that were put in Execution, and the Courage, Learning, and Prudence of Archbiſhop *Whitgiſt*, a Stop was put to them. And, I preſume, ſuch Severities as ſuppreſs'd theſe bold and daring Crimes in their Infancy, may be called *Wholeſome* without a *Catachreſis*; and can never be conſtrued to be a Suggeſtion, that the Toleration now granted by Law is unreaſonable, or the Allowance of it unwarrantable.

As to that Part of the Second Article, which chargeth the Doctor with maintaining, *That it is the Duty of Superior Paſtors to thunder out their Eccleſiaſtical* Anathemas *againſt Perſons intitled to the Benefit of the Toleration:* The Doctor humbly apprehends there is nothing in his Sermon can be a juſt Foundation for that Charge.

The Sermon hath this Sentence, Page 25. *Let our Superior Paſtors do their Duty in thundering out their Eccleſiaſtical* Anathemas; *and let any Power on Earth dare reverſe a Sentence ratified in Heaven.* This is an intire and independent Sentence, that doth not relate to any particular Perſon, or any particular Crimes, and does not mention the Perſons intitled to the Benefit of the Toleration.

Nor can it be imagin'd that he ſhould deſire *Anethemas* to be thundered out againſt ſuch Perſons who he wiſheth may enjoy the Toleration in the full Limits the Law hath preſcrib'd. But the *Anathemas* muſt be intended to be againſt the Works of Darkneſs, Atheiſm, Profaneneſs, Faction, and other enormous Crimes which are mentioned in the preceding Part of this Sermon, ſince it is not applied by him to any particular Sins or Offences.

The thundering *Anathemas*, is declaring thoſe Judgments which are denounced in Scripture againſt Sin. And he deſires the Superior Paſtors of the Church to thunder out theſe *Anathemas*, becauſe the greater the Authority is of the Perſon that declares theſe Judgments, the greater Influence they are like to have upon the Perſons guilty of ſuch Sins.

But if he had deſir'd *Anathemas*, or *Excommunications*, (as they would infer) ſhould be thundered out againſt Diſſenters, yet it muſt be intended only againſt ſuch as are not intitled to the Benefit of the Toleration; and ſince the Act of Indulgence leaves ſuch Perſons open to the Laws, it cannot be a Crime in the Doctor to preſs the Execution of the Laws againſt them.

For not to accept of the Toleration on the Terms offer'd by the Act, is what the Doctor calls *hoiſting the Toleration into an Eſtabliſhment*, in deſpite of the Act, and ſetting up a Toleration of their own in Defiance of it.

As to the laſt Part of the Second Article, which charges, that the Doctor *inſolently dares and defies any Power on Earth to reverſe ſuch Sentences*, which Sentences are there inſinuated to be the Sentences, or *Anathemas*, given and thundered out by Superior Paſtors; there are no ſuch Words in the Doctor's Sermon: For the Doctor's Words are, *Let any Power on Earth dare reverſe a Sentence ratified in Heaven.* So that the bare Recital of the Doctor's Expreſſion, is a ſufficient Confutation of that Part of the Article.

For if the Judgments or *Anathemas* denounced by Superior Paſtors againſt Sin, are ſuch as are denounced againſt ſuch Sins in Scripture, ſuch Sentences may truly be ſaid to be ratified in Heaven; And if ſo, then no one can dare to think, that ſuch Sentences, ſo ratified in Heaven, can be reverſed by all the Powers on Earth united together: And therefore, the Doctor hopes it will not be thought Inſolence, or a High Crime and Miſdemeanor in him, to aſſert what he conceiv'd would be Blaſphemy in any one to deny. This is what I humbly offer to your Lordſhips Conſideration on this Article.

Mr. *Dee.* MY Lords, I humbly beg the Favour of a few Words on this Article. It is divided into Three Parts. The firſt is concerning Toleration; the Charge againſt the Doctor is, That he has reflected on the Toleration as it is Eſtabliſhed by Law. I crave Leave to take Notice, that on conſidering the whole Sermon, there are two diſtinct Tolerations mentioned in it; a Toleration that is Legal, (for ſo I call the Act of Indulgence) and a Toleration that is general; and we think that Diſtinction well obſerved, will clear the Doctor of any Crime in this particular. Where he reflects on Toleration, it is not the Legal Toleration, but the general; and if it will bear this Conſtruction, you will not put the other upon it; for where he has taken Notice of a Legal Toleration, (which he hath done only in one Place of his Sermon) he is for extending it to the utmoſt Bounds; his Words are theſe: *I would not here be miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence the Government hath condeſcended to give them; which I am ſure all thoſe that wiſh well to our Church, are very ready to grant to Conſciences truly Scrupulous; let them enjoy it in the full Limits the Law hath preſcribed.* But where he ſpeaks againſt Toleration, it is a Toleration of ſuch enormous Crimes, as are not fit to be tolerated in any Chriſtian Nation.

As to the Second Part of the Article, for reflecting on Archbiſhop *Grindal*, and thereby reflecting on the Toleration, it was given up on the other Side; and admitted, that whether True or Falſe, it was not material, and then ſurely that will hardly amount to a Crime. Bu, we ſhall be ſo far from giving up that Point, that we ſhall ſhew he was Falſe to the Church at that Time; and it was a Crime in him, to give up the Diſcipline of the Church. No Laws were then made to indulge any Separation: And for the Head of the Church under the Queen, to give up the Diſcipline of the Church was a high Crime in him; and though it may be thought harſh, will bear the true Term of a Falſe Brother.

As to the Third Part of the Article, the thundering out *Anathemas*, I would beg Leave to read that Part of the Doctor's Sermon, which, I hope, ſhall not be applied to thoſe that are within the Legal Toleration. 'Schiſm and Faction are Things of impudent and incroaching Natures, they thrive upon

'Conceſſions, take Permiſſion for Power, and advance a Toleration immediately into an Eſtabliſhment:' (I hope the Diſſenters will not take theſe Characters on themſelves:) 'And are therefore to be treated like growing Miſchiefs, or infectious Plagues, &c.' Preſently after follows, 'Let our Superior Paſtors do their Duty in thundering out their Eccleſiaſtical *Anathemas*, and let any Power on Earth dare reverſe a Sentence ratified in Heaven.' Now, my Lords, I would beg Leave to ſay, that this is only Advice; and altho' the Doctor may be accounted pretty Pert, to give Advice to his Superior Paſtors that they ought to thunder out *Anathemas*; yet this cannot be conſtrued to extend to them that are deſcribed in the Act of Toleration, thoſe that could not conform to ſome Ceremonials by reaſon of Scrupulous Conſciences, theſe could not be called Factious, but is meant of other People deſcribed in the Sermon. But if the Doctor had adviſed to thunder out *Anthemas* againſt Diſſenters (ſuppoſing, but not granting it) the Queſtion would come to this Point, whether he was deceived in Point of Judgment or no: For, if they were Schiſmaticks before, the Schiſm remains the ſame notwithſtanding the Toleration; and if it was Sin before the Act of Toleration, it is ſo ſtill, notwithſtanding the Act; and then his Advice to the Superior Paſtors, is, to do that which is (with Submiſſion) their Duty to do, 'till prohibited by the Temporal Courts. My Lords, I ſhall mention one Caſe, that will ſhew you, that it is ſtill Schiſm to ſeparate from the Church, and that it is the Duty of Diſſenters to Communicate with the Church. That was the Caſe of one Mr. *Larwood*: In *Hillary Term*, *ſexto* of King *William*, an Information was exhibited againſt him, for refuſing to take upon him the Office of Sheriff of the City of *Norwich*; he pleads he had not taken the Sacrament in Twelve-Months; the Attorney replied, that he ought to have done it. He rejoins, that he was a Proteſtant Diſſenter, and was excuſed by the Act of Toleration. There were two Points in the Caſe; the firſt was, whether it appear'd by the Information that the Defendant was duly elected; the other, whether the Plea in Bar was good, (for the whole Court held, that the Rejoinder was a Departure from the Bar, and that the Replication was inſufficient;) ſo that Judgment was to be given upon the Information, and the Plea in Bar. *Samuel Eyre*, Juſtice, was of Opinion with the Defendant as to both Points; my Lord Chief Juſtice *Holt*, and Mr. Juſtice *Giles Eyre* were of Opinion againſt him as to both Points, and held the Bar to be inſufficient, becauſe it was only excuſing of one Fault by another, which no Man ſhall be admitted to do; and they held, that the Duty of Communicating with the Church remain'd notwithſtanding the Act of Toleration: And I ſubmit it to your Lordſhips Conſideration, whether, if it be a Duty to Communicate with the Church of *England*, it be not Schiſm to Separate from it. My Lords, I ſhall ſay no more to this Article, but ſubmit it to your Lordſhips.

Dr. *Henchman*. MY Lords, We are now endeavouring to defend Doctor *Sacheverell* againſt the Charge contain'd in the Second Article of Impeachment, in the two firſt Clauſes of which he is ſaid *to ſuggeſt and maintain*, 'That the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable: And to aſſert, That he is a Falſe Brother with Relation to God, Religion and the Church, who defends Toleration and Liberty of Conſcience.' But it has not been ſaid by any of the Learned Managers on this Head, that either of thoſe two Branches of this Article are expreſly delivered in any Part of the Sermon preach'd at St. *Paul*'s; but what is no where affirm'd, is ſaid to be ſuggeſted, and this Charge is maintained by Inferences only, becauſe there is no plain, poſitive Propoſition that it can be ſupported by.

My Lords, It is humbly hop'd, That if an Inference may be allowed as Proof to accuſe him, an open Declaration will be heard in his Defence: If what another Man makes him ſay be thought Ground enough for an Accuſation, then certainly what he himſelf openly declares will be eſteemed ſomething more than a dry Caution, and have its due Weight with your Lordſhips in his Vindication. I would therefore beg Leave to read a Paſſage where he explains himſelf, and plainly declares what his Thoughts are concerning the Indulgence granted by Law: This Paſſage is in the twentieth Page, where ſpeaking of ſome wholeſome Severities uſed in former Reigns, he adds, 'I would not here be miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give them, which I am ſure all thoſe that wiſh well to our Church are very ready to grant to Conſciences truly ſcrupulous; let 'em enjoy it in the full Limits the Law has preſcribed.'

My Lords, theſe Words are plain and expreſs, and not capable of being miſconſtrued or miſunderſtood: Whether thoſe Learned Gentlemen, who have applied ſome Parts of this Sermon to Purpoſes directly oppoſite to this plain Declaration, have miſunderſtood or miſconſtrued thoſe Paſſages, muſt be ſubmitted to your Lordſhips Judgment; but it ſeems hardly reconcileable, that the ſame Perſon in the ſame Diſcourſe ſhould declare, That all who wiſh well to the Church are ready to grant Indulgence to Conſciences truly ſcrupulous; and at the ſame time maintain, That ſuch Toleration is unreaſonable, and the Allowance of it unwarrantable; that he ſhould deſire it may be enjoy'd in its full Latitude, and yet aſſert that he is a Falſe Brother that defends it.

My Lords, This ſeeming Difficulty will be eaſily reconciled, by conſidering who thoſe Perſons are who are deſigned to be eaſed by the Act of Exemption, and who the Falſe Brethren are, deſcribed by Doctor *Sacheverell* in this Sermon.

That Act, in the Preamble, is ſaid to be intended *for the Eaſe of ſcrupulous Conſciences*; one Sett of the Falſe Brethren, mention'd in the Sermon, are *Men of no Conſcience at all*; whether Diſſenters, or ſuch as profeſs themſelves with Zeal to be of the eſtabliſhed Church, but yet break her Communion by not obeying her Precepts.

That Act was intended for ſuch only, as qualify themſelves according to the Directions laid down in that Act; the Falſe Brethren which the Doctor every where ſpeaks of are ſuch, and ſuch only, as neither qualify themſelves according to that Act, nor think themſelves ſubject to the Penalties of former Acts.

This Act was intended in favour of ſuch as either ſubſcribe the Articles of Religion, excepting only the thirty-fourth, thirty-fifth and thirty-ſixth, ſome Part of the twentieth, and that Part of the twenty-ſeventh which relates to Infant-Baptiſm; or elſe for ſuch as ſubſcribe a Profeſſion of their Chriſtian Belief in theſe Words; 'I profeſs Faith in God the Father, and in Jeſus Chirſt his Eternal Son the true God, and in the Holy Spirit, one God bleſſed for evermore; and do acknowledge the Holy Scriptures of the Old and New Teſtament to be given by Divine Inſpiration.' Theſe are the Qualifications required of ſuch as will intitle themſelves to the Benefit of this Act.

On the other hand, the Falſe Brethren deſcribed by Doctor *Sacheverell*, are *Atheiſts*, *Deiſts*, *Tritheiſts*, *Socinians*, *Revilers of the Holy Scripture*, and ſuch like. Are not Men of theſe Opinions Falſe Brethren, with Relation to God and Religion? Or ſhall ſuch Men be ſuffered to cover themſelves under the Protection of an Act of Parliament, deſigned only for the Eaſe of ſcrupulous Conſciences. That there are Men among us of theſe Principles, will be but too viſible, from a Paſſage or two, which I beg Leave to lay before your Lordſhips from Books lately publiſh'd.

The firſt which I ſhall mention, is intitled, *A brief but clear Confutation of the Trinity*: If the Title itſelf has not given too much Offence to your Lordſhips, I will proceed to look into the Book itſelf; and in the Ninth Page there is this Propoſition laid down, *The Divinity attributed to the Son and Holy Ghoſt is unſcriptural and idolatrous*; and in Page the Tenth he goes on in theſe Words, *This one Fundamental Falſe Principle, as well with* Jews *and* Turks, *as Heathens, has done more Miſchief to Chriſtianity than all other Errors beſides.* Theſe are ſuch bare-fac'd Blaſphemies as muſt make every Man's Ears tingle that hears them; and the Reſpect which is due to your Lordſhips, and this Aſſembly, makes me forbear inſtancing any Thing more from this Author: But he does not ſtand alone; out of many more of the like Sort I ſhall mention but one only, and

This is a Book, intitled, *The Rights of the Chriſtian Church*; and the Author, in p. 108, lays down this Doctrine:

Among Chriſtians one no more than another can be reckoned a Prieſt. And a little after, *The Clerk has as good a Title to the Prieſthood as the Parſon.*

Thus, my Lords, theſe two Men ſtrike off our whole Religion at once; the Fundamental Doctrine of our Faith is deſtroyed by the firſt of 'em; and the Miniſters, who are to ſupport and defend that Doctrine, are ſet aſide by the other.

If theſe and ſuch like Opinions have any where prevailed, is it not high time that ſome wholeſome Severities were uſed to Stop the growing Contagion? Or, if the Superior Paſtors of the Church ſhould thunder out their Eccleſiaſtical *Anathemas* againſt the Authors and Abettors of ſuch horrible Blaſphemies, by what Conſtruction can this be ſaid to be done againſt Perſons intitled to the Benefit of the Toleration?

But, my Lords, there is one Paſſage in this Sermon, which has been urg'd by the Learned Managers on this Head with more than ordinary Force, and as a direct Breach and Inſult upon the Toleration; with your Lordſhips Patience, I ſhall endeavour to ſet that Paſſage in a true Light. It is in the Eighth Page: *Should any one, out of Ignorance and Prejudice to the antient Rights and eſſential Conſtitution of the Catholick Church affirm, that the Divine Apoſtolick Inſtitution of Epiſcopacy is a novel Doctrine, not ſufficiently warranted by Scripture, and that it is indifferent, whether the Church be governed by Biſhops or Preſbyters; is not ſuch an one an Apoſtate from his own Orders?*

It was ſaid, my Lords, that all thoſe Diſſenters who do not acknowledge the Divine Right of Epiſcopacy, and are therefore ſpecially exempted by the Act of Indulgence from Subſcribing ſome of the Articles of Religion, and who are immediately under the Protection of that Act, are yet, in the End of this Paragraph, charged with being Falſe Brethren, where he prays, That *God would deliver us from all ſuch Falſe Brethren.*

But, my Lords, it is plain, that theſe Words are not meant, nor can be conſtrued, generally of Diſſenters, who deny the Divine Inſtitution of Epiſcopacy; but are intended peculiarly of ſuch Perſons as have themſelves been Epiſcopally ordain'd; the firſt of theſe cannot be ſaid to be Apoſtates from that Doctrine which they never owned, nor Subſcribed to; the latter, who could not be admitted to their Orders 'till they had ſubſcrib'd the receiv'd Doctrine of our Church, are the only Perſons who can be ſaid to be Apoſtates from their own Orders, if they deny that Divine Inſtitution by which they themſelves had been Ordain'd, and conſequently, the only Perſons that are intended in this Paſſage, and term'd *Falſe Brethren.*

My Lords, I ſhall not preſume to ſay, what the Duty of the Superior Paſtors of the Church is, when our Religion and Diſcipline is invaded by Atheiſts and Schiſmatics, much leſs to determine what Sentences juſtly paſs'd by them on Earth, may be ratify'd in Heaven. Thus much I hope I may ſay without Offence, That the Spiritual Power of Church-Paſtors, is not derived from the Civil Magiſtrate, but from God; that one Branch of that Power is the cenſuring of notorious Offenders, and excluding them from the Communion of the Church; and that this has in all Ages, in Fact, and of Right too, been exerciſed by the Paſtors of the Church, by Permiſſion of the Civil Magiſtrate. The Reverend and Learned Bench of Biſhops well know, That before the Civil Magiſtrate did embrace the Chriſtian Religion, the Paſtors of the Church did inflict Spiritual Cenſures on Offenders, for doing ſuch Things as the Imperial Edicts did not only permit, but command; and this Power of inflicting Cenſures on Perſons exempted from Puniſhment by the Laws of the Land, has been always challeng'd, and is now exerciſed by the Reformed Churches abroad; and by the Rubrick of our own Liturgy, open and notorious Evil Livers are to be repell'd from the Lord's Table, until they have openly declar'd their Repentance and Amendment.

We are told by the Learned Managers, That in caſe any Eccleſiaſtical Judge ſhould inflict an illegal Cenſure of Excommunication, the Temporal Courts may, and would ſoon give Relief, by ſending forth a Prohibition. But, your Lordſhips will conſider, that there is a wide and manifeſt Difference betwixt an Excommunication founded upon a Proſecution in the Eccleſiaſtical Courts, and the pronounciug Cenſures purely Spiritual. The external coercive Juriſdiction of Eccleſiaſtical Courts being derived from the Laws of the Land, may, and is frequently by thoſe Laws reſtrain'd; but ſuch Reſtraint does not hinder the Paſtors of the Church from exerciſing the Spiritual Power of the Keys, which they derive not from the Laws of the Land, but from the Inſtitution of Chriſt; and therefore tho' it be provided in the Act of Exemption, that Perſons taking the Oaths, and making the Declaration in that Act mention'd, ſhall not be proſecuted in any Eccleſiaſtical Court for not conforming to the Church of *England*, yet it is not by that Act expreſs'd or intended that Non-conformity to the Eſtabliſhed Church ſhould no longer be looked upon as Schiſm; or that Separatiſts may not, by the Paſtors of the Church, be pronounced Schiſmatical. If Separatiſts from the Church of *England* were guilty of Schiſm before the Act of Exemption, they are as much guilty of it ſince; the Laws of the Land which require Conformity, being not by that Act repealed, though the Tranſgreſſors of thoſe Laws are releaſed from thoſe Pains and Penalties to which they were before obnoxious: But were the Laws of the Land which require Conformity to the Church of *England* expreſly or virtually repealed; yet whilſt the Laws of God requiring Church-Unity, and forbidding Schiſm, or uncancelled, and remain in their full Force, thoſe who make cauſeleſs and unneceſſary Diviſions are ſtill guilty of Schiſm, and may by the Paſtors of the Church be cenſured as ſuch.

My Lords, I ſhall add but one Word in relation to Archbiſhop *Grindal*, not to diſturb his Aſhes, or blacken his Character, but to vindicate the Memory of that Glorious Queen, under whoſe Diſpleaſure he died.

It was ſaid, My Lords, That the true Ground of that Archbiſhop's Suſpenſion, was partly becauſe he would not give up his Manor of *Lambeth* to the Earl of *Leiceſter*; and partly becauſe he had cenſured one *Julio*, an *Italian*, for an illegal Marriage. Had theſe been the known Reaſons of his Suſpenſion, he would have had juſt Cauſe to complain loudly of that Cenſure; but without entering into the ſecret Hiſtory of that Reign, I ſhall put the whole Matter upon that Archbiſhop's own Sentiments, both as to the Cauſe of his Suſpenſion, and the Juſtice of it.

By the Account which is yet extant under his own Hand it appears, that there were in thoſe Days Men of a Fanatical Spirit, that called themſelves *Propheſiers*; that that Archbiſhop had been ordered by the Queen and Council to ſuppreſs ſuch Exerciſes within his Province, as contrary to the Laws of the Land, and the eſtabliſhed Diſcipline of the Church; but this Archbiſhop thought fit not only to delay, but abſolutely to refuſe to join in ſuppreſſing thoſe Exerciſes; and for this Diſobedience to the lawful Commands of his Sovereign he was ſuſpended.

My Lords, His own Words which he uſes upon this Occaſion are very remarkable, when he applies to the Council to intercede with her Majeſty to be reſtored to her gracious Favour, *viz.*

"And whereas I have ſuſtained the Reſtraint of my Liberty, and the Sequeſtration of my Juriſdiction, now by the Space of ſix Months; I am ſo far from repining thereat, or thinking myſelf injuriouſly or hardly dealt withal therein at her Majeſty's Hands, that I do thankfully embrace, and frankly, with all Humility, acknowledge her Princely and Gracious Care and Clemency towards me, who having Authority and Power to have uſed greater and ſharper Severity againſt me, and for good Policy and Example thinking it ſo expedient, hath notwithſtanding dealt ſo mercifully, mildly and gently with me."

My Lords, In this Letter that Archbiſhop frankly acknowledges that he had given Offence, and was, for good Policy and Example, juſtly puniſhed by her Majeſty; but had it been known that he was ſuſpended for not tamely parting with the Revenues of his See, or for pronouncing a Sentence in a Court of Juſtice againſt an unlawful Marriage, there could have been no Reaſon for him to have acknowledged the Juſtice of his Suſpenſion; neither could it be for good Policy and Example expedient, that he ſhould be puniſhed for not alienating the Revenues of his Church, or for not pronouncing *Julio*'s Marriage with another Man's Wife lawful.

Mr. *Dodd*. We ſhall ſpend a little of your Lordſhips Time in reading to this Head; we ſhall only read the Toleration-Act, to ſhew the Exception in it; and offer the Archbiſhop's Letter to the Council; and the Queen's Letter to the Biſhops. We have the Letters of *Calvin* and *Beza*; but I believe we ſhall not have Occaſion to read them, but only the other three. The firſt is the Act of Toleration.

Clerk reads.] Anno Primo Gulielmi & Mariæ. "An Act for exempting their Majeſties Proteſtant Subjects, diſſenting from the Church of *England*, from the Penalties of certain Laws."

'FOraſmuch as ſome Eaſe to ſcrupulous Conſciences in the Exerciſe of Religion, may be an effectual Means to unite their Majeſties Proteſtant Subjects in Intereſt and Affection,

'Be it enacted by the King and Queen's moſt Excellent Majeſties, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by the Authority of the ſame, That neither the Statute made in the Three-and-Twentieth Year of the Reign of the late Queen *Elizabeth*, intitled, "An Act to retain the Queen's Majeſty's Subjects in their due Obedience:" Nor the Statute made in the Twenty-ninth Year of the ſaid Queen, intitled, "An Act for the more ſpeedy and due Execution of certain Branches of the Statute made in the Three-and-Twentieth Year of the Queen's Majeſty's Reign," *viz.* The aforeſaid Act; nor that Branch or Clauſe of a Statute made in the firſt Year of the Reign of the ſaid Queen, intitled, "An Act for the Uniformity of Common Prayer, and Service in the Church, and Adminiſtration of the Sacraments;" whereby all Perſons having no lawful or reaſonable Excuſe to be abſent, are required to reſort to their Pariſh Church or Chapel, or ſome uſual Place where the Common Prayer ſhall be uſed, upon Pain of Puniſhment by the Cenſures of the Church, and alſo upon Pain that every Perſon ſo offending ſhall forfeit for every ſuch Offence Twelvepence: Nor the Statute made in the third Year of the Reign of the late King *James* the Firſt, intitled, "An Act for the better diſcovering and repreſſing Popiſh Recuſants:" Nor that other Statute made in the ſame Year, intitled, "An Act to prevent and avoid Dangers which may grow by Popiſh Recuſants:" Nor any other Law or Statute of this Realm made againſt Papiſts or Popiſh Recuſants, except the Statute made in the Five-and-twentieth Year of King *Charles* the Second, intitled, "An Act for preventing Dangers which may happen from Popiſh Recuſants;" and except alſo the Statute made in the Thirtieth Year of the ſaid King *Charles* the Second, intitled, "An Act for the more effectual preſerving the King's Perſon and Government, by diſabling Papiſts from ſitting in either Houſe of Parliament;" ſhall be conſtrued to extend to any Perſon or Perſons diſſenting from the Church of *England*, that ſhall take the Oaths mentioned in a Statute made in this preſent Parliament, intitled, "An Act for removing and preventing all Queſtions and Diſputes concerning the Aſſembling and Sitting of this preſent Parliament:" And ſhall make and ſubſcribe the Declaration mentioned in a Statute made in the Thirtieth Year of the Reign of King *Charles* the Second, intitled, "An Act to prevent Papiſts from ſitting in either Houſe of Parliament." Which Oaths and Declaration, the Juſtices of Peace at the General Seſſions of the Peace to be held for the County or Place where ſuch Perſon ſhall live, are hereby required to render and adminiſter to ſuch Perſons as ſhall offer themſelves to take, make, and ſubſcribe the ſame, and thereof to keep a Regiſter. And likewiſe none of the Perſons aforeſaid, ſhall give or pay as any Fee, or Reward to any Officer, or Officers belonging to the Court aforeſaid, above the Sum of Six-pence, nor that more than once, for his or their Entry of his taking the ſaid Oaths, and making and ſubſcribing the ſaid Declaration. Nor above the further Sum of Six-pence for any Certificate of the ſame to be made out, and ſigned by the Officer or Officers of the ſaid Court.

'And be it further enacted by the Authority aforeſaid, That all and every Perſon and Perſons already convicted, or proſecuted in order to Conviction of Recuſancy, by Indictment, Information, Action of Debt, or otherwiſe, grounded upon the aforeſaid Statutes, or any of them, that ſhall take the ſaid Oaths mentioned in the ſaid Statute made this preſent Parliament, and make and ſubſcribe the Declaration aforeſaid, in the Court of *Exchequer*, or Aſſizes, or General or Quarter Seſſions to be held for the County where ſuch Perſon lives, and to be thence reſpectively certified into the *Exchequer*, ſhall be thenceforth exempted and diſcharged from all the Penalties, Seizures, Forfeitures, Judgments and Executions, incurred by Force of any the aforeſaid Statutes, without any Compoſition, Fee, or further Charge whatſoever.

'And be it further enacted by the Authority aforeſaid, That all and every Perſon and Perſons that ſhall, as aforeſaid, take the ſaid Oaths, and make and ſubſcribe the Declaration aforeſaid, ſhall not be liable to any Pains, Penalties, or Forfeitures, mentioned in an Act made in the Five-and-Thirtieth Year of the Reign of the late Queen *Elizabeth*, intitled, "An Act to retain the Queen's Majeſty's Subjects in their due Obedience:" Nor in an Act made in the Two-and-Thirtieth Year of the Reign of the late King *Charles* the Second, intitled, "An Act to prevent and ſuppreſs ſeditious Conventicles." Nor ſhall any of the ſaid Perſons be proſecuted in any Eccleſiaſtical Court, for or by reaſon of their Nonconforming to the Church of *England*.

'Provided always, and be it enacted by the Authority aforeſaid, That if any Aſſembly of Perſons, diſſenting from the Church of *England*, ſhall be had in any Place for religious Worſhip, with the Doors locked, barred or bolted, during any Time of ſuch Meeting together, all and every Perſon or Perſons that ſhall come to and be at ſuch Meeting, ſhall not receive any Benefit from this Law, but be liable to all the Pains and Penalties of all the aforeſaid Laws recited in this Act for ſuch their Meeting, notwithſtanding his taking the Oaths, and his making and ſubſcribing the Declaration aforeſaid.

'Provided always, That nothing herein contained ſhall be conſtrued to exempt any of the Perſons aforeſaid from paying of Tythes or other Parochial Duties, or any other Duties to the Church or Miniſter; nor from any Proſecution in any Eccleſiaſtical Court or elſewhere for the ſame.

'And be it further enacted by the Authority aforeſaid, That if any Perſon diſſenting from the Church of *England*, as aforeſaid, ſhall hereafter be choſen or otherwiſe appointed to bear the Office of High Conſtable, or Petit Conſtable, Church-warden, Overſeer of the Poor, or any other Parochial or Ward-Office, and ſuch Perſon ſhall ſcruple to take upon him any of the ſaid Offices in regard of the Oaths, or any other Matter or Thing required by the Law to be taken or done in reſpect of ſuch Office, every ſuch Perſon ſhall and may execute ſuch Office or Employment by a ſufficient Deputy, by him to be provided, that ſhall comply with the Laws on this Behalf.

'Provided always, the ſaid Deputy be allowed and approved by ſuch Perſon or Perſons, in ſuch Manner as ſuch Officer or Officers reſpectively ſhould by Law have been allowed and approved.

'And be it further enacted by the Authority aforeſaid, That no Perſon diſſenting from the Church of *England*, in Holy Orders, or pretended Holy Orders, or pretending to Holy Orders, nor any Preacher or Teacher of any Congregation of Diſſenting Proteſtants, that ſhall make and ſubſcribe the Declaration aforeſaid, and take the ſaid Oaths at the General or Quarter-Seſſions of the Peace, to be held for the County, Town, Parts or Diviſion where ſuch Perſon lives; which Court is hereby impowered to adminiſter the ſame; and ſhall alſo declare his Approbation of, and ſubſcribe the Articles of Religion, mentioned in the Statute made in the Thirteenth Year of the Reign of the late Queen *Elizabeth*, except the Thirty-fourth, Thirty-fifth, and Thirty-ſixth, and theſe Words of the Twentieth Article, *viz.* ["The Church hath Power to decree Rites or Ceremonies, and Authority in Controverſies of Faith,"] and yet ſhall be liable to any of the Pains or Penalties mentioned in an Act made in the Seventeenth Year of the Reign of King *Charles* II. intitled, "An Act for reſtraining Nonconformiſts from inhabiting in Corporations;" nor the Penalties mentioned in the aforeſaid Act made in the Two-and-Twentieth Year of his ſaid late Majeſty's Reign, for or by Reaſon of ſuch Perſons preaching at any Meeting for the Exerciſe of Religion; nor to the Penalty of One Hundred Pounds, mentioned in an Act made in the Thirteenth and Fourteenth of King *Charles* II. intitled, "An Act for the Uniformity of public Prayers, and Adminiſtration of Sacraments, and other Rites and Ceremonies; and for eſtabliſhing the Form of Making, Ordaining, and Conſecrating of Biſhops, Prieſts, and Deacons in the Church of *England*," for officiating in any Congregation for the Exerciſe of Religon, permitted and allowed by this Act.

'Provided always, That the making and ſubſcribing the ſaid Declaration, and the taking the ſaid Oaths, and making the Declaration of Approbation and Subſcription to the ſaid Articles, in Manner as aforeſaid, by every reſpective Perſon and Perſons herein before-mentioned, at ſuch General or Quarter-Seſſions of the Peace as aforeſaid, ſhall be then and there entered of Record in the ſaid Court, for which Six-pence ſhall be paid to the Clerk of the Peace, and no more.

'Provided, That ſuch Perſon ſhall not at any Time preach in any Place, but with the Doors not locked, barred or bolted as aforeſaid.

'And whereas ſome diſſenting Proteſtants ſcruple the Baptizing of Infants; Be it enacted by the Authority aforeſaid, That every Perſon in

‘ pretended Holy Orders, or pretending to Holy Orders, or Preacher or Teacher, that ſhall ſubſcribe the aforeſaid Articles of Religion, (except before excepted, and alſo except Part of the Seven-and-twentieth Article, touching *Infant Baptiſm)* and ſhall take the ſaid Oaths, and make and ſubſcribe the Declaration aforeſaid, in manner aforeſaid, every ſuch Perſon ſhall enjoy all the Privileges, Benefits and Advantages, which any other diſſenting Miniſter, as aforeſaid, might have or enjoy by virtue of this Act.

‘ And be it further enacted by the Authority aforeſaid, That every Teacher or Preacher in Holy Orders, or pretended Holy Orders, that is a Miniſter, Preacher or Teacher of a Congregation, that ſhall take the Oaths herein required, and make and ſubſcribe the Declaration aforeſaid, and alſo ſubſcribe ſuch of the aforeſaid Articles of the Church of *England*, as are required by this Act in manner aforeſaid, ſhall be thenceforth exempted from ſerving upon any Jury, or from being choſen or appointed to bear the Office of Church-Warden, Overſeer of the Poor, or any other Parochial or Ward-Office, or other Office in any Hundred, of any Shire, City, Town, Pariſh, Diviſion or Wapentake.

‘ And be it further enacted by the Authority aforeſaid, That every Juſtice of the Peace may at any Time hereafter require any Perſon, that goes to any Meeting for Exerciſe of Religion, to make and ſubſcribe the Declaration aforeſaid, and alſo to take the ſaid Oaths, or Declaration of Fidelity herein after-mentioned, in caſe ſuch Perſon ſcruples the taking of an Oath; and upon Refuſal thereof, ſuch Juſtice of the Peace is hereby required to commit ſuch Perſon to Priſon without Bail or Mainprize; and to certify the Name of ſuch Perſon to the next General or Quarter Seſſions of the Peace to be held for that County, City, Town, Part or Diviſion where ſuch Perſon then reſides: And if ſuch Perſon ſo committed, ſhall, upon a Second Tender at the General or Quarter Seſſions, refuſe to make and ſubſcribe the Declaration aforeſaid, ſuch Perſon refuſing ſhall be then and there recorded; and he ſhall be taken thenceforth, to all Intents and Purpoſes, for a Popiſh Recuſant Convict, and ſuffer accordingly, and incur all the Penalties and Forfeitures of all the aforeſaid Laws.

‘ And whereas there are certain other Perſons, Diſſenters from the Church of *England*, who ſcruple the taking of any Oath; Be it enacted by the Authority aforeſaid, That every ſuch Perſon ſhall make and ſubſcribe the aforeſaid Declaration, and alſo this Declaration of Fidelity following; *viz.*

‘ I *A. B.* do Sincerely Promiſe, and Solemnly Declare before God and the World, that I will be True and Faithful to King *William* and Queen *Mary*; and I do ſolemnly profeſs and declare, that I do from my Heart abhor, deteſt and renounce, as impious and heretical, that damnable Doctrine and Poſition, That Princes Excommunicated, or deprived by the Pope, or any Authority of the See of *Rome*, may be depoſed or murthered by their Subjects, or any other whatſoever. And I do declare, That no Foreign Prince, Perſon, Prelate, State or Potentate, hath, or ought to have, any Power, Juriſdiction, Superiority, Pre-eminence or Authority, Eccleſiaſtical or Spiritual, within this Realm.

‘ And ſhall ſubſcribe a Profeſſion of their Chriſtian Belief, in theſe Words;

‘ I *A. B.* profeſs Faith in God the Father, and in Jeſus Chriſt his Eternal Son, the True God, and in the Holy Spirit, One God bleſſed for ever-more; and do acknowledge the Holy Scriptures of the Old and New Teſtament to be given by Divine Inſpiration.

‘ Which Declarations and Subſcription ſhall be made, and entered of Record, at the General or Quarter Seſſions of the Peace for the County, City, or Place where every ſuch Perſon ſhall then reſide. And every ſuch Perſon that ſhall make and ſubſcribe the two Declarations and Profeſſion aforeſaid, being thereunto required, ſhall be exempted from all the Pains and Penalties of all and every the afore-mentioned Statutes made againſt Popiſh Recuſants, or Proteſtant Nonconformiſts; and alſo from the Penalties of an Act made in the Fifth Year of the Reign of the late Queen *Elizabeth*, entitled, *An Act for the Aſſurance of the Queen's Royal Power, over all Eſtates and Subjects within Her Dominions*; for or by reaſon of ſuch Perſons not taking, or refuſing to take the Oath mentioned in the ſaid Act; and alſo from the Penalties of an Act made in the Thirteenth and Fourteenth Years of the Reign of King *Charles* II. entitled, *An Act for preventing Miſchiefs that may ariſe by certain Perſons (called* Quakers) *refuſing to take Lawful Oaths*; and enjoy all other the Benefits, Privileges and Advantages, under the like Limitations, Proviſos and Conditions, which any other Diſſenters ſhall, or ought to enjoy by virtue of this Act.

‘ Provided always, and be it enacted by the Authority aforeſaid, That in caſe any Perſon ſhall refuſe to take the Oaths, when tender'd to them, which every Juſtice of the Peace is hereby empower'd to do, ſuch Perſon ſhall not be admitted to make and ſubſcribe the Two Declarations aforeſaid, tho' required thereunto, either before any Juſtice of the Peace, or at the General or Quarter Seſſions, before or after any Conviction of Popiſh Recuſancy, as aforeſaid, unleſs ſuch Perſon can, within Thirty-one Days after ſuch Tender of the Declarations to him, produce Two ſufficient Proteſtant Witneſſes, to teſtify upon Oath, that they believe him to be a Proteſtant Diſſenter, or a Certificate under the Hands of Four Proteſtants who are conformable to the Church of *England*, or have taken the Oaths, and ſubſcribed the Declaration above-mentioned; and ſhall alſo produce a Certificate under the Hands and Seals of Six, or more ſufficient Men of the Congregation to which he belongs, owning him for one of them.

‘ Provided alſo, And be it enacted by the Authority aforeſaid, That until ſuch Certificate under the Hands of Six of his Congregation (as aforeſaid) be produced, and Two Proteſtant Witneſſes come to atteſt his being a Proteſtant Diſſenter, or a Certificate under the Hands of four Proteſtants (as aforeſaid) be produced, the Juſtice of the Peace ſhall, and hereby is required to take a Recognizance with Two Sureties, in the Penal Sum of Fifty Pounds, to be levied of his Goods and Chattels, Lands and Tenements, to the Uſe of the King and Queen's Majeſties, their Heirs and Succeſſors, for his producing the ſame; and if he cannot give ſuch Security, to commit him to Priſon, there to remain until he has produced ſuch Certificates, or Two Witneſſes, as aforeſaid.

‘ Provided always, And it is the true Intent and Meaning of this Act, That all the Laws made and provided for the frequenting of Divine Service on the Lord's Day, commonly call'd *Sunday*, ſhall be ſtill in force, and executed againſt all Perſons that offend againſt the ſaid Laws; except ſuch Perſons come to ſome Congregation, or Aſſembly of Religious Worſhip, allowed or permitted by this Act.

‘ Provided always, And be it further enacted by the Authority aforeſaid, That neither this Act, nor any Clauſe, Article, or Thing herein contained ſhall extend, or be conſtrued to extend, to give any Eaſe, Benefit or Advantage to any Papiſt or Popiſh Recuſant whatſoever; or any Perſon that ſhall deny, in his Preaching or Writing, the Doctrine of the Bleſſed Trinity, as it is declared in the aforeſaid Articles of Religion.

‘ Provided always, And be it enacted by the Authority aforeſaid, That if any Perſon or Perſons, at any Time or Times after the Tenth Day of *June*, do and ſhall, willingly and of Purpoſe, maliciouſly or contemptuouſly, come into any Cathedral or Pariſh Church, Chapel, or other Congregation permitted by this Act, and diſquiet or diſturb the ſame, or miſuſe any Preacher or Teacher, ſuch Perſon or Perſons, upon Proof thereof before any Juſtice of Peace, by Two or more ſufficient Witneſſes, ſhall find Two Sureties, to be bound by Recognizance in the Penal Sum of Fifty Pounds; and in Default of ſuch Sureties ſhall be committed to Priſon, there to remain till the next General or Quarter Seſſions; and upon Conviction of the ſaid Offence at the ſaid General or Quarter Seſſions, ſhall ſuffer the Pain and Penalty of Twenty Pounds, to the Uſe of the King and Queen's Majeſties, their Heirs and Succeſſors.

‘ Provided always, That no Congregation or Aſſembly for Religious Worſhip, ſhall be permitted or allowed by this Act, until the Place of ſuch Meeting ſhall be certified to the Biſhop of the Dioceſe, or to the Archdeacon of that Archdeaconry, or to the Juſtices of the Peace, at the General or Quarter Seſſions of the Peace for the County, City, or Place in which ſuch Meeting ſhall be held, and regiſter'd in the ſaid Biſhop's or Archdeacon's Court reſpectively, or recorded at the ſaid General or Quarter Seſſions; the Regiſter or Clerk of the Peace whereof reſpectively, is hereby required to regiſter the ſame; and to give Certificate thereof to ſuch Perſon as ſhall demand the ſame, for which there ſhall be no greater Fee, or Reward taken, than the Sum of Six-pence.'

Mr. *Dodd.* The next is the Queen's Letter to the Biſhops: We have it from the *Cotton Library*, and a Perſon here, that has the Cuſtody of it, and proves it a True Copy.

(*Then Mr.* Rawlinſon *was Sworn.*)

Mr. *Dodd.* Pray, give my Lords an Account, whether you examin'd that Paper? and where? and whether it be a True Copy?

Rawlinſon. I examin'd it in the *Cotton Library*, and (Errors excepted) I believe it a True Copy.

Mr. *Dodd.* Do you believe it to be a True Copy?

Rawlinſon. Yes, I do believe it.

‘ Clerk reads.] ‘ *A Letter from the Queen's Majeſty, ſent to the Biſhops through* England, *for the ſuppreſſing of the Exerciſe called Prophecyeing.*

Cotton *Library*, Cleopatra, *F.* 2. *fol.* 287, 288, 289.

‘ RIGHT Reverend Father in God, We greete you well. We hear to our great Griefe, that in ſundry Parts of our Realme there are no ſmall Numbers of Perſons preſuming to be Teachers, and Preachers of the Church, tho' neither lafulie thereunto called, nor yet for the ſame, which contrary to our Laws eſtabliſhed for the publique Devine Service of Almightie God, and the Adminiſtration of his holie Sacreement within this Church of *England*, doe dailie deviſe, imagine, propound and put in Execution ſundrie new Rites and Forms in the Church, as well by their preaching, readings, and miniſtring the Sacraments, as well by procureing unlawful Aſſemblies of a great Number of our People out of either their ordinary Pariſhes, and from Place far diſtant; and that alſo of ſome of good-will, calling (though therein not well adviſed) to be Hearers of their Diſputations, and new deviſed Opinions upon points of Devinities, farre and unmeete of unlarge People; which manner of Invaſions they in ſome Places call Phropheſiings, and in ſome other places Exerciſes. By which manner of Aſſemblies great Numbers of our People, eſpecially the vulgar ſort, meete to be otherwiſe ouccupied with honeſt Labour for their Livinge, are brought to Idleneſs and ſeduced, and in a manner ſchiſmatically devided amongſt themſelves into varietie of dangerous Opinions, not only in Towns and Pariſhes, but even in ſome Families; and manifeſtly thereby incorraged to the Violation of our Laws, and to the Breach of common Order, and finalie to the Offence of all our quiet Subjects that deſire to ſerve God according to the uniforme Orders eſtabliſhed in the Church, whereof the Sequele cannot be but over-dangerous to be ſuffered. Wherefore, conſidering it ſhould be the Duty of the Biſhops, being the principal ordinary Officers in the Church of God, as you are one, to ſee this Diſhoners againſt the Honor of God and the Quietneſs of the Church reformed: And that we ſee that by the Increaſe of theſe, through Sufferance, great danger may enſue even to the decay of the Criſtianne Faithe, whereof we are by God appointed the Defendor; beſides the other Inconveniences, to the diſturbance of our peaceable Government. We therefore, according to Authoritie we have, do Charge and Command you, as the Biſhopp of that Dioceſſe, with all manner of Diligence, to take Order through your Dioceſſe, as well in Places exempt, as otherwiſe; that no manner of Publique and Devine Service, nor other Form of the Adminiſtration of the Holy Sacraments, nor any other Rightes or Ceremonies be in any ſort uſed in the Church, but directlie according to the Orders eſtabliſhed by our Laws. Nether that any maner of Perſon be ſuffred within your Dioceſſe to preach, teach, read or exerciſe any Function in the Church, but ſuch as ſhall be lawfully Approved and Licenſed, as Perſons able for their Knowledge, and conformable to the Miniſtrie in the Rites and Ceremonies of the Church of *England*. And where there ſhall not be ſufficient able Perſons for Learning in any Cures, to preach or inſtruct their Cures as were requiſet, there ſhall

‘ you lymitte the Curates to read the publique Homlines, according to ‘ the Injunctions heretofore by us given for like Cauſes: And further‘ more conſidering, for the great Abuſe that have byn in ſundrie Places of ‘ our Realme, by Reaſon of our forſaid Aſſemblies called Exerciſes, and ‘ for that the ſame are not, nor have not been Appointed nor Warranted ‘ by us or by our Laws, We will and ſtraightlie Charge you, that you do ‘ charge the ſame forthwith to ceaſe, and not to be uſed: But if any ſhall ‘ attempt, or continew or renew the ſame, We will you not onlie to com‘ mitte thereunto Priſon, as Maynteyners of Diſorders, but alſo to ad‘ vertiſe Us or our Counſaile of the Names and Qualities of them, and ‘ of their Mayntainers and Abbettors, that thereupon for better Example ‘ their Puniſhment may be more ſharp for their Reformation. And in ‘ theſe Things we charge you to be ſo careful and villiant, as by your Ne‘ gligence if we ſhould hear of any Perſon attempting to ſend in the Pre‘ miſſes without your Correccion or Information to us, we be not forced ‘ to make ſome Example or Reformation of you, according to your Deſerts.’

Given under our Signet, at the Mannor of Greenwich, *the 7th of* May, 1577.

Mr. *Phipps.* Your Lordſhips obſerve, this is a Letter from Queen *Elizabeth* to the Biſhops, taking Notice of the Danger that might ariſe from the Propheſyings, and directs them to take Care to ſuppreſs thoſe unlawful Aſſemblies; and now we will read to your Lordſhips the Letter from the Archbiſhop to the Council, wherein he tells them, that he could not comply with her Majeſty's Command.

[*Clerk reads.*] *To the Lords of the Privy-Council.*

‘ RIGHT Honorable and my ſinguler good Lords, I cannot deny ‘ but that I have been commanded both by the Quenes Majeſtie ‘ herſelf, and alſo by divers of your Honorable Lordſhips in her Name, ‘ to ſuppreſſe all thoſe Exerciſes within my Province, that are commonly ‘ called Propheſies; but I do proteſt before God, the Judge of all Hartes, ‘ that I did not of any Stubbernneſs or Wilfulneſs refuſe to Accompliſh the ‘ ſame, but onlye upon Conſcience; for that I found ſuch Kind of Ex‘ erciſe ſet down in the Holie Scriptures, and the Uſe of the ſame to have ‘ contynued in the Primitive Church, and was perſwaded that (the Abuſes ‘ being reformed which I always offered myſelf ready to labour in) the ‘ ſaid Exerciſe might yet ſerve to the great Profit of the Church, and ‘ feared that the utter ſuppreſſing of them would bread Offence, and ‘ therefore was a moſt humble Suter unto her Majeſtie, that I might not ‘ be made the chieſe Inſtrument in ſuppreſſing the ſame: Yet not preju‘ dicing or condemning any that in reſpect of Pollicie or otherwiſe ſhould ‘ be of contrary Judgment, or being of Authority, ſhould ſuppreſs them: ‘ For I know right well, that there be ſome things of that Nature, where‘ in diverſe Men may be of diverſe Opinions, and abownd in their owne ‘ Senſe, (being not repugnant to the Analogie of Faith) without any ‘ Prejudice to their Salvation, or any Prejudice of ether to other. Not‘ withſtanding however others being otherwiſe perſwaded, might ſafely ‘ do yt; yet I thought it not ſafe for me (being ſo perſwaded in ‘ Minde) to be the Doer of that whereof my own Heart and Con‘ ſcience would condemn me. And whereas I have ſuſteyned the ‘ Reſtraint of my Libertie, and Sequeſtration of my Juriſdiction nowe ‘ by the Space of ſix Monethes, I am ſo farre from repininge there‘ at, or thinkinge myſelf injuriouſly or hardlie dealt withal therein at ‘ her Majeſties Hands, that I do thankfully embrace, and franklie, with ‘ all Humilite, acknowledge her Princely, Gracious, and rare Clemencie ‘ towards me, who having Authoritie and Power to have uſed greater and ‘ ſharper Severitie againſte me, and for good Pollicie and Example think‘ ing it ſo expedient, hath notwithſtanding dealt ſo mercifullie, myldelye, ‘ and gentlie with me. But the greateſt Griefe that ever I have had or ‘ have, is the Loſs of her Majeſties Favour, and the ſuſteyninge of the Diſ‘ pleaſure of ſo gracious a Soveraigne, by whom the Church and Realm ‘ of *Englande* hath been ſo longe and ſo happilie governed; and by whom ‘ myſelf privatelie and ſpeciallie above other Subjects have received ſo ‘ many and ſo great Benefitts above all my Deſervings, for the Recovery ‘ of whoſe gracious Favour, I moſt humbly beſeech your Lordſhips to be ‘ a Meanes to her Majeſtie for me: The which obteyned, I ſhall eſteme ‘ far above all worldly Benefits whatſoever. And I proteſt here before ‘ God and your Honours, that not onely my dewtifull and humble Obe‘ dience to her Majeſtie ſhall be ſuche, as ſhe ſhall have no Cauſe to re‘ pente her of her gracioufe Goodneſs and Clemencie ſhewed unto me; ‘ but alſo that by moſte fervente, heartie, and dailie Prayer (as I have ‘ done hitherto) ſo I will contynew, accordinge to my bownden Dewtie, ‘ to make moſte earneſte Sute unto Almightie God for the longe Preſerva‘ tion of her Majeſties moſt happie Raigne, to the unſpeakable Benefitt of ‘ the Church and Realm of *England*, &c.’

29 *Novemb.* 1577. *EDM. CANTUAR.*

Mr. *Dodd.* We hope theſe two Letters have ſet that Matter in a true Light, that the Reaſon of the Archbiſhop's Diſgrace was, for not complying with the Commands of the Queen. We will add no more upon this Article, but proceed to the Third.

Mr. *Phipps.* My Lords, The Dates of theſe Letters are material; for your Lordſhips take Notice, they were written in the Year 1577; and her Majeſty's Commands for ſuppreſſing the Propheſyings not being obeyed, the *Puritans* in few Years became ſo dangerous, that the Parliament was neceſſitated to make the Act of the 35th Year of her Reign, (with thoſe ſevere Penalties, which have been ſo much cenſured by one of the learned Managers) to give a Check to them.

Mr. *Dodd.* MY Lords, The Third Article that the Doctor is charged with, is, That ‘ he does ſuggeſt and aſſert, That ‘ the Church of *England* is in a Condition of great Peril and Adverſity un‘ der her Majeſty's Adminiſtration; and that, in order to arraign and ‘ blacken the Vote or Reſolution of both Houſes of Parliament, approved ‘ by her Majeſty, he, in Oppoſition thereto, does ſuggeſt the Church to ‘ be in Danegr.’ And, my Lords, this we take the Liberty totally to deny: The Doctor aſſerts no ſuch Thing in his Sermon, nor hath it (as we apprehend) been proved upon him.

But true it is, that he aſſerts, That when national Sins are ripened to Maturity, with other Immoralities and irreligious Practices therein-mentioned, then ſuch a People and Church are in very great Danger, as we apprehend, from the Sins and Vices of wicked Men. My Lords, This we conceive no ways to be oppoſite to the Votes of the two Houſes of Parliament, nor to her Majeſty's Declaration: We think we have followed the Act of Parliament of the 9th and 10th of King *William*, for ſuppreſſing Blaſphemy and Prophaneneſs, and other Acts of Parliament, in aſſerting this Matter. It muſt be agreed, that the Church, as a Church Militant, is always in Danger, till it is a Church Triumphant: It is always taken Notice ſo to be; ſhe has many Enemies; ſhe ought to be always on her Guard and Watch, and all good People ought to pray for her Support. The Prayers directed by her Majeſty to be uſed, and that are uſed in all Churches, are, ‘ That no Sedition may diſturb the State, nor Schiſm ‘ diſtract this Church;’ and that we all ought to lay it to Heart, how great Dangers we are in by our unhappy Diviſions: Theſe are the Prayers that are put up every Day in the Churches. Now to object from this, that we look on the Church to be in Danger under her Majeſty's Adminiſtration, is ſo directly contrary to what the Doctor has aſſerted in his Sermon, wherein he does, as a good and loyal Subject, pray, and pray heartily for the beſt of Queens, ‘ that ſhe may long live for the Comfort and ‘ Support of this Church and Nation;’ after this, one would think, when he has ſo poſitively laid it down in plain Words, there could be no Ground to quarrel with him on this Head. And as to that which was urged by one of the Gentlemen Managers for the Houſe of Commons, obſerving that the Doctor's Expreſſions were taken out of the *Lamentations*, and that when the *Lamentations* were written, the King was a Priſoner, and the People in Captivity; and therefore the Doctor intended the Parallel to anſwer the preſent Times; ſurely no ſuch Inference can be drawn from theſe Paſſages: I hope the People are in no Captivity whatſoever; nor is our Queen (bleſſed be God) a Priſoner. And if it was intended by the Gentleman Manager, (as I ſuppoſe it was) that the Doctor herein meant the *Pretender*; the Doctor utterly denies it, and has all along diſclaimed his Right, and aſſerted her Majeſty's Right in very expreſs Terms. But in this Place cited by the Doctor, is repreſented the Prophet's Lamentation for the Sins of the People, and the Judgments that had overtaken the *Jews* for their Sins and Rebellion. The like Prayers may be obſerved to have been made by King *David*, and yet the Church of the *Jews* was in the greateſt Proſperity in his Time: However, there is ſcarce a *Pſalm* but he laments the Sins of the People, for Fear leſt they ſhould bring down Judgments on the *Jewiſh* Church and State. This is pathetically expreſſed almoſt thoughout all the *Pſalms*.

As to the Allegation, That ‘ the Members of both Houſes were con‘ ſpiring the Ruin of the Church,’ he totally denies it; nor has the Doctor, in all his Sermon, mentioned the Votes of the two Houſes: Therefore for the Article to charge the Doctor with aſſerting, ‘ That the Mem‘ bers of both Houſes, who paſſed the Vote relating to the Danger of the ‘ Church, were conſpiring her Ruin, when they voted her out of Dan‘ ger, is a miſtaken Fact. That Vote was almoſt four Years ago. There could be no Reaſon to think he reflected on that Vote; nor is there any Thing that can induce your Lordſhips (as we humbly apprehend) in the Doctor's Sermon, to believe ſuch a Charge. The Paſſage in the Doctor's Sermon relates to the Wars in the late Times: And as in thoſe Days there were many ill Men, and God permitted them to bring their ill Deſigns about, ſo it is plain, that there were many good Men innocent, as my Lord *Clarendon* expreſſes it, that had no ſuch ill Deſigns. Now, when your Lordſhips and the Commons paſſed that Vote, no Doubt it was a juſt Vote, and gave a great Satisfaction: But nobody could expect that Paſſage to be turned on the Doctor as a Reflection on your Lordſhips, the Commons, and her Majeſty, in relation to that Vote. But what he reflects upon is quite another Thing; He takes Notice, that the Church is in Danger from evil Men, from evil Practices, and evil Books that are daily publiſhed. We hope your Lordſhips will not take it, that when we urge this, we intend to reflect either on the Paſtors of the Church, or the Miniſtry of the Queen; for it would be hard that they ſhould be anſwerable for all thoſe Pamphlets. But when ſuch are publiſhed to poiſon the Notions of the People, and a Miniſter in the Pulpit takes Notice of them, to prevent the ill Conſequences of them; whether this can have ſuch a Conſtruction as has been contended for, we may ſafely ſubmit to your Lordſhips. The now aſſerting the Chriſtian Faith to be in Danger by Vice and Irreligion, cannot be contrary to the Votes in the Articles alledged, nor affect him, who makes the Aſſertion, with any Crime, or (as we think) ſubject him to any Puniſhment.

My Lords, We ſhall be the ſhorter in opening this Article, becauſe we fear we ſhall be very long in our Evidence upon this Head; we ſhall produce and give in Evidence ſeveral Books that daily come out, which contain the higheſt Blaſphemy, Irreligion and Hereſy that can be publiſhed. I will not take upon me to open them, they are ſo horrid, I leave the Paſſages to be read, that your Lordſhips may ſee what Grounds there are for a Preacher in the Pulpit to take Notice of theſe Matters. When the Church is run down, the Clergy vilified; when they tell us a grey Coat has as much Authority to adminiſter the Sacrament as a black Coat; and that a Country-Man may make as good a Prieſt as the Parſon of the Pariſh: Theſe Things may excuſe the Zeal of the Doctor in ſo warmly reprehending them.

We ſhall read Abundance of this Sort of Learning, and we ſhall do it only to ſhew, that there was Reaſon for the Doctor in the Pulpit to forewarn the People, to caution that they may not have ill Impreſſions made upon them, by ſuch wicked and ſcurrilous Writings. We ſhall humbly offer our Evidence to your Lordſhips, and then ſubmit this Article.

Mr. *Phipps.* MY Lords, I am now to ſpeak to the Third Article exhibited by the Commons of *Great Britain* againſt Doctor *Sacheverell:* And I humbly beg your Lordſhips Patience, while I take Notice of the ſeveral Branches of this Article, and ſhew your Lordſhips, that the Doctor is not guilty of any Offence therein charged.

As to ſuch Part of this Article as charges the Doctor, ‘ That he doth ‘ falſely and ſeditiouſly ſuggeſt and aſſert, that the Church of *England* is ‘ in a Condition of great Peril and Adverſity under her Majeſty's Admi‘ niſtration; and that to arraign and blacken the Vote and Reſolution of ‘ both Houſes of Parliament, approved by her Majeſty, he, in Oppoſi‘ tion thereto, doth ſuggeſt the Church to be in Danger:’

I beg Leave to take Notice, That the Firſt Part of the Fourth Article explains this Branch of the Third Article, and ſhews what the Commons meant by the Church being in Danger *under* Her Majeſty's Adminiſtration: For the Firſt Part of the Fourth Article ſays, That 'the Doctor ſuggeſts, that her Majeſty's Adminiſtration in Eccleſiaſtical and Civil Affairs tends to the Deſtruction of the Conſtitution.' So that by charging that the Doctor aſſerts the Church is in Danger under Her Majeſty's Adminiſtration, it muſt be intended that he aſſerts the Church to be in Danger by Reaſon of Her Majeſty's Adminiſtration. And therefore, if there be any Expreſſion in the Doctor's Sermon which ſuggeſts the Church to be in Danger; yet if it be not alſo therein aſſerted that the Danger proceeds from her Majeſty's Adminiſtration, the Doctor cannot be an Offender within the Meaning and Intention of this Article: And the Doctor denies, that he hath aſſerted any thing in his Sermon, from whence any ſuch Suggeſtion can be inferred.

To give your Lordſhips full Satisfaction in this Point, I ſhall firſt take Notice of the ſeveral Clauſes in the Doctor's Sermon at St. *Paul*'s, which have been cited to make good this Article.

The firſt Paſſage quoted for this Purpoſe, is in *Page* the 5th, where the Doctor thus expreſſeth himſelf: 'I ſhall take the Expreſſion in its full Latitude, without confining it to the expreſs Deſign of the Place, tho' it were very obvious to draw a Parallel here betwixt the ſad Circumſtances of the Church of *Corinth* formerly, and of the Church of *England* at preſent; wherein her Holy Communion has been rent and divided by factious and ſchiſmatical Impoſtors; her pure Doctrine has been corrupted and defiled; her Primitive Worſhip and Diſcipline prophaned and abuſed; her ſacred Orders denied and vilified; her Prieſts and Profeſſors (like *St. Paul*) calumniated, miſrepreſented and ridiculed; her Altars and Sacraments proſtituted to Hypocrites, Deiſts, Socinians and Atheiſts; and this done, I wiſh I could not ſay, without Diſcouragement, I am ſure with Impunity, not only by our profeſſed Enemies; but, which is worſe, by our pretended Friends and Falſe Brethren.'

This is the Paſſage which is chiefly inſiſted on to make good this Branch of the Article. My Lords, Is there not too much Truth in this Clauſe? Hath not the Communion of the Church been rent and divided by ſome Factious and Schiſmatical Teachers in Separate Congregations, who have no Orders at all; and by others who refuſe to take the Oaths, and will not comply with the Act of Toleration; by Popiſh Prieſts, who have drawn away Perſons from our Communion to their Church? Have not her Sacred Orders been denied and vilifyed by the Papiſts, who pretend Archbiſhop *Parker* was conſecrated at the *Nag's-Head?* Are not her Altars and Sacraments proſtituted to Atheiſts, Deiſts and Socinians, who communicate to qualify themſelves for Offices and Places of Truſt; and yet, Is there any thing in this Clauſe can ſupport this Article? Are theſe Evils charged upon Her Majeſty? or is it aſſerted, that theſe Miſchiefs are owing to, or proceed from, Her Majeſty's Adminiſtration?

The next Paragraph cited to maintain this Article, is in the 14th Page, where the Doctor ſays, 'In ſhort, as the *Engliſh* Government can never be ſecure on any other Principles, but ſtrictly thoſe of the Church of *England*; ſo I will be bold to ſay, where any Part of it is truſted in Perſons of any other Notions, they muſt be ſalſe to themſelves, if they are true to their Truſts; or if they are true to their Opinions and Intereſt, muſt betray that Government they are Enemies to upon Principle. Indeed, we muſt do them that Juſtice, to confeſs, That ſince the Sectariſts have found a way (which their Fore-fathers, God knows, as wicked as they were, would have abhorr'd) to ſwallow not only Oaths, but Sacraments, to qualify themſelves to get into Places and Preferments; theſe ſanctify'd Hypocrites can put on a Shew of Loyalty, and ſeem tolerably eaſy in the Government, if they can ingroſs the Honours and Profits of it: But let Her Majeſty reach out Her little Finger to touch their Loins, and theſe Sworn Adverſaries to Paſſive Obedience, and the Royal Family, ſhall fret themſelves, and Curſe their Queen and their God, and ſhall look upwards.'

Here is not one Word of the Church being in Danger by Her Majeſty's Adminiſtration: He only ſhews the Danger the *Engliſh* Government may be in by Occaſional Conformiſts put into Offices and Places of Truſt. For Occaſional Conformiſts, who are Diſſenters, Republicans, Atheiſts and Deiſts, that communicate only to qualify themſelves for Places, if they are true to their Opinions, cannot be true to the Church of *England* in which they communicate, cannot be true to the Government by which they are entruſted in ſuch Offices; for they will be always promoting their own Principles in Religion, and their own Forms of Government in the State.

Both Lords and Commons were of Opinion, it was not ſafe to truſt Occaſional Conformiſts with the Guardianſhip of our Church or Crown, when they agreed to the Bill for preventing Occaſional Conformity, which Enacts, 'That if any Perſon, who had any Office Civil or Military, or any Command or Place of Truſt under Her Majeſty; or if any Perſon bearing any Office of Magiſtracy, or Place of Truſt in Corporations, who by the Laws are obliged to receive the Sacrament of the Lord's Supper, according to the Rites and Uſage of the Church of *England*, ſhould, after their Admiſſion into their reſpective Offices, and during their Continuance in ſuch Offices, reſort unto any Conventicle, Aſſembly or Meeting, under Colour or Pretence of any Exerciſe of Religion, in any other Manner than according to the Liturgy and Practice of the Church of *England*, they ſhould, being convicted thereof, be diſabled from henceforth to hold ſuch Office or Offices.' Tho' this was never Enacted into a Law, yet as it was the Opinion of both Houſes of Parliament, I beg Leave to offer it as a Reaſon, to confirm what the Doctor hath aſſerted.

My Lords, I ſhall trouble your Lordſhips only with one Paſſage more, which was urged to prove this Article, which is in Page the 15th, where the Doctor hath theſe Words; 'To lay before you the great Peril and Miſchiefs of theſe Falſe Brethren in Church and State; which I ſhall endeavour to do, by proving that they weaken, undermine, and betray in themſelves, and encourage, and put it into the Power of our profeſs'd Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment of both.' Theſe Falſe Brethren are the Occaſional Conformiſts mention'd in the Page preceding.

I heartily wiſh, that all who communicate in the Church, were true Sons of the Church; but if, as the Doctor ſuggeſts, there are any that communicate at her Altars, who diſown her Miſſion, who refuſe to comply with her Liturgy, and are Enemies to her Conſtitution; if *Arians*, *Socinians*, *Deiſts*, and almoſt all Diſſenters, and other Enemies to the Church, communicate with her to get Places and Preferments in Church and State, what Prejudice the Church may receive from ſuch Falſe Brethren, I ſubmit to your Lordſhips Judgment; begging Leave only to offer to your Lordſhips, what was ſaid by the Commons at a Conference with your Lordſhips, upon the Bill for preventing Occaſional Conformity; and which, I hope, in an Impeachment by the Commons, will have ſome Weight with your Lordſhips.

The Commons upon that Conference were pleaſed to take Notice, "That when the Corporation-Act was made, the Parliament had freſh in their Minds the Confuſions and Calamities that had been brought upon the Nation, by ſuch as pretended to be at the ſame time in the true Intereſt of Religion and their Country. That the Parliament by that Act, and afterwards by the Teſt-Act, thought they had ſecured our Eſtabliſhment both in Church and State; and that they had provided a ſufficient Barrier to defeat and diſappoint any Attempts upon them, by Enacting, *That all in Office ſhould receive the Sacrament of the Lord's Supper, according to the Rites and Uſages of the Church of* England; and never imagined a Set of Men would riſe up, whoſe Conſciences were too tender to obey the Laws, but harden'd enough to break through any."

Thus, my Lords, having ſhewn that the Paſſages cited by the Managers do not maintain this Article, and that the Doctor hath not aſſerted the Church to be in Danger by Her Majeſty's Adminiſtration; I will next ſhew, from what Cauſes the Doctor doth ſuggeſt the Danger of the Church to ariſe: And of theſe, Schiſm is one.

That Schiſm may diſtract the Church, a Prayer lately added to our Liturgy tells us. That Separation from the Eſtabliſh'd Church, which impoſeth no Sinful Terms of Communion, is Schiſm, all the Learned Men of our Church agree; and that there are many People in this Nation that are guilty of Schiſm, I think nobody will deny. And altho' it cannot be imagined, nor is it aſſerted by the Doctor, that ſuch Schiſm ſhould grow to ſuch a Head as to endanger the Church, during Her Majeſty's happy Adminiſtration; yet, what ill Conſequence it may be to the Church in another Age, nobody can pretend to know, though every body may have too much Reaſon to fear.

So, my Lords, when Men attack the Articles of our Religion and our Homilies, and repreſent them as Spurious; when they call the Doctrine of Non-Reſiſtance and Paſſive-Obedience a Blaſphemous Doctrine, what Influence that may have hereafter upon our Government both in Church and State, your Lordſhips are the beſt Judges.

I ſubmit to your Lordſhips, if the Queen can be ſafe, when it ſhall be averr'd in Print, that there is one on the other Side of the Water that is a *Jure Divino* King, and hath an Hereditary Right. Can the Queen or Church be ſafe, when all the whole Adminiſtration is vilify'd and abus'd as it is in the *Obſervator*, in this Manner? *Countryman* aſks the Queſtion, 'Have you any more Knaves to talk of?—*Obj.* Honeſt *Countryman*, What would you have me to do? If I muſt run through all the Liſts of Knaves, I muſt bring in all the Courts, all the Employments, all the Claſſes of Publick Affairs in the Nation.'

Can the Queen be ſafe, when the Murther of King *Charles* the Firſt is juſtify'd in Print by the *Review* and *Obſervator?* When the *Wet Martyrdom* of King *Charles* the Firſt, and *Dry Martyrdom* of King *James* the Second are ſaid to be all one, and no Difference between them? I ſay, How can Her Majeſty be ſafe, when ſuch Rebellious Principles are ſo publickly avowed? And if Her Majeſty be in Danger, can the Church be ſafe?

All Learned Men that underſtand our Conſtitution, have always agreed, that there is ſuch a near Relation between the Church and Monarchy, ſuch a Dependance of one upon the other, that where one falls, the other cannot ſtand.

Can either Church or Queen be ſafe, when ſo great and neceſſary a Part of our Conſtitution, our Parliament, is ſtruck at? When it ſhall be ſaid 'that the Members ſit in the Houſe to do nothing, making long Speeches without Meaning, and Voting Bills without Deſign to have them paſs?' And when ſuch Rebellious Principles are broached, as I mentioned to your Lordſhips upon *Friday* laſt out of the *Review*, to ſhew the Neceſſity of Preaching the Doctrine of Paſſive Obedience, *viz.* 'If the next Parliament ſhould prove like this, the Nation will be ſo much the nearer that Criſis of Time, when *Engliſh* Liberty being brought to the laſt Extremity, muſt open the Magazine of Original Power?' Theſe are ſome of the Things alledged by the Doctor to be dangerous to the Church and State.

But the chief Cauſes from whence the Doctor ſuggeſts the Danger of our Church and State to proceed, are Atheiſm, Prophaneneſs, and Immorality; for he thus expreſſeth himſelf, *Page* 20. 'What Reaſon have we to think but that the National Sins are ripen'd up to a full Maturity, to call down Vengeance from Providence on a Church and Kingdom thus debauch'd in its Principles, and corrupted in its Manners; and inſtead of the True Faith, Diſcipline and Worſhip, given over to all Licentiouſneſs both in Opinion and Practice; to all Senſuality, Hypocriſy, Lewdneſs and Atheiſm?'

From theſe Sins it is, he apprehends the Church and Nation to be in Danger; and what Judgments have been brought down upon Kingdoms and Nations for theſe Sins, we have Multitudes of Inſtances, both in Sacred and other Hiſtories; ſometimes they have been deprived of the true Worſhip of God, and overwhelmed with Idolatry and Mahometaniſm. Is not the Name of God forgot in the Place of his miraculous Birth? And is not the Light of the Goſpel totally extinguiſhed where it at firſt ſo gloriouſly ſhined? And by what Means? By Infidelity, Prophaneneſs and Immorality. And may not the ſame Cauſes produce the ſame Effects?

Can *England* be always ſecure from ſuch Judgments, when ſome amongſt us ſcarce own the firſt Perſon of the Trinity, by whom they were created? But many have the Boldneſs to deny the Divinity of the ſecond Perſon, by whom they were redeemed, and many other ſuch Blaſphemies and Atheiſtical Notions are daily propagated and ſpread abroad among us; of which I ſhall beg your Lordſhips Permiſſion to cite ſome few Inſtances, of thoſe many we ſhall offer to your Conſideration in the Courſe of our Evidence; and they are ſuch as I hardly dare name, and as your Lordſhips will ſcarce bear to hear.

There is a Treatiſe call'd, '*A brief but clear Confutation of the Doctrine of the Trinity*, Page the 19th, he ſays, *The Divinity attributed to the Son and Holy Ghoſt is unſcriptural and Idolatrous.* Page the 14th, *To be ſhort, Trinitarianiſm is Polytheiſm and Idolatry, if there be any ſuch Thing in Nature*,

And a Book called *Brief Notes on the Creed of Athanaſius*, ſpeaking of the

' Trinity and Incarnation, ſays, ' A Belief in theſe Points is in no Degree ' neceſſary, much leſs neceſſary before all Things.'

The ' Account of the Growth of Deiſm, *P.* 17. *ſays*, Many Doctrines ' are made neceſſary to Salvation, which it is impoſſible to believe, becauſe ' they are in their Nature Abſurdities. *Idem, p.* 22. One of my Old Ac- ' quaintance always thought the moral Part of the Bible very good; but ' he alſo thought that by the Strength of his own Reaſon, he could have ' writ as good a Moral himſelf.'

Theſe are Sins of a very deep Dye, and may juſtly draw down very heavy Judgments; and altho' we are very well aſſured, that the Piety of her Majeſty alone is ſufficient to avert thoſe Judgments that are due to ſuch Crimes during her own Life; and altho' we are ſure, that, by her Majeſty's Care, and the Vigilance of Her Miniſters, thoſe Sins will not grow to ſuch a Head during her Majeſty's Life, as to endanger the Church and State; yet (if not prevented) they may take ſuch Root now, as may hereafter endanger the State, the Church, and even Chriſtianity itſelf: For as among Men, *Nemo repentè fuit turpiſſimus*, ſo Hereſies and Schiſms in the Church, Factious and Seditious Principles in the State, are not invented and arrive to the Height at once, but ſteal by degrees into the Church and State: And therefore, as in the Body Natural, ſo in the Body Politick, we muſt meet the Diſeaſe, and prevent the ſpreading of its Contagion: And one of the beſt Methods to do it, is by our Miniſters ſhewing the Heinouſneſs of theſe Crimes, and the dangerous Conſequences that attend them. And we ſubmit it to your Lordſhips, whether the Doctor hath any otherwiſe aſſerted the Church to be in Danger, than what may happen to her as the Conſequences of ſuch Sins; and whether he any where avers the Church to be in Danger by or under her Majeſty's Adminiſtration.

As to the Votes of both Houſes, we dare not preſume to ſay how far they were deſign'd to extend: But I humbly ſubmit to your Lordſhips Conſideration, whether the Vote of both Houſes in 1705, did relate only to ſuch Suggeſtions and Inſinuations of the Church's Danger, as ſhould be made about that Time, or ſome ſhort time after; or whether it was intended to have a Proſpect, and relate to what ſhould be ſuggeſted four Years after; whereas it was impoſſible for the Wit of Man to foreſee what ſhould happen in ſo long a Time.

We were then, as we are now, engaged in a War with a powerful Enemy; a Pretender, ſupported by that Enemy, and who, ſince that Vote, attempted to invade theſe Kingdoms, if that Army of the *French* had been ſucceſsful in *Flanders*, and the Advantage of the War had turn'd on their Side; and if the Pretender had landed with ſuch a ſucceſsful and powerful Army of *French* Papiſts in *Great Britain*, I believe it would have been impoſſible to have made the Generality of the People avoid thinking both Church and State too in Danger under thoſe Circumſtances.

To conclude this Branch, If there be any Thing in his Sermon, from whence it can be inferr'd that he ſuggeſts the Church to be in Danger, yet if it be not ſuggeſted to be by Reaſon of her Majeſty's Adminiſtration; and if it was not done with a wicked, malicious, and ſeditious Intent to defame Her Majeſty's Adminiſtration, and to contradict and arraign the Reſolutions of both Houſes of Parliament; and unleſs ſuch Intention plainly appears, without *Innuendos* he cannot be guilty within the Intent of this Article.

And as to ſo much of the Third Article, which chargeth that ' the Doc- ' tor, as a Parallel, mentions a Vote that the Perſon of King *Charles* the ' Firſt was voted to be out of Danger, at the ſame time that his Murder- ' ers were conſpiring his Death, thereby wickedly and maliciouſly inſinu- ' ating, that the Members of both Houſes who paſs'd the ſaid Vote were ' then conſpiring the Ruin of the Church;' I cannot give a better Anſwer than the Doctor himſelf hath given to it, *viz.*

1. That he doth not draw any Parallel between the Vote concerning the King's Perſon, and the Vote of the Two Houſes.
2. That he does not in his Sermon mention the Vote of the Two Houſes.
3. That if he had mentioned it, he would not thereby wickedly and maliciouſly have inſinuated that the Members of both Houſes, who paſs'd that Vote, were then conſpiring the Ruin of the Church; but would have inſinuated, that as ſome Perſons were conſpiring the Murder of the King, whilſt others, no way privy to their wicked Intentions, voted his Perſon to be out of Danger; ſo when the Two Houſes voted the Church to be in no Danger under her Majeſty's Adminiſtration, there might be ſome others who were conſpiring the Ruin of the Church, and many others, who by their Vice and Infidelity were drawing down God's Vengeance both on Church and State.

Mr. *Dee.* MAY it pleaſe your Lordſhips to indulge me a little upon his Article, and I beg leave to make a Diſtinction, as on the laſt Article, that is, that theſe Words, *Danger of the Church*, ſeem in the Articles to bear one Senſe, and in the Doctor's Sermon another. The Danger ſuggeſted in the Article, is a Danger under Her Majeſty's Adminiſtration. I muſt beg leave to ſay, theſe Words were put in, to inſinuate, that the Doctor does in his Sermon urge the Danger of the Church to ariſe from her Majeſty's Adminiſtration; which, I think, is not to be found there; and if they were omitted, then it will ſtand only thus, That the Doctor doth affirm that the Church of *England* is under great Peril and Adverſity; and if ſo, I hope, the Aſſertion is not Criminal. I can't, by all the Obſervation I have made on the Doctor's Sermon, find that the Doctor ſuggeſts that there is any form'd Body of Men conſpiring to overthrow the Church; but the Doctor ſays, that there are ſuch Men that are falſe Brethren that endanger the Doctrines and Diſcipline of the Church. That there is ſome ſort of Danger, appears by the Form of Prayer that is daily offered up for her Safety, and therefore a general Suggeſtion of Danger would not have anſwered the End of the Commons to make the Doctor Criminal, without adding the Words, *under Her Majeſty's Adminiſtration*; and if they can ſhew that the Doctor in any Part of his Sermon has charg'd the Queen with ſuch Adminiſtration as endangers the Church, I am ſure I ſhould be very much to blame to appear for him at this Bar: But the contrary, I think, appears, when he prays for her Life, with theſe Words added, *for the Comfort and Support of this Church and Nation.*

My Lords, I ſhall ſay no more to that Part of the Article, it having been fully ſpoken to already, but beg leave to take Notice, that the Managers for the Houſe of Commons have been pleaſed to ſay, That the Doctor has reflected upon the Reſolutions of both Houſes of Parliament, by drawing a Parallel between the Vote relating to the Murder of King *Charles*, and the Vote of the Two Houſes, that the Church was not in Danger. My Lords, To make a Parallel there muſt be Two Lines; a Line firſt given to draw the Parallel Line to; and I beg leave to ſay, that in the Doctor's Sermon there is no ſuch firſt Line given; for he has not, in all his Sermon, taken Notice of any Vote of both Houſes. If he has not taken Notice of this Reſolution of both Houſes in his Sermon, the Law will not imply that he had any Notice of it. For Votes are private Reſolutions of the Houſes, and always were ſo, till of late they have been publiſhed in Print, and the Printing of them will not infer that he had Notice of them. The Doctor's Diſtinction in his Anſwer is very true and plain, that he doth not charge the Perſons concerned in paſſing that Vote with being concerned in that odious and execrable Deſign of carrying on the Murder of that Royal Prince; (and I hope Charity will carry us ſo far as to think, that very many Perſons that join'd in that Vote were not concerned in it) but that yet, at the ſame Time they paſſed that Vote, that bloody Deſign was carry'd on by a private Juncto of Blood-thirſty Men.

My Lords, I do not admit, but ſuppoſing I ſhould admit the Doctor hath contradicted the Reſolutions of both Houſes, I ſubmit it to your Lordſhips what Crime the contradicting a Vote of the Houſe of Commons, or the Reſolution of both Houſes, is? The contradicting a known eſtabliſh'd Law may be Seditious; but I ſubmit it, whether a Vote is ſo publick an Act, that contradicting it, at leaſt without taking Notice of it, be any Crime, or at leaſt be ſo high a Crime as to deſerve a Cenſure? It is very certain he may be thought Saucy and Unmannerly to do it, or it may be a Breach of Privilege; but whether your Lordſhips will interpret it to be a Crime and ſuch a Crime as will bear an Impeachment for High Crimes and Miſdemeanors, I ſubmit to your Lordſhips.

My Lords, We humbly hope, that notwithſtanding any thing yet offered againſt the Doctor, that your Lordſhips will be of Opinion, that the acquitting the Doctor of this Impeachment will be a noble and convincing Proof of the undoubted Truth of that Vote, That the Church of *England*, (of which the Doctor is a true, tho' an unfortunate Son, whilſt under a Charge by the Commons of *Great Britain* for High Crimes) under Her Majeſty's Adminiſtration, is in a ſafe and flouriſhing Condition.

Dr. *Henchman.* MY Lords, We are now upon the Third Article of Impeachment, in which Doctor *Sacheverell* is charged with [' falſly and ſeditiouſly ſuggeſting and aſſerting, That the Church ' of *England* is in a Condition of great Peril and Adverſity under Her Ma- ' jeſty's Adminiſtration.'] If by theſe Words, *under Her Majeſty's Adminiſtration*, your Lordſhips are to underſtand, By the Courſe and Tendency of Her Majeſty's Adminiſtration, that Charge we poſitively deny, and humbly aſſure ourſelves, that the Learned Managers have not been able to maintain it, either from the general Scope and Deſign of the whole Sermon, or from any Paſſages contained in it.

If by thoſe Words, *under her Majeſty's Adminiſtration*, is to be underſtood only during the Time of her Majeſty's Adminiſtration, then we apprehend that there may be Perils under her Majeſty's Adminiſtration, which do no ways proceed from ſuch her Adminiſtration, and which may be mentioned without any ſeditious Thought or Intention of Reflecting upon her Majeſty's happy Adminiſtration.

If your Lordſhips look thro' the whole Sermon, it will appear, that he who now ſtands accuſed for caſting this foul Aſperſion upon her Majeſty, never once mentions her throughout this whole Diſcourſe, but in Terms full of the profoundeſt Reſpect and Reverence: In the very Beginning of this Sermon, in the ſecond Page, this is reckoned as one chief Part of that Day's Deliverance, which he was then ſolemnizing, ' That this good and ' pious Relict of the Royal Family ſits now happily upon the Throne of ' her great Anceſtors.' In the 19th Page we find him with an honeſt and hearty Zeal aſſerting Her Majeſty's Right to the Throne, and praying God to bleſs her in it; and within a few Lines he again repeats that Prayer, ' That God would long preſerve her on that Throne, *for this very Remark-* ' *able Reaſon*, becauſe She is the Comfort and Support of the Eſtabliſhed ' Church.'

Is this, my Lords, the Language of one that would ſuggeſt and aſſert, that very Church to be in a Condition of great Peril and Adverſity from her Majeſty's Adminiſtration? Or can your Lordſhips preſume, that any one can ſo far prevaricate with God and Man, as openly to thank God for the peculiar Happineſs that we now enjoy by her Majeſty's ſitting on the Throne of her Anceſtors, and to beſeech him long to preſerve her there for the Support and Comfort of the Eſtabliſhed Church, and yet aſſert that that Church is in great Adverſity under, that is, from her Majeſty's Adminiſtration?

In this Caſe your Lordſhips will ſuffer me to ſhew what thoſe Perils are which the Church is ſaid to be in, in this Diſcourſe, and how they do not proceed from her Majeſty's Adminiſtration.

The Dangers ſpoken of in this Sermon are either ſuch as ariſe from the Infidelity and Prophaneneſs, the Vice and Immorality of the Age, or elſe ſuch as always have attended the Chriſtian Church from her firſt Foundation, and always will attend her whilſt ſhe continues Militant upon Earth.

That there are Dangers ariſing to the Church from Infidelity and Prophaneneſs, is already, I doubt, too evident from thoſe Authors I mentioned under the ſecond Article, and from what the Gentlemen who have ſpoke before me, have obſerv'd upon this: If it yet wants a Confirmation, we ſhall beg leave to lay before your Lordſhips a black Catalogue of Prophaneneſs and Blaſphemy, not fit to be heard more than once.

As to the Dangers proceeding from Vice and Immorality, the Laws of the Land, and the many Proclamations iſſued out by Royal Authority upon that Occaſion, are an undeniable Evidence of the growing Danger to the Church on that Head, and of her Majeſty's ſpecial Care to ſuppreſs and prevent that Danger. In the Cloſe of thoſe Proclamations Her Majeſty declares Her Royal Reſolution to puniſh all manner of Vice, Immorality and Prophaneneſs in Perſons of all Degrees whatſoever, and particularly in ſuch as are near her Royal Perſon; and theſe Proclamations are ordered to be read by all Miniſters in their reſpective Congregations, at leaſt Four Times in every Year; and they are directed to incite and ſtir up their Congregations to the Practice of Piety and Virtue, and the avoiding all Immorality and Prophaneneſs. My Lords, hard is the Fate of Miniſters, if they muſt reprove Prophaneneſs in Men of all Degrees under Her Majeſty's Diſpleaſure; and yet if they once happen to mention Men of Characters and Stations in their publick Diſcourſes, that two muſt be made one Part of the Impeachment againſt him.

My Lords, It was ſaid indeed by a Learned Manager, that the Pulpit was not a proper Place for Complaints of this Nature; that theſe things ought not to be ſpoken of in Publick unleſs they could be proved; and if they could be proved, thoſe that are known to be guilty ſhould be proſecuted in a due Courſe of Law. But, my Lords, I humbly apprehend it to be the Duty of a Miniſter of the Goſpel *to be inſtant in ſeaſon, and out of ſeaſon*; *to exhort and rebuke with all Authority*, and without Diſtinction. This their Holy Function obliges them to do, and the Dignity of that Function does, and ought to protect them in the Performance of that Duty; but that Miniſters ſhould be obliged to proſecute every Offender in a Court of Juſtice, is not yet known to be any Part of their Office; and he that at any time ſhould take that Part upon him, would hardly avoid that Imputation which many People are ready to lay upon the whole Profeſſion.

In the next Place, your Lordſhips will conſider whether the Dangers mentioned in this Sermon are not ſuch as have in all Ages, and under the beſt Princes, infeſted the Church.

I appeal to the Reverend Bench of Biſhops, whether even in the Apoſtles Time there were not *Men of unſtable Minds* crept in among them; ſome *carried about with every Wind of Doctrine, deceiving and being deceived*; others *teaching for Doctrines the Traditions of Men*: and whether in the immediate ſucceeding Ages the Church was not miſerably rent and divided by factious and ſchiſmatical Impoſtors. Their Lordſhips well know that the pious Care of Chriſtian Emperors was not able to prevent the ſpreading of old Errors, and the continual ſpringing up of new ones; neither has Her Majeſty's peculiar Piety and Zeal prevented many Inſtances of Prophaneneſs and Irreligion under Her happy Adminiſtration; but certainly no Inference ought to be made from an Hiſtorical Account, or bare Mention of ſuch like Perils of the Church, as if that was intended to arraign the Adminiſtration of thoſe Princes in whoſe Times they happen'd.

My Lords, That there are ſuch Dangers attending the Church, even under Her Majeſty's happy Adminiſtration, needs no other Evidence than that Form of Prayer which is by Her Majeſty's Authority directed to be uſed in all Churches; in which we beſeech God, *That no Sedition may diſturb this State, nor Schiſm diſtract this Church*; *and that he would give us all Grace ſeriouſly to lay to Heart the great Danger we are in by our unhappy Diviſions.* My Lords, this Prayer is enjoined to be uſed by publick Authority; and particularly mentions the great Danger of the Church, in being at this Time diſtracted with Schiſm; and I muſt ſubmit it to your Lordſhips Conſideration, how hard it is that a Miniſter may not from his Pulpit mention thoſe Dangers without Offence, which he is ſpecially commanded to pray againſt in his Deſk.

Mr. *Dodd.* We ſhall beg leave to produce ſeveral Books, wherein there are the ſtrongeſt Opinions that perhaps your Lordſhips ever heard of: And we ſhall firſt confine ourſelves unto them which relate to Blaſphemy, Irreligion and Hereſy, which we confeſs are not pleaſant to be heard, or fit to be publiſhed, if it were not abſolutely neceſſary for the Doctor's Defence.

Mr. *Phipps.* My Lords, We begin with ſome Miſcellaneous Tracts, publiſhed by Mr. *Edward Hickeringill.* And we offer them firſt to your Lordſhips Conſideration, becauſe he was a falſe Brother; and we think his Tracts will juſtify the Doctor in what he hath ſaid in relation to the Church being in Danger, from the Blaſphemy, and other enormous Crimes mentioned in his Sermon.

Mr. *Dee.* It's in *Page* 12.

Part 1. *p.* 12. *Clerk reads.*] 'The ſecond Pretender to Infallibility is the Bible; and that I admit too, ſo ſoon as 'tis agreed which Chapter and Verſe is God's Word, and which not, and why.—For as for ſome Verſes and Clauſes in the Holy Bible, the very Penmen thereof did not ſometimes know very well whether the ſame were the Dictates of the Spirit of God, or no.—Sometimes they write—*Thus ſaith the Lord*—and not I, but the Lord commands, ſo and ſo: and then again in a Qualm or Quandary, modeſtly pretend to gueſſing: *I think alſo*, ſays St. *Paul*, *that I have the Spirit of God.*'

Mr. *Thompſon.* My Lords, upon what is offered to be given in Evidence, the Managers apprehend there is ſomething that will require their Conſideration.

[*Accordingly the Managers withdrew, and then the Lords adjourned to their Houſe above*; *and in a ſhort time their Lordſhips being returned, and ſeated as before, and the Managers being returned to the Place appointed for them at their Lordſhips Bar, Proclamation for Silence was made by the Serjeant at Arms.*]

Mr. *Thompſon.* My Lords, The Managers have conſider'd the Nature of the Evidence open'd by the Counſel; and without troubling your Lordſhips to obſerve how material it is for the Priſoner's Defence, ſubmit it to your Lordſhips, whether ſuch impious and blaſphemous Paſſages as the Counſel were aſham'd to repeat, ſhall be republiſh'd in ſo ſolemn a Manner, by reading them in Evidence before your Lordſhips.

Lord Chancellor. Gentlemen, You that are of Counſel for the Doctor may proceed in your Evidence as you ſhall think proper.

Mr. *Dodd.* My Lords, We muſt own there are a Multitude of Sentences never to be repeated, if it were not neceſſary for our Defence; but we think it ſo material for the Doctor's Defence, that we dare not depart from it without your Lordſhips Order.

Mr. *Phipps.* My Lords, The Reaſon that Learned Gentleman gave againſt reading them, is the very Reaſon we offer for reading them; for the Doctor aſcribes the Danger of the Church to thoſe Blaſphemies and impious Doctrines and Tenets, that are ſo frequently publiſhed, and which call for God's Judgments on the Nation.

Mr. *Dee.* My Lords, we deſire he may read in the ſame Book he was reading before.

Ibid. p. 17. *Clerk reads.*] 'For Sabbathiſing. The Sabbath, Oh the Sabbath—called by the cunning Prieſtcraft, not by the Holy Scripture, the Lord's Day, to recommend it the better to the unthinking Mob.—Of all the other Seven Days the Prieſt's beſt Market-Day to put off his Wares, and turn them into Money.

Ibid. p. 21. 'Family Duties are the next plauſible Piece of Prieſtcraft Divinity, I mean Praying with the Family, (not that I condemn it) tho' our Bleſſed Saviour ſeems to condemn it by his Practice and Preaching.

Ibid. p. 23. 'Saying Grace, an univerſally cry'd up Piece of Divinity, Superſtition, or Prieſtcraft; for we never read that Chriſt or his Apoſtles ſaid Grace, either before Meat, or after Meat.

Ibid. p. 50. 'King *Saul* found to his Coſt, that he had better have diſpleaſed all *Iſrael*, than *Samuel* the good High-Prieſt; and had better have rent the Clothes off from his own Back, than have rent *Samuel*'s Caſſock.—It fretted the good old Gentleman; and in a Paſſion he ſaid, *God hath rent from thee the Kingdom alſo, and hath given it to thy Neighbour that is better than thou.*'

Ibid. p. 51. 'Then the Lord anſwered, *Take an Heifer with thee, and ſay I am come to do Sacrifice to the Lord.* The Policy of Heaven, we ſee jumps with our late Prieſtcraft in this, to make Religion the common Covert to hide a Plot.

Ibid. p. 52, 53. 'His Kingdom, which was given to *David*, becauſe he was a Man after God's own Heart, (not in Holineſs, that is not meant: for beſides his Adultery and Murder, his many other Sins, and curſing his Enemies to the Pit of Hell, is unaccountable;) but after God's own Heart is a *Hebraiſm*, and in *Engliſh* ſignifies as much as a Man for my Turn, he will kill and ſlay as the Prieſt directs, by Orders received from Heaven; he will fulfil all my Will ſaith the High-Prieſt.

Ibid. Part 2. *p.* 4. 'I can by no means perceive that this Commiſſion to Teach, Baptize, Excommunicate, or Abſolve, does properly or more appertain to a Grey Fryar, or any Black Coat, more than to a Grey Coat or Layman.

Ibid. p. 14. 'To ſay, the Uſe (being for God's Service) ſanctifies it: So may a Meeting-Houſe, a Tabernacle, or my Dining-Room be conſecrated, when we pray and preach there, or ſay Grace there, *pro hac vice*; and *vice verſa*, it is unconſecrated when Dinner-time comes, or the Punch-Bowl.'

Mr. *Dee.* *The Rights of the Chriſtian Church* is the next Book we ſhall offer to your Lordſhips.

Page 105. *Clerk reads.*] 'At the Cloſe of the Supper, the great Meal with them, the Maſter of the Feaſt diſtributed among his Gueſts ſmall Pieces of Bread; and having firſt drank of the Grace-Cup, delivered it to be handed about: To which Chriſt, who inſtituted no new Rites, ſuperadded the Remembrance of his Sufferings; and directs his Diſciples as often as they did this, that is, Celebrate ſuch Feſtivals, and cloſe them with the *Poſt-Cœnium*, to commemorate him after this manner.

Ibid. p. 108. 'Does not every one, as well as the Miniſter, equally apply the Bread and Wine to the ſame Holy and Spiritual Uſe, in commemorating the Benefits received by our Saviour, and in offering up the ſame Prayers, and deſiring the ſame Bleſſings? And whoever does this with a due Application of Mind, rightly conſecrates the Elements for himſelf, ſince, this is the only Conſecration they are capable of: Any thing further than this may rather be called Conjuration than Conſecration.'

Mr. *Dee.* The next Book we offer to your Lordſhips is *Blount's Oracles of Reaſon.*

Preface, p. 3. *Clerk reads.*] 'Reaſon is able to furniſh us with enough to make us happy, and that is as much as we need care for.

Ibid. p. 165. 'When he made his Calvalcade upon *Aſinego*, they extoll'd him as the Deſcendant of King *David*; but his untimely Apprehenſion and Death, together with his Neglect to improve the Inclination of the People to make him King, did allay the Affections of the *Jews* towards him.

Ibid. p. 49. 'It ſeems a very cruel and very hard thing in this reſpect that God ſhould be ſaid to have tormented, nay, and ruin'd Mankind, for ſo ſmall a Fault; and that too committed thro' the Levity of a Woman's Mind.'

Mr. *Phipps.* The next is Dr. *Burnet's Archæologia Sacra.*

Clerk reads.] '*Id utique videtur graviſſimum, & aſperrimum in hac Narratione, quod Gentem humanam plexiſſe, imo perdidiſſe dicatur Deus ob rem exiguam, & fœminilis Ingenii levitate perpetratam.*'

Mr. *Phipps.* The next is, *An Account of the Growth of Deiſm.*

P. 191, 192, 193. 'But ſince the Goſpel Simplicity has been worn off, the Prieſts of all Churches have agreed, firſt, That it is neceſſary for all Chriſtian People to communicate at the Lord's Table. Secondly, That this Sacrament cannot be righty celebrated without the Aſſiſtance of a Prieſt, who muſt conſecrate the Elements to the Uſe for which they are deſign'd; whereby the Prieſt is made abſolutely neceſſary to the very Being of the Sacrament. The Prieſt alſo making himſelf Judge of every one's Preparation for this Sacrament, has it in his power to admit to a Participation whom he thinks fit; as likewiſe to exclude whom he pleaſes from this neceſſary Means of Salvation: And hereby he is enabled to make his Terms with his People, who muſt be contented to ſave their Souls upon what Conditions he will admit. No wonder, then, that ſo great a Noiſe has been made concerning this Sacred Commemorative Repaſt. That Chriſtian Communion which you read of as practiſed in the Apoſtles Days, was nothing elſe but a Religious Converſation with Chriſtians one amongſt another. 'Twas for Society-ſake that they went from Houſe to Houſe, that they eat and drank together frequently.—Now it's plain, that this ſort of Religious Converſation may be kept up among Chriſtians without either Prieſt or Altar, or any ſet Form of Prayer, or Praiſe. It was long after the Apoſtles were dead and buried, before the Temples were built, or Altars erected, or ſet Orations were made to the People in Churches. And what if you ſhould further conſider, if there be any Part of this Primitive Church Communion that might not have been performed by a Woman as well as a Man?——When the Primitive Chriſtians met together to break Bread, from Houſe to Houſe, had any of

‘ theſe Women craved a Bleſſing on that Bread, we have no Reaſon to doubt but that God would have heard her Prayer.’

Mr. *Phipps.* The next is, *A Letter concerning Enthuſiaſm.*

Page 59. *Clerk Reads.*] ‘ Is the doing Good for Glory's Sake ſo Divine a Thing? Or is it not diviner to do Good even where it may be thought inglorious, even to the ungrateful, and to thoſe who are inſenſible of the Good they receive? How comes it then, that what is ſo divine in us ſhould loſe its Character in the Divine Being? And that, according as the Deity is repreſented to us, he ſhould more reſemble the weak, womaniſh, and impotent Part of our Nature, than the generous, manly and divine?

Ibid. p. 60. ‘ One would think it were eaſy to underſtand, that Provocation and Offence, Anger, Revenge, Jealouſy in Point of Honour, or Power, Love of Fame, Glory, and the like, belong only to limited Beings, and are neceſſarily excluded a Being which is perfect and univerſal.

Ibid. p. 61. ‘ It is Malice only, and not Goodneſs that can make us afraid.

Ibid. p. 62. ‘ So that we have only to conſider, whether there be ſuch a Thing as a Mind that has Relation to the whole, or not: For if there be no Mind, we may comfort ourſelves, however, that Nature has no Malice.

Ibid. p. 63. ‘ For nobody trembles to think that there ſhould be no God, but that there ſhould be one.

Ibid. p. 69. ‘ I am not a Divine good enough to reſolve what Spirit that was which proved ſo catching among the ancient Prophets, that even the prophane *Saul* was taken by it.’

Mr. *Phipps.* The next is, *A brief, but clear Confutation of the Doctrine of the Trinity.*

Page 9. *Clerk reads.*] ‘ The Divinity attributed to the Son and Holy Ghoſt, is unſcriptural and idolatrous.

Page 10. ‘ This one fundamental falſe Principle, as well with *Jews* and *Turks*, as Heathens, has done more Miſchief to Chriſtianity, than all our other Errors beſides.

Ibid. p. 11. ‘ For my Part, I declare I ſhall never more admire at the Abſurdity of either Papiſts, *Turks*, or Heathens; be they as groſs as they will, I am ſure they will never be able to exceed this Doctrine.

Ibid. p. 14. ‘ To be ſhort, Trinitarianiſm is Polytheiſm and Idolatry, if there be any ſuch Thing in Nature.

‘ Revelat. 17. 5. “ And upon her Forehead was a Name written, Myſtery, Babylon the Great, the Mother of Harlots, and the Abominations of the Earth.” And to what, I pray, in Popery can that Word *Myſtery* there ſo properly relate, as to the Trinity?’

Mr. *Phipps.* The next is, *Brief Notes on the Creed of* Athanaſius.

Page 7. *Clerk reads.*] ‘ A Belief in theſe Points, that have been always controverted in the Churches of God, is in no Degree neceſſary, much leſs before all Things.

‘ Now I appeal to all Men that have any Freedom of Judgment remaining, whether this Creed is fit to be retained in any Chriſtian, much leſs Proteſtant and reformed Church? Since it ſubverts the Foundations not only of Chriſtianity, but of all Religion, that is to ſay, Reaſon and Revelation.’

Mr. *Dee.* There is a Book marked with the Letter *L*, called, *An Account of the Growth of Deiſm.*

Ibid. p. 17. *Clerk reads.*] ‘ Many Doctrines are made neceſſary to Salvation which it's impoſſible to believe, becauſe they are in their Nature Abſurdities. I replied, that theſe things were myſteries, and ſo above our Underſtanding. But he aſked me, To what End could an intelligible Doctrine be revealed? Not to inſtruct, but to puzzle and amuſe.

Ibid. p. 22. ‘ One of my old Acquaintance always thought the moral Part of the Bible very good; but then he alſo thought, that by the Strength of his own Reaſon he could have written as good a Moral himſelf.

Ibid. p. 24. ‘ If you look over the State of Religion, as it ſtandeth in *Chriſtendom*, there is no Church whatſoever which will accept you as a Member of its Communion, but upon ſome particular Terms of Belief or Practice, which Chriſt never appointed, and it may be ſuch as an honeſt and wiſe Chriſtian cannot conſent to.—It looks like a Trick in all Churches to take away the Uſe of Men's Reaſon, that they may render us Vaſſals and Slaves to all their Dictates and Commands. But what greater Slavery than to force on Men a Belief of ſuch Things as neceſſary to Salvation, of which it's not poſſible to form an Idea? Though I am ſatisfied there is no ſuch Thing as a Change of Bread into the Fleſh of Chriſt, yet I can form an Idea that ſuch a Thing may be, that the ſame Power that changed Earth into a Man, may change Bread into Fleſh; but I can frame to myſelf no Idea of what your Church teacheth in the Sacrament, “ That the Body and Blood of Chriſt are verily and indeed taken and received of the Faithful:” And when I aſk, how can this be underſtood by a Proteſtant, who believeth that there is no other Body but that of Bread? I am told, that the Church means it in a ſpiritual Senſe. Now, I have tried, and find it impoſſible for me to form to myſelf an Idea of a Body verily and indeed in a ſpiritual Senſe.

Ibid. p. 25. ‘ Your Church will require me to believe other Abſurdities as bad as theſe; as that Kings and Biſhops have Divine Right to that Power which they exerciſe over us; whereas with my own Eyes, I ſaw our great and gracious King accept the Crown of *England* as the Gift of the People. And I ſee as plainly that Biſhops are an Order of Men of their own (not of Chriſt's making.

Ibid. p. 26. ‘ I can find no Footſteps of any Juriſdiction given to the Twelve over the Seventy, or indeed over any body elſe.’

Mr. *Dee.* The next is, *The Hiſtory of Religion.*

Page p. 313. *Clerk reads.*] ‘ Strange and puzzling Methods of religious Ceremonies and Myſteries, and of various Rites of ſacrificing, good for nothing but to confound and diſtract the Minds of Men.

Ibid. p. 313. ‘ In very deed, Creeds were the ſpiritual Revenges of diſſenting Parties upon one another.’

Mr. *Dodd.* The next is, *Aſgyl*'s Argument.

Ibid. 36. *Clerk reads.*] ‘ God told *Adam*, that if he did eat he ſhould die; the Devil told Eve, that they might eat and not die; and theſe were the firſt Words ſpoken to Man by God, or the Devil; upon the Truth or Falſehood whereof, the very Beings of them both were to depend for ever: For which ever of them could maintain the Truth of his Word againſt the other, he muſt have been God, and the other the Devil. And therefore God, having turned the Lye upon the Devil, he is from thence called a Lyar from the Beginning, and the Father of it, and will never be believed again for ever. God could not have diſpenſed with his Word, without complimenting the Devil with his Godhead.

Ibid. p. 82. ‘ What is it that you do, or would believe of Chriſt, or in Chriſt? *Anſw.* Why, we believe him for our Saviour. Save you! from what? Why, from our Sins. Why, what Hurt will Sin do you? Why, it will kill us. How do you know? Why, the Law of God ſaith ſo: “ In the Day thou eateſt thereof, thou ſhalt die.” Why, but then will not this Saviour ſave you from this Law, and from this Death? No, he'll ſave us from Sin. Why, then it ſeems you have got a Pardon for Horſe-ſtealing, with a *Non-Obſtante* to be hanged. Do but ſee now what a Jeſt you have made of your Faith. And yet I defy the Order of Prieſthood to form a better Creed than this, without admitting the Truth of my Argument, or to make Senſe of their own Faith without adding mine to it. It's much eaſier to make a Creed, than to believe it after it's made: Nor can any Man really believe any Part of the Goſpel that doth not believe it at all. For it is a Doctrine ſo dependant upon itſelf, that unleſs we know the whole of it from the Beginning to the End, we can't know the Uſe and Reaſon of any Part of it. Wherefore (notwithſtanding this Inundation of Death in the World, and the Infection of Fear contracted upon Man from hence) I am not affrighted from re-aſſuming my Aſſertion at the Beginning, That this long Poſſeſſion of Death over Man, is a Poſſeſſion againſt Right.

Ibid. p. 97. ‘ Behold, ye Deſpiſers, and wonder! Wonder at what? Wonder to ſee Paradiſe Loſt, with the Tree of Life in the Midſt of it! Wonder and curſe at *Adam* for an original Fact, who in the Length of one Day, never ſo much as thought to put forth his Hand for him, and us, and pull, and eat, and live for ever. Wonder at, and damn yourſelves for Fools of the laſt Impreſſion, that in the Space of 1700 Years, never ſo much as thought to put forth our Hands every one for himſelf, and ſeal and execute that Covenant of Eternal Life, and live for ever.

Ibid. p. 98. ‘ To be even with the World at once, he that wonders at my Faith, I wonder at his Unbelief. And ſtare at me as long as you will, I am ſure that neither my Phyſiognomy, Sins, nor Misfortunes, can make me look ſo unlikely to be tranſlated, as my Redeemer was to be hanged.’

Mr. *Dee.* The next is a Book called, *Chriſtianity not myſterious.*

Ibid. p. 80. *Clerk reads.*] ‘ God himſelf, nor any of his Attributes are myſteries to us for Want of an adequate Idea: No, not Eternity.

Ibid. p. 107. ‘ As far as any Church allows of Myſteries, ſo far it is Antichriſtian, and may with a great deal of Juſtice, though little Honour, claim Kindred with the Scarlet Whore.

Ibid. p. 134. ‘ For to ſpeak freely, Contradiction and Myſtery are but two emphatick Ways of ſaying nothing.

‘ Contradiction expreſſes nothing by a Couple of Ideas that deſtroy one another; and Myſtery expreſſes nothing, by Words that have no Ideas at all.

Ibid. p. 156. ‘ It will not be amiſs to lay down a ſhort Parallel of the antient Heathen, and new-coin'd Chriſtian Myſteries. And I ſhall endeavour ſo to do it, as to make it evident they were one in Nature, however different in their Subjects.’

Mr. *Dee.* The next is Sermons and Eſſays of Mr. *Whiſton*'s.

Ibid. p. 215. *Clerk reads.*] ‘ When the Scriptures ſpeak of the one God, or of one God, they plainly and diſtinctly mean, one original Fountain and Author of all Beings whatſoever; or mean thereby one Supreme God, the Father only.

Ibid. p. 215. ‘ The Moderns called theſe three Divine Perſons but one God, and ſo introduced at leaſt a new, and unſcriptural, and inaccurate, if not a falſe Way of ſpeaking in the Church.’

Mr. *Dee.* He makes it an *Errata*, that he has named the Trinity, and put it out of the Book.

Ibid. p. 415. *Clerk reads.*] ‘ *Errata*, Page 123. Line 23, 24. To whom with the Father, and the Holy Ghoſt, read, in the Holy Ghoſt; and *dele* Three Perſons and one God.’

Mr. *Dee.* The next is, *The Unreaſonableneſs of making and impoſing Creeds.*

Ibid. 14, 15. *Clerk reads.*] ‘ But what Creeds and Articles of Faith can be produced that are not doubtful and diſputable? That which goes under the Name of the Apoſtles not excepted; it being neither of undoubted Authority, nor indiſputable, or unambiguous Senſe in ſome Articles thereof; tho' it be generally received by Chriſtians, and as venerable for its Antiquity, and profeſſed, or rather ſaid, by all, even thoſe who underſtand not what they ſay when they recite it.’

Mr. *Dee.* The next, *An Account of the Growth of Deiſm.*

Ibid. p. 25. *Clerk reads.*] ‘ If thoſe Writings which they call Holy Scriptures are of their Side, as they all ſay they are, I make no doubt but they are of their own inventing. And if Jeſus Chriſt their Patron laid their Foundation of thoſe Powers, which both Papiſt and Proteſtant Clergy claim to themſelves, from under him, I

‘ think, the old *Romans* did him Right in puniſhing him with the Death of a Slave.’

Mr. *Phipps.* We ſhall next ſhew ſome Papers that reflect on the Church and Clergy; and ſhall firſt offer to your Lordſhips Conſideration the *Rights of the Chriſtian Church.*

Page 47. ‘ *Clerk reads.*] Not only an independent Power of Excommunication, but of Ordination in the Clergy, is inconſiſtent with the Magiſtrates Right to protect the Commonwealth.

Ibid. p. 104. ‘ The Scriptures now here make the receiving the Lord's Supper from a Prieſt neceſſary; nay, not one inſtance of the Laity's receiving it ſo, can be produced from thence.

Ibid. p. 237. ‘ It can belong only to the People to appoint their own Eccleſiaſtical Officers.——It's an inherent fundamental Right of all Communities.

Ibid. p. 240. ‘ None pretend to impoſe a Conductor or Director, on another in Temporal Affairs, but every one is left to manage them, as he thinks beſt, for his own Intereſt, as being preſumed to underſtand it better than another; and therefore is to chuſe his own Lawyer, Phyſician, Brewer, Baker, *&c.* and by the ſame Reaſon he ought to chuſe his own Spiritual Conductor.

Ibid. p. 137. ‘ It's abſurd to imagine every Chriſtian is not capable of ſuch Circumſtances, as praying aloud, diſtributing the Bread and Wine, or (according to the preſent Mode) of ſprinkling an Infant, and repeating a ſet Form of Words.

Ibid. p. 402. ‘ Have they not inſerted this Power of theirs in an Article of the Creed, commonly called the Apoſtles, *viz.* ‘ *I believe the Catholick Church.*

Mr. *Dee.* We ſhall next offer the *Review.*

Vol. 2. *N.* 112. *p.* 447, 448. ‘ *Clerk reads.*] Whether our Fathers had a Neceſſity to make thoſe excluſive Laws, and impoſe as neceſſary their indifferent Things, acknowledg'd to be ſo, as Terms of Communion: Nor is this all, but ſuppoſing they had; which nevertheleſs I do not grant; then this Addreſs is further preſs'd to your Lordſhips, to examine whether that Neceſſity does yet continue, or no? Either of which will be the ſame Thing. For if there either was not a Neceſſity at the Time of their Enacting, or that Neceſſity does not yet remain, let which will happen to fall out, the Act of Uniformity, impoſing ſuch and ſuch indifferent Things, as Terms of Communion, will appear Scandalous to the Church, Injurious to the publick Peace, and a Grievance to the whole Nation.’

Ibid. Vol. 3. Numb. 27. p. 106.

Leſt it become a new, proverbial Jeſt,
To be as wicked as an Engliſh *Prieſt.*

Ibid. Numb. 27. *p.* 107. ‘ I cannot but tell him, ſhould I publiſh the Matters of Fact which I am Maſter of, with reſpect to the High-flying Gentlemen of the Clergy; ſhould I give a faithful Account of the moſt infamous and ſcandalous Behaviour, the Notorious Lives, the Beaſtly Exceſſes, and the furious Treatment of their Brethren the Diſſenters, which on a ſmall Search I have been acquainted with; the Inferior Clergy of his Party would appear the moſt wretched, provoking, abominable Crew, that ever God ſuffered to live unpuniſh'd, ſince he deſtroyed *Sodom* and *Gomorrah* by Fire from Heaven.

Ibid. Vol. 2. *Numb.* 105. *p.* 418. ‘ If Words could be made Treaſon, one third at leaſt of the Inferior Clergy in *England* would be hang'd.

Ibid. Vol. 2. *Numb.* 36. *p.* 142. ‘ I again appeal to you, Gentlemen, Whether, generally ſpeaking, all over this unhappy Nation, the Clergy are not Three Parts in Five, in a cloſe Conjunction with the Enemies of the Church's Peace, and the profeſs'd Enemies of the Government?

Ibid. Vol. 6. *Numb.* 118. *p.* 471. ‘ Others, not ſo directly, but altogether as fatally, and tending to the ſame End, with ſubtle Deſigns to divide and amuſe the People, by preaching, Writing, and Printing, endeavour to revive the ſaid exploded Doctrines of Non-Reſiſtance, and abſolute uncondition'd Obedience, as things the People of *England* ought to think themſelves oblig'd by; which tho' in themſelves of no force, yet manifeſtly tend to unravel the Conſtitution, to invalidate the Queen's Title to the Crown, and deſtroy the legal Authority of Parliaments in the Nation. An eminent Proof of which is now depending before the Houſe.

Ibid. Numb. 93. *p.* 371. ‘ Drunkenneſs, Oaths, and abominable Lewdneſs; Ignorance, Negligence, and ſcandalous Inſufficiency; abhorr'd Error, Deiſm and Socinianiſm, have over-run the Clergy.’

Obſervator, *Vol.* 4. *Numb.* 89. ‘ You know the Church he means is High-Church, which is a Fiction, a Church of the Brain, ſupported by a little, inſignificant, trifling Number of Brainleſs People; and the People of *England* are no more concern'd about that Church, than about the Inſtitutions of Government laid down in *Moor*'s *Utopia*, *Harrington*'s *Oceana*, or *Bacon*'s *New Atlantis*; and all the Canons, Rites, and Ceremonies of that Church are no more to be conſider'd by you, or me, than ſo many Ballads, or *Duck-Lane* Penny Hiſtories.

Ibid. Numb. 67. ‘ The Univerſities have large Endowments, which I fancy may be better employ'd for the publick Good than at preſent. Let you and I then Vote them uſeleſs.

‘ *Country-M.* With all my heart, Maſter.’

Mr. *Dodd.* My Lords, The next Thing we ſhould go upon, is to ſhew ſeveral Paſſages which reflect upon the Queen, the State, and Miniſtry; there are Five or Six Inſtances which we ſhall read, and then we ſhall have done.

Review, *Vol.* 2. *Numb.* 80. *p.* 519. *Clerk reads.*] ‘ In ſhort, if *Jure Divino* comes upon the Stage, the Queen has no more Title to the Crown than my Lord-Mayor's Horſe: All the People are bound by the Laws of God to depoſe Her as an Uſurper, and reſtore their Rightful and Lawful King *James* the Third.

Review, *Vol.* 3. *Numb.* 122. *p.* 486. ‘ The Line of all the World famed for Blood, and that had ravag'd the beſt Families of the Kingdom.

Ibid. Vol. 2. *Numb.* 43. *p.* 170. ‘ Ever ſince the coming of King *James* the Firſt to the Crown, this Nation has been perplexed with Diviſions, Uneaſineſſes, Oppreſſions and Murmurings, both in Sovereign and Subject.

Ibid. Numb. 44. *p.* 174. ‘ Either the Diſſenters had Reaſon for former Diſcontents, and Reaſon to complain of Oppreſſion, Perſecution, and Infringement of Privileges, or they had not. If they had; the Church was cruel, and the State unjuſt before, in laying thoſe Loads upon them. If they had not, both Church and State were infatuated and delirious, in granting them the Toleration, and Liberties ſince conceded.

Ibid. Numb. 46. *p.* 181. ‘ If the next Parliament ſhould purſue the Steps of the laſt, the Nation, in my Opinion, will be ſo much nearer that Criſis of Time, when *Engliſh* Liberty being brought to the laſt Extremity, muſt open the Magazine of Original Power.

Ibid. Numb. 27. *p.* 106. ‘ What can be ſaid for Members ſitting in the Houſe to do nothing; making long Speeches without Meaning, and Voting Bills without Deſign to have 'em paſs?

Ibid. Numb. 123. *p.* 489. ‘ The Balance between 41 and 88 will appear to run againſt him; and the Difference between the dry Martyrdom of King *James*, by his Paſſive-Obedience Church-Subjects, and the wet Martyrdom of King *Charles* the Firſt, by People that never made any ſuch Pretence, will appear ſo ſmall, that it's not worth Dr. *D*——'s while to meddle with it.

Obſervator, *Vol.* 2. *Numb.* 89. ‘ *Country-M.* Pray, Sir, are there a great many of thoſe People alive, that cut off the Head of King *Charles* the Firſt?

‘ *Obſ.* No, no; they are dead and gone a long time ago. However, the Story ſerves ſome Men as Raw-head and Bloody-bones to affrighten ſome, and Calumniate others. Now, for my Part, I know nothing of the Buſineſs of King *Charles* I. I was born ſince the Reſtoration; and I have ſo high a Value for the Prudence and Juſtice of our Forefathers as not to condemn any of their Actions, for the common Good. We are unkind to ourſelves in cenſuring the Juſtice of our Forefathers Actions, and thereby do give a Handle to our Succeſſors to cenſure ours. Did our Forefathers detruncate the Father? Did not we depoſe the Son, and put one more Righteous in his ſtead? Did we not diveſt him of all his Regalities, and make him a Fugitive on the Earth? And may not future Ages examine the Difference between the Decollation and the Abdication?

Ibid. Vol. 4. *Numb.* 97. ‘ I recite this, to let you know the Encouragement the Papiſts have had in this Reign; when by their Intereſt they can get ſuch as write againſt them proſecuted, *&c.*

Ibid. ‘ Should I tell you, honeſt Countryman, the Accounts I have had of the Numbers of Popiſh Prieſts and Emiſſaries come into *England* the firſt Two Years of Her Majeſty's Reign, it would make your Hair ſtand an end.

Ibid. Vol. 3. *Numb.* 15. ‘ They would have but a ſorry Foot Soldier of the *Obſervator.*———And yet I have been where thoſe People that would ſend me durſt not come, and where perhaps I have commanded better Men than themſelves. It has been my Fortune to be in a fighting Army, under a General that we now dearly want, who did not uſe to return from the War, *ſine Clade Victor*, and then ride in Triumph over his Queen on a Medal.

Ibid. Vol 3. *Numb.* 99. ‘ I am ſorry that the Folly of ſome, and the Bribery of others, have brought us into ſuch amazing and diſmal Circumſtances, that either our Liberties muſt be loſt, or be maintained by a Body that is neither of us, nor from us.

Ibid. ‘ I ſhall produce myſelf as an Example of the Arbitrary Power of this Parliament; and the Man that does not acknowledge their Proceeding againſt me to be Arbitrary, muſt aſſert, that an Arbitrary Power was never executed.

Ibid. ‘ Now if this ben't Arbitrary, I don't know what to call ſo. The *Spaniſh* Inquiſitors have ſo much Regard to Juſtice, or the Shew of it at leaſt, that they'll ſuffer a Man to ſpeak in his own Behalf, *&c.*------Now, Countryman, do but conſider my Caſe; I was ſentenc'd to the Loſs of my Liberty without being heard.

Ibid. ‘ Which plainly ſhews, that what the Commons condemn'd me for, would not bear an Action at Law.

Ibid. ‘ My Intent is to inform ſuch as you, honeſt *Roger*, how much you have been abus'd by your repreſentatives.

Ibid. ‘ This Parliament is the very Reverſe of former Parliaments; as they were merciful, this was cruel; as they made good and wholeſome Laws to preſerve the Liberties of their Electors, theſe took away the Freedom of their Electors without any Law; as they uſed all Means to keep their Electors out of Jail, theſe uſed all Means to put 'em into Jail.

Ibid. Vol. 2. *Numb.* 99. ‘ *Obſ.* Honeſt Countryman, what wouldſt thou have me to do? If I muſt run thro' all the Liſt of Knaves, I muſt bring in all the Courts, all the Employments, all the Claſſes of Publick Affairs in the Nation.

Review, *Vol.* 2. *Numb.* 2. *p.* 5. ‘ I really find the State of *England* in general to be thus: Its trade under a ſenſible, miſerable Decay in all its Branches:-----Its Navy great and flouriſhing; but all her well-laid Deſigns either defeated in their Preparations, by the miſerable Methods, and ill Government, with relation to Seamen, or diſappointed by the ill Conduct or Cowardice of her Commanders. In Civil Concerns, in the utmoſt Confuſion of Parties-----blending together the moſt abſurd Contradictions, ſuch as propagating Religion by a ſcandalous Miniſtry,-------reforming Manners by debauched Magiſtrates, and chuſing Men to make Laws, by Bribery and Corruption.’

Mr. *Phipps.* My Lords, we ſhall offer but one Paſſage more, and that is out of *The Divine Rights of the* Britiſh *Nation vindicated.*

Clerk reads.] 'And if he will but ſtay till the end of
Page 105. 'this preſent Seſſion of Parliament, he'll find ſeveral
'new Powers annex'd to the Regal Office, and perhaps
'ſome made void and repealed for the Publick Good.'

Mr. *Dodd.* My Lords, we have now done with our Proofs; we have gone over the Heads of Blaſphemy, Irreligon and Hereſy; the Church reflected on; the Queen, Miniſtry, and all Orders of Men reflected upon and abuſed. We have cited theſe Books and Paſſages, not to reflect on the Government, but as thoſe which put the Doctor in ſome Heat and Concern both for the Church and State; and we hope your Lordſhips will make the beſt Conſtruction of the Doctor's Intentions in this Matter.

Mr. *Phipps.* If Blaſphemy and Irreligion can endanger the Church; if Treaſon and Rebellion can endanger the Nation, I think, with great Submiſſion, the Doctor has made good his Anſwer; and therefore, I hope, he is not guilty of any Part of this Article.

Mr. *Dee.* My Lords, I beg leave that we may apply ſome Part of the Proofs we have read to-day to the Fourth Article.

Mr. *Phipps.* My Lords, The other Article, I fear, will be longer than will be fit to trouble your Lordſhips with now; we ſhall be ready to proceed when it is your Lordſhips Pleaſure.

[*Then the Lords Adjourned to their Houſe Above.*]

Tueſday, March 7. The Eighth Day.

THE Lords coming down into *Weſtminſter-Hall,* and being ſeated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell,* Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel, as before:

Lord Chancellor. Gentlemen, you that are Counſel for the Priſoner may proceed in his Defence.

Mr. *Dodd.* IF your Lordſhips pleaſe, we will proceed to the Fourth Article. That Article contains ſeveral Heads: 1. 'That 'the Doctor ſuggeſts Her Majeſty's Adminiſtration tends to the Deſtruc- 'tion of the Conſtitution. 2. That there are Men of Characters and Sta- 'tions in Church and State, who are Falſe Brethren, who undermine and 'betray, and put it in the Power of others to overturn and deſtroy the 'Conſtitution. 3. That the Doctor charges her Majeſty, and thoſe 'in Authority under Her, with a general Male-Adminiſtration. '4. Theat he perſuades the Subjects to keep up a Diſtinction of Faction 'and Parties, inſtils Jealouſies, foments Diviſions, and ſtirs up the Sub- 'jects to Arms, and perverts ſeveral Texts of Scripture.'

My Lords, As to the Firſt, the Doctor is ſo far from ſuggeſting that her Majeſty's Adminiſtration tends to the Deſtruction of the Conſtitution, that he has not, as we apprehend, ſaid any thing that can bear ſuch a Conſtruction. The Doctor denies, that he has made any Mention of Her Majeſty's Adminiſtration in Church or State in his Sermon: Therefore, How can he argue that it tends to the Deſtruction of the Conſtitution? It has not been proved. But he takes all Opportunities to ſpeak of the Bleſſings we enjoy under Her Majeſty's Government; prays for Her Preſervation; and that ſhe may long Reign for the Comfort and Support of the Church; profeſſes what he ſpoke proceeded from a tender Concern for Her Majeſty and Her Government: So that we humbly apprehend there was little Occaſion for ſuch a Charge againſt him.

The Second Part of the Article is, That 'there are Falſe Brethren, that 'are Men of Character and Station in Church and State, who undermine 'and betray, and put it in the Power of others to overturn and deſtroy 'the Conſtitution.' Now the Falſe Brethren by him deſcribed, are Perſons who propagate falſe Doctrines, who give up the Diſcipline and Worſhip of the Church, who are for Neutrality in Religion, or who wiſh well to the Church, but do not ſhew their Zeal in obeying her Precepts, and defending her Rights. Theſe are the Falſe Brethren intended; and this is very different from the Allegation in the Impeachment. As to that Part of the Charge, of *putting it in the Power of others to deſtroy the Conſtitution,* he does not mention Men of Characters and Stations in this Place; but, as I take it, in *Pag.* 15. where this Paſſage is ſuppoſed to be contained; and yet it is Twelve Pages after, before theſe Words are mentioned. They are not joined together, as is ſuppoſed by the Article; and ſpeak nothing of that Matter. It is a Conjunction of Paſſages widely different from, and not relating to, one another. The Betrayers of the Conſtitution, to whom the Doctor does refer, are ſuch as by Writing endeavour to ſubvert the Foundation of our Church and State; ſuch as are of a Latitudinarian Principle, *who neither believe her Faith, own her Miſſion, ſubmit to her Diſcipline, or comply with her Liturgy.* My Lords, Theſe are the Heads, and Perſons, that the Doctor refers to; and not ſuch Perſons or Things, as are pretended by the Article.

As to a General Male-Adminiſtration under Her Majeſty, he abhors the Charge; has no where ſaid it: Always, as a good Subject, mentioned Her Majeſty with the profoundeſt Duty and Reſpect; nor does he tax any in Authority with a Male-Adminiſtration. And ſurely it is not ſufficient to charge the Doctor, as if he had fallen foul on the Miniſtry, when there is no Proof of it, and when there is no Paſſage in his Sermon, as we apprehend, that tends to it. The Doctor has on all Occaſions, as a good Subject, juſtified her Majeſty's Title; and particularly at the Beginning of this War, he preach'd a Sermon at *Oxford,* before the Univerſity, therein juſtifying Her Majeſty's Title to the Crown, and Her entering into the War againſt *France* and *Spain*; wherein he has very clearly demonſtrated theſe Two Points. And as to the Charge of endeavouring to keep up Diſtinction of Parties, he is ſo far from it, that he complains of thoſe that have divided us with a Diſtinction of High and Low Churchmen; *They have villainouſly divided us with knaviſh Diſtinctions:* And what could he mean by all this, but a Service to the Government; and that they which raiſe ſuch falſe Inſinuations, ſuch Fears and Jealouſies, are the People he intended, and complains of? And as he has done that, ſo he takes all Opportunities to pray, *that we may be one Fold under one Shepherd,* and that all invidious Diſtinctions might be laid aſide.

My Lords, The next Thing is, The raiſing theſe groundleſs Fears and Jealouſies, that are ſuggeſted. As to that, the Paſſage we read before is quite oppoſite: The Doctor rebukes them, that do it as ill Chriſtians, and ill Subjects; and early ſets forth the Miſchief of them. He is ſo far from encouraging it, that he has upon ſeveral Occaſions ſeverely cenſured it. And as to ſtirring up Her Majeſty's Subjects to Arms and Violence, he abhors it, and throughout his Sermon aſſerts the Doctrine of Non- Reſiſtance; which is quite contrary to this Part of the Charge, altho' he conceives it to be the Ground of the Impeachment. Sure there is not any one Paſſage, that tends to excite the Subjects to Arms, in his Sermons.

My Lords, There was Notice taken of a Paſſage (that has little in it) exciting Chriſtians to *put on the whole Armour of God:* But ſure that is diſtinguiſhed from the Arms of Fleſh and Blood: It cannot be ſo miſinterpreted, as to be underſtood of any Earthly Power whatſoever; for as it is in the Scripture, ſo it is in the Doctor's Sermon, *the whole Armour of God, Patience, Submiſſion,* &c. This is the Armour he excites Chriſtians to put on; nothing of fleſhly Arms.

As to the Charge of perverting ſeveral Texts of Scripture, to make ill Impreſſions on the People; he denies it, and had no ill Impreſſion to make on any Perſon whatſoever: His Work was to do good, and make good and religious Impreſſions on his Hearers. But he thinks it hard, when he cites Texts of Scripture againſt Vice and Immorality, by a Conſtruction in Prejudice of the Preacher, thoſe Texts ſhould be ſaid to be applied to particular Perſons. The Story of the Prophet, in the Second Book of *Kings, chap.* vi. as printed in the Doctor's Sermon, is miſtaken; but the Two Reflections made upon it, are very unnatural and not credible. The firſt Inference was, That he had it by Hearſay, and that he had not read it. Sure your Lordſhips cannot think, but that he, that is a Doctor of Divinity, has read every Chapter in the Bible: He, that has been a Student in the Univerſity of Twenty Years ſtanding, and more, and conſtantly keeping to the Church, certainly none can think but he has read the Bible. But then it is turn'd the other way upon him; That taking it to be ſo, then he repreſents himſelf to be the Prophet that could ſee the Danger, and makes the Lords and Commons the People that were blind.

My Lords, This, I ſuppoſe, was intended to be wittily ſaid; but if it be ſeriouſly (and without Raillery) conſidered, there is no Wit or Senſe in it. He mentions not the Lords and Commons at all; But it is true, he, as a Preacher, warns the People to have their Eyes open, to ſee the Dangers of Sin and Vice; ſo that we apprehend, there is no Ground from that Paſſage, to charge the Doctor with corrupting the Scripture.

My Lords, The next Text that is quoted againſt the Doctor upon this Head, is, *Blow the Trumpet in Sion; ſound an Alarm.* Now it is urged by the Gentlemen Managers, That this can be for nothing but for War; and this (it is pretended) was only to be done in Time of War, when the Prieſts with the Silver Trumpets were to ſound in Battle. But, my Lords, this cannot have that Conſtruction; for whoever looks into the Scripture, particularly into the Prophet *Joel,* and other Places, (where that Expreſſion is uſed) will find it to proclaim a Faſt: They were to blow the Trumpet to ſignify the Generality, and that all ſhould take notice of it. The Alluſion is carried by an Elegancy to the Trumpet, to ſhew the Generality of it, and that all the People ſhould humble themſelves before the Lord. Now, to make this Sedition to infer it to be to excite the People to War and Rebellion, is not right Reaſoning, nor is there the leaſt Colour for it.

Another Quotation he makes, is much preſſed upon the Doctor, where ſpeaking of the Church, he cites that Paſſage out of the *Lamentations: Her Adverſaries are Chief, and her Enemies* at preſent *proſper.* This is preſs'd upon us, as if the Doctor had an Eye in it on the Miniſtry. But this, we think, is ſtraining the Words beyond their Senſe or Meaning: For, firſt, He does not ſay her Adverſaries are the chiefeſt, but, in the loweſt Degree of Compariſon, her Adverſaries are chief; that is, that amongſt her Adverſaries there are ſome conſiderable Perſons, ſome Men of Eſtates and Figure. And this, I think, appeared Yeſterday in Pamphlets that were read, ſome whereof are ſuppoſed to be wrote by no mean Perſons; the Doctor cites the Words of Scripture, and we think it can have no ill Conſtruction. As to the ſecond Part of the Expreſſion, *Her Enemies at preſent proſper,* they are the Words of the Prophet; and how true in the preſent Caſe, we muſt ſubmit to your Lordſhips, upon what has been already offered, whether any ill Conſtruction can, or ought to be made of them? Neither the firſt nor ſecond Part of theſe Words are determined to any particular Perſons; we cite the Words themſelves; they are not determined to any Perſon whatſoever; and ſo we hope no Offence can be taken at them, nor any ſuch Inference drawn from them, as hath been endeavoured to be repreſented to your Lordſhips. The Doctor declares in his Sermon, as we formerly mentioned, and read to your Lordſhips, that he hoped what he had ſpoken would be without any Offence, as it proceeded from an honeſt and good Intention, and a tender Concern for Her Majeſty's Perſon and Government, and an hearty Zeal for the Honour and Safety of our Excellent Church and Conſtitution: And ſo we hope your Lordſhips will conſtrue and intend it. And ſo we ſubmit this Article, and the Doctor's Defence, with all Humility, to your Lordſhips. We ſhall read no more than two or three Proclamations; The firſt is againſt Vice and Immorality, and to ſtir up Magiſtrates to take Care to execute the Laws. A ſecond takes Notice that Her Majeſty's Commands had not been obeyed nor the Laws executed to ſuppreſs Vice, and commands the Magiſtrates to be careful to do their Duty herein: And, thirdly, a Direction that this Proclamation ſhall be read to the People out of the Deſk. And ſure the reading them there, and preaching them, or the Subject Matter of them in the Pulpit, are conſiſtent together.

Mr. *Phipps.* MY Lords, We are now humbly to offer to your Lordſhips Conſideration, our Anſwer to the fourth and laſt Article of the Impeachment, to which we think there is no Neceſſity of giving any Anſwer, becauſe we humbly apprehend there is not any Offence charg'd upon the Doctor in that Article; for the Article ſaith, That *the Doctor doth falſely and maliciouſly ſuggeſt,* &c. Now to ſuggeſt can amount to no more than to inſinuate, and is far ſhort of an Averment or Aſſertion; and whether a bare Suggeſtion or Inſinuation can be a ſufficient Foundation to ground an Impeachment, is humbly ſubmitted to your Lordſhips. But ſince 'tis made an Article againſt the Doctor, we humbly hope we ſhall give as full an Anſwer to the Suggeſtions and Inſinuations contain'd in that Article, as we have to the Offences charged in either of the other Articles.

The firſt Part of the Article ſaith, “ That the Doctor doth falſly and “ maliciouſly ſuggeſt that Her Majeſty's Adminiſtration, both in Eccle- “ ſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution.” In anſwer to which 'tis humbly offered, that the Doctor doth not any where mention Her Majeſty's Adminiſtration, either in Eccleſiaſtical or Civil Affairs. He eſteems it one of the greateſt Bleſſings and Deliverances, “ That her Majeſty now happily ſits on the Throne of Her Anceſtors; “ *he prays*, that God would long preſerve Her for the Comfort and Support “ of the Church; *he profeſſeth*, That what he ſpeaks proceeded from a “ tender Concern for Her Majeſty and Her Government, and an hearty “ Zeal for the Honour and Safety of our excellent Church and Conſtitu- “ tion; *he ſolemnly declares*, That his only Aim and Intention was “ earneſtly to contend for the Safety, Rights and Eſtabliſhment of her “ Majeſty, together with thoſe of the Church.” And how, after all this, it can be inferred he ſuggeſts that her Majeſty's Adminiſtration, in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution, I cannot imagine. I humbly ſubmit, whether ſuch a Charge can be inferr'd from his Sermons, without carrying Innuendos farther than ever hath been attempted.

As for that Part of the Fourth Article, which chargeth, that “ The “ Doctor doth ſuggeſt that there are Men of Characters and Stations in “ the Church and State, which do themſelves weaken, undermine and “ betray, and do encourage and put it into the Power of others, “ who are profeſſed Enemies, to overturn and deſtroy the Conſti- “ tution and Eſtabliſhment:” The Doctor denies he ſuggeſteth any ſuch things concerning Men of Characters and Stations.

I can't but obſerve what Art hath been uſed to make up this Article, and I do not doubt but your Lordſhips will be of that Opinion; for the Doctor in Page 22, mentions Men of Characters and Stations, but does not mention Men of Character and Station in Church or State; but ſays, “ There are Men of Characters and Stations that ſhift and prevaricate with “ their Principles, and ſtart from their Religion upon any Occaſion of “ Difficulty.” Which is a Charge upon them in their private Capacity, and does not charge them with any Miſbehaviour in their Stations, or in any thing relating to the Publick Adminiſtration; nor does he mention in that Place their weakening, undermining and betraying, or the encouraging or putting it in the Power of our profeſs'd Enemies to overturn and deſtroy the Conſtitution and Eſtabliſhment.

And in Page 15, where he mentions “ The weakening, undermining “ and betraying in themſelves, and the encouraging and putting it in the “ Power of our profeſſed Enemies to overturn and deſtroy the Conſtitution “ and Eſtabliſhment of both:” There he does not mention Men of Character and Station, but chargeth the weakening, *&c.* on the Falſe Brethren in Church and State; ſo that he thinks it very hard that a Part of one Sentence in *Page* 22, ſhould be brought back ſeven *Pages*, and coupled with Part of another Sentence, Page 15, and put together as one Sentence, to make an Article of High Crimes and Miſdemeanors; whereas one of the Sentences hath no manner of Relation to, or Dependance upon the other, and neither of the Sentences alone can amount to, or be charged as a High Crime and Miſdemeanor.

By this Method they might have charged him with High Treaſon, or any other Crime. Nay, my Lords, by this tranſpoſing and altering of Sentences, by taking a Part of one Sentence and coupling it with Part of another, they may make the Scripture itſelf ſpeak Blaſphemy.

But ſuppoſe it had been one entire Sentence, had this been a Ground for an Impeachment? By Men of Characters and Stations, muſt Men of the higheſt Characters and Stations be neceſſarily underſtood? No, my Lords: Are not inferior Officers, even Conſtables, Mayors, Juſtices of the Peace, Officers of the Militia, Deputy-Lieutenants, Officers of the Army, Officers of the Cuſtoms, and other Branches of the Revenues, all Men of Station? And are not ſome of the Stations very good ones? And are not many of the Perſons that enjoy them Men of Characters too? And if among all theſe there may be found ſome whoſe Conſciences are ſo tender, that they think it a Sin to communicate with the Church upon any other Account than to qualify themſelves for their Offices and Stations; and ſuch who vilify her Orders, calumniate, miſrepreſent and ridicule her Prieſts and Profeſſors: Is it a High Crime and Miſdemeanor in the Doctor to call ſuch Perſons Falſe Brethren, and to ſuggeſt that they are Enemies to our Conſtitution, and that they endeavour to weaken and undermine it? And yet this is all that can be inferr'd from theſe two Pieces of Sentences put together, to form this Article. And does this bring the leaſt Blemiſh or Reflection on the Miniſtry, or thoſe of the Higheſt Character and Stations in the Church? By no means: For the Miniſtry preſumes that Men in thoſe inferior Stations are well-affected to our Conſtitution, when they qualify themſelves according to Law, by taking the Sacrament and Oaths; and if any of them are not ſo, it cannot be preſumed to fall under the Notice of the Miniſtry: And in many Caſes, if they did know it, yet it would not be in their Power to redreſs it. I remember one Inſtance, in an eminent Borough in this Kingdom. It was proved, at the Hearing of an Election for that Borough, that the Mayor declared, that no Perſon ſhould be admitted into the Corporation, and qualified to Vote for Members of Parliament, but ſuch as were Diſſenters from the *Teſt*; ſo that there may be Mayor, Aldermen, and the whole Corporation who may take the Sacrament in the Church of *England*, and the Oaths, and yet every one Diſſenters: And they may elect Perſons into much higher Stations, if they pleaſe, which are equally diſaffected to our Church, and it is not in the Power of her Majeſty or the Miniſtry to help it. And when there are ſuch found among us, whether the Doctor, when he chargeth them for being Falſe Brethren, can be ſaid to reflect on the Miniſtry, can be ſaid to be guilty of High Crimes and Miſdemeanors, I ſubmit to your Lordſhips.

The Learned Gentleman who ſpoke firſt to this Article, ſeemed to allow that Men of the higheſt Characters and Stations were not intended; but he objected, that to charge the inferior Magiſtrates with a Neglect of their Duty, is charging the Government with Male-Adminiſtration; in which I cannot concur with him. But as this Caſe is, I take it to be plain, that to charge inferior Officers or Magiſtrates with a Neglect of their Duty, cannot reflect on Her Majeſty's Adminiſtration; for there are Magiſtrates which Her Majeſty cannot remove; there are Neglects which Her Majeſty or Her Miniſtry cannot be preſumed to know, as I before-mention'd. And to ſet this in a true Light, and to give a full Anſwer to this Objection, we have Her Majeſty's Authority to vindicate the Doctor in this Point; for Her Majeſty chargeth the Magiſtrates with a Neglect of their Duty, and carrieth the Charge higher than can be inferr'd from the Doctor's Sermon, I mean the ſeveral Proclamations that have been iſſued by Her Majeſty, by the Advice of her Privy-Council (which are Her Miniſtry) for ſuppreſſing Profaneneſs and Immorality. Thoſe Proclamations take Notice of the ſeveral Acts of Parliament againſt Profaneneſs and Immorality, and charge the inferior Magiſtrates with a Neglect of their Duty, in not putting thoſe Laws in Execution. And is it an Offence for the Doctor to mention that in his Pulpit, which hath been ſo often repeated by her Majeſty under Her Great Seal?

It has been objected, That the Doctor, ſpeaking of the Church, ſays, That *Her Adverſaries are Chief.* This is a Quotation out of Scripture, which ſignifies that they are Mighty; but that this reflects on the Miniſtry, or Her Majeſty's Adminiſtration, I cannot apprehend.

But it is alſo objected that the Doctor, Page 5, ſaith, “ That the “ Communion of the Church hath been rent and divided by Factious and “ Schiſmatical Impoſtors, *&c.*” Is the ſaying this is done with Impunity, a Reflection on the Adminiſtration? That Blaſphemy, Atheiſm and Profaneneſs have been juſtify'd in Print; that the Worſhip and Diſcipline of the Church hath been profaned and abuſed, her Orders denied and vilified, her Prieſts and Profeſſors calumniated, miſrepreſented and ridiculed; that Trumpets have been ſounded to Rebellion; that Her Majeſty and Her whole Adminiſtration have been reflected on, I think was ſufficiently proved to your Lordſhips Yeſterday; and that it hath been done with Impunity hitherto, I believe will not be denied, for I have not heard that any of theſe bold Offenders have yet been puniſh'd; and that the inferior Magiſtrates have neglected their Duty in that reſpect, we have Her Majeſty's Authority for it. But that this is a Reflection on Her Majeſty, or Her Miniſtry, is totally denied; for the Execution of the Laws againſt ſuch Offenders is within the Province of inferior Magiſtrates; and God forbid that the faults of inferior Magiſtrates ſhould be charged upon her Majeſty. The ſeveral Proclamations iſſued out by Her Majeſty, by the Advice of Her Privy-Council, ſhew, Her Majeſty and Her Miniſtry have done all that in them lies to ſuppreſs Blaſphemy, Profaneneſs, and other Vices; and that the Fault and Neglect lies entirely at the Door of the inferior Magiſtrates: And this ſufficiently anſwers the Objection, that what is charged upon inferior Magiſtrates cannot reflect on Her Majeſty, or Her Miniſtry. And this is alſo a full Anſwer to that Part of the Fourth Article, which accuſeth the Doctor with charging Her Majeſty, and thoſe in Authority, both in Church and State, with a general Male-Adminiſtration; to which I would only add what the Doctor hath ſaid in his Anſwer to this Article, *viz.* “ That he abhors the Thoughts of bringing any Charge againſt Her “ Sacred Majeſty, whom he never mentions but in Terms of the pro- “ foundeſt Duty and Reſpect; that he doth not charge thoſe in Authority “ with any Male-Adminiſtration; that he doth not ſo much as mention ‘ the Word *Male-Adminiſtration*, nor any other Word Synonymous with “ it, or from whence it can be inferr'd, or in which it is or can be imply'd.”

As to ſuch Part of the Fourth Article, which chargeth, that “ The “ Doctor, as a publick Incendiary, perſuades her Majeſty's Subjects “ to keep up a Diſtinction of Factions and Parties;” he invites the Diſſenters to leave their Schiſm, and come ſincerely into the Church: He complains of thoſe who have villainouſly divided us with the knaviſh Diſtinctions of High and Low Church. He wiſheth we were all one Fold under one Shepherd; and that all thoſe invidious Diſtinctions, that diſtract and confound us, were loſt.

If wiſhing that People would leave their Schiſm, and come ſincerely into the Church; that we were all one Fold under one Shepherd, makes a Man a publick Incendiary; if blackening thoſe that divide us with knaviſh Diſtinctions with the Character of Villainous; and wiſhing that all thoſe invidious Diſtinctions which diſtract and confound us were loſt, be to keep up Diſtinctions of Factions and Parties, the Doctor is Guilty; but if not, then he conceives there is nothing in his Sermons which can be a Foundation for the Charge in this Branch of the Fourth Article.

But it hath been objected, That tho' the Doctor invites the Diſſenters to come into the Church, yet he invites them upon his own Terms: And I hope, my Lords, they ſhall never come in upon any other Terms than their conforming to the Doctrine and Diſcipline of the Church. I hope I ſhall never ſee the Conſtitution of our Church weakened, and her Pales and Fences broken down, to let her Enemies into it.

As to the other Part of the Article, which chargeth the Doctor with inſtilling groundleſs Jealouſies, and fomenting deſtructive Diviſions among her Majeſty's Subjects, there is no Foundation for it; for, on the contrary, he rebukes and condemns thoſe who by falſe Inſinuations, and raiſing groundleſs Jealouſies and Fears, embroil and bring it into Confuſion.

As to that Part of the Fourth Article, which chargeth, That “ The “ Doctor excites and ſtirs up Her Majeſty's Subjects to Arms and Violence;” if Preaching up Paſſive Obedience be to ſtir up People to Rebellion; if Preaching up the Illegality of Reſiſtance be to excite Her Majeſty's Subjects to take up Arms againſt Her, I own there is a ſufficient Ground in his Sermon for this Charge; but otherwiſe, there is not one Paſſage in the Sermon to warrant this Accuſation.

I do admit, the Doctor, in the laſt Page of his Sermon, hath this Exhortation of St. *Paul*'s “ Put on the whole Armour of God, that ye may “ be able to ſtand againſt the Wiles of the Devil; for we wreſtle not only “ againſt Fleſh and Blood, but againſt Principalities, againſt Powers, “ againſt the Rulers of the Darkneſs of this World, againſt Spiritual Wick- “ edneſſes in high Places.” I pray, my Lords, What is it that the Doctor in the Words of St. *Paul* adviſes his Auditors to reſiſt? Is it not *the Wiles of the Devil?* With what Armour are they to reſiſt? 'Tis with *the Armour of God.* What is the Armour of God? Are Guns, or Swords of Iron or Steel, the Armour of God?

The Learned Manager that ſpoke to this Point ſaid, the Doctor could not mean the Spiritual Armour, becauſe he departed from the Apoſtle's Spiritual Meaning. And to make good this Charge, he uſeth the ſame Method that was taken to make up the firſt Part of this Article; for the Words cited by the Doctor, are in the Eleventh and Twelfth Verſes of the Sixth Chapter of St. *Paul* to the *Epheſians*; and to find out the Doctor's Meaning, he goes back to the Thirty-firſt Verſe of the Fourth Chapter, where St. *Paul* ſaith, *Let all Bitterneſs, and Wrath, and Anger, and Clamour, and Evil-ſpeaking be put away from you, with all Malice.* And why this ſhould be alledged to ſhew what the Doctor means, when in the Words of St. *Paul* he adviſeth his Auditors to put on the Armour of God, I cannot imagine. If he had read but two Verſes after thoſe Words cited by the Doctor, he would have found the Armour of God to be *The Sword of the Spirit, the Shield of Faith, the Breaſt-plate of Righteouſneſs, and the Helmet of Salvation*; and the Doctor could mean no other Armour: And how Her Majeſty, or thoſe in Authority under Her, can be reſiſted by this Armour, or what Violence Her Majeſty's Subjects can uſe with theſe Arms, I ſubmit to your Lordſhips. 'Tis plain, that the Principalities, Powers and Rulers here meant, are not Earthly Principalities, Powers and Rulers; but the *Principalities, Powers and Rulers of Darkneſs*, againſt which Swords and Guns are but a very weak and feeble Defence. Theſe Things being conſider'd, I think there is nothing to be collected from this Paragraph, that can excite Her Majeſty's Subjects to Arms and Violence; unleſs it be, to *take the Armour of God*, to *reſiſt the Devil and all his Works*; which, I hope, is not a High Crime and Miſdemeanor.

As a further Evidence that the Doctor excites Her Majeſty's Subjects to Arms and Rebellion, it is objected, That the Doctor, in his Sermon, *Pag.* 26. ſays, *Let us therefore, being well aſſur'd how much our Cauſe deſerves, and how much at preſent it requires our braveſt Reſolutions, hold faſt our Integrity and Religion without wavering, and earneſtly contend for the Faith which was once delivered to the Saints.* And is not this wholeſome and religious Advice? The more ſtrongly and openly the Cauſe is oppugned, the braver Reſolution it requires to defend it. The Cauſe of Religion is attack'd by Atheiſts and Deiſts; the Cauſe of Monarchy, by Aſſertors of Republican and Seditious Principles; the Cauſe of the Church, by Papiſts and Sectaries of all ſorts; and therefore it requires our braveſt Reſolutions to defend the Church, the Queen, and the Conſtitution, with the ſame Zeal they are attack'd, as the Doctor explains himſelf; *Not doubting, if we ſhew the ſame Courage, and indefatigable Zeal and Labour to defend, as our Adverſaries to reproach, divide and ruin our Church; neither their united Malice nor Power, nor all the Plots and Machinations of* Rome, *nor the very Gates of Hell itſelf, ſhall ever be able to prevail againſt Her.* And ſhall this be conſtrued to excite Her Majeſty's Subjects to Arms and Violence?

As to the laſt Part of the Article, which chargeth, That *the Doctor doth wickedly wreſt and pervert divers Texts of Holy Scripture*: It ſeems, the Printer of the Second Edition miſtook one Text. If the Doctor had perverted, or wickedly wreſted the Text, he muſt have been ſubject to a Proſecution in another Place; but it would not have been a Ground for an Impeachment of High Crimes and Miſdemeanors.

To conclude.—My Lords, If condemning the Dethroning and Murdering the Royal Martyr King *Charles* the Firſt, be to caſt black and odious Colours on his late Majeſty and the Revolution; if the averring the utter Illegality of Reſiſtance to the Supreme Power in all things lawful; if Preaching the Doctrine of Paſſive Obedience and Non-Reſiſtance, which hath been enjoined by our Church, and confirmed by the Legiſlature, and is the Doctrine of all Chriſtian Churches, ſhall be conſtrued to be a Reflection on the Revolution, and a greater Reflection on it now, than the Preaching of the ſame Doctrine was in the Reign of his late Majeſty, who was the Happy Inſtrument of that Revolution: If the Doctor be a Criminal for Preaching that Doctrine which the Right Reverend Fathers of our Church, and other Eminent Divines, have preach'd, with the Approbation and Applauſe of the Crown, and both Houſes of Parliament; then the Doctor is guilty of the High Crimes and Miſdemeanors in the firſt Article.

And if to wiſh that Diſſenters, who qualify themſelves according to the Act, may enjoy the full Benefit of it; if to deſire the Laws to be put in Execution againſt ſuch who will not comply with the Terms preſcribed by the Act, and againſt Atheiſts, Deiſts, and ſuch who frequent no Religious Worſhip at all, and are particularly excepted out of the Act of Toleration; and if to aſſert, that a Sentence ratified in Heaven cannot be reverſed on Earth, be to affirm the Toleration unreaſonable, and the Allowance of it unwarrantable; then the Doctor is alſo guilty of the High Crimes in the Second Article.

And if to aſſert the Prejudice the Church receives by Schiſm and Occaſional Conformity; if the ſhewing the heavy Judgments which may be brought down upon a Church and Nation, by Blaſphemy, Atheiſm, Prophaneneſs and Immorality; if to ſhew the Danger the Queen and Church are in, by the rebellious Principles that are daily broach'd and publiſh'd, be to aſſert the Church is in Danger under Her Majeſty's Adminiſtration; the Doctor is likewiſe guilty of the Crimes in the Third Article.

And laſtly, If to pray for Her Majeſty's long Continuance on the Throne, for the Comfort and Support of the Church and Nation; if to ſhew that the Laws againſt Atheiſm, Blaſphemy, Prophaneneſs and Irreligion, be not put in due Execution by inferior Magiſtrates; that is, if to aſſert in his Pulpit what Her Majeſty, by Advice of Her Miniſtry, hath aſſerted in Four Proclamations, be to reflect on Her Majeſty and Her Miniſtry, and to charge Her Majeſty with Male-Adminiſtration in Church and State; and if exhorting the People to *put on the Sword of the Spirit, the Shield of Faith, the Breaſt-plate of Righteouſneſs, and the Helmet of Salvation*, to *reſiſt the Devil, and all the Powers of Darkneſs*, be to excite Her Majeſty's Subjects to Arms and Violence againſt Her Majeſty; and if Preaching up Paſſive Obedience and Non-Reſiſtance, is to ſtir up People to Rebellion; then the Doctor is guilty of the High Crimes and Miſdemeanors in the Fourth Article; eſpecially, if ſtrain'd, foreign and unnatural Inferences, Inſinuations and Innuendos are to paſs for Proof: But otherwiſe, I preſume to ſay, the Doctor is not guilty of any of the Offences charged in either of the Articles; and I humbly hope, your Lordſhips will be of that Opinion.

Mr. *Dee.* MY Lords, This Article is ſhort of the former Articles, in the manner of the Charge. The firſt Part of it is a Charge upon the Doctor, That he *ſuggeſts* only, *That Her Majeſty's Adminiſtration tends to the Deſtruction of the Conſtitution.* As to this Part of the Article, (as has been obſerved) there is no Paſſage in the Sermon mentioning Her Majeſty, but with the greateſt Reſpect, and with hearty Prayers for Her. The Words, *Miniſters* and *Miniſtry*, are not found in the whole Sermon: Therefore, to find any Charge on them by the Doctor, we muſt look to the Second Part of the Article, which charges the Doctor with ſuggeſting, *That there are Men of Character and Stations, who are Falſe Brethren, and do undermine the Conſtitution, and endeavour to betray the Church; and* conſequently *charges Her Majeſty with a General Male-Adminiſtration.*

My Lords, As to this Part of the Charge, *viz.* That the Doctor doth ſuggeſt, that Men of Characters and Stations are Underminers of our Conſtitution, it is not to be found in any Part of the Sermon: But if he doth ſuggeſt, that Men of Characters and Stations (not ſaying of what Characters, or what Stations) are Falſe Brethren, (if your Lordſhips take notice what thoſe Men are, whom the Doctor calls Falſe Brethren) it will not be a ſufficient Ground for a Charge of High Crimes and Miſdemeanors. There are Four Sorts of Perſons that the Doctor charges as Falſe Brethren: Thoſe that propagate Falſe Doctrines; Thoſe that give up the Diſcipline of the Church; Thoſe that are for a Neutrality in Religion; and Thoſe that own themſelves to be of the Church, but live not according to her Rules. Now, to ſay that there are ſome Men of Character and Stations in the Nation that are Falſe Brethren, within ſome one or other of theſe Deſcriptions, I wiſh I could ſay it was not true. But when the Doctor comes to charge ſome Perſons as Underminers of the Church and Conſtitution, they are deſcribed to be either thoſe Perſons that ſubvert the Fundamentals of Religion, as Atheiſts, Deiſts, *Socinians*, and ſuch like; or Occaſional Conformiſts, Perſons that creep into the Church, only with a Deſign to do it a Miſchief. And I think theſe Perſons may be juſtly ſaid to be Underminers of the Church.

My Lords, There is a General Charge againſt the Doctor, *That he excites the People to Rebellion.* If this could be naturally inferr'd from his Words, he muſt be guilty of Self-Contradiction, and ought rather to be pitied as a weak, fooliſh Man, than puniſhed as a cunning Incendiary. For when he hath ſo poſitively affirmed the utter Illegality of Reſiſtance to the Supreme Power, if any Thing had dropp'd from him in the ſame Aſſembly tending to Rebellion, he would have expoſed himſelf to the utmoſt Ridicule.

My Lords, Some Things have been obſerved out of the Preface to his Sermon at *St. Paul*'s: One Expreſſion is that of ſounding a Trumpet. I ſhould not have thought this worth taking notice of, but that ſome of the Gentlemen did lay ſome Streſs on it, as if this were ſounding an Alarm, exciting People to Arms: But I conceive, that the Words out of the Mouth of the Doctor, bear the ſame Senſe as out of the Mouth of the Prophet. But for fear that he ſhould be miſconſtrued, the Doctor explains himſelf by the Words immediately following, and ſhews, that ſuch Prohibition or Reſtraint laid on the Clergy, as are there ſuggeſted, are expreſly contrary to the Command of God. His Words are theſe: *We are told by theſe Men, who would ſhut both our Eyes and our Mouths, in order the more effectually to undermine and deſtroy us, that the Pulpit is not a Place for Politicks; and that it is the Buſineſs of a Clergyman to preach Peace, and not ſound a Trumpet in* Sion; *ſo expreſly contrary to the Command of God, to* cry aloud, and ſpare not. So that theſe Words do plainly interpret what the Doctor meant by ſounding a Trumpet.

My Lords, There was another Thing taken notice of from this Preface, and that was the Encouragement he gives to People to Arms and Violence, againſt ſuch as would deſtroy the Church, *&c.* The Words of the Doctor are theſe: *If honeſt Men will ſit ſtill, and give up their Cauſe through want of Courage, or a juſt Senſe of the dangerous Attempts of our Enemies; we may, without the Spirit of Prophecy, foretel what will become of our Conſtitution, when it is ſo vigorouſly attack'd from without, and ſo lazily defended from within.* This was looked upon as dividing the People, and exciting them to make Reſiſtance. But if the Gentlemen had looked a little before, in the ſame Paragraph, they would have found who the Aſſailants he mentions were; and then they would not, I conceive, have blamed the Doctor for encouraging the People to make a vigorous Defence. The Aſſailants are thoſe that make rebellious Appeals to the People, as the only Judges of Right and Wrong, and the Dernier Reſort of Juſtice and Dominion: Theſe, he ſays, are the faſhionable Methods now made uſe of to undermine the Church and Legiſlature, by breaking in upon the Prerogative of the Crown, by threatening them with imaginary Legions and a Popular Tribunal, where their Authority is to be tried and determined. To put a ſtop to this Thing, is what he ſays is the Intent of his Diſcourſe. Now if theſe are the Perſons that attack the Conſtitution, that appeal to the People as the only Judges of Right and Wrong, if theſe are the Aſſailants, ſurely the Doctor may encourage the People vigorouſly to defend themſelves againſt them.

My Lords, There was one Thing more taken notice of by the Gentlemen Managers, That the Doctor had given great Offence to the Commons, by an Expreſſion he has made uſe of, by way of Exclamation, in the Cloſe of his Anſwer to the Articles; and that runs thus: *Hard is the Lot of the Miniſters of the Goſpel, if, when they cite the Word of God in their General Exhortations to Piety and Virtue, or in their Reproofs of Men's Tranſgreſſions, or where they are Lamenting the Difficulties and Conflicts with which the Church of Chriſt, whilſt Militant here on Earth, muſt always ſtruggle; the ſeveral Texts and Paſſages by them cited, ſhall be ſaid to have been by them meant of particular Perſons and Things, and ſhall be conſtrued in the moſt Criminal Senſe, and be made by ſuch Conſtruction one Ground of an Impeachment for High Crimes and Miſdemeanors.* If this Suppoſition, as the Doctor has put it, be turned into a Poſition, he hopes you will pardon him for his Exclamation. If Generals have not been tied to Particulars, to make up theſe Articles, then the Doctor had no Reaſon to make this Exclamation: But if the Doctor's Sermon hath been ſo treated, in order to frame the Articles againſt him, then he is not blameable for that Expreſſion.

My Lords, The Doctor has never before been charged with Diſloyalty to the Government: He hath always been a Man of that Probity, and of ſo blameleſs a Life and Converſation, that he hath not been ſo much as attack'd on that Account. And when a Man of his Character is brought before your Lordſhips, for a Sermon preached in a public Congregation, for a Doctrine that is the Doctrine of the Church of *England*, and for which he has the Authority of ſo many of the Fathers of that Church, as well as of many of her Learned Sons: For him, I ſay, to be brought before your Lordſhips (by an Impeachment) on that Account, ſurely he may be allowed to ſay this: His Lot (at leaſt) is hard that he ſhould be made the firſt, and ſo ſolemn Example; when he only followed ſo many and great Examples, as have been ſet him from the Beginning of the Reformation down to this Time. And when your Lordſhips conſider the Circumſtances of the Doctor, I hope your Lordſhips will think, that the Defence of this Proſecution, muſt be a ſufficient Puniſhment for any Crimes he is charged with, and of which he can be ſuppoſed guilty: And ſo I ſubmit him, and his Cauſe, to your Lordſhips Juſtice.

Dr. *Henchman.* MY Lords, In the General Preamble to the Articles of Impeachment, Doctor *Sacheverell* is ſaid to have preached and publiſhed Two Diſcourſes, with *an Intention to defame Her Majeſty's Adminiſtration*; and this laſt Article contains ſeveral particular Charges of a very high Nature, and great Malignity, againſt her Majeſty's Happy Adminiſtration.

For a General Anſwer to this Article, I muſt beg your Lordſhips Patience, to look back again upon thoſe Paſſages of this Sermon, which I humbly offer'd to your Lordſhips Conſideration under the Third Article, which will ſet the Doctor's Intentions in a clear Light. In one of them, he readily acknowledges the great Bleſſings we at preſent enjoy, by Her Majeſty's happily ſitting on the Throne of her Anceſtors: And in the other Places where he mentions her Majeſty, it is with great Reſpect, and hearty Addreſſes to God, long to preſerve her on that Throne; and at laſt concludes with this ſolemn Proteſtation; That what he had then ſpoken, *proceeded from a good Intention, and tender Concern for Her Majeſty's Perſon and Government, and a hearty Zeal for the Honour and Saftey of our Excellent Church aud Conſtitution.*

My Lords, Some Regard is to be had to the Declarations of every honeſt Man, in relation to his own Thoughts and Intentions, which are known only to God and his own Conſcience: And certainly, when a Prieſt of the Church of *England* does, in the Preſence of God, and the Face of the Congregation, ſolemnly declare, That what he ſpeaks is with a tender Concern, and hearty Zeal for Her Majeſty's Perſon and Government; no looſe Words or diſtant and unconnected Expreſſions ought to be conſtrued to a direct contrary Senſe of ſo expreſs a Declaration. My Lords, the Senſe of theſe Words is plain and obvious to every Man's Underſtanding: But if a Paſſage in the Two-and-Twentieth Page of this Sermon, in itſelf, and as it ſtands in its Proper Connection (not Criminal,) muſt be conſtrued by what is ſaid in the Fifteenth Page, little relating to the ſame Purpoſes, and both theſe Paſſages explain'd by a Third ſtill farther diſtant; by ſuch a Method the moſt inoffenſive Diſcourſe may be made blameable, and it will be very difficult to make any Defence.

My Lords, It has been objected by the Learned Managers, That the Doctor choſe an unſeaſonable Time and an improper Place, to vent his Notions in. But how does it appear, that either the one or the other was of his own Choice? Does it not rather appear, that he was called to perform that Duty by the publick Magiſtrate; and that both the Time and Place were of his Appointment? Or how can it, at this Time, be thought unſeaſonable, to maintain the Doctrine of our Church, when ſuch Swarms of infamous Libels are daily publiſhed in Oppoſition to it? Or what Place can be more proper for this Purpoſe, than that in which ſuch Libels uſually firſt appear, and moſt prevail? Whether the Doctor perform'd his Duty by Preaching that Doctrine there, which the Rubrick of our Liturgy expreſly commands him to teach on that Day, muſt be ſubmitted to your Lordſhips: And certainly it will always be thought proper, on that Day, that our Church and State were delivered from a moſt horrid Conſpiracy, to preach againſt the Sin of Rebellion: Upon that Day that the whole Nation was delivered from a Popiſh Conſpiracy, it will always be proper to ſhew, that Reſiſtance of the Higher Powers is the Doctrine of of Papiſts. and firſt proceeded from them. It is well known to your Lordſhips, what the General Duty of Miniſters obliges them to; but upon State-Days, when they are commanded by Supreme Authority, and directed by the Rubrick what Subject to treat of; it would be Contempt in them not to obey the Commands of their Superiors, or not to inſiſt upon that Doctrine which they are peculiarly ordered to explain. And I humbly apprehend, that thoſe Reverend Prelates, ſome of whoſe Expreſſions were lately read to your Lordſhips, would not have received the Thanks of this Honourable Houſe, if they had not adapted their Diſcourſes to the Solemnity of that Day, which they then celebrated.

My Lords, Upon general View of this and the other Articles, the whole Charge will appear to be ſupported, not by any one plain Propoſition, but by Inferences and ſuppos'd Conſtructions. It has been my Endeavour, under every Article, to lay before your Lordſhips one or more clear Paſſages of this Sermon, which ſufficiently declare the Author's Intention as to that Article; and I muſt leave it to your Lordſhips Conſideration, how far an Inſinuation or Inference will be outweighed by an expreſs Declaration. If there are any Words in this Diſcourſe which ſeem to bear a doubtful Meaning, your Lordſhips will in all Caſes incline to the moſt favourable Side; and, in this Particular, the Character and Function of a Miniſter will deſerve ſome more than ordinary Allowance. My Lords, It is a known Rule in the *Roman* Law, *In ambiguis orationibus maxime ſententia ſpectanda eſt ejus qui eas protuliſſet.* Where-ever Words are capable of a double Conſtruction, there the Intention of the Speaker is chiefly to be looked after, and attended to. Every Man has a Right to explain his own Intentions; and the darker and more obſcure Expreſſions of his Diſcourſe muſt be conſtrued by thoſe Paſſages which are more plain and explicit. This is a Rule in all Civil and Common Caſes between Man and Man; but in Criminal Caſes, there that Law exacts a ſtricter and a nicer Proof: Wherever the Life or Liberty of a Citizen is concerned, there the Proofs ought to be *Luce meridianâ clariora*, as evident as the Sun at Noon-day, and ſuch as will convince every one at firſt Sight.

My Lords, I mention theſe Maxims of the *Roman* Law only as they are agreeable to the common Senſe and Underſtanding of Mankind, as Rules of Reaſon and Equity, which your Lordſhips have always governed yourſelves by, and always will. The laſt of 'em I mention with the greater Confidence, becauſe I find it has once already received the Sanction of this honourable Houſe, in Sir *Samuel Barnardiſton*'s Caſe; in which it is declared, *That Innuendos or ſuppoſed Conſtructions ought not to be allowed; for all Accuſations ſhould be plain, and the Crimes aſcertained.* This, my Lords, has once been the Reſolution of this Honourable Houſe, and we humbly hope your Lordſhips will not depart from a Precedent ſo well eſtabliſhed. My Lords, one Part of this laſt Article is, That the Doctor has wreſted ſeveral Texts of Scripture to ſeditious Purpoſes; but it has not yet appeared that he ever harboured one ſeditious Thought: Whether he has perverted any Texts of Scripture will be beſt explained by himſelf, when your Lordſhips ſhall be pleaſed to hear him.

Mr. *Dodd.* My Lords, We deſire to read two or three Proclamations: The firſt is to direct the Magiſtrates to put the Laws in Execution againſt Prophaneneſs and Immorality; and that not being duly obſerved, the Second Proclamation takes notice thereof, and directs the Magiſtrates to put the ſame in Execution: And there are two ſubſequent Proclamations to the ſame Purpoſe.

Clerk Reads.] *By the Queen, A Proclamation for Reſtraining the Spreading Falſe News, and Printing and Publiſhing of Irreligious and Seditious Papers and Libels.*

ANNE R.

'WHEREAS by an Act of Parliament made in the Third Year of the Reign of King *Edward* the Firſt, It is Enacted, That none be ſo hardy to tell or publiſh any falſe News or Tales, whereby Diſcord, or Occaſion of Diſcord or Slander may grow between the King and his People, or the great Men of the Realm; and that he that doth ſo, ſhall be taken and kept in Priſon until he hath brought him into Court which was firſt Author of the Tale. And by another Act made in the Second Year of the Reign of King *Richard* the Second, it is declared, That the deviſing, ſpeaking, and telling ſuch falſe News and Tales, was likely to occaſion great Peril and Miſchief to, and the quick Subverſion and Deſtruction of this Realm: For the preventing whereof, it is thereby Enacted, That none be ſo hardy to deviſe, ſpeak or tell any falſe News, Lyes, or other falſe Things, of Prelates, Noblemen and Officers of the Crown therein named, whereof Diſcord, or any Slander, might ariſe within this Realm, under the Pain ordained by the ſaid Statute of King *Edward* the Firſt. And by another Act made in the Twelfth Year of the Reign of the ſaid King *Richard* the Second, it is Enacted, That when any ſuch ſhall be taken and impriſoned, and cannot find him by whom the Speech be moved, that he ſhall be puniſhed for ſuch his Offence. And whereas the preventing of the ſpreading and publiſhing of falſe News and Tales, and the Writing, Printing and Publiſhing of Heretical, Blaſphemous, Irreligious, Treaſonable, Seditious and Scandalous Books, Pamplets, Libels and Papers, is a Matter which requires our Publick Care, and is of great Concernment; eſpecially conſidering, that by Reaſon of the general Licentiouſneſs of the Times, ſince an Act for preventing Abuſes in Printing Seditious, Treaſonable, and Unlicenſed Books and Pamphlets, and for regulating of Printing, and Printing-Preſſes, made in the Thirteenth Year of the Reign of Our late Royal Uncle King *Charles* the Second, and continued by an Act made in the Fourth Year of the Reign of the late King *William* and Queen *Mary*, expired, many Evil diſpoſed Perſons have Written, Printed and Publiſhed divers Heretical, Blaſphemous, Irreligious, Treaſonable, and Seditious Books, Pamphlets, Papers, and many falſe, infamous and ſcandalous Libels, and do continue ſuch their unlawful and exorbitant Practices, endeavouring thereby to traduce and reproach the Eccleſiaſtical and Temporal Government of this Kingdom, and the publick Miniſters of the ſame, and the Proceedings and Members of both Houſes of Parliament, and other our loving Subjects, to the high Diſhonour of Almighty God, and the endangering the Peace of theſe Kingdoms, contrary to the ſaid Statutes, and the common Laws of our Realm: We therefore (with the Advice of our Privy-Council) do by this Our Royal Proclamation Charge and Command all our Subjects, of what State or Condition ſoever they be, That they do not henceforth preſume, either by Writing, Printing or Speaking, to tell or publiſh any falſe News or Tales, contrary to the Statute before-mentioned; nor Write, Print, Publiſh, or Sell, or cauſe to be Written, Printed, Publiſhed, or Sold, any Heretical, Blaſphemous, Irreligious, Treaſonable, or Seditious Books, Papers or Pamphlets, or any ſcandalous Libels, reflecting upon us, or upon the Eccleſiaſtical or Temporal Government of this Realm, or any of our publick Miniſters or Officers, or on the Proceedings of either of our Houſes of Parliament, or any the Members thereof, or upon any other of our loving Subjects. And we do hereby further declare, That we will proceed with the utmoſt Severity and Rigour of Law, againſt all ſuch Perſons who ſhall be Guilty of any the malicious and unlawful Practices aforeſaid: We being reſolved as much as in us lies, to ſuppreſs the ſaid Enormities by a more ſtrict and exemplary Puniſhment of all ſuch Offenders herein, as ſhall hereafter be diſcover'd: To the Diſcoverers whereof we will give all due Encouragement. And we do hereby ſtraitly charge and command all and ſingular our Judges, Juſtices of the Peace, Sheriffs, Mayors, Bailiffs, and all other our Officers and Miniſters whatſoever, to take effectual Care for the ſpeedy Apprehenſion, Proſecution and Puniſhment of all ſuch Perſons, who ſhall at any Time hereafter be found Offenders herein.

'*Given at Our Court at* Whitehall, *the Twenty-Sixth Day of* March, 1702. *In the Firſt Year of Our Reign.*'

GOD ſave the QUEEN.'

Mr. *Dodd.* Now read the Second. Read the Date firſt.

Clerk Reads.] *Given at our Court at St.* James's, *the Five-and-Twentieth Day of* February, 1702. *In the Firſt Year of Our Reign.*

By the Queen, a Proclamation for the Encouragement of Piety and Virtue, and for Preventing and Puniſhing of Vice, Prophaneneſs and Immorality.

ANNE R.

'WHEREAS on our Acceſſion to the Throne, we thought fit, by the Advice of our Privy-Council, to iſſue out our Royal Proclamation for the Encouragement of Piety and Virtue, and for the Preventing and Puniſhing of Vice, Prophaneneſs and Immorality: And whereas we have been informed, that our Laws mentioned in the ſaid Proclamation have not been executed according to our juſt Expectation and Commands: We moſt ſeriouſly and religiouſly conſidering, That it is an indiſpenſible Duty on us, to be careful, above all other things, to preſerve and advance the Honour and Service of Almighty God, and to diſcourage and ſuppreſs all Vice, Prophaneneſs, Debauchery and Immorality, which are ſo highly diſpleaſing to God, ſo great a Reproach to our Religion and Government, and (by Means of the frequent ill Examples of the Practicers thereof) have ſo fatal a Tendency to the Corruption of many of our loving Subjects, otherwiſe religiouſly and virtuouſly diſpoſed, and which (if not timely remedied) may juſtly draw down the divine Vengeance on us and our Kingdoms: We alſo humbly acknowledging, That we cannot expect the Bleſſing and Goodneſs of Almighty God (by whom Kings and Queens reign, and on which we entirely rely) to make our Reign happy and proſperous to ourſelf and our People, nor hope for the Divine Aſſiſtance to deliver us from the great and imminent Dangers which our Kingdoms, and the true Proteſtant Religion eſtabliſhed among us, are in this preſent Juncture threatned with, without a religious Obſervance of God's Holy Laws. To the Intent, therefore, that Religion, Piety, and good Manners may (according to our moſt hearty Deſire) flouriſh and increaſe under our Adminiſtration and Government; We have thought fit (by the Advice of our Privy-Council) to iſſue this our Royal Proclamation; and do hereby declare our Royal Purpoſe and Reſolution to diſcountenance and puniſh all manner of Vice, Prophaneneſs and Immorality in all Perſons, of whatſoever Degree or Quality, within this our Realm; and particularly in ſuch as are employed near our Royal Perſon: And that for the greater Encouragement of Religion and Morality, we will, upon all Occaſions, diſtinguiſh Perſons of Piety and Virtue by Marks of our Royal Favour. And we do expect and require, That all Perſons of Honour, or in Place of Authority, will give good Example by their own Virtue and Piety, and to their utmoſt contribute to the diſcountenancing Perſons of diſſolute and debauch'd Lives, that they, being by that Means reduced to Shame and Contempt, for their looſe and evil Actions and Behaviour, may be thereby alſo enforced the ſooner to reform their ill Habits and Practices, and that the viſible Diſpleaſure of good Men towards them, may (as far as it is poſſible) ſupply what the Laws (probably) cannot altogether prevent. And we do hereby ſtrictly enjoin and prohibit all our loving Subjects, of what Degree or Quality ſoever, from playing on the Lord's Day at Dice, Cards, or any other Game whatſoever, either in publick or private Houſes, or other Place or Places whatſoever; and do hereby require and command them, and every of them, decently and reverently to attend the Worſhip of God on every Lord's-Day on Pain of our higheſt Diſpleaſure, and of being proceeded againſt with the utmoſt Rigour that may be by Law. And for the more effectual reforming of all ſuch Perſons, who by Reaſon of their diſſolute Lives and Converſations are a Scandal to our Kingdom; our further Pleaſure is, and we do hereby ſtrictly charge and command all our Judges, Mayors, Sheriffs, Juſtices of the Peace, and all other our Officers and Miniſters, both Eccleſiaſtical and Civil, and all other our Subjects, whom it may concern, to be very vigilant and ſtrict in the Diſcovery, and the effectual Proſecution and Puniſhment of all Perſons who ſhall be guilty of exceſſive Drinking, Blaſphemy, prophane Swearing and Curſing, Lewdneſs, Prophanation of the Lord's-Day, or other diſſolute, immoral or diſorderly Practices; and that they take care alſo effectually to ſuppreſs all Bawdy-Houſes, publick Gaming-Houſes and Places, and other diſorderly Houſes; and to put in Execution the Statute made in the nine-and-twentieth Year of the Reign of our late Royal Uncle King *Charles* the Second, intitled, *An Act for the better Obſervation of the Lord's Day, commonly called Sunday*; and alſo an Act of Parliament made in the ninth Year of the Reign of our late dear Brother King *William* the Third, intitled, *An Act for the more effectual ſuppreſſing of Blaſphemy and Prophaneneſs*; and all other Laws now in Force for the puniſhing and ſuppreſſing any of the Vices aforeſaid; and alſo to ſuppreſs and prevent all Gaming whatſoever, in publick or private Houſes on the Lord's-Day; and likewiſe, that they take effectual Care to prevent all Perſons keeping Taverns, Chocolate-Houſes, Coffee-Houſes, or other Publick-Houſes whatſoever, from ſelling Wine, Chocolate, Coffee, Ale, Beer, or other Liquors, or receiving or permitting Gueſts to be or remain in ſuch their Houſes on the Lord's-Day, (except in Caſe of Neceſſity and Charity) as they will anſwer it to Almighty God, upon Pain of our higheſt Diſpleaſure. And for the more effectual Proceeding herein, we do hereby direct and command all our Judges of Aſſize and Juſtices of the Peace, to give ſtrict Charges at their reſpective Aſſizes and Seſſions, for the due Proſecution and Puniſhment of all Perſons that ſhall preſume to offend in any the Kinds aforeſaid; and alſo of all Perſons, that contrary to their Duty, ſhall be remiſs or negligent in putting the ſaid Laws in Execution; and that they do at their reſpective Aſſizes and Quarter-Seſſions of the Peace, cauſe this our Proclamation to be publickly read in open Court immediately before the Charge is given. And we do hereby further charge and command every Miniſter in his reſpective Pariſh-Church or Chapel, to read or cauſe to be read this our Proclamation, at leaſt four Times in every Year, immediately after Divine Service, and to incite and ſtir up their reſpective Auditories to the Practice of Piety and Virtue, and avoiding of all Immorality and Prophaneneſs. And to the end that all Vice and Debauchery may be prevented, and Religion and Virtue practiſed by all Officers, private Soldiers, Mariners, and others, who are employed in our Service by Sea or Land; We do hereby ſtrictly charge and command all our Commanders and Officers whatſoever, That they do take care to avoid all Prophaneneſs, Debauchery, and other Immoralities; and that by their own good and virtuous Lives and Converſations, they do ſet good Examples to all ſuch as are under their Care and Authority; and likewiſe take care of and inſpect the Behaviour of all ſuch as are under 'em, and to puniſh all thoſe who ſhall be guilty of any the Offences aforeſaid, as they will be anſwerable for the ill Conſequences of their Neglect herein.

GOD ſave the QUEEN.'

Mr. *Dodd.* My Lords, There are two ſubſequent Proclamations preſſing Magiſtrates to put the Laws in Execution in this Caſe; but they are to the ſame Purpoſe, therefore I think we need not ſpend your Lordſhips Time to read them: They are to the ſame Purpoſe with the laſt, taking notice that the Magiſtrates had not done their Duty as required.

My Lords, We have now done our Defence; only we have one Petition to make, That your Lordſhips would be pleas'd to hear the Doctor ſpeak for himſelf: There are ſome things more proper for him to give an Account of, than for his Counſel. We apprehend the moſt proper Time will be after the Gentlemen Managers for the Houſe of Commons have replied; but we thought it proper to mention it to your Lordſhips now, and humbly ſubmit it to your Lordſhips.

Mr. *Phipps.* My Lords, The Reaſon why we troubled your Lordſhips with reading thoſe Proclamations, was to ſhew your Lordſhips, that the inferiour Magiſtrates being negligent of their Duty in putting the Laws in Execution againſt Prophaneneſs, her Majeſty put out another Proclamation to quicken them to it; therefore, when the Doctor charges the Magiſtrates with a Neglect of their Duty, it cannot be underſtood to be a Reflection on the Queen or the Miniſtry, becauſe you ſee what great Care her Majeſty has taken: So that we think this laſt Article is ſufficiently clear'd by theſe Proclamations. One thing, my Lords, I think we have not troubled your Lordſhips with, and that is the Journal of your own Houſe in the Caſe of Sir *Samuel Barnardiſton:* If the Gentlemen of the Houſe of Commons think it otherwiſe, we are ready to read it.

Sir *Joſeph Jekyll.* My Lords, I have the Commands of the Gentlemen employed in this Service with me, to mention to your Lordſhips, that they are under a great Surprize, that the Counſel for the Doctor ſhould take upon them to propoſe to your Lordſhips, that the Doctor might ſpeak after the Commons Reply: I have Inſtructions (ſince the Doctor's Counſel have referred ſome Part of the Defence to himſelf) to tell the Doctor, that if he has any thing to ſay for himſelf, now is his Time before the Commons reply; the Commons claiming it as their Right to ſpeak laſt.

Mr. *Dodd.* My Lords, we ſubmit to it. Doctor, go on.

Dr. *Sacheverell.* MY Lords, The Defence made by *my Counſel* has been ſo *full* and *particular*, and the *Trial* itſelf drawn out into ſo great a *Length*, that I ſhould not add to your Lordſhips Trouble by ſaying any thing for *myſelf*, did I not think, that in *ſuch a Cauſe* as *this* (wherein the *Doctrine* of *our Church*, the *Dignity* of *that Holy Order* to which I belong, and even the *Common Intereſt of Chriſtianity* itſelf, are ſo nearly concerned) it becomes me not to be altogether ſilent.

For, my Lords, it has been owned by ſome of the *Managers for the Honourable Houſe of Commons*, that tho' I am the *Perſon Impeached*, yet my *Condemnation* is not the *Thing* principally aimed at. I am, it ſeems, an *inſignificant Tool of a Party*, *not worth regarding*; the avowed Deſign of my *Impeachment* is, by the *means* of it to procure an *Eternal and Indelible Brand of Infamy to be fixed, in a Parliamentary Way, on all thoſe who maintain the Doctrine of Non-Reſiſtance, and to have the Clergy directed what Doctrines they are to preach, and what not.* And therefore, as *Inſignificant* as I am in my *Self*, yet the *Conſequences* of my Trial (if rightly repreſented to your Lordſhips by ſome of *thoſe Gentlemen*) are of the higheſt Moment and Importance.

Since I am the unfortunate Occaſion of bringing theſe Matters in Judgment before your Lordſhips, it will behove me, I think, after what has been pleaded in my behalf, by my *Counſel learned in the Law*, to ſay ſomewhat alſo for my *Self*, in order to clear the *Innocence* of my *Intentions*, and remove that Load of *Guilt* and *Infamy*, which may be laid upon me, ſhould your Lordſhips determine, (as, I truſt in God, you will not) that the *Articles of Impeachment* Exhibited, have been made good againſt me.

With your Lordſhips Permiſſion then, I ſhall lay before you ſome few *General Remarks*, which in my humble Opinion may be added to what *my Counſel* have already obſerv'd, concerning the Methods taken by the *Managers for the Honourable Houſe of Commons*, to Prove and Support the *Articles* of their Charge. And ſhall then, with your Lordſhips leave, ſay ſomewhat *ſeverally* to the *Articles* themſelves, which may ſerve to remind your Lordſhips of what my *Counſel* before offered more at large, and with greater Advantage.

My Lords, The Charge brought againſt me in theſe *Articles* is of a very *High* and *Heinous* Nature; and had it been as *clearly made out*, as it has been *ſtrongly affirmed*, it would juſtly have expoſed me to a very ſevere Sentence. But the more *heinous* the *Charge* is, the more *evident* and *undeniable*, I ſhould think, the *Proof* ought to be. And how, my Lords, has this Charge been ſupported in the ſeveral *Articles* of it? By *plain*, *direct*, and *expreſs* Paſſages produced, and read to your Lordſhips out of my Sermons; or by *Intendments*, *unneceſſary Implications*, and *ſtrain'd Conſtructions?* By laying *entire Sentences* before your Lordſhips, and relying upon what was *manifeſtly* contain'd in them? or by *piecing broken Sentences*, and conjoining diſtant and independent Paſſages, in order to make me *ſpeak*, what I never *thought* of?

I am unacquainted, my Lords, with the Methods of *legal Proof*, and little thought I ſhould have had *this Occaſion* of enquiring into them. But, as far as I am able to comprehend any Thing of this Nature, I ſhould think, that there cannot be a *clearer Indication* that I am not guilty of having aſſerted what I am charg'd by the ſeveral Articles to have ſaid, than that ſo *many Hours Learning and Eloquence* have been employ'd in proving me to have ſaid it. Had I *really* affirm'd thoſe Propoſitions for which I am accuſed, my Sermons being before your Lordſhips, the Places wherein ſuch Propoſitions were directly contained might have been referred to, and read, with the ſame Eaſe as *my Counſel* referr'd to the Paſſages contained in the ſeveral *Writings* and *Sermons* of the *Reverend Fathers*, and other *Eminent Divines* of *our Church*, wherein they Taught the *Doctrine of Non-Reſiſtance* in the ſame Extent as I maintained it, or in Terms much ſtronger.

Theſe Paſſages produced by *my Counſel* were barely *Read* to your Lordſhips: No *Argument*, no *Colours* were uſed, becauſe *none* were *neceſſary*, to prove what Propoſitions were laid down in thoſe Paſſages. Whereas, to prove me guilty of having aſſerted what is laid to my Charge, after my *Sermons* and *Prefaces* were read to your Lordſhips, much Art and Induſtry were uſed to perſuade your Lordſhips, that ſuch Aſſertions were really contained in them.

My Lords, When my Words were capable of *Two* Senſes, the *worſt* and moſt *invidious*, though at the ſame Time the moſt *ſtrained* and *unnatural*

Conſtruction, has been always made of them. Nay, when my Words were ſo *plain* and *expreſs*, that it was *impoſſible* to put any *criminal Gloſſes* or *Colours* upon them, I have been accuſed of *meaning* the *direct contrary* to what I have ſaid: And when I preſſed the Duty of *Allegiance to the Queen*, your Lordſhips were told, that it was moſt *certain* I *meant* the *Pretender*.

To *Aggravate* my Guilt, I have been *accuſed* not only for what I am *ſuppoſed* to have ſaid, but for what I am allowed *not* to have ſaid: Not only for what I have taken notice of in my *Sermons*, but for what I have *paſſed by unobſerved*: I have been charged with *Negative Crimes*; as if what I omitted to ſay, had been *omitted* with *Deſign*, and my *Silence* itſelf were *Criminal*.

Theſe, my Lords, are the Methods, that have been made uſe of to *prove* me guilty of *Crimes*, which *if* proved, might affect my *Liberty* and *Fortune*; no *favourable Allowances* have been made to a *Miniſter of the Goſpel*, diſcharging the *Duty* of his *Function*, and rebuking *Vice* and *Irreligion* with an *honeſt* and *well-meant zeal*, but ſometimes perhaps carrying him into Expreſſions too open, and unguarded. I could add, my Lords, if ſuch a Complaint might not be thought *improper* from one in my *Circumſtances*, that, in the Courſe of my Accuſation, I have been ſtiled a *Criminal*, and treated as *ſuch* by ſome of theſe *Honourable Gentlemen* with a Degree of *Scorn* and *Indignity*, from which I hoped my *Sacred Profeſſion*, *my preſent unhappy Condition*, and a Regard to this *Solemn* and *Awful Judicature* might have ſcreened me.

But, my Lords, I lay aſide all *Complaints* of this Nature, and with your Lordſhips leave ſhall proceed to make ſome few, ſhort Obſervations upon the ſeveral *Branches* of the *Charge* Exhibited againſt me.

I am charged, my Lords, in the *firſt Article*, with having Maintained, *That the neceſſary Means*, uſed to bring about the *late Happy Revolution*, *were Odious and Unjuſtifiable*; in Proof of which it has been urged, that I have in *General Terms* aſſerted, *the utter Illegality of Reſiſtance to the Supreme Power upon any Pretence whatſoever*. My Lords, the *Reſiſtance* in that Paſſage by me *condemned*, is no where to be applied to the *Revolution*; nor is it applicable to the Caſe of the *Revolution*, the Supreme Power not being then *reſiſted*.

My Lords, I neither expreſly apply'd my Doctrine of *Non-Reſiſtance* to the Caſe of the *Revolution*, nor had I the leaſt thoughts of including the Revolution under my general Aſſertion. I expreſſed this Doctrine in the ſame general *Terms*, in which I found it deliver'd by the *Apoſtles of Chriſt*. I taught it as I had learnt it from the *Homilies* of our Church, and as I was enjoined to teach it by the Articles of our Religion. I uſed no *other Language*, than what had been uſed by our *firſt Reformers*, by a continued Series of *Right Reverend Prelates*, and other *Celebrated Divines* now with God, and by many of thoſe *Venerable Fathers*, before whom I ſtand, and what is perfectly agreeable to the *Laws and Statutes* of this Realm. I had *little* Reaſon to apprehend that I could *ever* have been accuſed by the *Gentlemen of the Houſe of Commons* to your Lordſhips as a *Criminal*, or as an *Aſperſer of the Memory of the late King*, for preaching this Doctrine; when *others*, who preached the ſame Doctrine, in the ſame Terms, before their late Majeſties, before our preſent Gracious *Sovereign*, (whom I pray God long to Preſerve!) before each *Houſe of Parliament*, before this very *Houſe of Commons*, have met with *publick Approbation*: But ſince it is my *ſingular Misfortune* to be *Accuſed*, for what *others* have *received Thanks*, in ſome Inſtances convey'd to them by ſeveral of the *Managers themſelves*, I do with all humble Confidence rely upon your Lordſhips *Juſtice*; not doubting but that the *Learned Judges*, if thought neceſſary to be conſulted, will declare, what I have in this Caſe aſſerted, to be warranted by *Law*, and the *Right Reverend the Biſhops* will affirm it to be the *Doctrine of the Goſpel*.

The Doctrine I preached being the *Doctrine of the Homilies* of our Church, not expreſſed only in a few particular Paſſages of thoſe *Homilies*, but perfectly agreeable to the *whole Tenor*, the main Scope and Deſign of them; and thoſe *Homilies* being eſtabliſhed by the *Thirty-Nine Articles*, as containing godly and wholeſome *Doctrine*; and thoſe Articles being confirmed by the 13th of Queen *Elizabeth*; and that Statute being made Perpetual and Fundamental to our Conſtitution by the *late Act of Union*; I leave it to your Lordſhips to conſider, how far the Condemnation of *me*, on the Account of that Doctrine, may affect, and ſhake the *preſent Frame* of the *Britiſh Conſtitution*, in Church and State, and tend to diſſolve the *Union of the two Kingdoms*.

My Lords, Upon the *ſecond Article*, I would humbly pray your Lordſhips to conſider, that I have no where in my Sermon ſhewn any the leaſt Diſlike of the *Indulgence granted by Law to the Diſſenters*; that, on the contrary, I have declared my *Approbation* of it in the *moſt expreſs Terms* imaginable, which I beg leave once more to repeat to your Lordſhips out of my Sermon preach'd at St. *Paul*'s. 'I would not (I there ſay) be miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence which the Government hath condeſcended to give them; which I am ſure, all thoſe who wiſh well to our Church, are ready to grant to Conſciences truly Scrupulous; let them enjoy it in the full Limits the Law hath preſcribed.'

My Lords, This *then was*, and ſtill *is*, my ſincere Opinion; nor am I conſcious that I have uttered *one Word* inconſiſtent with it. I have indeed *blam'd*, and perhaps with ſome Warmth and Earneſtneſs blam'd, the *Abuſes* which Men of *no Conſciences* have made of the *Legal Exemption* granted to Conſciences *truly ſcrupulous*: Nor could I think that thoſe Reprehenſions of mine, would have drawn upon me the Diſpleaſure of any *ſincere Chriſtian*, which were levelled againſt *Hypocrites*, *Socinians*, *Deiſts*, and ſuch, as under the Umbrage of that *Act*, *which permits Proteſtant Diſſenters*, and thoſe only, to ſerve God, every Man in his own Way, think themſelves at Liberty to be of no *Proteſtant Congregation*, of *no Religion* at all. I will farther ingeniouſly own to your Lordſhips, that I had in my Eye ſome *Abuſes* made of *that Act* by the *Diſſenters themſelves*; who, I am told, do (both *Paſtors* and *People*) rarely obſerve the *Qualifications* preſcribed by *that Act*; and who erect *Seminaries* for educating Youth in *Principles* oppoſite to the *Doctrine*, *Diſcipline*, and *Worſhip* of our Church: Whereas *that Act* was *intended* for the Eaſe of *thoſe*, whoſe Minds, thro' the unhappy Prejudices of Education, were already eſtranged from the Church; not, as I humbly conceive, to indulge Men in taking the moſt effectual Methods to *Propagate* and *Perpetuate* their *Schiſm*.

My Lords, Of any Favours to Diſſenters granted, or intended by the *Law*, I have no where complained. Of *Toleration*, a Word unknown to our *Laws*, and implying, as I am informed, much more than our *Lawgivers* deſigned, if I have ſaid any thing *Offenſive*, I may, I hope, reaſonably preſume, that it will not be judged by your Lordſhips in any wiſe to reflect on that *Act of Exemption*, which I have ſpoken of in Terms, no ways, I think, miſbecoming a *good Subject*, or betraying any want of *Chriſtian Moderation*. Nor is there, my Lords, any want of it, I conceive, in affirming that *this Act*, which relieves ſome Diſſenters from *legal Puniſhments*, to which they were before obnoxious, hath not any ways alter'd the *Nature of Schiſm*, or extinguiſhed the *Obligations* to *Church-Communion*, which is an *Evangelical Duty*, incumbent on all Chriſtians, by the *Rules* of the *Goſpel*, *Antecedent* to all *Secular Laws*, and can by no *human Power* be *Diſpenſed* with. If the *Church* of *England*, my Lords, impoſes no *unlawful* Terms of *Communion*, as She certainly does not, then all *Separatiſts* from her *Communion*, will, notwithſtanding the *Indulgence*, continue to be Guilty of *Schiſm*; The Conſequence of which *Guilt*, may ſtill reſt upon their *Souls*, however it may ceaſe to Affect their *Bodies* or *Eſtates*. For as no *human Law* can render that *Lawful* which God hath *forbidden*, ſo neither can it make that *Void*, which God hath *commanded*.

My Lords, I am accuſed, under this Head, of maintaining, that 'it is the Duty of Superior Paſtors to Thunder our their Eccleſiaſtical *Anathemas* againſt Perſons entitled to the Benefit of the Toleration;' I hope, it hath evidently appeared to your Lordſhips, that I advance no ſuch *Poſition*. Sure I am, that my Words do not in *themſelves* carry ſuch a Meaning, nor does the *Connexion* of my Diſcourſe require *that* Senſe, or eaſily *admit* it. *Schiſmaticks*, my Lords, are not the *only* Perſons againſt whom *Eccleſiaſtical Cenſures* may be denounced; *the Works of Darkneſs*, which I referred to, *as fit to be reproved* in that Part of my Sermon, where I ſpeak of *theſe Cenſures*, are of the ſame kind with thoſe mentioned by the *Apoſtle*, whoſe Words I produced, all *lewd* and *immoral* Practices; againſt theſe, my Lords, and againſt *Hereſies*, and *Blaſphemies* (a black Catalogue of which has been diſplay'd before your Lordſhips) I thought the *Anathemas* of the Church would be well employed; ſuch *Anathemas*, I doubt not, my Lords, would be *ratify'd in Heaven*, and would therefore, by any *Power on earth*, *be irreverſible*.

As to Archbiſhop *Grindal*, though I may ſeem to have uſed ſome undue Aſperity of Expreſſion concerning him, yet I charged him with nothing but what I had good Grounds for, from our *Hiſtorians*: It hath been made appear to your Lordſhips, that, on the Account of his *Remiſſneſs in Church-Government*, he lived and died under the High Diſpleaſure of Queen *Elizabeth*; and whether therefore he, or *that glorious Queen*, ſhall bear the Blame of his Diſgrace and Sufferings, is with all Humility ſubmitted to your Lordſhips.

I hope, my Lords, I ſtand clear in your Opinions, of the Charge advanced againſt me, in the *two firſt Articles*; and as my own Conſcience acquits, ſo I truſt your Lordſhips will acquit me, of whatever is laid to my Charge in the *Third*.

My Lords, I neither have ſuggeſted, nor do in my Conſcience believe, *that the Church is in the leaſt Peril or Adverſity from her Majeſty's Adminiſtration*. So far am I from any ſuch Thoughts, that I am entirely ſatiſfied of her being a moſt *affectionate Nurſing-Mother* to it. But I hope I may ſay without Offence, that the *Church* may be in Peril from *other Cauſes*, without any Reflection upon Her Majeſty's Government, or any Contradiction to *Her Royal Proclamation*, and the *Reſolution of both Houſes of Parliament* four Years ago. If the *Church* be in Danger, when the *Chriſtian Religion* is evidently ſo, I hope it will be thought no Crime to ſay, it has ſcarce ever been in greater Danger than it is now, ſince Chriſt had a *Church* upon Earth. For beſides that Deluge of *Prophaneneſs* and *Immorality*, which overſpreads the *whole Kingdom*; beſides the *Variety*, and growing *Strength* of thoſe *Schiſms* which *weaken* and *divide us*, and of thoſe *Heterodox Opinions*, and *damnable Hereſies*, which are daily *publiſhed* and *propagated* among us; I verily believe, that never were the *Miniſters of Chriſt* ſo *abuſed* and *vilify'd*, never was the *divine Authority* of the *Holy Scriptures* ſo *arraigned* and *ridiculed*, never were *Infidelity* and *Atheiſm* itſelf ſo *Impudent* and *Barefaced*, never were ſuch *horrid Blaſphemies* printed in any *Chriſtian State*, from the *Foundation* of *Chriſtianity to this Day*.

Out of the many Inſtances of this Kind, which, being ready at hand, I could have produced to your Lordſhips, I have *Selected* a *few* only; but thoſe ſuch, as I am perſuaded your Lordſhips could not hear without Horror and Aſtoniſhment. Pardon me, my Lords, if my Apprehenſion of the ſad Conſequences we may expect from ſuch *crying Abominations*, have forced from me ſome Expreſſions, which upon a *leſs* Occaſion might ſeem too harſh and vehement. A Man that dreads no *Danger* from ſuch *unparallel'd Iniquities*, that do, as it were, *call down* God's ſevereſt Judgments upon that *poor Church* and *Nation*, wherein they are *openly* and *daringly* committed, muſt be *dead* in his *Love* for his *Country*, and *Religion*. If I have diſcloſed ſuch a *frightful* and *deteſtable Scene* of Impiety, which by reaſon of your Lordſhips *high Stations* and *great Employments*, might poſſibly lie undiſcovered to your Sight before; I ſhall think myſelf *happy*, whatever ſhall befal me, if I may by *God*'s Grace become the *mean Inſtrument* of putting a Stop to that *overflowing* of *Ungodlineſs* and *Blaſphemy*, which as yet no *Laws*, no *Proclamations*, how well ſoever *deſign'd*, and how often ſoever *repeated*, have been *able* to *reſtrain*.

Nor ought I, my Lords, to *forget*, tho' it was *forgotten* by the *honourable Managers*, another *Ground* of *Danger* ariſing to *this Church* from the Attempts of *Popiſh Emiſſaries*, by me mentioned, I hope without the leaſt Offence, in my Sermon at St *Paul*'s; where I ſay, 'It were highly to be wiſhed that thoſe excellent Laws, made for the Defence and Security of the Church, were at preſent put ſtrictly in Execution; for the *Roman* Catholick Agents and Miſſionaries that ſwarm about this great City, as 'twere in Defiance and Contempt of them, were never more buſy in making Proſelytes to their Superſtition and Idolatry, and perverting and debauching Her Majeſty's Subjects in every Corner of our Streets.' I have not, my Lords, been called upon to prove the Truth of this Paſſage, nor has it been reckon'd among the falſe Inſinuations I have made that the *Church is in Danger*. I pray God, the Church may be in *no* Danger upon *any* of theſe Accounts! Her Majeſty, your Lordſhips, and the *Commons*, have indeed provided againſt theſe *Dangers* by *wholeſome Laws*, and I hope, I did not *exceeds* the Limits of my *Function*, when, being called to preach before *Magiſtrates*, I exhorted them to prevent *theſe Dangers*, by putting *thoſe Laws* ſtrictly in Execution.

Juſt had been the *Indignation* of *the Honourable Houſe of Commons*, juſt would be your Lordſhips moſt ſevere *Reſentments*, if by any *Parallel* by me drawn, I had inſinuated that the *Members of both Houſes, who paſſed the Vote concerning the ſafe and flouriſhing Condition of the Church, had been then conſpiring its Ruin.* I have already *purged* myſelf from this *Imputation*, by obſerving, that the *Parallel*, aſcribed to me, implies, that they who voted *King* Charles *the Firſt* to be out of *Danger*, and thoſe who *conſpired his Death*, were the very *ſame Perſons*, whereas it is certain they were not; for, my Lords, the *Vote* about the *King's Safety* was paſſed by *Lords and Commons* a *Year and Half* before his execrable Murder, which had been contrived by *the Army*, and was perpetrated by a *pretended Ordinance* of a *ſmall Remnant of the Houſe of Commons (not a tenth Part of the whole)*, *after the reſt of the Members had been impriſoned or ſecluded, and without the Concurrence of the Houſe of Peers, who totally rejected it.* You have had, my Lords, a very *different Repreſentation* of *this Fact* made by *one* of the *learned Managers:* But this, my Lords, is the *real Truth*, as recited in the *Act of Parliament* for the *Attainder of the King's Murderers*; and is an *Evidence*, that I *could* not poſſibly mean, by any *odious Parallel*, to inſinuate, that the *Members* of *both Houſes*, who paſſed the Vote concerning the Safety of the Church, were *then* conſpiring its Ruin.

I humbly crave your Lordſhips Patience yet a little farther, whilſt I ſpeak to what is alledged in the *Fourth Article*, which charges me with many Crimes of a very *high* and *flagrant* Nature; none of which have been endeavoured to be proved upon me, otherwiſe than from *ſuppoſed Suggeſtions*, and *undetermined Expreſſions*; and I muſt ſtill, with your Lordſhips Leave, humbly *inſiſt* upon it, that where the *Expreſſions* are *doubtful*, there the *favourable Senſe* is always to be *preferred*.

After all that has been ſaid by the *learned Managers for the Commons*, What Miniſter of State, I beſeech your Lordſhips, have I been *proved* to *reflect upon directly or indirectly? Where*, and *how* do I, by any *Suggeſtion*, charge her Majeſty, or *thoſe in Authority under her*, *with a general Male-Adminiſtration? How* do I perſuade her Subjects to keep up a *Diſtinction of Parties and Factions*, while I reprove thoſe who *divide* us by *knaviſh Diſtinctions*, and while I perſuade my Fellow-Subjects to *loſe* and *forget* them? *How* is it *poſſible*, I ſhould *ſtir up the People to Arms and Violence*, when I am endeavouring to convince them of the utter *Illegality* of *Reſiſtance* upon *any Pretence whatſoever?* Theſe Things, my Lords, ſeem to be *inconſiſtent*, unleſs a Man may be thought a *Rebel* for recommending *Loyalty*, or *ſeditious* for preaching againſt *Sedition*.

I remember, indeed, at the Opening of this Charge againſt me, that *one of the Managers for the Houſe of Commons*, vouchſafed to offer his charitable Aſſiſtance towards *reconciling* this *ſeeming Inconſiſtency*; for he was pleaſed to *ſuppoſe*, that when I ſpake againſt *reſiſting the Sovereign*, I had not our *gracious Queen*, but *ſome other Perſon* in View; and that I might therefore, agreeably to *my Principles of Non-Reſiſtance*, ſtir up the People to Arms and Violence againſt her ſacred Majeſty. Your Lordſhips will once more pardon my Earneſtneſs, if I call God to witneſs, that I utterly deteſt any ſuch *traitorous Intention*; and I ſhould, in my own Opinion, be unworthy of the *Name* of a *Chriſtian*, if I could give myſelf Leave to caſt ſuch a *black and groundleſs Imputation* upon any one in *like* Circumſtances with *mine*, who had given all *poſſible Evidences* of his *Duty* and *Affection* to the *preſent Government*. My Lords, I have taken the *Oaths of Allegiance to her Majeſty*, and that of *Abjuration* againſt the *Pretender*; and when therefore I preached the *Doctrine of Non-Reſiſtance*, it is moſt apparent, that the *Government*, which I perſuaded my Fellow-Subjects not to *reſiſt*, is the *preſent Government:* and I humbly conceive, that the *preſent Government* can never be *overturned*, if it be *never reſiſted*.

How *true* a *Zeal* and *Affection* I have always borne to her Majeſty's *Perſon* and *Government*, I leave to be judged by your Lordſhips, and the *whole World*, from thoſe *publick Demonſtrations* which I have given of it, at all Times when I had Occaſion to make Mention of *either*. I hope your Lordſhips will pardon me, if I refer to ſome of my own *printed Expreſſions*, as an evident Proof of my unfeigned Duty and Allegiance. “If to call it the moſt ineſtimable Bleſſing this Nation could enjoy, that her Majeſty, the good and pious Relict of the Royal Family, ſits now happily upon the Throne of her Anceſtors; if to pray that God may long preſerve her for the Comfort and Support of the Church, as the only Security, under God, it has to depend upon; if earneſtly to contend for the Safety, Rights, and Eſtabliſhment of her Majeſty, together with thoſe of the Church; if to vindicate her Majeſty's Title to the Crown againſt the Uſurpations, Pretences, and Encroachments of her Adverſaries, and to aſſert her Right to the Throne to have been ſo clear, manifeſt, and undoubted, that even her worſt Enemies (*could ſuch a pious Princeſs be ſuppoſed to have any)* muſt acknowledge it: That ſhe was proclaimed as 'twere by the Voice of God, in the univerſal Joy, Satisfaction, and Unanimity of her Subjects; that her *perſonal Merit*, exempted from *that*, made her worthy of a brighter Diadem than ſhe wears: If to perſuade her Subjects, with the moſt hearty Zeal, and Generoſity, to enter into a neceſſary War for the Defence of her Majeſty, and the common Preſervation of our Church, Liberties, and Conſtitution, againſt a powerful Adverſary; if to beſeech God to proſper ſo good an Undertaking, to give an happy Event and Iſſue to ſuch a rightful Cauſe, to crown our Arms with Victory, and to make them as ſucceſsful as they are juſt and honourable; and that, in order to this, we are all bound, both in Duty to God and our Sovereign, as well as by our own Intereſt, unanimouſly, and heartily to aſſiſt and ſupport her under this great Undertaking, as far as our Prayers, and Eſtates, Lives and Fortunes, can ſerve her; if to perſuade her Subjects, that the great and threatning Dangers of her Enemies, ſhould have that juſt Effect upon us, to unite us, as much as in our Reſolutions and Affections, as they do in our common Intereſts, Apprehenſions, and Troubles; if to ſet out the Bleſſings we enjoy in the wiſe Conſtitution of our Government and Laws, in the moſt refined Policies of our Parliament and Miniſtry, in the Strength and Number of our Armies, Fleets, and Confederates, in the Care and watchful Vigilance, the Courage, Reſolution and Conduct of our General, and *above all*, in the Piety and Prudence of our *moſt gracious QUEEN*; if to affirm that ſhe daily gives freſh Inſtances of her Wiſdom, in the happy Adminiſtration of her Government, and in nothing more ſhews her Policy, and diſtinguiſhed Judgment, than in making Choice of ſuch Miniſters of State, who are acceptable to their Country, and expreſs ſuch a Zeal and Steadineſs in its Service and true Intereſts, and whom nothing could bribe, or betray into a Party, wherein it might any ways ſeem to be endangered; if, with the moſt ardent Requeſts, to implore God's Providence, which through ſo many Dangers and Difficulties has raiſed up, and preſerved her Majeſty, to carry on theſe glorious Undertakings with Succeſs, that ſhe may be able to reſtore and ſettle the Peace of *Europe*, in its juſt Rights and Limitations; and that, as God has beſtowed a Crown upon her in this World, as the Reward of theſe heroic and pious Deſigns, ſo, after a long Reign here, he would advance her to an higher Throne in Heaven, and dignify her with a glorious and immortal Crown hereafter:” If this, my Lords, I ſay, is *falſely and maliciouſly to ſuggeſt*, that her Majeſty's *Adminiſtration, both in Eccleſiaſtical and civil Affairs, tends to the Deſtruction of the Conſtitution*; if this *be charging* her Majeſty, *and thoſe in Authority under* her, *both in Church and State, with a general Male-Adminiſtration*; if this be, *as an Incendiary, to perſuade* her *Subjects to keep up Diſtinctions of Factions and Parties*; if this be *inſtilling groundleſs Jealouſies, fomenting deſtructive Diviſions, and ſtirring up* her Majeſty's *Subjects to Arms and Violence*, againſt any but her Enemies; then, my Lords, I am guilty of *this Article of Impeachment*; otherwiſe I am innocent.

My Lords, I have always thought it *my Duty*, upon all *publick Occaſions*, to aſſert theſe Principles of *Loyalty and Subjection* to the ſupreme Power, whenever I had a *proper Call* ſo to do; of this there are *numberleſs Witneſſes* in thoſe ſeveral Places to which I have belonged. One of theſe I beg Leave of your Lordſhips particularly to mention, *Magdalen College* in *Oxford*, whereof I am at preſent an unworthy Member; and which by the known *Sufferings* of the *whole Body* for the *Church* and *Conſtitution*, contributed as much towards the *late happy Revolution* as any *Society* in the *Kingdom:* To which *Honourable Society* I humbly appeal for my *Character* and *Behaviour*. I could alſo appeal for the ſame to a *Right Reverend Lord*, that now ſits on the *Bench of Biſhops*.

Had it been fit to have troubled your Lordſhips with *Evidences* of my *hearty Affection* to the *preſent Government*, I could have produced them in great *Abundance*, from the *Perſons* with whom I have *converſed*, from the *Gentlemen* whom I have *bred* up, and from the *Congregations* to which I have *preached*. If my *Principles* had any Tendency towards *alienating* the *Affections* of her Majeſty's Subjects, ſurely *ſome* one Inſtance of my *Diſloyalty* to the QUEEN, ſome *favourable Expreſſions* toward the *Pretender*, ſome *Indications* of my *Diſlike* to the *preſent Settlement*, and the *Proteſtant Succeſſion*, might have been *pitched* upon, and *expoſed* to your Lordſhips, in order to *juſtify* the *Charge of Sedition* againſt me. But I cannot but with Pleaſure obſerve to your Lordſhips, that from the *whole Courſe* of my *Actions*, no one Inſtance of that *Kind* is *alledged*, or ſo much as *pretended*.

My Lords, The Charge of *wickedly wreſting divers Texts of Scripture* lies very heavy upon me as a *Chriſtan*, and *Miniſter of Chriſt*. If I am guilty of it, there is *another Tribunal*, *another Bar* at which I am to appear, and where by *that Scripture*, which I have *wreſted*, I ſhall be *judged* and *condemned*. In the mean time, my Lords, I hope that thoſe, whoſe particular *Profeſſion* and *Studies qualify* them to be the moſt *competent Judges* of *ſuch Matters*, will *abſolve* me in this Particular.

Upon the *whole*, therefore, my Lords, I hope it appears, that I am not *guilty* of *any* of the Crimes of which I am *accuſed*; that I have trangreſſed *no Law of the Land*, neither *Statute*, nor *Common Law*, relating either to her Majeſty, or to my *Fellow-Subjects*, to the *Church*, or to the *State:* And that I may with all Humility apply to my own Caſe the Words of that *bleſſed Apoſtle*, whoſe *Doctrine* I *defend*, and whoſe *Example* I hope I ſhall have the Grace to *follow*, *neither againſt the Law, nor againſt the Temple, nor againſt Cæſar, have I offended any thing at all.*

What I have hitherto humbly offered to your Lordſhips relates to my *Words* and *Actions*; and as to the *Thoughts* and *Intentions of my Heart*, which are known only to *God*, and my own *Conſcience*, and which are *affirmed* in my *Impeachment* to be *wicked*, *ſeditious* and *malicious*; I call the *Searcher* of *Hearts* to *witneſs* in the moſt *ſolemn* and *religious Manner*, as I expect to be *acquitted before God, and his Holy Angels*, at that *dreadful Tribunal*, before which not only *I*, but all the World, even your Lordſhips, who now ſit in *Judgment* upon me, muſt *appear*, to be *acquitted* or *condemned*, that I had no ſuch *wicked*, *ſeditious*, or *malicious Intentions*; that there is nothing upon Earth I more *deteſt* and *abhor*; that my *Deſigns* were, in every reſpect, directly contrary. I had no *Intention to aſperſe the Memory of his late Majeſty*, to *traduce*, or *condemn* the *late happy Revolution*, or to *arraign the Reſolutions of both Houſes of Parliament*. So far was I from deſigning to *undermine* and *ſubvert* her Majeſty's *Government*, and the *Proteſtant Succeſſion* as by *Law eſtabliſhed*, that it was my *ſincere Intention* to exert my *beſt Endeavours* for their *Security*. So far was I from intending to perſuade her Majeſty's *Subjects to keep up a Diſtinction of Parties and Factions*, *from inſtilling groundleſs Jealouſies, fomenting deſtructive Diviſions among them*, or *exciting and ſtirring them up to Arms and Violence*, that my Aim was to perſuade them to lay aſide *all Diſtinctions*, to *unite in one well-compacted Body*, to be obedient to their Governors, and to ſupport the *preſent Eſtabliſhment*. So far was I from deſigning to *defame* her Majeſty's *Adminiſtration*, or to infuſe any *undutiful Thoughts* of Her, that I not only pay her all Honour and Obedience, but am from the *Bottom of my Soul* zealouſly, and affectionately *loyal* to her; being entirely perſuaded, that the *Church* is ſo far from being in Danger from Her, that She is as *heartily affected to its Eſtabliſhment* and *Proſperity*, as I hope I have always ſhewed myſelf to be to her *Sacred Perſon and Government*.

As to the *Proteſtant Succeſſion by Law eſtabliſhed*, tho' the *Doctrine* which I preached tends to the *Security* of it, (as I heartily deſire *every thing* by me ſpoken ſhould tend) yet having no *Occaſion* in either of my *Sermons* to take Notice of it, I do no where in thoſe Sermons *mention* it, nor ſay any thing that can be *interpreted* to have *any View* towards it. Therefore, tho' I cannot with my beſt Application apprehend how it comes to be ſaid in the *Preamble to my Impeachment*, that *I had deſigned to undermine and ſubvert it*, yet I ſhall gladly take this Opportunity, of *declaring myſelf* before your Lordſhips upon *that Subject*. It is my ſincere and hearty Prayer, that *God* would prolong the Life of Her Moſt Sacred Majeſty, whoſe *Exemplary Goodneſs* and *Piety* give us the beſt Hopes we have of *averting* that *Vengeance* which is due to the *Wickedneſs* of the *Age* we live in; that He would *bleſs* Her *Councils* at *Home*, and Her *Arms Abroad*, and make Her *Reign* exceed that of Her *Renowned Predeceſſor Queen* Elizabeth, *in Length*, as well as *Glory*. But when the *Inheritrix of the Bleſſed Martyr's Crown*, and *Piety*, when She, *the Deſire of our Eyes*, *and the Breath of our Noſtrils*, ſhall, full of *Years* and *Honour*, be *Gathered* to *Her Fathers*, and exchange Her *Temporal* for an *Immortal* Crown; (ſince we are deprived of *that Prince*, Her Royal Off-ſpring, whoſe *Loſs* no *true Lover* of his *Country*, and of the *Royal Family* can reflect upon without a *Bleeding Heart*, and whom *God* in his *Anger* took from us, becauſe we were *unworthy* of ſo *ineſtimable* a *Bleſſing*,) I earneſtly beſeech *God*, in defect of *Future Iſſue* from Her Majeſty, to *Perpetuate* the *Succeſſion* of the *Crown*, as it is *Eſtabliſhed*, in the moſt illuſtrious Houſe of *Hanover*, which I look upon as, next to his Providence, the *beſt Guard* we have againſt *Popery* and *Arbitrary Power*, the *beſt Security of our Church*, and of the *Conſtitution* of our *Government*, which is the *Glory* and *Happineſs* of our *own Nation*, and the *Envy of all others*. And I cannot *yet* apprehend, how the *Doctrine*, which I have taught, tends to *weaken* or *undermine* it; nor on the other ſide, how the *Doctrine of Reſiſtance*, which brought Her Majeſty's *Royal Grand-Father* to the Block, (*ſuppoſing* it a *true Doctrine*) comes to be *mentioned*, or *thought of*, much leſs to be *induſtriouſly maintained* as a neceſſary and indiſpenſible Duty, under the moſt *mild* and *gracious Adminiſtration* of the beſt of Queens. Nothing ſeems more *ſtrange* than that *Reſiſtance* ſhould be ſo carefully taught under *ſuch a Government*, unleſs it be that *Non-Reſiſtance* ſhould *overturn* it.

So far was I therefore from having any of thoſe *wicked*, *malicious*, or *ſeditious Deſigns*, which are laid to my *Charge*, that my *Intentions* were, on the *contrary*, to *inſtil* the *Principles of Loyalty* and *Obedience* into my Fellow-Subjects, and withal to put a Stop to that *Torrent* of *Lewdneſs*, *Irreligion* and *Atheiſm*, of which I have given your Lordſhips ſo many *flagrant Teſtimonies*.

Thoſe *outragious Inſults* upon *God*, and *Goodneſs*, are ſo Provoking, that they may excuſe ſome *Heat*, and *Severity of Expreſſion* in a *Miniſter of Chriſt*, who has a *juſt Senſe of Religion*, a *due Concern* for the *Diſcharge* of his *Holy Function*, or for the *Honour* of his *Maker* and *Redeemer*. And if any Objection be made againſt me, for Treating with an *Unbecoming Bitterneſs* ſuch *Daring Rabſhekahs*, who *defy the Living God*; I beg leave to Reply in the Words of a *Reverend Father of our Church*, *Let them conſider what Moderation and Temper a Man had need be of*, *that in this Nation*, *and this Age*, *ſhall ſpeak againſt Faction*, *Rebellion* (I add *Deiſm*, *Tritheiſm*, and all ſorts of *Hereſy*, *Blaſphemy*, and *Atheiſm*), *without extraordinary Severity*; nay, it is our *Duty in ſuch Caſes*, to expreſs ourſelves with *Warmth* and *Sharpneſs*, according to the Example of our *Bleſſed Saviour*; who tho' *Meekneſs itſelf*, could not but ſhew the utmoſt Indignation at the *Prophaning the Houſe of God*. This is not, my Lords, to *rail*, but to *rebuke*; and thoſe who ridicule, or cenſure us for it, either *have not*, I preſume, or *will not* own they have, a *right Notion* of the *Dignity* of our *Office*; will not conſider, that we are the *Ambaſſadors of Chriſt*, that we are *commanded*, in his Name, *to exhort*, *and rebuke with all Authority*; and that our *Authority* is *derived* from thoſe to whom it was ſaid by our *Bleſſed Saviour*, *He that deſpiſeth you*, *deſpiſeth me*, *and he that deſpiſeth me*, *deſpiſeth him that ſent me*: Whatever Expreſſions, therefore, in my Sermons may have *ſlipt* from me, which ſeem ſo *far* liable to *Exception*, as to carry a Senſe I never *intended* (as he muſt be an *Happy Speaker*, indeed, whoſe Words are altogether unexceptionable), yet I humbly hope, the above-mentioned Provocations will plead my Excuſe, or that, at the very worſt, ſome *haſty*, or even *violent Expreſſions*, ſhall not be deemed *High Crimes and Miſdemeanors*. I deſire it may be farther conſidered by your Lordſhips, that I could have no *Temporal Intereſts* to ſerve by the *Doctrines* I advanced; and therefore could have no *Deſign* in view, but to *diſcharge* my Duty to God, as a *Miniſter of Chriſt*, and to my *Sovereign*, as a *Faithful* and *Loyal Subject*.

My Lords, Theſe Things being humbly offered to the Conſideration of your Lordſhips, I hope, that what I have already *ſuffered*, as a *ſuppoſed Criminal*, will be thought *ſufficient Puniſhment* for one, who has offended againſt *no Law yet in Being*. It muſt be thought no little *Grief* and *Vexation* to any *ingenuous Man* to be brought to *this Bar*, under the leaſt *Suſpicion* of ſuch *Crimes* as are laid to my Charge; but for a *Perſon* of *my Function* to have an *Accuſation* of this Nature alledged againſt him, ſo heinouſly reflecting upon his *Holy Character*, is ſuch a *foul Blot*, as though his *Innocence* ſhould at laſt be cleared by your Lordſhips, upon the moſt *undeniable Evidence*, muſt leave a *Scar* upon his *good Name*; which is to all Men dear, but much more ſo to *thoſe*, whoſe whole *Capacity* of *doing good* in the World *principally* depends upon it.

My Lords, As the *Matter* of my *Charge* was highly *criminal*, ſo the *Form* and *Manner* of it ran in ſuch *general* and *uncertain Terms*, that 'twas impoſſible to know the Grounds of my *Accuſation*; or *how* to *defend* myſelf, when I knew not *where* I ſhould be *attack'd*. So that after I had provided as *particular an Anſwer* as ſuch a *general Accuſation* would admit of, the *Commons* were pleaſed in their *Replication* to ſay, that there *were ſeveral Things in it Foreign to the Charge*. To the great Misfortune of falling under the *Diſpleaſure* of that *Honourable Houſe*, I might add, That of a *long and cloſe Confinement*, and of an *Expence* no ways proportion'd to my *Circumſtances*. Theſe, my Lords, are Afflictions which can be conceiv'd by nobody ſo well as by *him*, who has been ſo *unhappy* as to *feel* the *Weight* of them. And among theſe I reckon it not the leaſt of my *Sufferings*, that I have been for ſo long a time debarr'd, *from taking heed to that Flock over which the Holy Ghoſt hath made me an Overſeer*. For even ſince I have had my *Liberty*, by the Favour of your Lordſhips *admitting me to Bail*, I have purpoſely avoided doing any Part of the *Duty* of my *Function*, or even *appearing in Publick*, leſt it ſhould occaſion any *Tumult* or *Diſturbance*; as my *neceſſary Attendance* on your Lordſhips, from time to time, has ſince been thought *unhappily* to have done, without any *Fault of mine*, or the *leaſt degree of Encouragement* given by *me*, which I profeſs, in the Preſence *of God*, to abhor.

All theſe Circumſtances, my Lords, being conſider'd, together with the *Publick Manner*, the *Length* and *Solemnity* of my *Trial*, before ſo Auguſt a Court of Judicature, by which Means *I am made a Gazing-ſtock*, *both by Reproaches and Afflictions*, *and a Spectacle to the whole World*; I have ſtood in this Place Day after Day, to hear myſelf Accus'd of the *blackeſt Crimes*, and openly *revil'd*; I have been repreſented as a *Papiſt* in Diſguiſe, as a *Rebel*, as an *Enemy to* Her Majeſty's *Perſon and Government*, and a *Favourer of the Pretender*, tho' I have *abjur'd* him, (but not *forgot* him, as a Learned Perſon was pleas'd to ſay) that is, as the worſt of *Perjur'd Villains*: I have been call'd *an inſignificant Tool of a Party* on the one Hand, and *a moſt dangerous Incendiary* on the other; nay, *an Angel*, that is a Devil, *detach'd from the Infernal Regions*: All theſe things, I ſay, being conſider'd, (and your Lordſhips I am ſure, in tender Compaſſion to me will conſider them,) it is moſt certain, that, whatever be your Lordſhips Determination concerning me, I cannot eſcape without being a very *great Sufferer*, and I ſhall have been abundantly *puniſh'd*, tho' I ſhould have the *Happineſs* to be by your Lordſhips at laſt *Acquitted*.

Yet I cannot Reflect without *Comfort*, (the *greateſt of Comforts* next to *that* of a *good Cauſe*, and *a good Conſcience)* that *I Anſwer for myſelf this Day* before the moſt Illuſtrious Aſſembly in the World, *the whole Body of the Nobility of* Great Britain; whoſe *Princely Extraction* and *High Quality*, whoſe *Magnificent Titles* and *Splendid* Fortunes, whoſe *Hereditary Candor* and *Generoſity*, *inherent* in *Noble Blood*, *inſeparable* from the *Birth* and *Education* of *Peers*; in a word, whoſe *Solid Judgment*, and *exact Skill* in the *Laws* of *this Realm*, ſo eminently Qualify them for the *final Determination* of *Juſtice*; who are neither to be *ſway'd* by *Hopes*, *over-rul'd* by *Fears*, nor *miſled* by any *Falſe Prejudice* or *Paſſion*: If it muſt be a Man's *Misfortune* to *labour* under ſuch *hard Circumſtances* as *mine*, it is no ſmall *Mitigation* of them, that he *Pleads* his *Cauſe* before *ſuch Judges*, who, he knows, will *Decide* it with the ſtricteſt *Impartiality*, *Equity*, and *Honour*.

And, when I conſider that *I now ſtand*, and *am judg'd* for ſome of the *Doctrines* of *that Goſpel* which God *deliver'd unto our Fathers*, and you, my Lords the Biſhops, their *Succeſſors*, have receiv'd from *Chriſt* and *his Apoſtles*, as the *ſacred Depoſitum* of the *Church*, to be maintain'd inviolably in its *Primitive Simplicity*; when I conſider, what is the *Cauſe for which I am this Day call'd in Queſtion*; that it is *One* of thoſe *Eternal Truths*, which you are ſo Solemnly *commiſſion'd* to Teach, and *earneſtly Contend* for; when I conſider, that 'tis what our *Bleſſed Lord* and his *Apoſtles* ſeal'd with their *precious Blood*, and ſo many *Primitive Martyrs* maintain'd even in the midſt of *Flames*, ſo many *Learned Biſhops*, and *Confeſſors recommended to Poſterity* in their *immortal Writings*, as the *diſtinguiſhing Badge*, and *Glory* of our *Reformation*; nay, when I conſider, that 'tis what *you yourſelves* have *already ſupported* with *inconteſtable Reaſon*, and *Authority*; it is no ſmall Satisfaction to me to think, that as your Lordſhips are my *Judges*, ſo, I hope in God, you muſt be my *Advocates*. What a *Guilt*, as well as *Diſgrace*, would it juſtly devolve upon the *Clergy*, to *recede* from any *Principle* of our *excellent Church*, eſpecially from what has been ſo long *retain'd*, and *boaſted of*, as its *peculiar Character*! By *abandoning*, which we muſt *relapſe* into ſome of the *worſt Doctrines*, even of *Popery* itſelf, and render *ourſelves* the moſt *contemptible*, as well as *inconſiſtent Church* in the World! I think, I may therefore with Confidence uſe the Words of the *Great Apoſtle* to his *Accuſers*; *Having obtain'd Help from God*, *I continue unto this Day*, *witneſſing both to ſmall and great*; *ſaying none other Things than thoſe which the Prophets and* Moſes (I may add, Chriſt and his Apoſtles), *did ſay*.

For, my Lords, if I have committed any Faults or Errors in Expreſſion, yet as I *inſiſt* upon my *Innocence* with reſpect to all the *High Crimes* laid to my *Charge*, ſo I muſt ſtill *inſiſt* upon *all the Doctrines* which I have taught, as being *agreeable* to the *Word* of *God*, and to the *Doctrine* of our *moſt excellent* and truly *Apoſtolical Church*, and which *we* of *the Clergy* are *oblig'd*, both by *Subſcription*, and *Oath* to *acknowledge* and *defend*. And how *hard* are our *Circumſtances*, if we muſt be *puniſh'd* in this World for *doing* that, which if we *do not*, we ſhall be more heavily *puniſh'd* in the *next!* What a *Condition* are we in, if we are *commanded* to *cry aloud and ſpare not*, *to exhort*, *rebuke*, *in Seaſon and out of Seaſon*, on the one Hand; and *proſecuted*, *impriſon'd*, *ruin'd* on the other? If this be our Caſe, *who indeed is ſufficient for theſe Things?* And truly, how may we of the *Miniſtry*, above all Men living, apply to ourſelves thoſe Words of the Apoſtle, *If in this Life only we have hope in Chriſt*, *we are of all Men moſt miſerable*: But our *Comfort* is, that our *Hope in Chriſt* is not only in *this Life*. Juſtly might we be *reproach'd*, and *deſerve* ſome of thoſe *Reflections*, which in theſe *Licentious Times* are ſo plentifully *pour'd* upon us, were we not ready to *Practiſe* the *Doctrines* we *preach* of *Self-Denial*, *taking up our Croſs*, and *patient Submiſſion to Sufferings* and *Afflictions!* For my *own* Part, it matters not what becomes of *me*, nor is *my Deliverance*, or *Ruin*, of any Moment to the World; or, if it be, *I am not only ready to be bound*, *but to die*, could I by that do Service to my *Queen*, my *Church*, or my *Country*; *neither count I my Life dear*, *ſo that I might finiſh my Courſe with Joy*, *and the Miniſtry which I have received of the Lord Jeſus*. But may *God* ſo direct your Lordſhips, that through *me* a *Wound* may not be given to the *Doctrines* of the *Scriptures*, and of *the Church*, *which Chriſt hath purchas'd with his own Blood*.

And ſo, with all *Humility* and *Reſignation*, I ſubmit myſelf to your Lordſhips *Judgment*, be it what it will: *One Thing* I am ſure it can never *take* from me, the Power of *Wiſhing* and *Praying*, and (whether in *Proſperity* or *Adverſity*, whether I am *Acquitted* or *Condemn'd)* I ſhall always pray for the Queen my Sovereign, for your Lordſhips my *Judges*, and for the Commons my *Accuſers*; moſt earneſtly beſeeching Almighty God, to deliver all Orders, and Degrees of Men amongſt us, *from all falſe Doctrine*, *Hereſy*, *and Schiſm*, *from Hardneſs of Heart*, *from Contempt of his Word*, *and Commandment*; *from Envy*, *Hatred*, *and Malice*, *and all Uncharitableneſs*.

[*Then the LORDS adjourned to their Houſe Above.*]

Thurſday, *March* 9. The Ninth Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel, as before:

Lord Chancellor. Gentlemen, you that are Managers for the Houſe of Commons may proceed to your Reply.

Sir *Joſeph Jekyll.* MY Lords, Doctor *Sacheverell* and his Counſel having concluded what they had to offer to your Lordſhips, I ſhall enter upon the Province aſſign'd to me, in further Execution of the Commands of the Houſe of Commons, which is, to Reply to the Defence made for the Doctor to the firſt Article of the Commons Charge.

My Lords, I ſhall take Notice, firſt, Of the Conceſſions made by the Doctor's Counſel; ſecondly, Of the Expoſition they have put upon thoſe Paſſages of the Sermon, which have been relied on by the Commons to maintain this Article; and, thirdly, Of the Acts of Parliament, the Homilies, the Books, the Sermons, the Pamphlets and the Gazettes, which the Doctor's Counſel have call'd for to be read to your Lordſhips.

And if I ſhall ſatisfy your Lordſhips, that the Conceſſions made by the Doctor's Counſel are a Departure from the Defence made for him in his Anſwer, that they are extorted by Neceſſity, and are likely to be retracted when this Turn is ſerv'd; if I ſhall ſhew your Lordſhips, that their Expoſition of the Paſſages in the Sermon is contrary to the plain Meaning of thoſe Paſſages; if I ſhall ſhew, that the Acts of Parliament, the Homilies, and the other Prints that have been produc'd, are either immaterial, or condemn the Doctrine laid down in the Sermon; and if I ſhall ſhew, that this Criminal, for ſo I muſt call him, ſince the Houſe of Commons have call'd him ſo; (whether he will be ſo in the Event, I agree, reſts only in your Lordſhips Judgment;) if, I ſay, I ſhall ſhew he is guilty of a moſt heinous Offence, I ſhall not doubt of your Lordſhips Juſtice.

My Lords, The Conceſſions are theſe, That Neceſſity creates an Exception to the General Rule of Submiſſion to the Prince: That ſuch Exception is underſtood or implied in the Laws that require ſuch Submiſſion: And that the Caſe of the Revolution was a Caſe of Neceſſity.

Theſe are Conceſſions ſo ample, and do ſo fully anſwer the Drift of the Commons in this Article, and are to the utmoſt Extent of their Meaning in it, that I can't forbear congratulating them upon this Succeſs of their Impeachment; That in full Parliament this erroneous Doctrine of unlimited Non-reſiſtance is given up and diſclaim'd. And may it not, in After-Ages, be an Addition to the Glories of this bright Reign, that ſo many of thoſe who are honour'd with being in Her Majeſty's Service, have been, at your Lordſhips Bar, thus ſucceſsfully contending for the National Rights of Her People, and proving they are not precarious or remedileſs.

But to return to theſe Conceſſions; I muſt appeal to your Lordſhips, whether they are not a total Departure from the Doctor's Anſwer? whether there is one Word in the Anſwer which looks that Way?

In his Anſwer he takes Notice, that the general Aſſertion in his Sermon, of the utter Illegality of Reſiſtance, is a colourable Pretence for the Article; but does he add the Reſtriction or Limitation to it, which hath been now thought neceſſary, and hath been inſiſted upon as moſt material for his Defence? No, my Lords, but the quite contrary; for theſe are the Words of his Anſwer, "The ſaid *Henry Sacheverell* doth with all Humi-
"lity aver the Illegality of Reſiſtance, on any Pretence whatſoever, to be
"the true Doctrine of the Church of *England*." Now, could any thing have been more material for him in his Anſwer, than adding theſe Reſtrictions to his general Aſſertion in his Sermon, which his Counſel now ſay he intended, tho' he did not expreſs? Or if that was his Intention, could he poſſibly have forgot it, when the Frame of his Anſwer was under Conſideration?

But now he ſees the Reſolution of the Commons, and the Endeavours of thoſe who have their Commands to carry on this Proſecution, to bring him to Puniſhment; now he ſees your Lordſhips daily Attendance upon this Trial, and your Attention to the Charge againſt him; now he ſees, if he had abided by his Anſwer, *he* muſt have been condemn'd, or *the Revolution*; theſe are the Motives which have prevail'd upon him to tolerate his Counſel to make theſe unwilling Conceſſions, and have extorted them from him.

And how little theſe Conceſſions ought to avail him, your Lordſhips will ſee, when you conſider how likely it is he will retract them when this Turn is ſerv'd. May we not then expect he will uſe this very Argument of Neceſſity, the Coercion or Reſtraint he is under by this proſecution, as an Excuſe for theſe Conceſſions? And when your Lordſhips are told, that it is the Duty of Divines (whoſe Office it is to explain the Scripture to the People) to inculcate this Doctrine of Non-reſiſtance in the moſt unconfin'd and unlimited Terms they are able, and mentally reſerve the Exceptions to themſelves; when Authorities have been produced for aſſerting this Doctrine in ſuch a manner as to exclude any Exception whatſoever, and the Doctor himſelf did not expreſly come into theſe Conceſſions, it is certain they ought not to be of any Avail to him.

Your Lordſhips will therefore give me Leave to conſider the Expoſition which hath been put on thoſe Paſſages, which the Commons relied on for Proof of their Firſt Article: And I ſhall ſhew that Expoſition to be contrary to the plain Meaning of thoſe Paſſages.

My Lords, I readily agree, that no ſtrain'd Innuendos, or ſuppos'd and forc'd Conſtructions (which are the Words uſed in the Reaſon given for reverſing the Judgment in Sir *Samuel Barnardiſton*'s Caſe) ought to be admitted, to explain the Meaning of the Doctor, in order to prove him Criminal. I think the Principles laid down upon the Reverſal of that Judgment are ſolid and juſt; and therefore nothing but expreſs Words, or a neceſſary Implication collected from a Man's Words, can make him an Offender. But I would not have it gone away with, that there muſt be expreſs Words of Scandal to make a Man Criminal; indirect or oblique Scandal has in all Times been met with and puniſh'd in the ordinary Courts of Juſtice; and if it were otherwiſe, that which aggravates the Crime (the Subtilty or Contrivance of it) would prevent the Puniſhment: And therefore it is, that ironical Scandal, nay, even dumb Scandal (Scandal by Pictures, or by ſigns) as is mention'd in the Caſe *de Libellis Famoſis*, in my Lord Chief Juſtice *Coke*'s Fifth Report, is puniſhable by Law. The only Caution neceſſary in theſe Caſes is, that the Conſtruction or Interpretation be not ſtrain'd or forc'd, And, my Lords, in this Caſe we have not only a ſeditious Meaning plainly collected from the Doctor's Words, but expreſs Criminal Words, a falſe Suggeſtion, that his late Majeſty, in his Declaration, diſclaim'd the leaſt Imputation of Reſiſtance, introduc'd for a malicious and ſeditious Purpoſe.

My Lords, The Firſt Article has been rightly divided into Three Parts. The Doctor is charg'd with ſuggeſting and maintaining, Firſt, "That
"the neceſſary Means uſed to bring about the Revolution were odious
"and unjuſtifiable. *Secondly*, That his late Majeſty in his Declaration
"diſclaim'd the leaſt Imputation of Reſiſtance: *And*, *Thirdly*, That to
"impute Reſiſtance to the Revolution, is to caſt black and odious Co-
"lours on his late Majeſty and the Revolution."

The two laſt Branches, my Lords, are Particulars. The firſt is the General; and if the two laſt are proved, ſuch Proof makes out the firſt: But I ſhall conſider the Anſwer given by the Doctor's Counſel to the Proof of the two laſt Branches in their Order, and proceed to conſider the Anſwer that has been given to the proper Proofs of the firſt.

My Lords, The firſt Proof of this Branch, was the general Aſſertion of *the utter Illegality of Reſiſtance upon any Pretence whatſoever.* It hath been ſaid in Anſwer to this, that this is ſpoken of the Supreme Power, which is the Legiſlative Power, and then there ought to be no Exception whatſoever.

But, my Lords, that the Doctor did not mean the Supreme Legiſlative Power, but the Supreme Executive Power, is evident;

Firſt, From the Account he preſently gives of thoſe that oppoſe his Principle of Non-reſiſtance, which runs all along upon the Perſon of the Prince only, *as cancelling their Allegiance*, *calling their Sovereign to an Account*, *Dethroning and Murthering him.*

Secondly and Principally, From his bringing in the Caſe of the Revolution, as urg'd by thoſe who are Adverſaries to his Principle of Non-reſiſtance. Now the Revolution is not, cannot be urg'd as an Inſtance of the Lawfulneſs of any thing, but of reſiſting the Supreme Executive Power acting in Oppoſition to the Laws; and this the Doctor himſelf admitted, when he told your Lordſhips that *the Supreme Power was not then reſiſted.* This is therefore the Supreme Power he affirms it is utterly unlawful to reſiſt.

But it was ſaid by one of the Doctor's Counſel, *That the Non-reſiſtance the Doctor preaches up*, *is the utter Illegality of reſiſting the Supreme Power in all Things Lawful*, for thoſe Words, *in all Things Lawful*, make Part of that Sentence. My Lords, I admit they do; but thoſe Words are relative to his Aſſertion concerning Active Obedience, and not Paſſive, as will appear by reading the whole Sentence. *The grand Security of our Government*, *and the very Pillar upon which it ſtands*, *is founded upon the ſteady Belief of the Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power in all things Lawful*, *and the utter Illegality of Reſiſtance on any Pretence whatſoever.* The one dividing Member of the Sentence is, the *Obligation to Obedience in all Things Lawful*; the other, *the Illegality of Reſiſtance on any Pretence whatſoever*; the one is reſtrain'd, the other unlimited. It muſt be taken therefore (notwithſtanding theſe Objections) That the Doctor aſſerts the utter Illegality of Reſiſtance to the Supreme Executive Power, though acting not in Conformity, but in Contradiction to the Laws.

My Lords, I go on to the ſecond Proof of the firſt Branch of this Article, which is, the Doctor's Inſinuation that the Parliament diſown'd the Reſiſtance at the Revolution, by *declaring*, *that they ſet the Crown on the King's Head on no other Title than of the Vacancy of the Throne.* One of the Counſel thought fit to ſtand to this Fact, becauſe the Vacancy of the Throne is mention'd in the Bill of Rights; and he ſays, there is no other Fact there ſtated. I beſeech your Lordſhips, Does not the ſame Act take Notice of the Male-Adminiſtration of K. *James*, and his Abdicating the Government, as the Means by which the Throne became void? And I may appeal to your Lordſhips Journal, and the Journals of the Houſe of Commons, whether the Word *Abdicated* was not uſed rather than the Word *Deſerted* (after a Conference between the Two Houſes) for this Reaſon, inſiſted on by the Commons, that that Word *Abdicate* included in it Male-Adminiſtration, which the Word *Deſert* did not.

The ſame Counſel ſaid, the *Act for preventing Vexatious Suits*, urg'd by the Commons as a Parliamentary Declaration, juſtifying the Reſiſtance at the Revolution, was only for Indemnifying thoſe that acted at that Time, and was no more than was done in the Reign of *Edward* the Third, after *Edward* the Second was Dethroned. This ſurely is no manner of Anſwer to the Declaratory Part of that Law, which takes Notice of the King's undertaking a glorious Enterprize, for delivering the Kingdom from Popery and Arbitrary Power; and that divers Subjects, in Aid and Purſuance of that Enterprize, did ſeveral Acts of Violence and Reſiſtance; and this Law declares ſuch Acts were neceſſary, and ought to be juſtify'd. And I can't but abſerve this by the way, that the Parliament and the Doctor are of different Opinions; the Parliament thought that Reſiſtance ought to be juſtify'd; the Doctor thinks not; and if ſo, then *Doctor* Sacheverell *doth ſuggeſt and maintain*, *that the neceſſary Means uſed to bring about the Revolution were odious and unjuſtifiable.*

I come now, my Lords, to the ſecond Branch of the Firſt Article, the Doctor's Aſſertion, *That his late Majeſty in his Declaration diſclaim'd the leaſt Imputation of Reſiſtance*; and the Doctor's Anſwer to it.

My Lords, His Counſel admit this Aſſertion is in the Sermon, and that this Aſſertion is not true; but they ſay it was a Miſtake only in the Doctor; that the Doctor has expreſs'd himſelf ſomewhat obſcurely, and now he has explain'd himſelf; that Explanation ought to be receiv'd. The Doctor meant, they ſay, Conqueſt; and ſo he had explain'd himſelf not only in the Marginal Note, but in the Sermon itſelf. My Lords, if this were ſo, I admit it would be a good Defence; but that this was not a Miſtake, or rather was a wilful one in the Doctor, and that he thereby deſign'd to traduce the Memory of his late Majeſty and the Revolution, I ſhall ſhew from what his own Counſel inſiſt on.

They ſay the Doctor muſt mean Conqueſt, becauſe the Prince of *Orange*, who was no Subject, but a Sovereign Prince, could not be ſaid to reſiſt according to the common Underſtanding of that Word. Now, my Lords, it is true the Prince of *Orange* could not be ſaid to reſiſt, and ſo could not diſclaim Reſiſtance for himſelf; but could he not be join'd and aſſiſted by the Subjects of the Realm, who might be ſaid to reſiſt, and were invited by him ſo to do? Doth not this appear by the whole Tenor of his Declaration, and even by the Paſſages quoted by the Doctor? And ſince his late Majeſty could not be ſaid to reſiſt, but the Subjects, who, upon his Invitation, join'd with him, could; and the Reſiſtance of Subjects is what the Doctor is ſpeaking againſt; it is plain, that the Doctor ſpeaks of the King's diſclaiming the Reſiſtance of thoſe who join'd with him, and not his own Reſiſtance: And therefore I cannot ſee that the Quotation of the Paſſage out of the Prince's Declaration, at the Bottom of that Page, doth make out that he meant Conqueſt, by Reſiſtance in his Sermon; or if it did, Would it excuſe the Doctor's Preaching this Part of his Sermon, which was done without referring to that Paſſage?

But it is ſaid, he has explain'd that he meant Conqueſt by Reſiſtance in the Body of the Sermon, becauſe he ſays, *the Parliament burnt a Libel that would have pleaded the Title of Conqueſt, by which Reſiſtance was ſuppoſed.* But that this Paſſage doth not make out that he meant Conqueſt by Reſiſtance, is evident, from his making Reſiſtance not to be Conqueſt, but only an Ingredient in it. And by repreſenting Reſiſtance and Conqueſt to be the ſame thing with the Doctor, he is made to ſay, that the Parliament burnt a Libel that would have pleaded the Title of Conqueſt, by which Conqueſt is ſuppos'd.

It is plain, therefore, that *Doctor* Sacheverell *hath aſſerted, that his late Majeſty in his Declaration diſclaim'd the leaſt Imputation of Reſiſtance*; and diſclaim'd it at a Time, if you'll believe the Doctor, when he was exhorting the Subjects of King *James* to reſiſt, and was joining with them, and encouraging them in it; than which it is impoſſible there can be a greater Reflection on his late Majeſty, or the glorious Cauſe he then had in hand.

My Lords, I come now to conſider the Proof of the Third Branch of the firſt Article, and the Anſwer that has been given to it. The Third Branch is this, *That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the Revolution:* The Proof is, that Part of the Sermon wherein the Doctor aſſerts, *That the Adverſaries to the Doctrine of Non-Reſiſtance, who urge the Revolution in their Defence, are the greateſt Enemies to that and his late Majeſty, and the moſt ungrateful for the Deliverance, in endeavouring to caſt ſuch black and odious Colours upon both: How often muſt they be told*, &c. The Anſwer to this is, That the Perſons the Doctor deſcribes, as caſting black and odious Colours on his late Majeſty and the Revolution, are not thoſe who impute Reſiſtance to the Revolution, of whom he affirms nothing, but thoſe new Preachers and new Politicians, who teach Antimonarchical and wicked Doctrines, and who urge the Revolution in Defence of 'em.

My Lords, if the Doctor had meant theſe Perſons, he would have ſhewn them, which he certainly might have done, that what was acted at the Revolution, did not in the leaſt juſtify their Opinions; but he declining this, and placing the Defence of the Revolution on a falſe Fact, known to be ſo to himſelf and to the whole Nation; and this, taken together with his introducing theſe Men as defending their Principles by the Revolution, leaves the Load of theſe deteſtable Opinions on the Revolution, and not only condemns the Reſiſtance at the Revolution, but brands it.

But it is ſaid, my Lords, that the Clauſe, *Our Adverſaries think they effectually ſtop our Mouths*, &c. relates to the Defence of theſe Antimonarchical Principles, and not to the general Propoſition of the utter Illegality of Reſiſtance upon any Pretence whatſoever; and if ſo, I agree there is no Foundation for this Branch of the Article; and whether he is guilty of this Branch or not, turns entirely on this Queſtion.

My Lords, I little thought ſuch a Conſtruction would have been endeavour'd, by a wrong Recital of this Clauſe in the Sermon, by the Doctor in his Anſwer; for there it is ſaid, as from the Words of the Sermon, *That they, that is*, ſays the Doctor, *theſe new Preachers and new Politicians, urge the Revolution in Defence of ſuch Principles*; when your Lordſhips ſee the Words of the Sermon are, *Our Adverſaries think they effectually ſtop our Mouths, and have us ſure and unanſwerable on this Point, when they urge the Revolution of this Day in their Defence.* This therefore brings the Caſe of the Revolution urged by theſe Adverſaries, to the Point or Propoſition he had before laid down, which was the utter Illegality of Reſiſtance on any Pretence whatſoever; and not to the Defence of divers Antimonarchical Principles, taught by the new Preachers and new Politicians. And this is ſtill plainer, if your Lordſhips conſider that the Doctor's Reply to theſe Adverſaries, by denying there was any Reſiſtance at the Revolution, can only relate to the Point of Non-reſiſtance he had before aſſerted; and which Reſiſtance, if it were not denied, muſt ſtand condemn'd by the Doctor's Propoſition.

As little, my Lords, did I expect to hear from one of the Doctor's Counſel, that there are twenty or thirty Lines between the General Propoſition and this Clauſe; ſince if there be a Connection between this Clauſe and that Propoſition (which I have already ſhewn there is), it is not the Intervention of ſo many Lines will hinder it; and if there had been no Connection, their being cloſe together would not have made one. And by this manifeſt Connection, the Doctor hath brought this general Poſition, of the Unlawfulneſs of all Reſiſtance, to bear upon the Revolution. Which I hope may ſerve for an Anſwer to the ſame Gentleman, who ſays, It is one thing to lay down the General Rule without making the Exception, and another thing not to make the particular Exception out of that Rule; for the Doctor has mentioned the Revolution, but not in order to except it but to include it.

Indeed, my Lords, the Learned Doctor, who is of his Counſel, pretends to have found out the Exception in the Sermon, *Page* the 10th, becauſe he finds the Word *Neceſſity* there: The Words are theſe, *Only this Maxim in general I preſume may be eſtabliſh'd for the Safety, Tranquillity and Support of all Governments*; *that no Innovation whatſoever ſhould be allowed in the Fundamental Conſtitution of any State, without a very preſſing, nay, unavoidable Neceſſity of it.* But if the Doctor had but read to the End of the Sentence, he would have found Doctor *Sacheverell* condemns all that bore a Part in the Revolution, before a Law was made about it: The Words that follow are theſe, *And whoſoever ſingly, or in a private Capacity ſhould attempt it, is guilty of the higheſt Miſdemeanor, and is an Enemy to that Politick Body of which he is a Member.* And if that Sentence reſpects the Revolution, then Doctor *Sacheverell* condemns all from the higheſt to the loweſt, who, in their private Capacity, joined with the Prince of *Orange*, or aſſiſted in bringing about the Revolution. This is the Thing he is now charged with; not condemning the Revolution as a Thing ſettled by Law, but the Neceſſary Means uſed to bring it about. But if the Doctor inſtructed his Counſel to inſinuate, that there was any Innovation in the Conſtitution wrought by the Revolution, it is an Addition to his Crime. The Revolution did not introduce any Innovation; it was a Reſtoration of the ancient Fundamental Conſtitution of the Kingdom, and giving it its proper Force and Energy.

Indeed, all the other Counſel differ'd from that Learned Civilian, and maintain'd, that Doctor *Sacheverell* did not, nay, ought not, to make any Exception; and one of 'em ſaid, if Clergymen, inſtead of preaching up the general Rule of Obedience were permitted to ſtate the ſeveral excepted Caſes, ſuch Exceptions would in Time devour all Allegiance. My Lords, If the Doctor had pretended to have ſtated the particular Bounds and Limits of Non-reſiſtance, and told the People in what Caſes they might, or might not reſiſt, he would have been much to blame; nor was one Word ſaid in the Articles, or by the Managers, as if that was expected from him: but on the contrary, we have inſiſted, that in no Caſe can Reſiſtance be lawful, but in Caſe of extreme Neceſſity, and where the Conſtitution can't otherwiſe be preſerv'd, and ſuch Neceſſity ought to be plain and obvious to the Senſe and Judgment of the whole Nation; and this was the Caſe at the Revolution. And is there no Difference between a Divine's mooting and putting Caſes of lawful Reſiſtance, and excepting the Reſiſtance at the Revolution out of the general Rule of the Illegality of Reſiſtance, on a Day, when he was oblig'd not only to commemorate the Revolution, but the Reſiſtance, the neceſſary Means uſed to bring it about, as appears by the Service appointed for that Day?

And, my Lords, Is a Houſe of Commons, who are vindicating that Revolution only, to be repreſented as if we were calling upon Divines to ſtate the Caſes wherein Reſiſtance is lawful, and wherein not? A Taſk unfit for any one, and more eſpecially for them to meddle with: And are we, by ſuch Suggeſtions as theſe, to be defam'd and inſulted, and repreſented as promoting Anarchy and Confuſion?

My Lords, There can be no Order or Regularity, if the Conſtitution, the beautiful Frame of a Legal Monarchy, which this Nation hath ſo long enjoy'd and proſper'd withal, be deſtroy'd or given up. What Inclination has the preſent Age ſhewn to ſubmit to Arbitrary Power? or rather, what hath been wanting in it to ſhew the contrary?

But I go on, my Lords, to conſider an Argument made uſe of by another of the Doctor's Counſel, That it was needleſs for him to except the Caſe of the Revolution, for that was known to every Body, and had often been approv'd by the Legiſlature. I beſeech your Lordſhips, Could the Doctor know this, and not only not except that Caſe, on a Day appointed to give ſolemn Thanks for it, but introduce it for no Purpoſe but to leave it under the Condemnation of the General Rule of Non-reſiſtance? And by this Method the Doctor has brought his General Rule to bear upon the particular Caſe of the Revolution. For he takes but one way of acquitting the Revolution, which is by laying down that for Truth, which every Man knows to be falſe; and they that aſſert this Truth, he ſays, *caſt black and odious Colours on the late King and the Revolution:* Which makes out, that *Dr.* Sacheverell *doth ſuggeſt and maintain, that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours on his late Majeſty and the Revolution.*

I am ſenſible how tedious I muſt have been in this nice tracing the Anſwers given by the Doctor's Counſel to our Proofs of this firſt Article; but becauſe the Judgment of the Caſe will depend very much upon it, I am ſure I ſhall have your Lordſhips Pardon.

And now, my Lords, What a Repreſentation is here of that Glorious Tranſaction, the late happy Revolution! The Part the Subject had in it, is repreſented as contradicting the expreſs Command of God in Scripture, and deſtructive of all Governments: His late Majeſty is repreſented as encouraging this pernicious Wickedneſs, and diſowning it at the ſame time: Give me Leave, therefore, on behalf of the Nation, and the Memory of his late Majeſty, its Deliverer, to ſtate this Affair ſhortly, and in another Light to your Lordſhips.

The Subjects reſiſted, the late King join'd his Army with the Arms of Reſiſtance; and if the Nation at that time had not had Recourſe to that Remedy, how abject and how miſerable muſt they have been! If we look into the Hiſtories of other Countries, Have not the beſt and happieſt Nations been moſt tenacious of their Liberties? And while they have continu'd ſo, and withſtood Abſolute Power, they have been proſperous at home, and conſiderable abroad: But when they have fallen from this Zeal and Induſtry, which is the Foundation of their Proſperity at home, and Magnanimity, which makes them conſiderable abroad, have deſerted them, they have ſunk into Sloth and Effeminacy. Can any one, therefore, with any Colour ſay, That Reſiſtance, in Caſes of extreme Neceſſity, has worſe Conſequences than unlimited Subjection?

Let us now turn our Eyes a little on the Part our late King had in the Revolution. Did he not undertake a moſt hazardous Enterprize, to procure us Happineſs at home, and to give us that Weight abroad, which this Nation had long enjoy'd, but at that Time was depriv'd of? And with what Care and Anxiety, even to the laſt Moment of his Life, did he labour to ſecure theſe Bleſſings to us?

Let us look beyond his Time, and ſince, for the Senſe of the Nation upon this Point. What Satisfaction did the Nation take, in the Aſſiſtance his renowned Predeceſſor (Queen *Elizabeth*) gave to the oppreſſed *Provinces*, our then Good Neighbours, and our now Potent Allies? How zealouſly did the Nation promote the Aſſiſtance King *James* the Firſt gave to the injured Prince *Palatine*, againſt the Emperor his Superior Lord? And what Reſolution and tender Concern for the perſecuted *Rochellers* did King *Charles* the Firſt ſhew and expreſs? And has not her Majeſty aſſiſted the *Spaniards*, againſt a Prince acknowledged by them, and ſeated on the Throne? Nor did Her Goodneſs, which is as extenſive as Her Power, overlook the poor Eſtate of the People in the *Cevennes*, or neglect to give them all poſſible Aſſiſtance, againſt their King exerciſing a cruel Dominion over them.

Theſe, and many more Inſtances which might be fetched from other Countries, are ſo many Authorities againſt this Doctrine of unlimited Non-Reſiſtance.

And now, my Lords, I come to conſider the Authority the Doctor pretends to have for it: His Counſel ſay, They have Acts of Parliament for this Doctrine; I ſhall not mention the particular Acts, becauſe they are well known, but conſider them under Three Heads. Firſt, Thoſe Acts that were before the Reſtoration. Secondly, Thoſe after the Reſtoration, and before the Revolution. And, Thirdly, Thoſe after the Revolution.

My Lords, As to thoſe before the Reſtoration, I readily admit they condemn Reſiſtance generally; they don't mention any Exception. The Counſel of the other Side have furniſh'd me with an Anſwer to 'em: They ſay, Theſe, and all other Laws, have an Exception imply'd in them. The Wiſdom of the Law, in not expreſſing the Exception, is plain: It is neither decent, nor probably would have a good Effect, to put odious Caſes, ſuch as a Prince's Overturning the Conſtitution. The *Roman* Law did not provide againſt Parricide, nor doth the *Engliſh* Law neither; ſince it hath no diſtinct Puniſhment for that kind of Murder, tho' it hath ſome for others, which are called Petty Treaſons. Laws are framed upon a View of ordinary and common Caſes: *Ad ea quæ frequentius accidunt jura adaptantur*, is a known Maxim, and of great Uſe in the Expoſition of Laws. And if our Legiſlators had been aſk'd the Queſtion, Whether they meant by thoſe Laws to make all other Laws, and even thoſe Laws themſelves of no Validity? (Which, if Abſolute Power cannot be withſtood, would be the certain Conſequence;) Would not they have anſwer'd, Nothing was farther from their Thoughts. And if it be *Maledicta Expoſitio quæ corrumpit Textum*, apply'd to any particular Law; what a curſed Expoſition muſt that be, which corrupts, or rather annuls the Text of all the Laws at once?

My Lords, The next Head of Acts, are thoſe after the Reſtoration, and before the Revolution. I do admit thoſe Laws go farther than the former, and ſeem to condemn all Reſiſtance, and in ſuch Terms, as to exclude any Exception whatſoever. My Lords, What I have ſaid relating to the former Laws, may be apply'd to theſe. But further, I deſire it may be conſidered, theſe Legiſlators were guarding againſt the Conſequences of thoſe Pernicious and Antimonarchical Principles, which had been broached a little before in this Nation; and thoſe large Declarations in Favour of *Non-Reſiſtance*, were made to encounter or obviate the Miſchief of thoſe Principles; as appears by the Preamble to the fulleſt of thoſe Acts, which is the *Militia Act*, in the 13th and 14th of King *Charles* the Second. The Words of that Act are theſe: *And during the late Uſurped Governments, many Evil and Rebellious Principles have been inſtilled into the Minds of the People of this Kingdom, which may break forth, unleſs prevented, to the Diſturbance of the Peace and Quiet thereof: Be it therefore Enacted*, &c. Here your Lordſhips may ſee the Reaſon that inclined thoſe Legiſlators to expreſs themſelves in ſuch a manner againſt Reſiſtance: They had ſeen the Regal Rights ſwallowed up, under the Pretence of Popular ones; and it is no Imputation on them, that they did not then foreſee a quite different Caſe, as was that of the Revolution; where, under the Pretence of Regal Authority, a total Subverſion of the Rights of the Subject was advanced, and in a manner effected. And this may ſerve to ſhew, that it was not the Deſign of thoſe Legiſlators to condemn Reſiſtance, in a Caſe of Abſolute Neceſſity for preſerving the Conſtitution, when they were guarding againſt Principles which had ſo lately deſtroy'd it.

But now, my Lords, let us ſee how the Laws run after the Revolution. Your Lordſhips will find, that the Reſiſtance at the Revolution is not only approved of in expreſs Terms, by the Act for preventing vexatious Suits; and indeed, every Act paſſed ſince the Revolution is an implicit Approbation of it; but the Declaration of the Unlawfulneſs of taking Arms againſt the King on any Pretence whatſoever, (required to be taken by the Corruption-Act, the Militia-Act, and the Act of Uniformity,) is now repealed. There was another Act mentioned by one of the Doctor's Counſel, the Act for regulating Select Veſtries: That Act expired in King *Charles* the Second's Time, and was never continued. The firſt Gentleman that ſpoke for the Doctor, ſaid, in Anſwer to the Repeal of this Declaration, by a Clauſe in *the Act of the Firſt of King* William *and Queen* Mary, *for abrogating the old Oaths, and appointing new ones*; that it is a very tender Repeal, if it be one. I did not, my Lords, well underſtand his Meaning; but I am ſure, that is a very tender Anſwer, if it be any at all. My Lords, if it be thought that this Declaration, as it is enjoined by the Corporation-Act, is not repealed, becauſe the Corporation-Act is not particularly mentioned in the Clauſe of the Act of the Firſt of King *William* and Queen *Mary*, which repeals the Declaration; I anſwer, After the Militia-Act, and the Act of Uniformity are mentioned, there follow general Words; *Any Law or Statute to the contrary notwithſtanding:* And this repeals the Declaration as to that Act, as well as to the other Two Acts. And this Opinion has prevailed univerſally; and if it were otherwiſe, there is ſcarce a Corporation in *England*, but would be diſſolved by the Incapacity of their Members.

But the ſame Counſel argued, That the Doctrine mentioned in that Declaration muſt be the true Doctrine, or the Declaration would not have been enjoined and taken ſo long as it was; and the Repeal don't make the Propoſition falſe: and we might as well argue the *Solemn League and Covenant* to be a Lawful Oath. My Lords, As to the Declaration againſt the Covenant, that was conſidered as a Temporary Thing only, and, by the Act of Uniformity, was to ceaſe upon the 25th of *March*, 1682. and therefore not at all to be compared with the other Declaration, which was intended to be perpetual. As to the Truth of the Doctrine in this Declaration which was repealed, I'll admit it to be as true as the Doctor's Counſel aſſert it; that is, with an Exception of Caſes of Neceſſity; and it was not repealed becauſe it was falſe, underſtanding it with that Reſtriction; but it was repealed, becauſe it might be interpreted in an unconfined Senſe, and excluſive of that Reſtriction; and being ſo underſtood, would reflect on the Juſtice of the Revolution: And this the Legiſlature had at Heart, and were very jealous of; and by this Repeal of that Declaration, gave a Parliamentary, or Legiſlative Admonition, againſt aſſerting this Doctrine of Non-Reſiſtance in an unlimited Senſe.

My Lords, I muſt confeſs, I did not expect to hear the Aſſociation and the Abjuration-Oath brought in as aſſerting this Doctrine; if they do, this may ſerve to account for their taking them who believe that Doctrine, which otherwiſe perhaps they would be at a loſs to find an honeſt Reaſon for. But, my Lords, Doth engaging to ſtand by, and aſſiſt one another againſt all the King's Enemies, or ſwearing to defend the King or Queen againſt all Traitorous Conſpiracies, ſignify any more than what is implied in the old Oath of Allegiance? There is, my Lords, indeed ſomething more in the Aſſociation and Abjuration-Oath; for the Perſon taking them in his late Majeſty's Time, declared, That he believed in his Conſcience King *William* was Rightful and Lawful King of this Realm. This certainly put the Conſcientious Taker of 'em upon a Conſideration, of the Foundation on which that Right and Title was built. And ſince there was no Foundation for it but the Revolution, and that Revolution was founded on Reſiſtance; how thoſe could bring themſelves up to take that Aſſociation, or that Abjuration-Oath, who believed that Reſiſtance unlawful, I am at a loſs to know.

My Lords, Upon this Head of theſe ſeveral Acts of Parliament that have been mentioned, I beg leave to obſerve, That as it is not to be ſuppoſed it was the Original Intention of any Laws to enervate the Force of all the Laws, ſo your Lordſhips ſee, there are ſince the Revolution Laws that do exclude any ſuch Suppoſition, and do affirm that indefeaſible Inheritance which the People have in the Laws.

My Lords, the next Part of the Evidence offered by the Doctor was the Homiles; which are ſaid to be confirmed by Act of Parliament, becauſe the Articles of the Church of *England* are ſo; and the Thirty-fifth Article approves the Homilies, as containing Godly and wholeſome Doctrine; and the Clergy are oblig'd to read and ſubſcribe thoſe Articles.

My Lords, I believe it will be admitted, that no more is intended by that Subſcription, but that the Doctrine contained in the Homilies is right in the main, and not that every Sentence in 'em is ſo: For in this laſt Senſe, I believe, never any Divine ſubſcribed the Articles; and it will be hard to name any Preacher, or Writer of Note, who has not contradicted ſome Paſſage or other in them: Nay, as to one, the general and approved Practice of the Church is againſt it; I mean that Paſſage, which condemns the Uſe of Organs in Churches.

And ſurely, my Lords, the Senſe of the Homilies can't be found out, by reading ſelect Paſſages out of them, (as was done in the Doctor's Defence) but by obſerving the Frame and Tendency of the whole: And I may appeal to your Lordſhips, and eſpecially to my Lords the Biſhops, whether thoſe who compiled the Homilies againſt Rebellion, ſeemed to have had at all under their Conſideration the Caſe of a total Subverſion of the Conſtitution. It's plain, the main Deſign of thoſe Homilies was againſt the Riſings of the Popiſh Faction, and the plauſible and popular Pretences made uſe of by them for ſupporting their Rebellions. Did not that great Queen, in whoſe Time the latter Book of Homiles was compiled, explain Her own Opinion on this Point, by the Aſſiſtance ſhe gave to the *Hollanders* againſt the *Spaniſh* King, their Sovereign? Did not the Parliament explain Themſelves, by the Supplies given to the Queen for that Purpoſe? And did not the Clergy explain Themſelves likewiſe, by the Supplies granted in Convocation, in Favour of that Aſſiſtance? Can it therefore be imagined, the Homilies intended to condemn that Reſiſtance, which the Queen and the whole Nation, nay, even the Clergy themſelves, aſſembled in Convocation, approved of? And I dare ſay, if Doctor *Sacheverell* had read any of the Homilies againſt Rebellion, which he ſays he is commanded to do, if there be no Sermon on the fifth of *November*; I ſay, if he had read any one of them to his Congregation at St. *Paul*'s, not one of his Auditors would have thought the Revolution condemned by the Homily, whatever they might have thought of the Doctor.

My Lords, That which we accuſe him for, is, That he lays down this general Doctrine of Non-Reſiſtance, in Terms excluſive of any Exception; and, not content with that, points out the Revolution, for Men to compare it with, and condemn it by. How much better would it have become the Doctor, to have imitated that Zeal which appears in the Compilers of thoſe Homilies, for a Proteſtant Queen againſt a Popiſh Faction, than to arraign the Revolution, upon the defaming of which, the Hopes of a Popiſh Faction againſt a Proteſtant Queen are built?

My Lords, Let us now conſider the other Books, or Writings, the Doctor has produced to juſtify his Doctrine: Theſe are chiefly, if not all of them, the Labours of Divines; and I will place them in theſe two Claſſes, Thoſe before the Revolution, and thoſe ſince. And, my Lords, I will ſay, If this Queſtion of Submiſſion were left by the Divines, to thoſe who make the Municipal Laws of their Country, or the Nature of Laws in general, their Study; and they would confine themſelves to the preſſing a Legal Submiſſion only, founded (as it is by the Law of *England*) on common Conſent, and common Good, it would be much more for the Honour of Religion, and the Peace and Felicity both of the Sovereign and the Subject.

And this will be very manifeſt, if your Lordſhips call to mind but two of the Doctor's Quotations before the Revolution, which were read to your Lordſhips: The one is a Paſſage out of Biſhop *Sanderſon*, the other the *Oxford* Decree in 1683.

My Lords, Biſhop *Sanderſon* (and he only of all that have been quoted) has put the Caſe of Reſiſtance for the Preſervation of Church and State, which are but other Words for the Conſtitution; and has delivered this Doctrine of Non-Reſiſtance in ſuch unlimited and bold Terms, as I ſhall not repeat, to create a ſecond Diſpleaſure in this great Aſſembly. And I willingly admit, he was a very learned, judicious, and pious Prelate: And if ſo great and good a Man fell into ſuch indiſcreet, indecent and ſhocking Expreſſions on that Subject, as did viſibly affect ſuch an Aſſembly as this, one would think it ſhould diſcourage others from delivering that Doctrine in ſuch a Latitude.

The next is the *Oxford* Decree, which condemns all Reſiſtance whatſoever: But, my Lords, it is obſervable, that in the ſame Decree, there is a Condemnation of this Propoſition that I am going to read to your Lordſhips; *That it is lawful to preclude the next Heir from his Right and Succeſſion to the Crown:* And yet at the ſame Time, the condemning this Propoſition, that is, the *holding*, *affirming*, *or maintaining* the contrary Propoſition, was (by the 13th *Eliz. Cap.* 1.) made High-Treaſon in her Time, and a Forfeiture of Goods and Chattels ever after. And how the Law now ſtands as to that Particular, by the *Act for ſecuring her Majeſty's Perſon and Government, and the Succeſſion of the Crown of* Great Britain *in the Proteſtant Line*, every one knows. And, my Lords, when we find ſo great and learned a Body criminally erring in a Point ſo Fundamental, and upon which our Proſpect of Happineſs to future Ages doth, under God, depend; ought it not to diſcourage particular Divines, from pretending to determine Points of Law and Policy? For my own Part, I ſhould hope, that that Univerſity's having fallen in at firſt ſo heartily with the Revolution, is as ſincere a Condemnation of the Doctrine of unlimited Non-Reſiſtance, as their ſolemn taking the Abjuration-Oath is a publick Profeſſion, that a Parliamentary Excluſion is lawful.

As for all the Paſſages which have been read to your Lordſhips out of the Books or Sermons of Divines before the Revolution, in Favour of Non-Reſiſtance, your Lordſhips may obſerve the Reaſons reach only ſo far, as when the Miſchief is not Univerſal; or if it be Univerſal, where it is tolerable, and not ſo miſchievous a a Civil War. I ſhall not mention any Paſſages in them, (which have not been read) to limit the Generality of the Expreſſions concerning Non-Reſiſtance; becauſe I avoid bringing in any Thing, which hath not been given in Evidence. But how candid the Doctor's Collections have been, your Lordſhips may judge by that Quotation out of my Lord Biſhop of *Saliſbury*'s Book; where there is an expreſs Exception of the Caſe of ſubverting Fundamentals: But your Lordſhips may ſee the ſame Candor ſhining out in ſeveral Paſſages of the Doctor's Sermon, with reſpect to that Reverend Prelate, whoſe Services, my Lords, (before, and at the Time of the Revolution) will never be forgotten by one Part of the Nation, nor forgiven by another.

My Lords, I now come to the Sermons and Writings ſince the Revolution: And I may appeal to your Lordſhips, whether they don't moſt plainly condemn the Doctor; thoſe, I mean, where we had the Fortune to be ready to call for other Paſſages to be read out of the ſame Book. Does not my Lord Biſhop of *Lincoln* expreſly mention the Caſe of the Revolution, and juſtify the Reſiſtance then uſed? How carefully does his Grace the Archbiſhop of *York* limit this Doctrine of Paſſive Obedience, which the Doctor ſays ought to be deliver'd in the moſt unconfined Terms? And it is by his Grace's Notion of this Doctrine, that the Commons deſire this Cauſe may be judged and determined. I beg Leave to read again to your Lordſhips his remarkable Words: 'Care muſt be taken, that this general Doctrine be not miſapplied in particular Countries. Though Non-Reſiſtance or Paſſive Obedience be a Duty to all Subjects, and under all Governments, yet it is not expreſſed the ſame Way in all Places; but both the Objects and the Inſtances of it do vary in different Nations, according to the different Models of their Government. To ſpeak this as plainly as I can: As the Laws of the Land are the Meaſures of our active Obedience, ſo are alſo the ſame Laws the Meaſure of Submiſſion. And as we are not bound to obey, but where the Laws and Conſtitution require our Obedience; ſo neither are we bound to ſubmit, but as the Laws and Conſtitution do require our Submiſſion.'

This, my Lords, is the Doctrine the Commons are maintaining, and are calling this Criminal to an Account for contradicting. If our Obedience and Submiſſion is not to be extended to the Prejudice of the Conſtitution, the Reſiſtance at the Revolution, for preſerving the Conſtitution, ſtands juſtified; and the Doctor's unlimited Doctrine of Non-Reſiſtance ſtands condemned.

How prudently does his Grace, my Lords, caution the Doctor, and the reſt of the Clergy, in another Part of his Sermon, by theſe Words? 'If indeed, a Preacher ſhould in the Pulpit preſume to give his Judgment about the Management of public Affairs, or to lay down Doctrines (as from Chriſt) about the Forms and Models of Kingdoms or Commonwealths, or to adjuſt the Limits of the Prerogative of the Prince, or of the Liberties of the Subject in our preſent Government: I ſay, if a Divine ſhould meddle with ſuch Matters in his Sermon, I do not know how he can be excuſed from the juſt Cenſure of meddling with Things that nothing concern him. This is indeed a practiſing in State Matters, and is uſurping an Office that belongs to another Profeſſion, and to Men of another Character. And I ſhould account it every whit as undecent in a Clergyman to take upon him to deal in theſe Points, as it would be for him to determine Titles of Lands in the Pulpit; which are in Diſpute in *Weſtminſter-Hall*.' And how well the Doctor has obſerv'd this neceſſary Caution laid down by his Grace, I leave your Lordſhips to conſider.

My Lords, I have purpoſely omitted taking notice of any Writings, except ſuch as were produced by the Doctor, and I am ſatisfied how ſuperficially I have conſidered them: But, in general, I may appeal to your Lordſhips, whether in the loweſt Ebb of Liberty, there have been wanting thoſe in this as well as other Countries, who have denied this ſlaviſh Doctrine of unlimited Non-Reſiſtance? whether, ſince the Revolution this Nation has been ſo ungrateful to their Deliverer, or unthankful for their Deliverance, as to want thoſe who have maintain'd the Principles of the Revolution, and have ſhewed them to be as agreeable to the Chriſtian Religion, as they are to the Nature of that excellent Government we live under, which is that of limited Monarchy?

And yet, notwithſtanding the unanſwer'd Performances of divers, both of the Clergy and Laity, upon this Subject, the Doctor has the Boldneſs to affirm his Doctrine to be the Doctrine of our Bleſſed Saviour and his Apoſtles.

My Lords, I can't mention this, without the deepeſt Concern for the Honour of the Chriſtian Religion. I beſeech your Lordſhips, What is Liberty but Juſtice, and what is Juſtice, but doing to every one as we would be done by? And nothing, I think, is likelier to promote the Practice of this Chriſtian Precept, than ſpreading a true Senſe and Love of Liberty, that Principle which caſts out of us a narrow Regard to ourſelves, and introduces a diffuſive Benevolence to others.

And againſt this Principle it is, that the Doctor has offended.

My Lords, I have endeavour'd to ſhew, that the Charge in the Firſt Article ſtands prov'd againſt the Doctor, and that this Proof remains unanſwer'd; and if ſo, his being a Miniſter of the Goſpel, his having taken the Oaths to the late King, and to Her preſent Majeſty, his being a Fellow of that College which was in a particular manner delivered by the Revolution, are all of them Aggravations of his Offence, (if it can be aggravated;) and which, if prov'd, his own Counſel admits, brings a foul Imputation on Her Majeſty and Her Government, makes Her Government an Uſurpation, and her Subjects Rebels; and that no Puniſhment can be too great for him.

My Lords, I never ſaw that Criminal for whom I had not a hearty Compaſſion, but there is both Compaſſion and Juſtice due to the injur'd Innocent. Your Lordſhips have before you on the one hand, the Care and Concern of Doctor *Sacheverell*; on the other, the Honour and Proſperity of a wiſe and brave Nation, who as they have thought nothing too much to give or hazard to defend their Liberties againſt a Foreign Enemy; ſo they hope your Lordſhips Juſtice on this Offender, will ſecure thoſe Liberties againſt Domeſtick ones.

Mr. Sol. Gen. MY Lords, I am commanded by the Commons to join with the Learned Gentleman who ſpoke laſt, in Replying to the Defence that has been made upon the Firſt Article of this Impeachment, which the Commons inſiſt upon to be well-grounded, and fully prov'd, notwithſtanding the ſeveral Objections and Excuſes that have been offer'd by Doctor *Sacheverell* and his Counſel.

One of the Doctor's Counſel has agreed, That if he has aſſerted, that the Reſiſtance uſed to bring about the Revolution was Unlawful, no Puniſhment can be too great for him: But what they have offer'd to your Lordſhips in his Defence is, That no ſuch Poſition can be made out without the Help of *Innuendos* and forced Conſtructions, which infer a Meaning contrary to the natural Senſe and Import of his Words; and this way of charging a Man with a Crime, they truly ſay, is not agreeable to the Rules of Law, and would contradict one of the Reaſons given for the Judgment of the Houſe of Lords, in the Caſe of Sir *Samuel Barnardiſton*: And if this was the Caſe, it would not become the Commons of *Great Britain*, who have ſuch an Affectionate Regard to the Laws and Liberties of their Country, to proceed upon an Impeachment ſo ill-grounded. But when the Commons had ſo fully and particularly proved the Aſſertions charged upon the Doctor by this Article, they little expected to have heard that his Words had been wreſted to wrong Meanings, and made to ſpeak what he never thought: And therefore, ſince the Queſtion depends altogether upon Conſtruction, and your Lordſhips have been told that the Paſſage upon which this Charge is grounded, has not been fully ſtated, the Commons muſt give you the trouble of Reading the Paſſage at large, as it ſtands in the Sermon; that your Lordſhips may judge, whether they have not taken his Words in the common and ordinary Senſe, and given them the only Meaning they can bear.

The Paſſage is in theſe Words:---"The grand Security of the Government, and the very Pillar upon which it ſtands, is founded upon the ſteady Belief of the Subjects Obligation to an Abſolute and Unconditional Obedience to the Supreme Power in all Things lawful, and the utter Illegality of Reſiſtance upon any Pretence whatſoever. But this Fundamental Doctrine, notwithſtanding its Divine Sanction in the expreſs Command of God in Scripture, and without which, it is impoſſible any Government of any Kind or Denomination in the World, ſhould ſubſiſt with Safety, and which has been ſo long the Honourable and Diſtinguiſhing Characteriſtick of our Church, is now, it ſeems, quite exploded and ridicul'd out of Countenance, as an Unfaſhionable, Superannuated, nay (which is more wonderful) as a dangerous Tenet, utterly inconſiſtent with the Right, Liberty, and Property of the People; who, as our New Preachers, and New Politicians teach us, (I ſuppoſe by a New and Unheard-of Goſpel, as well as Laws,) have, in Contradiction to Both, the Power inveſted in them, the Fountain and Original of it, to Cancel their Allegiance at pleaſure, and call their Sovereign to Account for High Treaſon againſt his Supreme Subjects, forſooth! Nay, to Dethrone and Murder him for a Criminal, as they did the Royal Martyr, by a Juſticiary Sentence: And, what is almoſt Incredible, preſume to make their Court to their Prince, by maintaining ſuch Antimonarchical Schemes. But, God be thank'd! neither the Conſtitution of our Church or State is ſo far alter'd, but that by the Laws of both, (ſtill in Force, and which I hope for ever will be) theſe Damnable Poſitions, let them come from the Pulpit or the Preſs, either from *Rome* or *Geneva*, are condemned for Rebellion and High-Treaſon. Our Adverſaries think they effectually ſtop our Mouths, and have us ſure and unanſwerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly they are the greateſt Enemies of that, and his late Majeſty, and the moſt Ungrateful for the Deliverance, who endeavour to caſt ſuch Black and Odious Colours upon both. How often muſt they be told, that the King himſelf Diſclaim'd the leaſt Imputation of Reſiſtance in his Declaration; and that the Parliament declar'd, That they ſet the Crown upon his Head, upon no other Title, but that of the Vacancy of the Throne? And did they not unanimouſly condemn to the Flames (as it juſtly deſerv'd) that Infamous Libel that would have pleaded the Title of Conqueſt, by which Reſiſtance was ſuppoſed?"

And the Queſtion now before your Lordſhips is, Whether by theſe Words he has aſſerted, 'That his late Majeſty in his Declaration diſclaim'd the leaſt Imputation of Reſiſtance; and that to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the Revolution;' which are the Aſſertions charg'd upon him in this Article, as 'Suggeſting and Maintaining, that the neceſſary Means uſed to bring about the late happy Revolution were odious and unjuſtifiable:' Now that there was Reſiſtance in the Revolution, and that ſuch Reſiſtance, in a caſe of that abſolute and unavoidable Neceſſity, is conſiſtent with the Doctrine of the Church, and the Fundamental Law of the Kingdom, is agreed by the Counſel; and they have endeavour'd to convince your Lordſhips, that the Doctor has aſſerted nothing to the contrary; for they ſay, "The Reſiſtance which the Doctor affirms the King to have diſclaimed, was only a Reſiſtance which tended to Conqueſt; and that the Doctor did well to wipe off this Imputation, for the Parliament had declared it injurious to his rightful Title to the Crown, and had order'd a Treatiſe to be burnt, which Suggeſted a Title by Conqueſt; and that the Doctor having his Eye in that Expreſſion on the matter of Conqueſt, expreſſed the ſame by Reſiſtance, which was applicable to the Subject-Matter before, and therefore ought not to be wreſted to any other Purpoſe."

This, my Lords, is the Turn which the Counſel would give to the Doctor's Aſſertion, *That the King diſclaim'd the leaſt Imputation of Reſiſtance.* And indeed the Words of the Sermon are ſo plain and particular, that they are forced to have Recourſe to this Evaſion of a Reſiſtance by Conqueſt: But I wonder Gentlemen can argue in this manner, and at the ſame time ſpeak of reading the Words with Candor and Ingenuity; when 'tis moſt apparent that there is no *previous Diſcourſe* of a Title by Conqueſt, or of any Treatiſe in which it had been aſſerted, that could give Occaſion for his vindicating the late King from any ſuch Imputation, or to which theſe Words can in any Conſtruction be applied; for the Doctor ſays nothing of Conqueſt, 'till after he had aſſerted that the King diſclaim'd the leaſt Imputation of Reſiſtance;

and then he goes on, and lays another Foundation for the Settlement upon the Revolution, by grounding it upon the Vacancy of the Throne, before he ſays any thing about Conqueſt, or mentions the Book which hath pleaded that Title; and even then he condemns that Title for no other Reaſon but becauſe it implied Reſiſtance; which plainly ſhews, that his Argument was carried on upon the Subject of Reſiſtance, and not upon that of Conqueſt.

And the Anſwer which they have given to that Part of the Article, whereby he is charged with Aſſerting, *That to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the Revolution*, is equally evaſive.

What they have offer'd to your Lordſhips upon this Head is, That the Doctor is not ſpeaking of the utter Illegality of Reſiſtance, when he introduceth his Diſcourſe about caſting Black and Odious Colours, by ſaying *Our Adverſaries think they have us ſure and unanſwerable on this Point, when they urge the Revolution of this Day in their Defence*; but of the damnable Poſitions with which the Doctor charges the new Preachers and new Politicians, in the Words immediately preceding: And in this place it is, that the Manager appointed to maintain this Article is charged with omitting about twenty or thirty Lines between the General Doctrine and the Paſſage concerning the Revolution, in which ſeveral diſtinct and entire Sentences are contain'd, concerning thoſe Perſons and their Principles, to which that Paſſage entirely relates: And your Lordſhips are told, that to apply the Inſtance of the Revolution to juſtify ſuch wicked Principles, is what the Doctor calls caſting Black and Odious Colours upon his late Majeſty and the Revolution.

But the Commons take it to be very clear, That upon ſtating of the whole Paragraph, and all the Words in the Order in which they lie, and upon comparing the ſeveral Paſſages, it will manifeſtly appear, that what the Doctor ſaid about *caſting Black and Odious Colours* upon the Revolution, can be applied only to thoſe who maintain, that the Reſiſtance uſed to bring about the Revolution was lawful and juſt, and that the Perſons he calls *our Adverſaries*, are ſuch as urged the Revolution in oppoſition to his general Doctrine of the utter Illegality of Reſiſtance upon any Pretence whatſoever: and not to thoſe who urge the Revolution in Defence of thoſe damnable Poſitions, which, he ſays, the new Preachers and new Politicians had laid down.

This the Commons apprehend to be the only Meaning that his Words in any Conſtruction can bear; for *the Point* he is ſpeaking of, and which he ſays his Adverſaries thought they had him ſure and unanſwerable upon, muſt be ſome certain, ſingle Poſition which was mentioned before, ſome one Poſition or Principle, and not many; for 'tis *this Point*, not *theſe Principles*; and that ſingle Point could be no other than the *Point of Reſiſtance*: And the Perſons he calls his Adverſaries, who think they have him ſo ſure, can be no other than thoſe who deny his general Doctrine, and not thoſe new Preachers and new Politicians, who ſay the People have a Power veſted in them to cancel their Allegiance at Pleaſure; becauſe thoſe who deny this General Poſition of the utter Illegality of Reſiſtance, as applied to any one particular Caſe, are certainly his Adverſaries, and Enemies to his Fundamental Doctrine: For whoever can find an excepted Caſe, or ſhew an Inſtance in which Reſiſtance is lawful, deſtroys his general Aſſertion. And he ſufficiently ſhews, he meant thoſe who oppoſed his general Doctrine of abſolute Non-reſiſtance, by *our Adverſaries*, when he ſays that they urged the Revolution of that Day in their Defence; becauſe the Reſiſtance at the Revolution, which was founded in unavoidable Neceſſity, could be no Defence to a Man that was attack'd for aſſerting that the People might cancel their Allegiance at Pleaſure, or Dethrone and Murder their Sovereign by a Judiciary Sentence: For it can never be inferred from the Lawfulneſs of Reſiſtance at a Time when a *Total Subverſion* of the Government both in Church and State was intended, that a People may take up Arms, and call their Sovereign to account at Pleaſure; and therefore, ſince the Revolution could be of no Service in giving the leaſt Colour for aſſerting any ſuch wicked Principle, the Doctor could never intend to put it into the Mouths of thoſe new Preachers and new Politicians for a Defence; unleſs it be his Opinion, that the Reſiſtance at the Revolution can bear any Parallel with the execrable Murder of the Royal Martyr, ſo juſtly deteſted by the whole Nation; or that there was no other Difference between the two Caſes, than what the Learned Gentleman, who firſt ſpoke for him, was pleaſed to mention in the Concluſion of his Argument, by quoting an odious Expreſſion which I forbear to repeat: But it was very proper to take notice of the Reſiſtance at the Revolution, as an Objection to his general Doctrine, for it really is ſo; and 'tis impoſſible that Doctrine can be true in its full Extent, if the Reſiſtance at the Revolution was lawful; for 'tis moſt apparent, that the Juſtice of a Revolution, founded in Reſiſtance, and the Principle of Non-reſiſtance upon any Pretence whatſoever, can never ſtand together.

And therefore he could mean nothing, by *the Point* his Adverſaries thought they had him ſo ſure upon, but the general Poſition of Non-Reſiſtance, which was the only Point contended for in that Place; and he muſt mean thoſe only who denied his Doctrine of abſolute Non-reſiſtance, by *our Adverſaries*: And having no other way of maintaining the utter Illegality of Reſiſtance upon any Pretence whatſoever, and of anſwering the Caſe of the Revolution, which, from the Reſiſtance that was in it, was made an Objection; he goes on and denies the Reſiſtance, by ſaying, That *the King ſolemnly diſclaim'd the leaſt Imputation of Reſiſtance*; and calls thoſe who ſay that there was any Reſiſtance in the Revolution, *the greateſt Enemies of that and his late Majeſty, and the moſt ungrateful for the Deliverance, who endeavour to caſt ſuch Black and Odious Colours upon both.*

This, my Lords, is plainly Aſſerting, That to impute Reſiſtance to the Revolution, is to repreſent it as Black and Odious; and this Aſſertion is fairly collected from the plain Courſe and Tendency of his Argument, not from ſtrain'd Inferences and Innuendos, not from ſuppoſed or forc'd Conſtructions, but from his own Words, as they lie together, taken in their natural and genuine Senſe, and is the only Conſtruction that can give them any reaſonable Meaning or Coherence.

And therefore the Commons apprehend, That the Charge againſt the Doctor, for aſſerting, That *to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the Revolution*, is fully prov'd, and ſtands unanſwer'd.

But tho' the Charge, and the Paſſages produced for the Proof of it, are ſo very particular, and directly pointed at the Reſiſtance uſed to bring about the late happy Revolution, yet the Doctor and his Counſel are pleaſed to ſay, "That he has only Aſſerted the Doctrine of Non-Reſiſtance in general Terms, as it has been taught by the Apoſtles, the Homilies, and the Fathers of the Church in all Ages: That in this Caſe, as in all other general Propoſitions, Caſes of unavoidable Neceſſity, *as the Revolution undoubtedly was*, are always underſtood to be excepted; and that there is no other Difference between the Gentlemen of the Houſe of Commons and the Doctor, but Whether, when the general Rule of Obedience is taught, the particular Exceptions which may be made out of that Rule are always to be expreſs'd? or, Whether, when the general Rule is laid down, the particular Exceptions are not more properly to be underſtood or implied?" And upon this ground they have been very Elaborate, and have produced many Proofs to ſatisfy your Lordſhips, that the Doctor's general Aſſertion of the utter Illegality of Reſiſtance to the Supreme Power, upon any Pretence whatſoever, without mentioning any Exception, is warranted by the Doctrine of the Church, and by the Law of the Land.

But, with great Submiſſion, all this Pains might have been ſpared: For 'tis plain that the Doctor is not Impeach'd for preaching a general Doctrine, and enforcing the general Duty of Obedience, but for preaching againſt an excepted Caſe, after he has ſtated the Exception. He is not Impeached for preaching the general Doctrine of Obedience, and the utter Illegality of Reſiſtance upon any Pretence whatſoever; but becauſe, having firſt laid down the general Doctrine as true, without any Exception, he ſtates the excepted Caſe, the Revolution, in expreſs Terms, as an Objection; and then aſſumes the Conſideration of that excepted Caſe, denies there was any Reſiſtance in the Revolution; and aſſerts, that to impute Reſiſtance to the Revolution would caſt Black and Odious Colours upon it. This, my Lords, is not preaching the Doctrine of Non-reſiſtance in the general Terms uſed by the Homilies, and the Fathers of the Church, where Caſes of Neceſſity may be underſtood to be excepted by a Tacit Implication, as the Counſel have allowed; but is preaching directly againſt the Reſiſtance at the Revolution, which in the Courſe of this Debate has been all along admitted to be neceſſary and juſt, and can have no other Meaning, than to bring a Diſhonour upon the Revolution, and an Odium upon thoſe great and illuſtrious Perſons, thoſe Friends to the Monarchy and the Church, that aſſiſted in bringing it about. For had the Doctor intended any thing elſe, he would have treated the Caſe of the Revolution in a different manner, and have given it the true and fair Anſwer; he would have ſaid, that the Reſiſtance at the Revolution was of Abſolute Neceſſity, and the only Means left to revive the Conſtitution; and muſt be therefore taken as an excepted Caſe, and could never come within the Reach or Intention of the general Doctrine of the Church. But inſtead of this, he denies that there was any Reſiſtance in the Revolution, and repreſents it as a Scandal upon the Revolution, to ſay there was any Reſiſtance in it; *Thoſe*, ſays he, *are the greateſt Enemies to it, who caſt ſuch Black and Odious Colours upon it.*

My Lords, if extraordinary Caſes, if Caſes of Neceſſity, which are implicitly Excepted, are not to be ſtated at the Time when the general Prohibition is inculcated, and it would be of dangerous Conſequence in this particular Inſtance of the Doctrine of Non-Reſiſtance, "by picking Holes for the Subject to creep out of his Allegiance;" I ſubmit it to your Lordſhips Conſideration, whether ſtating an Excepted Caſe, and then bringing it within the general Prohibition, particularly in this Inſtance of the Revolution, muſt not have the ſame pernicious Conſequence? "Does not this plainly ſhew what Spirit the Doctor is of, and what he aims at?"

But your Lordſhips have been told, that "What the Doctor aſſerts concerning the utter Illegality of Reſiſtance to the Supreme Power, can never be applied to the Revolution; for the Legiſlative, the King, Lords and Commons, is the Supreme Power; and there was no Reſiſtance to the Lords and Commons, for they join'd with his late Majeſty in bringing about the Revolution; the Reſiſtance was made only to that unfortunate Prince who was then upon the Throne." But 'tis plain, from his applying the Illegality of reſiſting the Supreme Power to the Caſe of the Revolution, that he meant the Executive Power, which was then Reſiſted; and he uſes *Sovereign* and Prince as Synonymous Terms with the Supreme Power, in other parts of the ſame Paragraph of the Sermon; for he ſpeaks of calling the Sovereign to Account, and of cancelling Allegiance at Pleaſure, which can be due only to the Prince; which ſhews, that the Prince only, and not the Legiſlature, can be underſtood by *His Supreme Power*.

I ſhall not trouble your Lordſhips, to ſhew that the Reſiſtance uſed at the Revolution was conſiſtent with the Doctrine of the Church, and with the Law and Conſtitution of *England*: This is no Part of the Controverſy, and is not diſputed by the Counſel; for they agree ſuch Caſes to be excepted out of the General Rule, and profeſs to uſe the ſeveral Paſſages that have been read to your Lordſhips only to excuſe or extenuate the Doctor's Offence, and not to arraign the Juſtice of the Revolution; and therefore I ſhall not enter into a particular Examination of them, but only obſerve, That if the Books, out of which theſe Paſſages were taken, were narrowly examined, 'tis poſſible ſome Expreſſions might be found, to ſhew that the Authors never intended that their general Rule ſhould extend to Caſes where the total Subverſion of a Government was aim'd at. For your Lordſhips muſt needs have obſerved, from the Uſe that has been made of the Book of a Learned Prelate, called *A Vindication of the Authority, Conſtitution and Laws of the Church and State of* Scotland; *Printed in* 1673. that a perfect State of Truth is not altogether to be depended upon, from the Proofs that have been collected out of ſeveral Authors, and read to your Lordſhips; and that the Sincerity of the Collector is very much to be queſtioned: For that Book was produced to prove the Duty of Abſolute Submiſſion, and a Paſſage was read for that Purpoſe; but when the Managers looked into the Book, they found another Paſſage, where the Author, ſtating the Caſe of Abuſes tending to a total Subverſion, allows, That, in ſuch a Caſe, the Supreme Power may be adminiſtered by another: Which ſhews, That this Reverend Prelate, who was ſo inſtrumental in the Revolution, did not act in Contradiction to his former Sentiments, (as was inſinuated, by citing this Treatiſe;) but was firm and conſtant to himſelf, when he embarked in that Glorious Enterprize.

Several Sermons that have been preach'd ſince the Revolution, have been likewiſe offered to your Lordſhips, to ſhew that the Doctrine of Non-reſiſtance has been delivered in general Terms; but theſe can be of no Service in his Defence, for the Reaſons that have been given. Beſides, the Commons don't think themſelves concerned to enter into the Examination of of private Opinions. And for thoſe that have been preached by the Right Reverend Fathers of the Church now living, they are the beſt Expoſitors of their own Meaning; and I ſhould miſ-ſpend your Lordſhips Time, to enter into any Explication of them. The Doctor has appealed to the Right Reverend Fathers of the Church; to theſe Right Reverend Fathers we leave him; not doubting but the Nation will be ſatisfied how much they are concerned for the Honour of the Revolution, and the Security of the preſent Happy Eſtabliſhment under her Majeſty, by the juſt Judgment they will give upon this Occaſion.

And as to the Laws of the Kingdom, there needs little to be ſaid, after what the Learned Gentleman who ſpoke laſt, has offered to your Lordſhips; eſpecially ſince the Counſel for the Doctor have all of them own'd, That the General Expreſſions in the Laws don't extend to any ſuch Caſe as that of the Revolution, which no Municipal Law can be ſuppoſed to include. And if Doctor *Sacheverell* had been ſatisfied with laying down the General Doctrines of Obedience and Non-Reſiſtance, in the manner the Laws have done, the Commons had never given your Lordſhips this Trouble. 'Tis his entring into the Debate of what is agreed by his own Counſel to be an Excepted Caſe, and his arraigning the Juſtice of the Revolution, (which has been already ſtated at large to your Lordſhips) that has given Occaſion for the Proſecution upon this Article.

Beſides this, there have been other Things ſaid in the Doctor's Behalf. The Commons had alledged, That to ſhake the Juſtice of the Revolution, and the Validity of thoſe Acts of Parliament, by which Her Majeſty's Title to the Crown was declared, and the Succeſſion ſettled in the Proteſtant Line, was a Matter of the greateſt Conſequence, at a Time when the Hereditary Right to the Crown was conteſted; and that the Friends of the Pretender could Advance his Intereſt upon no other Ground. But it has been urged for the Doctor, That he could never mean any Service to the Pretender; for he aſſerts the Hereditary Right to be in the Queen; and that thoſe who deny Her Hereditary Right, are moſt like to bring in the Pretender. And by this Anſwer, they inſinuate, That the Doctor has aſſerted an Hereditary Right in Her Majeſty; and that thoſe who defend her Parliamentary Title, deny Her Hereditary Right. The Paſſage they cite for his aſſerting an Hereditary Right in Her Majeſty, is *Pag.* 2. where he calls Her Majeſty, *The Good and Pious Relict of the Royal Family:* And they argue, That if Her Majeſty be the Relict, and the only Prince of that Family left, ſhe muſt have the Hereditary Right of Courſe.

This Paſſage your Lordſhips cannot but obſerve, requires ſome Straining, to give it any Appearance of anſwering the Purpoſe to which they would apply it; and after all, it can carry no ſuch Meaning: Her Majeſty is not the only Deſcendant of the Royal Family now in being; there are ſeveral Branches of it yet remaining; and I cannot believe, that the Gentlemen who uſe this Argument, intend to exclude the Illuſtrious Houſe of *Hanover* from being Part of it. In the next Place, they turn it upon the Commons, as if they denied the Hereditary Right (which they ſhall ever avow) when they aſſerted the Title by Act of Parliament. I ſubmit it to your Lordſhips, Whether any thing more was ſaid, than that the Hereditary Right was conteſted? And this is notorious to all the World ————is taken Notice of in our Oath of Abjuration, and was claimed Two Years ago, by the Pretender's Attempting an Invaſion. And in ſuch a Caſe, 'tis certainly the Duty of every Subject, to make good all the Fences which guard Her Majeſty's Title to the Crown. And, my Lords, We have Reaſon to lay ſome Weight upon a Parliamentary Title, ſince the Proteſtant Succeſſion entirely depends upon it; and to defend the Power of Parliament, to limit the Succeſſion of the Crown, ſince the Doctor has offered to your Lordſhips in Evidence a Decree of the Univerſity of *Oxford*, in the Year 1683, where is this Propoſition, *viz.* "That it is lawful to preclude the next Heir from his Right and Succeſſion to the "Crown, was ſolemnly condemned, as Falſe, Seditious and Impious:" Which I the rather take Notice of, becauſe the Doctor relies ſo much upon the Authority of that Univerſity. But I muſt take Leave to ſay, That if the ſame Principle ſhould ſtill continue to be taught, or to be believed in that Univerſity, where ſo many of our Gentlemen receive their firſt Impreſſions, it muſt one Time or other involve us in Blood, and leave Poſterity in endleſs Diſputes about the Title to the Crown; and therefore 'tis of the greateſt Conſequence to Her Majeſty, and the Security of Her Perſon and Government, the Continuance of the Succeſſion in the Proteſtant Line, and the Peace and Happineſs of this Kingdom, to maintain the Power of Parliament to ſettle the Succeſſion of the Crown; which has been exerciſed in all Times, and frequently reſorted to by Her Majeſty's greateſt and wiſeſt Predeceſſors. This is not to make way for the Pretender, but to ſhew that he is effectually and legally excluded; and that Her Majeſty has not only the Hereditary Right, but the Sanction of an Act of Parliament, which has been always thought ſufficient to bind the Succeſſion to the Crown, and is the plain way to eſtabliſh her Majeſty's Throne againſt all Attempts whatſoever.

But your Lordſhips are told, That theſe Sermons were not preached with a ſeditious Intention; and that the Doctor can never be ſuppoſed to have a Deſign to undermine the Government, by preaching up the utter Illegality of Reſiſtance.

This, my Lords, has indeed ſome ſhew of an Excuſe; but if your Lordſhips conſider in what Manner he has applied his Doctrine of Non-Reſiſtance, and the Uſe he has made of it, together with the General Deſign of the Sermon, which is a virulent Invective throughout; it will appear, that he could not take a more proper Courſe to incite the People to Sedition, and to create Jealouſies and Diſcontents in the Kingdom. For, Firſt, he endeavours to ſhew, That if there was any Reſiſtance in the Revolution, the Foundations of our preſent happy Settlement were laid in an unlawful Force; becauſe ſuch Reſiſtance was, as he ſays, utterly illegal, odious, and unjuſtifiable. And having laid this Ground, he charges her Majeſty, and thoſe in Authority under Her, with a General Male-Adminiſtration: And what Inference can the People make from ſuch Poſitions as theſe; but that the Government they are under is ill founded, and therefore no Obedience is due to it; and ſince there is a general Miſmanagement in the whole Adminiſtration of the Executive Power, 'tis their Intereſt to get rid of it as ſoon as they can?

This, My Lords, is the plain Tendency of his whole Diſcourſe; and whoſe Intereſt is beſt ſerved by ſuch Diſcourſes as theſe, whether that of her Majeſty, our moſt gracious Queen, or that of the Pretender, I ſubmit to your Lordſhips impartial Conſideration.

My Lords, The Doctor will have no Reaſon to complain of being hardly uſed, in having his Intentions cenſured as ſeditious, if he conſiders what that great Prelate, my Lord Archbiſhop of *York*, has ſaid in the Sermon that has been produced in Evidence before your Lordſhips; in which there is this Paragraph, *viz.*

"They are the Factious, they are the Setters up or Abettors of Parties, "who endeavour to deſtroy, or unſettle, or diſparage, or at leaſt to hurt "and weaken the Government and the Laws, as they are eſtabliſhed; let "the Principles upon which they go, or the Pretences they make, be what "they will."

And if his ſeditious Intentions be apparent from the Sermon, his having taken the Oaths of Allegiance, his Signing the Aſſociation, and his taking the Abjuration, are ſo many Aggravations of his Guilt.

I have troubled your Lordſhips a great while; but I can't forbear taking notice of one Thing, which the Doctor has complain'd of as a Hardſhip; I mean, that he has been proſecuted in this publick Manner by an Impeachment, by which, he ſays, he ſhall have been abundantly puniſhed, though he ſhould have the Happineſs to be at laſt acquitted. But this Complaint is anſwered by his own Counſel, who acknowledge his Caſe to be a Cauſe of very great Moment; and that the Points now under your Lordſhips Conſideration, are proper only to be ſettled in Parliament. And certainly, no other Courſe could have been ſo proper: For when the Foundations of the Government in Church and State are apparently ſtruck at, and undermined, under Pretence of Zeal for the Conſtitution; when her Majeſty's Title to the Crown is endeavoured to be weaken'd, under the Colours of Obedience and Loyalty; when the Quiet and Repoſe of her Majeſty's Proteſtant Subjects is diſturb'd, under a pretended Zeal for the Good of the Church; when the Safety of the Church is in the greateſt Danger, from thoſe who declare the moſt affectionate Concern for her Welfare and Proſperity; when the Fathers of the Church are defamed, by thoſe who pretend the greateſt Reverence for the Epiſcopal Order; and when her Majeſty's happy Adminiſtration is publickly vilified and expoſed, in the moſt audacious and inſolent manner; where ſhould the Commons apply for Juſtice, but to this ſupreme Judicature? Or, where could they expect an adequate Remedy to theſe great and growing Evils, but in full Parliament?

They have therefore brought this great Offender before your Lordſhips; and have the higheſt Satisfaction, in a full Aſſurance of your Lordſhips impartial Judgment.

Mr. *Lechmere.* MY Lords, the Gentlemen who have now ſpoke before me, have gone through the Subſtance of the Reply to this firſt Article: They have ſhewn to your Lordſhips the Weakneſs and Vanity of the Defence, which has been made to it; and have fully re-aſſerted this Part of our Charge, by which Doctor *Sacheverell* ſtands accuſed, in the Name of the Commons of *Great Britain*, of condemning the Neceſſary Means uſed to bring about the happy Revolution.

Your Lordſhips Conſideration of this Branch of our Impeachment, and of what has been offered to you in Maintenance of it, has, doubtleſs, created in your Minds an Impreſſion equal to its Weight, and to the many great Conſequences which depend upon it: But we perſuade ourſelves, that when you reflect on the Nature and Method of the Defence, 'twill more clearly diſcover to your Lordſhips and the World, how neceſſary a Taſk the Commons have taken on themſelves in this Proſecution; of what high Concern it is to her Majeſty and her Government, and to our common Security, that this Fundamental Queſtion ſhould receive this publick and ſolemn Diſcuſſion; That the falſe Zeal, which the diſguiſed Enemies of her Majeſty's Title have the Confidence to put on, by endeavouring to cover the worſt Deſigns, under the ſacred Names of God and Religion, and the ſtrongeſt Profeſſions of Loyalty and Allegiance, may be brought to the Teſt, and the true Foundations of the Safety of the Kingdom be underſtood and aſſerted.

The Part aſſigned me in opening the Charge, leads me to take Notice of ſome Paſſages which have fallen from the Counſel; and tho' what I ſhall firſt mention, has been already obſerved and fully refuted, yet I muſt beg your Patience to reſume it a little. The Gentleman who began the Defence, ſaid, That 'twas inſiſted on the firſt Day of the Trial, *That the Doctor had not only aſſerted the utter Illegality of Reſiſtance on any Pretence* ☞ *whatſoever; but that he had likewiſe* declared *himſelf, That the Revolution was not ſuch a Caſe as ought to be excepted out of his General Rule*, and this he ſaid, *he denied; and if ſuch an Expreſſion could be found in the Doctor's Sermon*, he ſhould think *no Puniſhment too great for him.* Your Lordſhips could not but obſerve the Argument which immediately followed: *'Tis one thing*, ſays he, *expreſly to affirm the Revolution is ſuch a Caſe as ought not to be excepted, and another thing not to make that Exception.* You were told, indeed, in the Beginning of the ſame Diſcourſe, and afterwards by the Doctor himſelf, That his general Aſſertion of the utter Illegality of Reſiſtance on any Pretence whatſoever, did not relate to the Reſiſtance uſed to bring about the Revolution, it being applied to the Supreme Legiſlative Power, to which no Reſiſtance was then made, the Lords and Commons joining in it. This, my Lords, is a Meaning which the Doctor had not in view when he preached the Sermon; for, by obſerving the Paſſages, you will find, that the Words *Supreme Power* are no Part of the Aſſertion of the utter Illegality of Reſiſtance on any Pretence whatſoever. He doth, indeed, affirm unconditional Obedience to the Supreme Power in all Things lawful; but the Illegality of Reſiſtance is indefinitely and univerſally affirm'd, and not reſtrain'd to the Supreme Power. 'Tis likewiſe evident, not only from his mentioning the Caſe of the Revolution, which was the Caſe of Reſiſtance to the King, as an Objection to his general Rule of the utter Illegality of Reſiſtance, but likewiſe from the ſubſequent Parts of the ſame Paragraph, that the Non-Reſiſtance which he preached up, was Non-Reſiſtance to the Supreme executive Power; and, indeed, this is ſtill more evident from the Fallacy of that, which is offered to induce your Lordſhips to think otherwiſe, it being undeniable, that the Lords and Commons did not join in that Reſiſtance, as part of the Legiſlative and Supreme Power, but as part of the collective Body of the Nation. This Subterfuge, frivolous as it is, being ſoon departed from, the Argument proceeded upon the Suppoſition, that the general Aſſertion in the Sermon was to be underſtood of the ſupreme executive Power. I return, therefore, to the Objection as ſtated before, which being delivered with uncommon Oſtentation, your Lordſhips will allow me to enter into the Examination of it. *The Subjects*

Obligation to an unconditional Obedience to the Supreme Power in all Things lawful, and the utter Illegality of Reſiſtance on any Pretence whatſoever, is the Doctor's general Rule, which he affirms to be the Security of our Government, and the Belief of this, *the very Pillar on which it ſtands.* Your Lordſhips may here obſerve, that the Doctor, in delivering his general Rule, has gone pretty much beyond that Apoſtle he would be thought to imitate: The Apoſtle in general Terms enjoins the Duties of Obedience and Subjection to the higher Powers, not mentioning any Exception when he lays down thoſe Precepts. The Doctor goes on, and his next Sentences contain a general Obſervation, That though his fundamental Doctrine was now become unfaſhionable, and exploded as a dangerous Tenet, inconſiſtent with the Rights, Liberties, and Property of the People; yet, God be thanked, it ſtill continued to be the Doctrine both of Church and State: And then follow theſe Words, *Our Adverſaries think they effectually ſtop our Mouths, and have us ſure and unanſwerable on this Point, when they urge the Revolution of this Day in their Defence.*' Nobody can doubt what Revolution the Doctor means, nor, that under the Term *Revolution*, by which he expreſſes the Objection made to the general Rule of Non-Reſiſtance, he meant the Reſiſtance ſuppoſed to be made at that Revolution. This he ſtates as the unanſwerable Objection made by his Adverſaries to this Point, to his Rule of Non-Reſiſtance on any Pretence whatſoever.

If your Lordſhips collect the Senſe of that Paragraph thus far, it will ſtand thus: Thoſe Perſons who explode abſolute Non-Reſiſtance to the Prince as a Tenet dangerous to Liberty; in Defence of that their Opinion, object to us, who avow this Tenet as the honourable and diſtinguiſhed Characteriſtick of our Church, the Reſiſtance uſed to bring about the late happy Revolution, as an Exception out of our general Rule of Non-Reſiſtance. The Doctor having thus laid down his Rule in univerſal Terms, and expreſly taken Notice of the Caſe of the Revolution as an objection raiſed againſt it by other People; your Lordſhips are next to conſider what becomes of this Objection; in what Manner is it treated by him, and what Judgment does he paſs upon it? My Lords, The Doctor does not drop the Objection without conſidering it further; he is not *ſilent in the Matter*; he doth not leave this as an Exception *implied*, and *to be ſuppoſed* by the general Rule; he proceeds and argues expreſly upon it for two or three Sentences together: The Doctor's Expreſſions in this Reſpect alſo are not entirely agreeable to thoſe of the Apoſtle. In the next Place, Doth the Doctor yield the Objection to his Adverſaries? Doth he allow the Reſiſtance uſed to bring about the late happy Revolution to have been a lawful Reſiſtance, and to be an Exception out of his general Rule? No, my Lords, juſt the contrary: He is ſo far from agreeing with his Adverſaries in this Point, or giving way to the Exception, that in Vindication of the Revolution, as he would be thought to ſpeak, he pronounces thoſe who make the Exception, and contend for the Lawfulneſs of that Reſiſtance, to be Enemies to the Revolution; and that Reſiſtance, which the Commons aſſert to be the neceſſary Means by which it was brought about, he deſcribes to be odious Colours caſt upon the Revolution. In his next Sentence he inſinuates, That there was no Reſiſtance in the Revolution, and to that End, miſrepreſents his late Majeſty as having diſclaimed it; and with the ſame Intent likewiſe, that the Parliament ſet the Crown on his Head, on no other Title than of the Vacancy of the Throne; and ſtill the more effectually to delude his Hearers into the Belief of his general Aſſertion, groſly and ridiculouſly perverts the Cenſure paſt by a future Parliament upon the Notion of Conqueſt, as a Condemnation of that Reſiſtance. Having thus conſidered this Objection of the Revolution, and the following Parts of his Paragraph being Expreſſions of Triumph over his Adverſaries, whoſe Objection he would be ſuppoſed to have confuted, towards the Cloſe of it he uſes theſe Words, as his Concluſion and Judgment upon it: *In ſhort, as the* Engliſh *Government can never be ſecure on any other Principles but ſtrictly thoſe of the Church of* England, *ſo he will be bold to ſay*, &c. His general Rule of Non-Reſiſtance, on any Pretence whatſoever, he had before laid down as the Doctrine and Principle of the Church; which, after having conſidered the Caſe of the Revolution as an imaginary Exception to it, he re-aſſerts in thoſe Words. And what clearer Indication can your Lordſhips receive of the Doctor's Intention in his general Aſſertion? Can your Lordſhips, or any Body that ſhall conſider the Tenor of that Part of his Diſcourſe, retain any Doubt, whether he has *plainly and fully declared* himſelf, That the Reſiſtance uſed to bring about the late happy Revolution was odious and unjuſtifiable, and not to be excepted out of his fundamental Rule of the Illegality of Reſiſtance on any Pretence whatſoever? And, my Lords, Can it be ſaid that this Interpretation of his Diſcourſe is *ſtrained* and *unnatural?* Is this Part of our Charge maintained *by conjoining diſtant* and *independent Paſſages?* Or, is not the Connexion clear and neceſſary, and the Senſe we contend for, the only Senſe the Words can properly bear, in the moſt candid and genuine Interpretation of them? The Gentleman, whoſe Objection from the Bar I have been conſidering, ſaid, *That it is one Thing expreſly to affirm that the Revolution is not to be excepted, and another Thing not to make that Exception.* But though the Words of the Sermon are not an expreſs and literal Affirmation, yet if this Conſtruction appears to your Lordſhips to be neceſſary and certain, they will be taken by you to be an ample and undeniable Declaration of his Mind; and this poor Shift, thus emphatically inſiſted on at the Bar, will amount to no more than what the Doctor had before ſaid in his Anſwer in plainer Words, That he had not maintained the neceſſary Means to be odious and unjuſtifiable, becauſe he had not made Uſe of thoſe very Words.

The next Paſſage which I ſhall obſerve to your Lordſhips, fell from the Gentleman who ſpoke third in Defence of this Article; his ☞ Words were theſe: I have been *careful and exact* in collecting them, " One learned Gentleman, ſays he, did obſerve, that there was an original Contract; and that by that Contract, if the executive Power invaded the reſt, that Contract was broke, and the People diſcharged from their Allegiance; but he did not think fit to take Notice when that Contract was made. I would fain know, whether it was before *Magna Charta*, or ſince; if it was before, it is much no Mention was made of it there; for that has been always looked upon as the great Charter of the Rights of the People. Was it before 25 *Ed.* III? Then I would know, Whether that Contract, made before the 25 *Ed.* III. could ever diſcharge that Act which was made after it? If it doth diſcharge the Subject of their Allegiance, I have never yet known it pleaded to any Indictment for High-Treaſon upon that Act; and therefore, " *'Till the Legiſlature ſhall determine what that Contract is, and what Breach of it ſhall diſcharge the Subjects of their Allegiance, I muſt take Leave to ſay, that Reſiſtance ſtands ſtill upon the Foot of the Statute of* 25 Ed. III."

My Lords, the Nature and Conſequence of this Paſſage would bear a much more ample Conſideration than my Time has allowed me to give it, or than may be fit to trouble your Lordſhips with on this Reply; but I conceive a ſhort Notice of it, and of the near Relation it bears to the Matter now before you in Judgment, may yield a pretty clear Diſcovery and Explanation of the whole. But the Diſtance of Time ſince the opening of the Charge, and the many palpable Miſconſtructions which ſome of the Counſel have allowed to themſelves, of what has been offered by ſome of us in behalf of the Commons, makes it neceſſary for me, even in this Particular, to remind your Lordſhips of the Connexion of the Diſcourſe, out of which this Obſervation was raiſed. Your Lordſhips were acquainted, in opening the Charge, with how great Caution, and with what unfeigned Regard to her Majeſty and her Government, and to the Duty and Allegiance of her Subjects, the Commons made Choice of the Words *Neceſſary Means*, to expreſs the Reſiſtance that was made uſe of to bring about the Revolution, and with the condemning of which the Doctor is charged by this Article; not doubting, but that the Honour and Juſtice of that Reſiſtance, from the Neceſſity of that Caſe, and to which alone we have ſtrictly confined ourſelves, when duly conſidered, would confirm and ſtrengthen, and be underſtood to be, an effectual Security of the Allegiance of the Subject to the Crown of this Realm in every other Caſe, where there is not the ſame Neceſſity; and that the Right of the People to Self-Defence, and Preſervation of their Liberties by Reſiſtance, as their laſt Remedy, is the Reſult of a Caſe of ſuch neceſſity only, and by which the original Contract between King and People is broke. This was the Principle laid down and carried thro' all that was ſaid with reſpect to Allegiance, and on which Foundation, in the Name, and on the Behalf of all the Commons of *Great Britain*, We aſſert and juſtify that Reſiſtance by which the late happy Revolution was brought about. When the Gentleman from the Bar endeavoured thus, in a ludicrous Manner, to explode the original Contract between the King and the People, he muſt not be ſuppoſed to be ignorant, that thoſe very Words are Part of the Vote of the Abdication, the Vote of both Houſes of Parliament, at the Time of the Revolution, antecedent to that Settlement of the Crown, on which her Majeſty's Parliamentary Title, and our preſent Eſtabliſhment is founded. I have thought it neceſſary to tranſcribe that Proceeding from your Lordſhips Journals, now lying on your Table, and will ſtate it to you as I have taken it from thence.

Upon the Twenty-ninth of *January*, 1688, *A Meſſage* was brought *from the Commons by Mr.* Hampden, *and others*, who ſaid, ' The Commons taking into their Conſideration the State of this Kingdom, had paſſed a Vote, to which they deſired your Lordſhips Concurrence;' which Vote was as follows, ' Reſolved, That King *James* the Second having endeavoured to ſubvert the Conſtitution of the Kingdom, by breaking the Original Contract between King and People; and by Advice of Jeſuits and other wicked Perſons, having violated the fundamental Laws of this Kingdom; and having withdrawn himſelf out of this Kingdom, has abdicated the Government, and the Throne is become thereby vacant.' Your Lordſhips Houſe reſolved itſelf into a Committee of the whole Houſe, and the Vote containing in it divers Particulars, upon the 30th Day of *January*, was conſidered by Paragraphs; the firſt of which was, ' That King *James* the Second having endeavoured to ſubvert the Conſtitution of the Kingdom, by breaking the Original Contract between King and People:' To which the Committee, and the Houſe afterwards, agreed without any Amendment. Now, when it appears to your Lordſhips and the World, that *breaking the Original Contract between King and People*, were the Words made Choice of by that Houſe of Commons, with the greateſt Deliberation and Judgment, and approved of by your Lordſhips, in that firſt and fundamental Step made towards the Re-eſtabliſhment of the Government, which had received ſo great a Shock from the evil Counſels which had been given to that unfortunate Prince, and that they are ſtated in that Vote as a Conſequence of his endeavouring to ſubvert the Conſtitution of the Kingdom; I need not ſay how much the Lawfulneſs of that Reſiſtance, which had been before made by the People, and which is now the immediate Queſtion, nay, how much the Juſtice of the Revolution itſelf would be affected by a Condemnation of that Poſition: And what Light doth it give to the Queſtion now before your Lordſhips, when at your Bar, in Defence of a Perſon accuſed by the Commons, for condemning the neceſſary Means which brought about the Revolution, you have heard that Original Contract, at that Time ſo ſolemnly declared to be *a fundamental Principle*, publickly denied, ridiculed, and endeavoured (in what Manner 'tis eaſy to judge) to have been exploded?

My Lords, the Truth of that Poſition has its Foundation in the Nature and Eſſence of the Conſtitution of our Government, and it will ſtand ſo long as this remains; and the Sanction it has received from your Lordſhips, and from that Houſe of Commons, who had with ſo much Wiſdom and Bravery aſſerted the Rights of the Kingdom in that extraordinary Juncture, and who, purſuant to that Reſolution, ſettled the Crown upon her Sacred Majeſty, ought to render it indiſputable, ſo long at leaſt as that Eſtabliſhment is preſerved to us. But yet, could I think it ſeaſonable to enter into it, to conſider more particularly the Nature of our Government, to draw together ſome of the many inconteſtible Evidences of its original Freedom, to conſider the Nature, Antiquity and Hiſtory of the Coronation-Oath, and the Oath of Allegiance, and the mutual Obligations and Conſequences ariſing from them to the Prince and People: Was I to go over the ſeveral Branches that make up the ancient Frame of our Government, and which ſpeak and expreſs a Conſent and Compact between the Prince and People in their Inſtitution; and was I to obſerve that inſeparable Relation and equal Security which they import between the Crown and the Subject, and which are ſo many infallible Tokens of original Conſent ſtampt upon them; the Truth and Certainty of that Poſition of an original Contract between the King and People, might be laid down to your Lordſhips in demonſtrative Terms. The Gentlemen that raiſed this Obſervation, ſoon afterwards, in the ſame Diſcourſe, ſuppoſed, That by the Original Contract, the Original Conſtitution was meant; how ſtrictly proper that Manner of ſpeaking might be found to be, I will not now determine; yet thus much may with Certainty be concluded, That the denying the Original Contract, is not only to diſavow the whole

Proceeding at the Time of the Revolution, but to renounce the Conſtitution itſelf, to diſclaim thoſe many and undeniable Proofs and Teſtimonies of it, which almoſt every Part of our Hiſtory, our Records, and Memorials of Antiquity, will furniſh: To deny the Original Contract of Government, is to contradict and condemn the Voice and Tenor of all our Laws, of every Act of the Supreme Legiſlative Power, the Force and Efficacy of which exiſts upon the Conſent of the Crown, Lords and Commons, and are therefore ſo many laſting and unerring Proofs of that, as the Original Foundation of that Supreme Power; 'tis not only to oppoſe the conſtant Judgment of all learned Men, who have underſtood and wrote impartially of our Government, but even the Senſe of many of thoſe Writings which have been produced and read to you in the Doctor's Defence, and more particularly that of the judicious Mr. *Hooker:* To deny and condemn the Original Contract between King and People, what other Conſequences could it produce, than to unhinge the Government, and to deſtroy that excellent Balance of Power, which is ſecured by it, and by which it has been ſo long preſerved? It muſt weaken the ancient and juſt Prerogatives of the Crown, ſubvert the Foundations of your Lordſhips Legiſlative and Judicial Powers, render the Parliamentary Rights of the Commons precarious and uncertain, and terminate at length, in that abſurd, yet dangerous Opinion, of the *Patriarchal Right*, which, when together joined with the Doctrines of abſolute and unlimited Non-reſiſtance, and unconditional Obedience of the Subject to their Prince, completes that fatal Syſtem, which has been of late ſo much contended for towards the enſlaving Mankind.

But your Lordſhips will conſider further, what Uſe and Application was made of this Paſſage by the Counſel; his Concluſion was, *That till the Legiſlature had determined what the Contract was, and what Breach of it ſhall diſcharge the Subjects of their Allegiance, he took leave to ſay, that Reſiſtance ſtill ſtood upon the Foot of* 25 E. III.

My Lords, we ſtand here entruſted to maintain the Charge contained in our Article, to aſſert the Juſtice of that Reſiſtance only which brought about the late happy Revolution; and that being the Reſiſtance in queſtion, and to which alone we have apply'd ourſelves, and in Support of which the Original Contract was mentioned; what is the plain *Engliſh* of this Inference drawn from the Denial of it? Does it not amount to an open and poſitive Declaration from the Mouth of Doctor *Sacheverell*'s Counſel, That that Reſiſtance which was the neceſſary Means us'd to bring about the late happy Revolution, inſtead of being an Honourable and Lawful Reſiſtance, was an Act of Rebellion and High Treaſon?

Having conſidered theſe Particulars, I beg your Indulgence to make a few Obſervations on the Nature and Method of the Defence to this Article: Your Lordſhips will remember, tho' it ſeems to have been totally forgot on the Priſoner's Part, that the Maintenance of this Article has not reſted on the Doctor's general Aſſertion alone, but upon the following Paſſages, now ſtated to you; from whence we have undertaken to convince your Lordſhips, that Dr. *Sacheverell* has apply'd that general Rule of Non-reſiſtance to the particular Caſe of the Revolution; and this having render'd the Independent Conſideration of the general Aſſertion wholly immaterial, when you afterwards heard the Admiſſions that were made by the Counſel, of the Legality of the Reſiſtance uſed to bring about the Revolution, your Lordſhips might reaſonably have expected, that the only Queſtion remaining on this Article would have been, How far thoſe ſubſequent Paſſages of the Sermon did evince the Intent of the general Aſſertion? But tho' the Queſtion has been thus plainly ſtated and maintained, and the Method of the Doctor's Vindication thus clearly pointed out to him, yet how little has been ſaid? How little Notice has been taken of this, which was his proper Defence? The Gentleman who began the Defence has, indeed, denied the Charge of this Article; the Force of that, and of his Argument which followed, have been conſidered: But if your Lordſhips ſhall not think fit to accept the ſingle Attempt as ſufficient to acquit the Priſoner, (together with a nervous Obſervation of the Interpoſition of ſome Lines between the general Aſſertion, and that Sentence wherein the Revolution is named) how much will your Lordſhips find, throughout that long and labour'd Harangue, that can be judged by you at all material to the true Queſtion before you? For tho' the general Doctrine of Non-reſiſtance, the Doctrine of the Church of *England*, as ſtated in her Homilies, or elſewhere delivered, by which the geneal Duty of Subjects to the Higher Powers is taught, be owned to be, as unquſtionably it is, a godly and wholeſome Doctrine; tho' this general Doctrine has been conſtantly inculcated by the Reverend Fathers of the Church, dead and living, and preached by them as a Preſervative againſt the Popiſh Doctrine of depoſing Princes, and as the ordinary Rule of Obedience; and, tho' the ſame Doctrine has been preached, maintained, and avowed by our moſt Orthodox and Able Divines from the Time of the Reformation; and, how *Innocent a Man* ſoever Doctor *Sacheverell* had been, if, *with an honeſt and well-meant Zeal*, he had preached the ſame Doctrine, in the ſame general Terms, in which he found it delivered by the Apoſtles of Chriſt, as taught by the Homilies, and the Reverend Fathers of our Church; and, in Imitation of thoſe great Examples, had only preſs'd the General Duty of Obedience, and the Illegality of Reſiſtance, without taking Notice of any Exception; yet, what Excuſe can be derived, to the Matter now in queſtion, from ſuch Conſiderations as theſe, in favour of the Doctor, who has not only aſſerted the general Rule in Terms of the greateſt Latitude, but has expreſsly mention'd and diſallow'd the Exception of the Reſiſtance, which brought about the Revolution? And whatever is the Language of our Laws, *Repealed or in Force*, wherein the ſame general Duty of Sujects is ſtated, and the Rule laid down to them, as Neceſſary and Fundamental for the Safety of the Crown and Government, and the Peace of the Kingdom, and which are meant to enforce and ſecure their Civil Obedience in ordinary Caſes, (but which nobody will ſay can be conſtrued to extend to the Caſe of a People threatened by their Prince with total Deſtruction, the utter Subverſion of their Laws, and the Loſs of their Religion and Liberties, to a Caſe of the laſt Neceſſity, *ſuch a Caſe as the Revolution was*,) yet no Uſe can poſſibly be made of ſuch Declarations in our Acts of Parliament to juſtify the Doctor, who by his general Aſſertion, has not only out-gone even thoſe general Declarations, but has undeniably applied it in Condemnation of the Caſe of the Revolution, which is the Charge of this Article.

Your Lordſhips will allow me to obſerve yet a little farther: The Nature of this Article appearing to every Body to be of that near Concern to Her Majeſty and Her Government, you have, indeed, heard very warm and pathetic Expreſſions of Loyalty, of very tender and dutiful Regard to Her Majeſty's Title, and much Labour and Vehemence was uſed to perſuade your Lordſhips into a Belief of this: But yet, your Lordſhips could not but obſerve, where the real Streſs and Force of the Argument was placed, and where it center'd at laſt; your Lordſhips will find, the great Effort was made to eſtabliſh the Doctrine of Non-reſiſtance, and to inculcate this, in Terms of the largeſt Extent, in the ſame univerſal Terms wherein the Doctor has delivered it; and, than which I am at a Loſs to find Words that can extend it further: If your Lordſhips ſhould think fit to look back, with particular Exactneſs, upon the ſeveral Diſcourſes which have been made from the Bar on this Article, and for your more accurate Judgment, ſhall think proper to lay them together, and obſerve their Conſiſtency; and if from ſuch an Examination, you ſhould ſee Cauſe to compare that which was firſt delivered, with that which was afterwards *ſpoke* by the Doctor himſelf, (for, my Lords, between them the Reſemblance ſeems to be the neareſt, and *the Difference between them in the Notions of Allegiance* but *very ſmall*,) your Lordſhips may perhaps, in a great Meaſure, collect from thence the true Genius of this Defence. Your Lordſhips will obſerve, in how different a Manner, with what different Zeal the main Points in Agitation have been handled by them; I mean, the Juſtice of the Reſiſtance which brought about the Revolution, and the general Doctrine of Non-reſiſtance. It has always been obſerved to you, that the Doctor himſelf made no Admiſſions concerning the Lawfulneſs of that Reſiſtance, but has *uſed Expreſſions* of due Regard to the Proteſtant Succeſſion; The Gentleman who open'd the Defence, it being, it ſeems, of no Conſequence to the preſent Occaſion, came to no Declaration in this Point of the Proteſtant Succeſſion; but, as to the Honour and Juſtice of the Revolution, his Approaches are nearer: He has acquainted your Lordſhips, *That there is nothing further from our Hearts, nor any Thing leſs neceſſary for our Defence, than for us to call in Queſtion the Juſtice of the Revolution.* At another Time, he delivered himſelf in general Terms: *Such a Caſe* (that is a Caſe of Neceſſity, a Caſe never to be mentioned, but to be ſuppoſed and implied) *the Revolution was:* But, in other Parts of the ſame Diſcourſe, the Expreſſions even concerning the Revolution will be found to be more reſerv'd and wary, and always ſoften'd with ſome ſaving Particle: Thus ſhy and tender at the beſt, have the Admiſſions been from Two Diſcourſes, of the Lawfulneſs of that Reſiſtance which brought about the late Happy Revolution: But as for the Doctrine of Abſolute, Unlimited Non-reſiſtance, by which, if it be not an Erroneous Doctrine, the Juſtice of the Reſiſtance, which was the neceſſary Means that brought about the Revolution, (and in purſuance of which, the Crown was ſettled on Her Majeſty and the Proteſtant Line) muſt for ever remain condemned. What Fervency and Copiouſneſs of Expreſſion was uſed to eſtabliſh that? What Cautions have appear'd to guard and ſecure this Doctrine as inviolable? How often, and with what Zeal was it inculcated, that the general Doctrine, was that Doctrine which alone was to be preached and preſſed? The Exception, *The Caſe of Neceſſity, the Caſe of the Revolution*, the only Caſe contended for, was not fit to be mentioned: The Doctor's general Rule was that alone, which was proper to be inculcated and believed; the excepted Caſe never to be ſtated, but to be ſuppos'd or imply'd, and *to be left to juſtify itſelf.*

My Lords, How comes it to paſs that ſo little Concern has been ſhewn, in the Courſe of this Debate from the Bar, to that which was the proper Defence of the Criminal, to clear the Paſſages of his Sermon from the obnoxious Meaning they had been ſhewn to bear? How comes it to paſs, that the Honour and Juſtice of the Revolution is thus tenderly acknowledged; but yet all that has been ſaid to ſupport it, has by this Gentleman been endeavoured to be enervated, and at the ſame Time the extremeſt Zeal ſhewn to eſtabliſh the general Poſition, tho' altogether immaterial? I'll once more venture at a *charitable Reconciliation* of *thoſe* ſeeming *Inconſiſtencies:* Upon a very ſtrict and minute Recollection, your Lordſhips will find that *the Reſiſtance*, the *Neceſſary Means* uſed to bring about the Revolution, is never once acknowledged in that firſt Diſcourſe, *in plain and expreſs Terms:* The Caſe of Neceſſity in general, the Caſe of the Revolution, was ſo ambiguouſly ſpoke of, and ſo ſkilfully given up, that, by the *kind Help of ſome happy Diſtinction*, when *the Seaſon is proper*, 'twill be eaſy to retrieve it. Tho' your Lordſhips may remember ſome plauſible Expreſſions concerning the Juſtice of the Revolution, yet you will find the real Concluſions of the Diſcourſe tend to condemn it; and ſuch remarkable Inſtances choſen, ſuch as the Caſe of the two *Spencers*, which, being applied to the Caſe of the Revolution, repreſent its Principles damnable, its Conſequences deteſtable, and the Aſſertors of it deſerving Baniſhment: Your Lordſhips will find the Argument ſo well adjuſted to the *main Point in view*, to eſtabliſh the *ſlaviſh* Doctrine of *Abſolute, Unlimited, Non-Reſiſtance*, that, if the worſt ſhould happen, even that againſt which we are now contending, the judicious Reſerves that Gentleman has uſed on the Point in Queſtion, and the real Service he may be thought to have done to that *ſlaviſh Doctrine*, may, in due Time, raiſe a Merit in Favour of all its Conſequences.

But, as an undeniable Evidence of a *ſincere Affection* to the Caſe of Neceſſity, the Caſe of the Revolution, let me put your Lordſhips in mind of the Paſſage quoted from Mr. *Pym*, in his Declaration againſt Doctor *Manwaring:* The Doctrine preached in thoſe Days, and for which he was impeached by the Commons, was, the attributing an Abſolute Power to the King over the Property of the Subject, tho' with ſome *deceitful* Limitations, as that of extreme and urgent Neceſſity. Mr. *Pym* had ſhewn the Vanity and Fruitleſſneſs of that Limitation, it being left to the Prince to determine what is an urgent and preſſing Neceſſity: And to repreſent the Danger of ſuch a Caſe, of allowing any Exception upon any Pretence, even that of extreme Neceſſity, he cites the Charter of *Lewis* X. of *France* to the Dutchy of *Normandy*, wherein that Prince having acknowledg'd the Franchiſes of the Dutchy, and granted to them, that for ever afterwards they ſhould be free from all Exactions from him and his Succeſſors, theſe Words followed, *unleſs great Neceſſity required:* which ſmall Exception, Mr. *Pym* obſerved, had in Time devoured all their Immunities. Mr. *Pym*, in that Speech, arguing againſt the Poſition advanc'd by Dr. *Manwaring*, condemns the leaſt Pretence of any Exception: The Gentleman, who quoted this Paſſage from him, having endeavoured to eſtabliſh his general Doctrine of Abſolute Non-Reſiſtance, the Doctrine preached by Dr. *Sacheverell*, and having ſhewn the Danger of mentioning any Exception to it, even that of the Caſe of Neceſſity, and *ſuch a Caſe*, he had before told your Lordſhips, *the Revolution* was, concludes from that Inſtance, that ſuch Exceptions would in Time devour all Allegiance. This, my Lords, hath been the Method, theſe have been the Arguments uſed to acquit the Doctor, to ſhew the Innocence of his Intention, and that there was no Deſign either in his Sermon, or his Defence, to condemn the Reſiſtance, *the neceſſary Means* which brought about the late Happy Revolution; and from theſe Obſervations you may poſſibly diſcern the Conſiſtency of the whole Defence. I beg leave only *to turn the Caſe*, to ſuppoſe a Caſe of a real Deſign to condemn the late glorious Revolution, and all the happy Conſequences of it: At a Time, when expreſs Declarations of ſuch a wicked and traitorous Intention may not be judged proper; at a Time when ſome plauſible Expreſſions of the Juſtice of it, may be thought Uſeful and Neceſſary; and, at ſuch a Time, let the Illegality of Reſiſtance on any Pretence whatſoever, be laid down and enforced in its utmoſt Extent; let the Danger of ſtating or mentioning any Exception to it, be ſtrongly inculcated; let the Juſtice of the Exception, even of the Caſe of Neceſſity, *ſuch a Caſe as the Revolution was*, be illuſtrated by an Inſtance, wherein 'tis expreſly condemned; and, May it not be ſaid, *'Tis eaſy to diſcern what Spirit* ſuch a Perſon *is of, of what Party he* is, *what he aims at, and what he intends; that he has not been ſpeaking in Defence of the late Revolution*, can't be look'd upon *to have been arguing for it, and to ſhew the Juſtice of it, but was covering the Treaſon of his Heart, and under Pretence of juſtifying one Revolution, was labouring to bring about another?* But, what vain Imaginations muſt poſſeſs thoſe Minds, which can flatter themſelves into a Belief, that even whilſt they are maintaining Principles that tend moſt certainly to undermine the Foundation of Her Majeſty's Government, and the Proteſtant Succeſſion, the moſt ſolemn Proteſtations out of the ſame Mouth, and in the ſame Breath, ſhould paſs for an Atonement with your Lordſhips, or give Satisfaction to any that hear them?

My Lords, Your Lordſhips will conſider the evident and neceſſary Tendency of the Doctrines, which have been preach'd by the Priſoner, and have been again aſſerted, though not openly avowed, in their full Extent and Conſequence, in Defence of this Article. The Doctrine of *Abſolute Non-reſiſtance*, the condemning the Original Contract, renouncing the ancient Legal Conſtitution of the Government, which is our Title to our Liberties, are Poſitions, which can have no better Tendency, than to ſhake the preſent Settlement of the Crown, and our preſent Eſtabliſhment, and to make way for the Pretence of a Natural and Divine Right of Succeſſion: Are not thoſe the Principles taught and avowed by Papiſts and Nonjurors, and whereon their Hopes are founded? And are they more Wholeſome, or leſs Dangerous, when they fall from the Mouth, or drop from the Pen of the Priſoner, or are aſſerted in his Defence, tho' gilded over with ſpecious Pretences, and under the Umbrage of a true Son of the Church? If theſe Doctrines of Unlimited Non-Reſiſtance, of a ſole Hereditary and Divine Right of Succeſſion to the Crown, are the very Doctrines, on the Belief of which, the profeſſed Enemies of Her Majeſty and Her Government, inviolably engage themſelves againſt Her Title, and againſt the Proteſtant Succeſſion; If theſe are the Tenets, by which they openly condemn the late Glorious Revolution, and all its Conſequences: From which Part of this Defence can your Lordſhips collect the Innocence of the Priſoner? By what way of Reaſoning can it be concluded, that the ſame Opinions, embraced by this Gentleman, do not inevitably engage him in the ſame Intereſt?

Sir *Peter King.* MY Lords, It is my Part to Reply to the Anſwer that has been given by the Doctor, to the Charge of the Commons of *Great-Britain*, with Relation to the Second Article. When I was entruſted by the Commons to manage this Part of the Charge, I both quoted and read the Paſſages of the Sermon, to make good that Charge; I did not deſire that any Thing ſhould be taken upon Truſt, nor any Thing received againſt him, but what appeared from his plain expreſs Words, or by clear, neceſſary and unavoidable Conſequence. Indeed, after the whole Sermon had been read by the Clerk, I thought it too great a Trouble to your Lordſhips, to have the Clerk read over the particular Paſſages again at the Table, and therefore I read them myſelf, truly and fairly, as they were in his Sermon; and if I had done otherwiſe, the Doctor and his Counſel would have ſet me right. I agree with the Doctor and his Counſel, that in a Caſe of this Nature, and I will ſay further, in all Caſes whatſoever relating to Crimes, the Charge muſt be maintained by poſitive, plain Words, or neceſſary and unavoidable Inference, ſuch as no reaſonable Man can withſtand the Light of. And therefore, if there was nothing in this Caſe but dark Hints, ſtrain'd Innuendos, and forc'd Conſtructions, I am ſure, neither the Commons of *Great-Britain*, nor myſelf would appear before your Lordſhips with an Attempt to make out a Charge of this Nature; if it is not proved by plain, poſitive and expreſs Words, or neceſſary and unavoidable Inference, I am ſure your Lordſhips will never convict him; becauſe it would not be juſt and right ſo to do. It is a perverting of Common Juſtice to condemn a Perſon without plain and direct Proof; therefore what we repreſent to your Lordſhips is, that by plain and clear Paſſages in his Sermon, he is guilty of the Charge in the Second Article, of maintaining, *That the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable; and that he is a falſe Brother with Relation to God, Religion, or the Church, who defends Toleration, and Liberty of Conſcience.*

When the Doctor put in his Anſwer to this Article, he had not found out that there was a Toleration granted by Law to the Diſſenters; but his Counſel have now found it out, and they do agree, that there is a Toleration granted by Law, and that it is that Indulgence which is contained in the Act made in the Time of the late King and Queen; but they inſiſt at the ſame time, that the Doctor in his Sermon has not condemned or cenſured that Toleration; they ſay he has condemned a Toleration, but they inſinuate there are two Tolerations mentioned in his Sermon, the one a Toleration granted by Law, which he allows and approves of; and the other a general unlimited Toleration, which they admit he does condemn; ſo that we are now agreed upon the Word *Toleration*, and they do admit that he doth in his Sermon Cenſure and Condemn a Toleration; but, ſay they, it is not the Toleration granted by Law, becauſe he took Care in his Sermon that his general Expreſſions ſhould not be miſconſtru'd, and put in this expreſs Caution in the 20th Page: *I would not be here miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give 'em, which I am ſure all thoſe that wiſh well to our Church, are ready to grant to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law has preſcribed.* This, they ſay, is an expreſs and full Declaration of his Meaning, that he is not againſt the particular Toleration granted by Law; and therefore all thoſe other Paſſages in his Sermon condemning Toleration, are to be applied to a general Toleration, and not the particular Legal one.

When I made out this Charge, I mentioned this Caution of the Doctor's, but at the ſame Time ſubmitted it, whether ſuch a general Expreſſion as that is, could ſcreen him from other plain Paſſages in which he has condemned the Toleration; if in other Places he has condemned it, this Caution is but *Proteſtatio contra factum*; an oblique Defamation may be as criminal as a direct one; In the common Caſes of Scandal, if I obliquely defame another, and deſcribe him ſo that it is impoſſible but every one muſt know him, it is no Excuſe that I do not poſitively accuſe him; ſo that the Queſtion will be, whether the Doctor has not in the other Paſſages cited againſt him, plainly cenſured and condemned the Toleration granted by Law?

The firſt Paſſage cited out of his Sermon, to prove this Charge upon him, was in the 10th Page; I trouble your Lordſhips with reading it again, that I may be ſure to do him no Injury; the Words are, *So that in all thoſe Caſes before-mentioned, whoſoever preſumes to innovate, alter, or miſrepreſent any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traytor to our State; Heterodoxy in the Doctrines of the one naturally producing, and almoſt neceſſarily inferring Rebellion and High-Treaſon in the other, and conſequently a Crime that concerns the Civil Magiſtrate as much to puniſh and reſtrain, as the Eccleſiaſtical.*

The former Part is relative to what went before; the latter Part is a general Aſſertion, that *Heterodoxy in the Doctrines of the Church infers Rebellion and High-Treaſon in the State.*

The relative Part of this Clauſe has Relation to the ſeveral Doctrines mentioned before; among which, one of the Caſes and Inſtances of falſe Brotherhood is, *the affirming that the Divine Apoſtolical Inſtitution of Epiſcopacy is a Novel Doctrine, not ſufficiently warranted by Scripture; whoever affirms this, is guilty of an Innovation or Alteration of the Articles of our Church.* Now the Diſſenters of all Sorts univerſally hold this Propoſition, and they are exempted from ſubſcribing the 36th Article, which aſſerts Epiſcopacy: But, ſaith the Doctor, tho' they are exempted, yet whoſoever aſſerts this Propoſition, is to be puniſhed as a Traytor to the State, as well as an Enemy to the Church.

The Learned Civilian of Counſel for the Doctor ſays, that the reading the whole Paſſage will ſhow, that it was not intended for the Diſſenters, but for one in Holy Orders; that if ſuch an one ſhould maintain this Doctrine, *he would be an Apoſtate from his own Order*; now this Allegation is true, as it ſtands in *Page* 8; abſolutely conſidered in itſelf, it is there applied to one in Holy Orders; but as it ſtands in Relation to this Clauſe in *Page* 10, it is a general Aſſertion, that *whoſoever innovates, or alters that Article of the Church*, which the Diſſenters do, *ought to be arraigned as a Traytor to the State.*

Another Anſwer that hath been given hereto, is, That the Doctor there means thoſe who are for Innovations and Alterations in Matters of Faith; which can't reſpect the Diſſenters or their Toleration, becauſe the Diſſenters agree with the Church in Matters of Faith, and differ only in Matters of Diſcipline. But if you give this Turn to it, it alters the Senſe and Meaning of the Doctor; for he is not ſpeaking here of Matters of Faith, in Contradiction to Matters of Diſcipline, but he is ſpeaking in general of the Articles of Faith of our Church; *Whoever preſumes in any of the Caſes before-mentioned to innovate, alter, or miſrepreſent any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traytor to the State.* Now what are the Articles of the Faith of our Church? Are they not the Thirty-Nine Articles? Are not they the Articles of the Faith and Religion of the Church? Doth not the Thirty-Sixth Canon expreſly require the Clergy to ſubſcribe willingly, and *ex animo*, that all and every the Articles of Religion, being in Number Thirty-Nine, are agreeable to the Word of God? Now if the Thirty-Nine Articles be the Articles of Faith of our Church, and the Diſſenters disbelieve the Thirty-Sixth Article; and if for that Innovation or Alteration they are to be arraign'd as Traytors to the State, what then is become of the Toleration, that exempts them from the Penalties, and from ſubſcribing the ſaid Thirty-Sixth Article?

As to the general Propoſition immediately following in the ſame Clauſe, *viz. Heterodoxy in the Doctrine of the one, naturally producing, and almoſt neceſſarily inferring Rebellion and High Treaſon in the other, and conſequently a Crime that concerns the Civil Magiſtrate as much to puniſh and reſtrain, as the Eccleſiaſtical:* I don't remember that any Anſwer whatſoever was given to it by the Doctor or his Counſel. And I pray your Lordſhips caſt your Eyes on this, and ſee here is an Affirmation, that any different Opinion in any of the Articles of the Church, is a Crime againſt the State. Now all the Diſſenters are exempted by the Act of Toleration from ſubſcribing Three Articles and an half, others from Four and an half, and others from all. And when this Act grants them all theſe Exemptions, ſhall it be affirmed that this Heterodoxy allowed by that Act is High-Treaſon and Rebellion, and that they ought to be arraigned as Traytors? I ſubmit to every one's Judgment, whether any Thing can be more plain againſt the Toleration than this.

The next Paſſage cited out of his Sermon, to prove the Charge of the Second Article, is in the 16th and 17th Pages: *What could not be gained by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church can't be pull'd down, it may be blown up; and no Matter with theſe Men how 'tis deſtroyed, ſo that it is deſtroyed.*

My Lords, Here is an Affirmation, that Toleration was doing open Violence to the Church, that the Falſe Brethren had a Deſign by Toleration to pull down the Church. Now the Anſwer given to this by one of the Counſel, is what one can ſcarce imagine he was ſerious in, *viz.* That this doth not ſuggeſt the Toleration to be unreaſonable, or the Allowance of it unwarrantable, but that it is rather a Commendation of the Toleration, becauſe it ſhews that it could not do the Church any Hurt, it could not pull down the Church, and therefore they have found out a more peſtilent Way, of Occaſional Conformity and Moderation. But all that can be collected from hence, is, that Toleration is a leſs ſucceſsful Evil than Moderation: Toleration was a ſtorming the Church by Violence, and an endeavouring to pull it down; but though, by the good Providence of God, it hath not been ſo ſucceſsful an Evil as Moderation, which is a ſecret Treachery to undermine the Church, and blow it up, yet it is an Evil: And to ſuppoſe the Church to be either pulled down, or blown up, which way ſoever it be done, it is ſo great an Evil, that every Member of the Church muſt be for preventing it, and uſing all his Endeavours to prevent both thoſe Evils; and therefore to repreſent Toleration to be ſuch an Evil to the Church, as to be doing open Violence to the Church and pulling it down, is an undue Reflection on the Fathers of the Church, and on that Parliament that granted that Toleration, as if they concurred in Endeavours to pull down the Church, and deſtroy it.

Another Paſſage, in Page 14. of the Sermon, was cited by the Counſel of the other Side, as a Paſſage cited by me to make out the Charge againſt the Doctor; but herein they miſtook me, it was not cited by me for that Purpoſe, but to ſhew that the Doctor underſtood the Act of Indulgence to be a Toleration; and the Paſſage was this, *Certainly the Toleration was never intended to indulge and cheriſh ſuch Monſters and Vipers in our Boſom, that ſcatter their Peſtilence at Noon-day, and will rend, diſtract, and confound the firmeſt and beſt ſettled Conſtitution in the World.*

I cited this Paſſage to ſhew, that the Doctor himſelf, at the Time he preached this Sermon, knew what was meant by the Toleration; and it plainly proves it, and the Doctor himſelf doth not now diſown it. But as to the Propoſition itſelf contained in that Part of his Sermon, I agree with him that the Toleration was not intended, and I hope will never be made uſe of, to ſupport Atheiſm, Deiſm, Tritheiſm, or any ſuch Monſters and Vipers, but only diſſenting Proteſtants.

The next Paſſage I cited was in the 8th Page. *If upon all Occaſions to comply with the Diſſenters, both in publick and private Affairs, as Perſons of tender Conſcience and Piety, to promote their Intereſts in Elections, to ſneak to them for Places and Preferments, to defend Toleration and Liberty of Conſcience; and under the Pretence of Moderation, to excuſe their Separation, and lay the Fault upon the true Sons of the Church, for carrying Matters too high; if to court the Fanaticks in private, and to hear them with Patience, if not Approbation, rail at and blaſpheme the Church, and upon Occaſion to Juſtify the King's Murder; if to flatter both Dead and Living in their Vices, and to tell the World, that if they had Wit, and Money enough, they need no Repentance, and that only Fools and Beggars can be damn'd; and if theſe, I ſay, are the modiſh and faſhionable Criterions of a true Churchman, God deliver us from ſuch falſe Brethren!* So that here the Doctor makes it one of the Characters of a falſe Brother to defend Toleration, and Liberty of Conſcience.

The Anſwer given to it is this, That where the Doctor blames thoſe that defend Toleration, it is not thoſe that defend that only and ſingly, and do no other thing, but they muſt at the ſame time not only defend Toleration, but excuſe the Separation, not by reaſon of the Toleration, but *by laying the Fault on the Sons of the Church for carrying things too high:* He don't blame them that barely juſtify Toleration, unleſs they fall too on the Sons of the Church for carrying things too high. But whether or no that Place is capable of ſuch an Interpretation, your Lordſhips will be the beſt Judges, by looking on the Place, and conſidering whether any two of thoſe Characters are to be united in any one Perſon to make him a falſe Brother. Whether theſe ſeveral Characters are not ſo many different *Criterions* of falſe Brotherhood; if he does not defend Toleration and Liberty of Conſcience; if he does excuſe their Separation, and lay the Fault upon the True Sons of the Church, for carrying Matters too high, *&c.* They are all different Marks of falſe Brotherhood; ſo that whoſoever defends Liberty of Conſcience, and the Toleration, is a falſe Brother.

It was alſo anſwered, That in the Act of Indulgence there are a great many Reſtrictions; and therefore this Paſſage muſt be underſtood of a Toleration of ſuch as are not qualified by the Act to receive it: And for that end the Act was read, in which are ſeveral Reſtrictions; and the Toleration is not unlimited, but to Perſons under ſuch and ſuch Qualifications, conforming themſelves to the Rules there laid down. But what Foundation is there for this Anſwer in the Paſſage itſelf? Doth not he there condemn Toleration generally? Doth not an univerſal indefinite Proportion include all manner of Toleration, whether general or ſpecial? If he had meant it in this reſtrained Senſe, he ſhould then have expreſs'd himſelf, That he that defends Toleration, except ſuch Toleration as is allowed by Law, is a falſe Brother; but not doing ſo, but expreſſing it generally, it is plain, that he has condemned that Toleration that is granted by Law: And it is ſubmitted to your Lordſhips, that this is a plain Proof againſt him of this Article.

The next Paſſage, is that relating to the Perfidiouſneſs of Archbiſhop *Grindall*, in deluding Queen *Elizabeth* to the Toleration of the *Genevian* Diſcipline: The Doctor, in his Anſwer, did conceive he had good Authority from Hiſtory to make out that Aſſertion; but whether he had or no, he did apprehend that ſuch Aſſertion was no Proof of his maintaining or ſuggeſting that the preſent legal Toleration was unreaſonable, or the Allowance of it unwarrantable.

I did, in making out the Charge, agree with the Doctor, That whether he was, or was not miſtaken in that Fact, was not the material Point in Queſtion; but that he had put it on the right Queſtion, Whether that Aſſertion (true or falſe) relating to Archbiſhop *Grindall*, was a Condemnation of the Toleration now granted by Law? To that I principally applied myſelf, to ſhew that that Fact, as ſtated by the Doctor, was a Cenſure of the Toleration; not forgetting, at the ſame time, to ſay ſomething in Vindication of the Memory of that great Prelate.

But now, the Doctor's Counſel (in their Defence) have in a great meaſure quitted the true Point that the Doctor rightly put it upon in his Anſwer, and inſtead of endeavouring to ſhew that this is no Reflection on the Toleration, have rather endeavoured to ſhew, that this Fact of the Archbiſhop is true; That the Reaſon of his Diſgrace was, for deluding the Queen to the Toleration of the *Genevian* Diſcipline, and for giving up the Diſcipline of the Church: That at that time, there was no Law to indulge any Separation from the Church; and therefore for the Head of the Church, under the Queen, to give up the Diſcipline of the Church, was an high Crime in him; and tho' it be a harſh Term, yet it was true to call him a Perfidious Prelate, and Falſe Son of the Church.

For this End, they did produce and read two Letters; the one from Queen *Elizabeth* to the Biſhops throughout *England*, for ſuppreſſing the Exerciſe called *Propheſying*, and the other of the Archbiſhop to the Council; and out of theſe two, they ſay, there is Proof out of the Archbiſhop's own Mouth, That the Reaſon why he was under a Suſpenſion, was for deluding her Majeſty to permit a Toleration of the *Genevian* Diſcipline; and that he acknowledged the Juſtice of his Puniſhment for that Crime. And they further aggravate it, That it would be an invidious Reflection on the Character of that glorious Queen, that ſhe ſhould cauſe an Archbiſhop to be ſuſpended, for proſecuting *Julio* the *Italian* for having two Wives, or for not giving up the Palace at *Lambeth* to the Earl of *Leiceſter:* As if I had inſinuated, or could have imagined, that the apparent viſible Reaſon of the Diſgrace of the Archbiſhop, were theſe Things! No; it can't be thought I meant ſo. The apparent viſible Cauſe of *Grindall's* Diſgrace was, no doubt, the encouraging of the Exerciſe called *Propheſying*; and Queen *Elizabeth* knew no other: But yet the Real Spring, the ſecret Hiſtory, and true Reaſon, was the Artifice of the Earl of *Leiceſter*, who had the greateſt Power and Credit at that time with the Queen. The good Archbiſhop had, by his Proſecution of *Julio* the *Italian* Phyſician, and by his Refuſal to alienate *Lambeth*, offended this great Earl, who thereupon meditates Revenge againſt him: And knowing the Archbiſhop to be a great Favourer and Promoter of the Exerciſes called *Propheſyings*, which were far from being Conventicles, or Parts of the *Genevian* Diſcipline; he miſrepreſents theſe to the Queen, and by thoſe Means incenſed the Queen; and the Queen was angry with the Archbiſhop, only upon account of theſe *Propheſyings.* But theſe Miſrepreſentations, that incenſed the Queen, had not been, if the Archbiſhop had not firſt incenſed *Leiceſter* in the forementioned two Particulars. To make this out to be the Fact, I deſire your Lordſhips Patience, whilſt I refer to one or two Hiſtories of good Credit. *Fuller*, in the ninth Book of his *Eccleſiaſtical Hiſtory*, p. 130. after he hath recited a long Letter of *Grindall's* to the Queen about this Matter, thus concludes: *Alas! all in vain:* Leiceſter *had ſo filled her Majeſty's Ears with Complaints againſt him, there was no room to receive his Petition. Indeed* Leiceſter *caſt a covetous Eye on* Lambeth-*Houſe, alledging as good Arguments for his obtaining thereof, as ever were urged by* Ahab *for* Naboth's *Vineyard. Now* Grindall, *though generally condemned for Remiſſneſs in this kind, (parting with more from his See, than ever his Succeſſors thanked him for) ſtoutly oppoſed the alienating of this his principal Palace, and made the* Leiceſtrian *Party to malice him.*

This is as expreſs an Account as can be, that this was one of the ſecret Springs of that Proſecution: And as for the other, That he carried on the Proſecution againſt *Julio*, that is taken notice of by the ſame Author, in Page 163. and by *Camden*, in his Hiſtory of Queen *Elizabeth*, and other Authors: So that the true ſecret Reaſon of *Grindall's* Diſgrace, was not for tolerating the *Genevian* Diſcipline. And indeed it would be a Paradox, that the Earl of *Leiceſter*, who was the great Patron and Support of the *Puritans*, ſhould run down this Archbiſhop for encouraging of *Puritaniſm.* Can that be thought? No: It ſhews plainly, there was ſome other Reaſon. And it is no Reflection on Queen *Elizabeth*, that ſhe was deceived by the Miſrepreſentation of a Perſon on whom ſhe entirely relied. Princes are not exempt from the common Frailties of human Nature, and may be impoſed on by thoſe whom they moſt truſt.

But, my Lords, without conſidering the latent Cauſes of his Diſgrace, let us conſider the viſible Cauſe, which was known only to Queen *Elizabeth.* Do the Letters (which they have produced) prove, that the Archbiſhop ſuffer'd for deluding the Queen to the Toleration of the *Genevian* Diſcipline? It appears thereby, that Queen *Elizabeth* was diſpleaſed at thoſe Exerciſes called *Propheſyings*, which the Archbiſhop encouraged and favoured; but it is a great Miſtake to think, that thoſe *Propheſyings* were Conventicles, or Aſſemblies of *Puritans:* They were really Meetings of the Parochial Clergy of the Church of *England*, (which ſince have been called Conferences,) to improve one another in the Expounding of the Scriptures. The Manner of theſe *Propheſyings* was this: The Miniſter within each Arch-deaconry, or ſome other Pecinct, met on ſome Week-day, in the moſt noted Place in that Precinct; ſome antient grave Miniſter, appointed by the Biſhop, did preſide: Then every Miniſter ſucceſſively (the youngeſt ſtill beginning) did handle ſome Texts of Scripture, ſhewing the Senſe of the Place, the Propriety of the Words, the Diverſity of Interpretation, the Virtues enjoined, and the Vices prohibited. No Layman was ever ſuffered to ſpeak, nor any Clergyman, unleſs firſt licenſed by the Biſhop. This was that which they called *Propheſying*, and continued about two Hours; and then the Concluſion was with a Prayer for the Queen and all Eſtates, as is appointed by the Book of Common-Prayer, and a Pſalm. Now can any one think, this was an Encouragement of the *Genevian* Diſcipline?

The Parochial Clergy met by Conſent of the Biſhop, and diſcourſed about the Meaning of ſome Text of Scripture, and cloſed with a Prayer, as is appointed in the Common-Prayer-Book, and with a Pſalm: And can this be ſaid to be encouraging the *Genevian* Diſcipline? Can this be called the Holding of Conventicles; or receding from the Diſcipline of the Church? Nothing like it: Tho', if it were, it appears by the Letters, that he did not delude the Queen to encourage the *Genevian* Diſcipline. No; if this was the *Genevian* Diſcipline, the Queen would not be deluded by him; and becauſe he would not obey the Queen in ſuppreſſing theſe *Propheſyings*, this was the apparent Cauſe of his Diſgrace.

As to the Letter, becauſe it is ſaid the Archbiſhop owns his Crime; how does he do it? *I can't deny,* ſays he, *but that I have been commanded, both by the Queen's Majeſty Herſelf, and alſo by divers of your Honourable Lordſhips in her Name, to ſuppreſs all thoſe Exerciſes within my Province, that are commonly called Propheſyings.* He did not deny the Queen had given him that Command, or that he did not comply with it: *But,* ſaith he, *I do proteſt before God, the Judge of all Hearts, that I did not of any Stubbornneſs or Wilfulneſs refuſe to accompliſh the ſame, but only upon Conſcience:* And goes on and ſhews the Reaſons on which that Conſcience was founded. He denied it not out of *Stubbornneſs or Diſobedience*, but out of a *Perſuaſion of Conſcience*, becauſe he found it *profitable and uſeful to the Church.* Well, how did he behave himſelf under this? *And whereas,* ſays he, *I have ſuſtained the Reſtraint of my Liberty, and Sequeſtration of my Juriſdiction, now by the Space of ſix Months; I am ſo far from repining thereat, or thinking myſelf injuriouſly or hardly dealt withal therein at her Majeſty's hands, that I do thankfully embrace, and frankly, with all Humility, acknowledge her princely, gracious, and rare Clemency toward me; who having*

Authority and Power to have uſed greater and ſharper Severity againſt me, and for good Policy and Example thinking it ſo expedient, hath notwithſtanding dealt ſo mercifully, mildly and gently with me.

What Language more becoming a grave Prelate could be uſed? He patiently ſubmits to her Majeſty's Authority, neither murmuring, nor obſtinate: But there being a ſuperior Obligation of Conſcience, which it was not in the Power of any Man to diſpenſe with, he thinks himſelf obliged, as a true Example to all Clergymen and others, to ſubmit to the Dictates of his Conſcience; but ſtill with Patience, Calmneſs and Obedience.

Is there any thing in this, that looks like giving up the Intereſts of the Church? Not only this good Archbiſhop, but ſeveral others of the beſt Biſhops of thoſe Times, had thoſe Exerciſes in their Dioceſes, and concurred with him in the Encouragement of them. And can it be thought, that thoſe Biſhops, who were Exiles in Queen *Mary*'s Time, and were afterwards the happy and glorious Inſtruments, under God, in ſettling the Liturgy and the Articles of the Church, were for giving up the Eſtabliſhment of the Church, by introducing that which is now inſinuated to be the *Genevian* Diſcipline? But thoſe Biſhops then thought, it was a likely way to make an honeſt, learned, and laborious Clergy. Is there any thing in this, to occaſion the calling him a perfidious Prelate? A perfidious Man is he that violates his Conſcience, to obtain a Temporal End; but he choſe to loſe the Queen's Favour, rather than part with a good Conſcience.

I never found, that Archbiſhop *Grindall* was ever ſpoke hardly of by any *Engliſh* Divine of Credit, till the time of Archbiſhop *Laud*; and then, to extol Archbiſhop *Laud* for an active, zealous Prelate, it became the Faſhion to run down his Predeceſſor, *Abbot*, as a remiſs Man, to court the preſent Archbiſhop, by detracting from the Memory of the laſt. And, to carry on the Compliment, a Parallel was made between Archbiſhop *Grindall* and his Succeſſor *Whitgift*. I only mention this, to ſhew that for a long time the Memory of that good Archbiſhop was had in Eſteem; and he was always looked upon as a principal Father of the Reformation of the Church, before this Time.

But, my Lords, it is now time to come to the main Point; and that is, Whether or no the Doctor's Repreſentation of Archbiſhop *Grindall*, as a falſe Son of the Church, and a perfidious Prelate, for doing what he lays to his Charge? and, Whether his Commendation of Queen *Elizabeth*, for the Reſolution ſhe took to ſuppreſs the Diſſenters, and for her Prudence in exerciſing wholeſome Severities on them, whereby the Crown ſat eaſy on her Head, be a Cenſure or Condemnation of the preſent Toleration?

As to this, the Counſel for the Doctor firſt ſay, That in Queen *Elizabeth*'s Time, Schiſm was in its Infancy; the Number of Diſſenters were but few, and therefore the Exerciſing of Severities at that time was wholeſome, becauſe it might have cruſhed them in their Beginning, and prevented the growing Encroachments of thoſe Perſons: But at the time when the Act of Toleration was made, the Diſſenters were increaſed, and were Poſſeſſors of great Property, and it was reaſonable to grant them a Toleration; for it might be a Diſturbance to the State, to exerciſe thoſe Severities upon them, which might have been ſafely done in the time of Queen *Elizabeth*, when Schiſm was in its Infancy, and their Numbers few: And thence they infer, that what was ſpoken of the Toleration then, can't be applied to the Toleration now.

My Lords, ſuppoſing the Fact to be true, then it follows, that the Juſtice and Reaſonableneſs of the preſent Toleration depends only on the Strength and Number of the Diſſenters: When they are ſtrong and numerous, then they are to be tolerated and permitted; but when their Numbers decreaſe, and it ſhall be alledged that they are but few, then they are to be cruſhed, and the wholeſome Severities are to be renewed upon them again; notwithſtanding the Preamble of the Bill to prevent Occaſional Conformity, which ſays, "That Perſecution for Conſcience only, is directly contrary to the Profeſſion of the Chriſtian Religion, and particularly to the Doctrine of the Church of *England*, and that the Act of Toleration ought to be inviolably preſerved." If it ought to be inviolably preſerved, then, whether the Diſſenters in *England* be more or leſs, they ought to be tolerated.

This brings to my Mind the memorable Edict that was publiſhed by the *French* King for reverſing the Edict of *Nants*, in *October* 1685. the Preamble of which Edict recites, "That by reaſon of the great Troubles and Wars occaſioned by thoſe of the Reformed Religion, his Grandfather *Henry* the Fourth had given them Liberty by the Edict of *Nants*, retaining notwithſtanding a Deſign of bringing all back again to the *Romiſh* Church; and his Father and himſelf had had all along the ſame Deſign; and that in his Time the beſt and greateſt part of the Proteſtants were converted to the Catholick Faith, and that by reaſon thereof the Execution of that Edict was become of no uſe; and therefore, entirely to wipe out the Memory of thoſe Troubles and Confuſions which the Proteſtants had occaſioned, he thereby revoked that Edict."

May it not be ſaid in this caſe, That in Queen *Elizabeth*'s Time, becauſe the Number of Diſſenters were few, therefore thoſe Severities were good; and that when the Toleration-Act was made, there were greater Numbers, and therefore thoſe Severities were then fit to be taken away; but now the Diſſenters are but few again, therefore it may be fit to return to thoſe Severities again.

Another Anſwer that hath been given is, That in Queen *Elizabeth*'s Time there was no Toleration eſtabliſhed by Law, and all the Doctor aimed at, was to excite the Magiſtrates to put the Laws in Execution againſt ſuch Offenders as are not exempted by the Toleration-Act. But I ſubmit to your Lordſhips, whether the Words are capable of that Interpretation. Here is a Commendation of the Piety and Zeal of Queen *Elizabeth*, who reſolved entirely to ſuppreſs the Diſſenters, and ſhe in her Prudence put thoſe wholeſome Severities in Execution. What thoſe wholeſome Severities were, your Lordſhips have been told; they were Hanging, Burning, Abjuration, Confiſcation, Impriſonment, Loſs of Eſtate, Liberty and Life: I ſay no more of them; but I believe there is not one Perſon here, but if theſe Severities were to be inflicted on him, would be far from thinking them wholeſome, and deſire to be excuſed from them. I would not be thought in any thing to reflect on the Memory of that glorious Queen, who was ſo eminent an Inſtrument of God, to deliver this Kingdom from Popery, from the Power of *Spain*, and to ſettle the Proteſtant Religion among us; but it muſt be confeſs'd, there were theſe Spots and Blemiſhes in her Reign, permitted by God's Providence for wiſe Ends and Purpoſes; and this ſhould raiſe our Gratitude to Almighty God, and our Thanks to her preſent Majeſty, whoſe Reign hath exceeded her Predeceſſor's Queen *Elizabeth*, without being chequer'd with any of thoſe Spots or Stains. And as Queen *Elizabeth* preſerved this Kingdom from the Monarchy of *Spain*, ſo her Majeſty has preſerved us from the united Power of *France* and *Spain*, been the Terror of her Enemies abroad, whilſt at the ſame time ſhe has, with univerſal Clemency and Juſtice, cheriſhed and protected all her Subjects at home; and as by theſe Means ſhe has engaged in the ſtrongeſt Affection the Hearts of all her People, ſo no doubt they will always continue to retain the ſtricteſt Duty to a Queen, who hath been ſo univerſally good to all her Subjects.

The laſt Part of the Charge is, That *the Doctor aſſerts it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical Anathemas againſt Perſons entitled to the Benefit of the Toleration; and inſolently dares or defies any Power on Earth to reverſe ſuch Sentences.* One of the Counſel ſaid, that the thundering out thoſe Anathemas, is no more than declaring the Judgments of God denounced in Scripture againſt the Wickedneſs of Men; and that he deſires the ſuperior Paſtors to denounce them, becauſe the greater the Authority of the Perſon denouncing them is, the greater Influence they will have on the Minds of the People. But the Anathemas he excites them to, are Eccleſiaſtical Anathemas, which are plainly Eccleſiaſtical Cenſures and Excommunications; it is a plain exciting the Superior Paſtors to denounce Excommunications and other Eccleſiaſtical Cenſures. It is ſaid, that this Expreſſion is ty'd up only to thoſe Anathemas and Sentences that are ratify'd in Heaven, and thoſe, they ſay, no Power on Earth can reverſe. I ſhall not enter into that Queſtion, whether this is a Propoſition ſtrictly juſt in Divinity: All I ſhall ſay as to that, is this, That all who have wrote the higheſt of the Power of the Keys, allow and maintain that there is a double Power, a Power of remitting as well as retaining, of looſing as well as of binding, of opening as well as of ſhutting, both exerciſed by the Church on Earth. If the ſuperior Paſtor has for good Cauſe bound or ſhut any Perſon out of the Church, that Sentence is ratify'd in Heaven; but yet notwithſtanding, if that Perſon, ſo cenſured, reforms and amends, and the Church on Earth reſtore him again, the firſt Sentence, though ratified in Heaven, is vacated and done away by the Church's Power on Earth.

But this is not the Matter now before your Lordſhips; the Queſtion is, Whether he excites the Superior Paſtors of the Church to thunder out their Anathemas againſt Perſons that are entitled to the Toleration; and I think, that he does ſo, is owned by his Counſel; for they ſay, that Schiſm doth expoſe a Man to the Cenſures of the Church; that the Diſſenters were Schiſmaticks before the Act of Toleration, and that that Act don't excuſe the Schiſm; and therefore remaining Schiſmaticks ſtill, they are ſtill liable to the Cenſures of the Church: Now I do agree with the Doctor, that the Act of Toleration hath made no Alteration as to the Sin of Schiſm; if the Diſſenters were Schiſmaticks before the Toleration, they are Schiſmaticks ſtill; and taking that for granted, then here is the Force of the Doctor's Argument: The Diſſenters were Schiſmaticks before the Act of Toleration; as they were Schiſmaticks before, ſo they are Schiſmaticks ſtill; it is the Duty of all ſuperior Paſtors to thunder out their Anathemas againſt Schiſmaticks; when they thunder out thoſe Anathemas, they are ratify'd in Heaven; whatever is ratify'd in Heaven, no Power on Earth can reverſe; therefore, tho' the Diſſenters be exempted from human Penalties by the Toleration-Act, and are thereby preſerved in the free Exerciſe of their Religion and Conſciences; yet notwithſtanding that, *Let the Superior Paſtors do their Duty, and thunder out their Anathemas againſt them, and let any Power on Earth reverſe thoſe Anathemas if they can.* Now can there be a more plain, poſitive and direct Proof of this part of the Article, than this is? Can any thing be a clearer Evidence to prove this laſt part of the Charge againſt him, That *he Suggeſts and Maintains, that it is the Duty of Superior Paſtors to Thunder out their Eccleſiaſtical Anathemas againſt Perſons entitled to the Benefit of the Toleration-Act, and that he inſolently Dares or Defies any Power on Earth to Reverſe ſuch Sentences?*

My Lords, This is what I have to offer by way of *Reply:* There is a Gentleman to come after me, who will amply ſupply what I have omitted, and therefore I ſhall not trouble your Lordſhips any further.

Then the Lords adjourned to their Houſe above.

Friday, March 10. The Tenth Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner before mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady, the Queen, doth ſtrictly charge and command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel, as before:

Lord Chancellor. Gentlemen, you that are Managers for the Houſe of Commons may proceed in your Reply.

Mr. *Cooper.* MY Lords, when by Command of the Commons, I ſpoke to your Lordſhips a few days ſince, in Maintenance of the Second Article, towards the Concluſion of what I then ſaid, I preſented to your Lordſhips a ſhort View of what I apprehended we might reaſonably expect would be the Conſequence of the Doctor's bitter Invectives againſt the Act of Toleration, and the Perſons intended to be protected by it. I likewiſe took notice of thoſe Heats and Diſputes, of the Feuds and Animoſities, which were then apparently ſtirred up throughout the Kingdom.

I am ſorry to have ſo early an occaſion to ſay, that my Apprehenſions in this Particular were ſo well grounded: Your Lordſhips have ſeen, that this ſeditious Libel, under the ſpecious Title of a Sermon, calculated to ſeduce and delude the Rabble, has, even during the Continuance of the Trial, produced an actual Rebellion; in which ſeveral Places of Religious Worſhip (appointed for thoſe Perſons, who are by Law tolerated and allowed, but have the Misfortune nevertheleſs to be repreſented by Doctor *Sacheverell* as neceſſary to be deſtroyed) have been accordingly pulled down, and burnt, in Defiance of the Supreme Power of the Kingdom; and this, my Lords, at the Inſtigation of one who would be thought an Advocate for Paſſive Obedience.

I could wiſh the Priſoner's indiſcreet Behaviour (which ſeems to have abuſed the Liberty with which your Lordſhips have indulged him) may not unhappily have given ſome Occaſion to the Outrage and Violence of late committed, notwithſtanding the Apology he has made in this Particular.

Sure I am, that Diſcord, which flames in the Kingdom, was unheard-of among us, until the Toleration was thus publickly and ſeditiouſly branded; until Doctor *Sacheverell* had preſumed to repreſent it to the People, it's impoſſible to ſay how! without referring to his whole Libel.

His Counſel have obſerved, that the Second Article contains ſeveral Charges, and have inſiſted that the Paſſages given in Evidence by the Commons, are not ſufficient to maintain the firſt and ſecond; and as to the third and fourth, they ſeem rather to juſtify than deny thoſe Branches of the Charge.

My Lords, the Commons apprehend, notwithſtanding what has been ſaid, Firſt,

That Doctor *Sacheverell* has plainly ſuggeſted and maintained, *That the Toleration granted to Diſſenters is unreaſonable, and the Allowance of it unwarrantable.*

This, my Lords, we inſiſt he has done, not in ambiguous or doubtful Words, not in uncertain Expreſſions, but in direct and poſitive Aſſertions.

The Counſel admit, That to ſpeak againſt a Law in Being cannot be juſtified. The Act of Toleration is not only a Law in Being, but is a Law which has viſibly attained the End for which it was made; that is to ſay, by giving Eaſe to ſcrupulous Conſciences in the Exerciſe of Religion, it has proved an effectual Means to unite her Majeſty's Proteſtant Subjects in Intereſt and Affection.

Yet, my Lords, this Law, which, by the Experience of more than twenty Years has been found ſo uſeful and neceſſary, hath been traduced and arraigned by the Priſoner, both from the Pulpit, and the Preſs, with a malicious and ſeditious Purpoſe, to deſtroy the public Peace and Security of the Kingdom.

This Offence, it ſeems, is of too high a Nature to be juſtified by the Priſoner and his Counſel, and therefore it is thought more expedient to deny it. The Turn that's given is this; ſay they, Doctor *Sacheverell* affirms nothing touching Legal Indulgence or Toleration, but all that he has ſaid reſpects only Univerſal Toleration.

My Lords, I thought I had obviated this Excuſe, by obſerving that this Notion of univerſal Toleration has been conceived and brought forth ſince the Impeachment.

However, I am willing to enter into the Queſtion: Whether the Toleration mentioned in the Libel, is intended or can be underſtood of Univerſal Toleration.

Vide *Sermon.*

Fol. 34. Your Lordſhips will find theſe Words: *Nay, now they have advanced themſelves, from the Religious Liberty our Gracious Sovereign has indulged them, to claim a Civil Right, as they term it, and to juſtle the Church out of her Eſtabliſhment, by hoiſting their Toleration into its Place.*

My Lords, Will any Man deviate ſo far from Senſe, as to ſay, that the Doctor here meant Univerſal Toleration, in the Senſe the Doctor and his Counſel have defined it? Is Univerſal Toleration a Religious Liberty, with which our Gracious Sovereign hath indulged her Subjects? Nay, my Lords, Have not every one of them argued, and that rightly, that the Doctor's Univerſal Toleration is not tolerated by Law? That Atheiſts, Deiſts, Tritheiſts, Socinianiſts, and thoſe who go to no Religious Place of Worſhip, are not exempted from the former Penalties? How then is it poſſible the Doctor ſhould be underſtood, as ſpeaking of Univerſal Toleration in this Paſſage? Is not this directly and poſitively affirmed of the Toleration, with which the Diſſenters are indulged by our Gracious Sovereign? Can your Lordſhips conceive the Diſſenters are not the Perſons intended, when he ſays, *They claim a Civil Right, as they term it, to juſtle the Church out of her Eſtabliſhment, by hoiſting their Toleration into its Place?*

Again, Folio 25. *They thrive upon Conceſſions, take Permiſſion for Power, and advance Toleration into an Eſtabliſhment.*—Pray, my Lords, What Conceſſions have been made to Perſons not within the Benefit of the Act of Toleration? What Permiſſion is it they can be ſaid to take for Power? What Toleration have they to advance into an Eſtabliſhment?

My Lords, *Folio* 14, and in many other Places, your Lordſhips cannot but ſee that all the Doctor's Spleen is levelled at the Legal Indulgence or Toleration. But it is miſpending your Time, to prove what it is impoſſible not to know and be convinced of, upon reading every Paſſage in the Libel where Toleration is but ſo much as mentioned.

The next Thing they urge in the Doctor's Defence is, That if his Expreſſions do relate to the Legal Indulgence or Toleration, they are dubious and uncertain, that nothing can be inferred from them without Innuendos and forced Conſtructions.

My Lords, now the Queſtion is, Whether Doctor *Sacheverell*'s Expreſſions relating to the Toleration, and the Perſons indulged, are dubious and uncertain? Whether any Innuendo or forced Conſtruction is neceſſary to demonſtrate the Malignity?

Your Lordſhips will be pleaſed to remember, that the Counſel from the firſt to the laſt, maintained very ſtrenuouſly (as did the Doctor likewiſe in his Speech), that altho' the Act of Toleration exempts the Diſſenters from Penalties, yet they remain Schiſmaticks notwithſtanding; for, ſay they, Diſſenſion was a Schiſm before the Statute, and a bare Exemption from a Penalty has not alter'd the Caſe, but the ſame remains Schiſm ſtill; and this Poſition, I find, is agreeable to the Doctor's Opinion as delivered in his Sermon, with this Addition only, that all Schiſm and Separation is damnable Sin, without making any Allowance for Ignorance or Prejudice of Education.

His Words are theſe, Folio 8. *Is this the Spirit and Doctrine of our Holy Mother? To aſſert Separation from her Communion to be no Schiſm; or if it is, that Schiſm is no damnable Sin?*

My Lords, when I obſerved in this and other Paſſages what Spirit this Man is of, I wonder not to find, that the moſt Chriſtian Virtues of Charity and Moderation are mentioned by him with Slight and Contempt. *Folio* 25, you will find him citing a Paſſage from St. *Paul*'s Epiſtle to the *Galatians*, Chap. 2. after which he adds theſe Words, *If our Diſſenters*, ſays he, *had lived in thoſe Times, they would have branded him* (*i. e.* St. *Paul*) *for an intemperate, hot, furious Zealot, that wanted to be ſweetened by the gentle Spirit of Charity and Moderation, forſooth!* My Lords, if our Diſſenters had lived in thoſe Days, they would have been highly to blame, if they had branded the Apoſtle with thoſe opprobrious Names; whoever peruſes that Chapter, will find that there is not the leaſt occaſion for it. But Doctor *Sacheverell* would willingly have St. *Paul* thought like himſelf.

My Lords, I cannot take upon me to ſay what the Diſſenters would have ſaid, had they lived in St. *Paul*'s Days: But for my own part, I cannot forbear ſaying now, That ſince it appears to be the Doctor's Opinion that all Separatiſts are Schiſmaticks, and that all Schiſmaticks are damned, I cannot but think that Doctor *Sacheverell* wants to be ſweeten'd by that ridicul'd Spirit of Charity and Moderation. I own, my Lords, I was amazed to hear this Gentleman in his Speech affirm, that he had not betrayed any want of Chriſtian Moderation in his Sermon: I wiſh he has not been unmindful even of Chriſtianity itſelf; when it is ſo apparent that in this ſhort Sentence, and in the Paſſage (*Folio* 24.) which I formerly cited at large, he has ſentenced to eternal Damnation, not only the Diſſenters of whatſoever Denomination, but thoſe alſo who defend the Toleration.

It is to be hoped, ſome things which he has vowed and ſaid for himſelf in his Defence, may have more of Truth in them than this has.

But, my Lords, to return: The Doctor and his Counſel are agreed that all Diſſenters are Schiſmaticks; conſequently when he ſpeaks of Schiſm and Schiſmaticks, he muſt mean the Diſſenters; and then be pleaſed, my Lords, to judge if the Doctor's Expreſſions touching the Toleration, and the Diſſenters, can be ſaid to be dubious; on the contrary, whether they are not plain, poſitive and certain.

Before I enter into this Matter, I cannot but take notice again of that remarkable Paſſage, (*Fol.* 16 and 17.) *What could not be gained by Toleration, muſt be brought about by Occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church can't be pull'd down, it may be blown up; and no matter with theſe Men how it is deſtroyed, ſo it is deſtroyed.* My Lords, Is not here a direct Aſſertion that the Toleration is downright open Violence, and Occaſional Conformity ſecret Treachery? Is not here an Aſſertion, that altho' the Toleration has not been able to anſwer the End for which it was deſigned, *i. e.* to pull down the Church, yet Occaſional Conformity may blow it up? Pray, my Lords, what Conſtruction can theſe Words admit of, *No matter with theſe Men how it is deſtroyed, ſo it is deſtroyed?* What Men are here intended? Even Diſſenters and Occaſional Conformiſts.

Is this Paſſage doubtful and ambiguous? Is here any occaſion for a forced Conſtruction, or an Innuendo? My Lords, 'tis moſt ſcandalouſly plain, and as plainly ſeditious.

Your Lordſhips have obſerved, that neither the Doctor nor any of his Counſel, (one only excepted) have taken the leaſt notice in his Anſwer, of this Paſſage: It was produced and given in Evidence againſt him, and twice at leaſt mentioned by the Managers. I wonder the Author would not vouchſafe to explain it. Is not this Silence a Confeſſion of his Guilt?

The Counſel that did mention it, was pleaſed to ſay, that it rather commended the Toleration than found fault with it; as if it was ſome Credit to the Toleration, which was intended to pull down and deſtroy the Church, that it had not done it. In what Humour, my Lords, that Anſwer was made, to ſo high and criminal a Charge, I know not; the Commons might reaſonably have expected a more ſerious Anſwer. But, my Lords, from hence we conclude that no Anſwer can be given to it.

Again (*Folio* 10.) the Doctor affirms, *That whoever preſumes to alter or innovate any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traitor to the State; Heterodoxy in the Doctrines of the one, naturally producing, and almoſt neceſſarily inferring Rebellion and High-Treaſon in the other, and conſequently a Crime that concerns as much the Civil Magiſtrate to puniſh and reſtrain, as the Eccleſiaſtical.* Then he goes on, and adds, *This Aſſertion at firſt View, may look like an high-flown Paradox.*—I own, at firſt View it looked to me ſomething like it, and I am not yet convinced but it is ſo.

Are not the Diſſenters heterodox in Opinion? Conſequently they are Rebels and Traitors, according to Dr. *Sacheverell*, and ought to be puniſhed by the Civil Magiſtrate as ſuch: That is to ſay, they are to be hanged as Rebels, and damned as Diſſenters.

Still, my Lords, we have the Doctor's Word for it, he has not betrayed the leaſt Want of Chriſtian Charity or Moderation.

Many are the Paragraphs in this Libel equally obnoxious, and which, like theſe, are too plain to admit of any Anſwer.

My Lords, I ſhall not loſe Time as to the Second Head, or Charge, in this Article. *Folio* 8. you will find it aſſerted, as plain as Words can ſpeak, that to defend Toleration is the Mark or Characteriſtick of a falſe Brother; and (*Folio* 24.) you will find his Portion aſſigned him, with all the reſt of the Falſe Brethren, *with Hypocrites and Unbelievers, with all Lyars in the Lake which burns with Fire and Brimſtone, with the grand Father of Falſhood, the Devil and his Angels.*

My Lords, the Charge which relates to the Archbiſhop *Grindall* is, *That Doctor* Sacheverell *aſſerts, Queen* Elizabeth *was deluded by him to the Toleration of the* Genevian *Diſcipline; and that, to ſhew his Reſentment againſt the Archbiſhop for favouring Toleration, he calls him a falſe Son of the Church, and a perfidious Prelate.*

The Doctor, throughout his Sermon, is arguing with a furious and intemperate Zeal againſt the preſent Toleration; he is repreſenting it as a Law that gives Encouragement and Protection to Schiſmatical Impoſtors, Enthuſiaſts, Hypocrites, to a mungrel Union of Sects, to Fanaticks, Rebels, Traitors, Atheiſts, Deiſts, Tritheiſts, Socinianiſts, to the Principles of Fanaticiſm, Regicide, and Anarchy, to Monſters and Vipers, that ſcatter their Peſtilence at Noon-day, to *Jews, Quakers*, and *Mahometans*; in a word, to all falſe Brethren; and after a great deal more of this unprecedented Language he breaks out, (*Folio* 19.) *Theſe Charges are ſo flagrant and undeniable, that a Man muſt be very weak, or ſomething worſe, that thinks or pretends the Diſſenters are to be gained, or won over, by any other Grants or Indulgence, than giving up our whole Conſtitution.*

Have they not, ſays he, *ever ſince their unhappy Plantation in this Kingdom, by the Interceſſion of that falſe Son of the Church, Biſhop* Grindall, *always improved, and riſe upon their Demands in the Permiſſion of the Government?*

My Lords, I would fain know whether Doctor *Sacheverell*, by theſe Words, *A Man muſt be weak, or worſe, that thinks the Diſſenters are to be won by any other Indulgence than giving up our whole Conſtitution*, could mean any other than the preſent Diſenters, and that Indulgence which is at preſent afforded them.

In the very Line following he calls them *Clamorous*, *Inſatiable*, *and Church-devouring Malignants*; and then proceeds in the Words I have mentioned: *Have they not* (*i. e.* the Diſſenters) *ever ſince their unhappy Plantation in this Kingdom, by the Interceſſion of that falſe Son of the Church, Archbiſhop* Grindall, *improved and riſen upon their Demands in the Permiſſion of the Government?*

The Priſoner's Defence has explained this Paſſage; they were barely permitted or ſuffered, he ſays, for a time by Queen *Elizabeth*, but they have improved and riſen upon their Demands, till in this Age they have obtained an Indulgence by Act of Parliament, and this Act of Parliament is manifeſtly what the Doctor has taken Offence at.

Then he goes on——*Inſomuch*, ſays he, *that Queen* Elizabeth, *who was deluded by that perfidious Prelate to the Toleration of the* Genevian *Diſcipline, found it ſuch an headſtrong, encroaching Monſter, that in eight Years ſhe found it would endanger the Monarchy, as well as the Hierarchy: And, like a Queen of true Reſolution, and pious Zeal for both, pronounced them Factious, and ſuppreſs'd them by wholeſome Severities.*

My Lords, I think we ſhould have been wanting in that Duty we owe to the Memory of that great Prelate and Father of the Church, who was ſo conſiderable in eſtabliſhing the Reformed Religion, had we not taken notice of theſe harſh and unjuſtifiable Expreſſions.

Doctor *Sacheverell* ſpeaks of them as carrying an undue Aſperity, but ſuch as he hopes may be forgiven, ſince it was neceſſary, he pretends, that either Queen *Elizabeth*, or that Archbiſhop, muſt bear the Blame; and he rather thought it reaſonable to charge it on the Archbiſhop, than to ſuffer it to lie at the Queen's door.

My Lords, your Lordſhips will obſerve, that all the Anſwer he has given to this part of the Charge, is, as if the Commons had impeached him for being too free with Archbiſhop *Grindall*, for uſing, as he calls it, an undue Aſperity of Expreſſion towards him.

But your Lordſhips will diſcern that this Paſſage is made uſe of in our Charge, to ſhew that the Diſſenters are repreſented as headſtrong and encroaching Monſters, dangerous to the Monarchy, as well as the Hierarchy; and the Example of Queen *Elizabeth* is produced, to ſhew how neceſſary it is by wholeſome Severities to ſuppreſs them.

Are any ſtrained Conſtructions or Innuendos neceſſary to apply this Evidence to the firſt and main Head of the Charge, which is, *That Doctor* Sacheverell *aſſerts and maintains, That the Toleration is unreaſonable, and the Allowance of it unwarrantable?*

My Lords, before I take my leave of this Head, I cannot forbear ſaying upon this Occaſion, that ſure I am the Toleration is not ſo dangerous to the Monarch, as is this late Notion of an Hierarchy to the Supremacy of the Queen's Majeſty; which however I hope ſhall be continued and preſerved in the Crown of *England*, for the Peace and Safety of the Church, as by Law eſtabliſhed, to all Poſterity.

My Lords, to the next and laſt Part, which relates to the thundering out Eccleſiaſtical *Anathemas*, the Defence is, That thoſe *Anathemas* are not intended againſt the Perſons intitled to the Toleration.

To this I anſwer: He is particularly ſpeaking, in this Part of the Libel, of the Schiſmaticks and Diſſenters, and expreſly names them in theſe Words, (Fol. 25.)

And yet if our Diſſenters had lived in thoſe Times, they would have branded him as an intemperate, hot and furious Zealot.——Schiſm and Faction are Things of impudent and encroaching Natures, they thrive upon Conceſſions, take Permiſſion for Power, and advance a Toleration immediately into an Eſtabliſhment.——Are not the Diſſenters here expreſly named? Are we not to underſtand the Words *Schiſm* and *Faction*, as coupled with *Toleration*, to be meant of the Diſſenters, and of them only? Sure this is too plain to admit of any Doubt.

Then, my Lords, he proceeds: *And are therefore to be treated like growing Miſchiefs, or infectious Plagues, kept at a Diſtance, leſt their deadly Contagion ſpread. Let us therefore have no Fellowſhip with theſe Works of Darkneſs, but rather reprove them: Let our Superior Paſtors do their Duty, in thundering out their Eccleſiaſtical Anathemas, and let any Power on Earth dare reverſe a Sentence ratified in Heaven.*

My Lords, Is here one Word of Hereſies, Blaſphemies, and the reſt of thoſe enormous Offences, to which the Doctor would have theſe *Anathemas* relate? No; there is nothing to be found here but Diſſenters, Schiſm, and Toleration.

If theſe *Anathemas* are to be underſtood (as certainly they are) to extend to Perſons entitled to Toleration; then, my Lords, that Air of Inſolence that concludes the Period is explained.

Let our Superior Paſtors do their Duty; that is to ſay, let them exert themſelves, and thunder out, their *Anathemas*, *and let any Power on Earth dare reverſe them.*

Theſe Words, my Lords, ſeem too big and mighty, to mean little or ſubordinate Power.

Thus have we ſupported, and made good the ſeveral Charges contained in the Second Article.

My Lords, as the Commons are fully ſenſible how neceſſary it is to ſupport the Honour and Juſtice of the Revolution, to which we owe no leſs than the ineſtimable Bleſſing of her preſent Majeſty, the Guardian Angel of this Church and State, the future Expectation of a Proteſtant Succeſſion, the Religion, Laws, Rights, and Liberties of the *Britiſh* Nation; ſo are they thoroughly convinced that the Peace and Welfare, the Security and Strength of the Kingdom in great meaſure depend upon the inviolable Preſervation of the Act of Toleration, which has been moſt maliciouſly and ſeditiouſly traduced and miſrepreſented by Doctor *Sacheverell*.

Mr. *Thompſon.* MY Lords, It is my Part to trouble your Lordſhips with a Reply to ſuch Anſwers as have been offered to the Third Article of this Impeachment; and notwithſtanding what has been ſaid by the Counſel, what has been produced in Evidence, and what has been alledged by the Doctor himſelf to move your Lordſhips Compaſſion; I am concerned, even for his Sake, that I can obſerve it to your Lordſhips, That the Charge in this Article remains entirely unanſwered.

Before I enter into the Particulars, I muſt obſerve to your Lordſhips, that if there were any doubtful, or any the leaſt favourable Conſtruction to be made of ſome Paſſages in this Sermon, the Commons would not have given your Lordſhips this Trouble, nor the Doctor an Opportunity of cenſuring their Impeachment as a hard-hearted and uncharitable Proſecution.

My Lords, I cannot but think it very ungenerous to inſult any Man in Misfortunes, or to treat one in his Condition with Scorn and Indignity; neither have I, or ſhall I be guilty of it; but I muſt take leave to ſay, that no other Interpretation can be made of ſome Paſſages applicable to this Head, but what is criminal, ſince ſo many learned Counſel, ſince ſo many able Heads who have aſſiſted the Doctor in his Defence; nay, ſince he himſelf, who ſhould know beſt his own Meaning, has not been capable of giving the leaſt Colour or Pretence of any Conſtruction of them in his Favour.

Whatever Pity your Lordſhips may be inclined to in your private Capacities, for any one who has (I cannot ſay through Inadvertency) brought himſelf into Affliction, whatever Diſpoſitions you may have to Mercy, yet I need not ſay, that there is a Compaſſion, a tender Regard due to the Welfare of your Country, a Care incumbent on you to ſuppreſs what has the leaſt Tendency to Sedition, and the Diſturbance of the publick Peace of the Kingdom, and that theſe important Truſts have a Claim to your Lordſhips Juſtice, preferable to any private Concern whatſoever.

Not to detain your Lordſhips any longer in Generals, I ſhall proceed to ſtate the Charge and Defence, that your Lordſhips may have a View of the Inſufficiency of the latter. My Lords, the Charge is, "That the "Doctor ſuggeſts and maintains, that the Church of *England* is in a "Condition of great Peril and Adverſity under Her Majeſty's Admini-"ſtration:" He denies that he ſuggeſts any Danger to the Church, only from Vice, Infidelity, Blaſphemy and Hereſy, but not at all from or under any Part of her Majeſty's Adminiſtration.

The firſt Paſſage I produced to your Lordſhips, to prove the Charge, was in Page the 5th; I muſt beg leave to trouble your Lordſhips with reading it again, becauſe it may be neceſſary: "Tho' it were very obvious to "draw a Parallel here betwixt the ſad Circumſtances of the Church "of *Corinth* formerly, and the Church of *England* at preſent, where-"in our holy Communion has been rent and divided by factious "and Schiſmatical Impoſtors; her pure Doctrine has been corrupt-"ed and defiled, her primitive Worſhip and Diſcipline prophaned "and abuſed, her ſacred Orders denied and vilified, her Prieſts and Profeſ-"ſors (like St. *Paul*) calumniated, miſrepreſented and ridiculed, her Al-"tars and Sacraments proſtituted to Hypocrites, Deiſts, Socinians and "Atheiſts; and this done, I wiſh I could not ſay without Diſcourage-"ment, I am ſure with Impunity, not only by our profeſſed Enemies, but, "which is worſe, by our pretended Friends and falſe Brethren."

The learned Counſel pretended to ſhew, that moſt of theſe Calamities attending the Church, proceeded from the blaſphemous and heretical Books and Pamphlets produced to your Lordſhips, and that the Doctor meant them to be the Cauſe of the Danger he ſuggeſts: Now, pray, my Lords, how can that Conſtruction be made? How can this be conſiſtent with the Doctor's Aſſertion, that all this is done, not only by profeſſed Enemies (which every body will agree takes in the Infidels, Blaſphemers and Hereticks) but by pretended Friends and falſe Brethren? When I took the liberty to obſerve on this Paſſage, I ſtated it thus: Who could proſtitute Altars and Sacraments to Hypocrites, Deiſts, Socinians, and Atheiſts, but ſome of the Doctor's own Order? And who were to puniſh thoſe Crimes? Who could they be that did not diſcourage them, but ſuffered them to be committed with Impunity, but his Eccleſiaſtical Superiors? And that they were Part of her Majeſty's Adminiſtration, nobody could deny.

Now what Anſwer, my Lords, was given to this? To the firſt part of this Paragraph, about rending the Communion by ſchiſmatical Impoſtors, and ſo to the other Particulars, till the laſt, it was ſhifted off to the profeſſed Enemies, the Infidels, Blaſphemers and Hereticks, Diſſenting Teachers, and Popiſh Prieſts, but nothing laid to the Falſe Brethren, who, the Doctor ſays, neither Puniſh nor Diſcourage. But when the learned Counſel came to the laſt Calamity of the Church, that of proſtituting the Altars and Sacraments, *&c.* they are pleaſed to make Occaſional Conformiſts their Atheiſts, *&c.* that receive the Sacraments; but as to the Charge of arraigning the Perſons that do not diſcourage or puniſh thoſe who proſtitute Altars to Atheiſts, *&c.* they thought fit to ſlide it over, and not ſay one Syllable to it; they did not ſo much as mumble this Thiſtle, and the others but very tenderly. Pray, my Lords, in the Interpretation I make, where is there any foreign Intendment, any forced Conſtruction, or ſtrained Inference againſt the Doctor's expreſs Words, and poſitive Aſſertions? Let every candid Reader, without Prejudice, impartially conſider the Meaning of this Paſſage: Is this a Danger ſuggeſted from Books or Pamphlets? Or is it not a plain and direct Invective againſt thoſe Perſons in the Church, who are charged with being the Occaſion of theſe Dangers to the Church by their Remiſſneſs in their Duty, not only in not puniſhing, but not ſo much as diſcouraging thoſe Crimes? And to whom can his lazy Defenders within relate, but to the ſame Perſons, thoſe that are within the Church, and to protect it?

But if it were true, that Altars and Sacraments were thus proſtituted, why muſt the World be told in this Manner of it? Tho' it is the Duty of a Clergyman at all Seaſons, and in all Places, as one of the Doctor's Counſel was pleaſed to ſay, to preach againſt Vice and Infidelity, Immorality and Prophaneneſs; yet ſure none will ſay, that he is to revile his Superiors, and charge them in this Method with their want of Duty, and Care for the Church: What other End muſt ſuch licentious Reproaches produce, but a Contempt of their Perſons, a Leſſening the Dignity of their Order, and a Diminution of that Character which gives them the Capacity of doing Good in the World whilſt they preſerve a Veneration and Eſteem, but which muſt ceaſe when they meet with the contrary? The Doctor was ſo ſenſible of this, when he mentioned it as his own Caſe, that he thought the very Imputation of a Crime to any of his Function, tho' acquitted of it, muſt leave a Scar ſo as to blemiſh his Character; ſure then he ought to have uſed the utmoſt Caution, before he preached or publiſhed this Sermon, and to have conſidered the pernicious Conſequences of reviling thoſe in Authority. If, as he was pleaſed to ſay, ill treating of him, who was an Ambaſſador of Chriſt, was deſpiſing Chriſt himſelf; ſure it cannot be thought an unnatural Inference, if her Majeſty is ſaid to be reviled, by reflecting on thoſe who act under her Commiſſion, and are Part of her Adminiſtration.

The ſecond Paſſage I troubled your Lordſhips with, is in *Page* 16; he had been talking of the Comprehenſion and Union of the Church and Diſſenters, and giving a great many hard Names to it; which Deſign your Lordſhips

ſhips know had its Riſe from a Commiſſion under the Great Seal from his late Majeſty to ſeveral Lords, Biſhops, and other learned Divines, who were to conſider of proper Methods to accompliſh it: "But he thanks "God, that Providence had blaſted the long projected Scheme of theſe Eccle"ſiaſtical *Achitophels*;" with other ſcurrilous Reflections on the Deſign, and thoſe concerned in it; and then he ſays, "That ſince this Model of "Univerſal Liberty and Coalition failed, and theſe falſe Brethren could "not carry the Conventicle into the Church, they are now reſolved to "bring the Church into the Conventicle, which will more plauſibly and "ſlily effect her Ruin; what could not be gained by Comprehenſion "and Toleration, muſt be brought about by Moderation and Occaſional "Conformity; that is, what they could not do by open Violence, they "will not fail by ſecret Treachery to accompliſh. If the Church can't "be pulled down, it may be blown up; and no matter with theſe Men "how 'tis deſtroyed, ſo that it is deſtroyed."

Now pray, my Lords, where is the forced Conſtruction to make the Doctor in this Paſſage ſpeak of Perſons in Church and State who endanger the Church, and not of Books and Pamphlets, Vice, Infidelity, *&c.*?

He is on his ſecond general Head of the Perils of Falſe Brethren in the Church and State, and of thoſe Perſons who could not accompliſh the Deſtruction of the Church by the Comprehenſion, but were doing it another Way, by Occaſional Conformity and Moderation; I do not know that either of theſe are condemned by the Law for Vice, Infidelity, Blaſphemy, Hereſy or Prophaneneſs; be that as it will, 'tis from the Perſons in Church and State the Danger is ſuggeſted to ariſe, and who, as he is pleaſed to ſay, make uſe of theſe only as means to blow up and deſtroy the Church: But then, I ſuppoſe theſe Perſons in the Church muſt be interpreted to be only the moſt inferior, and ſo no Reflection on the Adminiſtration: As Men of Characters and Stations in the State were conſtrued to be Conſtables, Exciſe-Men, and Cuſtom-Houſe Officers, ſo theſe Perſons who were to bring about the Comprehenſion, and are now blowing up and undermining the Church in another Manner, muſt be Church-Wardens, Pariſh-Clerks and Sextons. Theſe Sort of Conſtructions by the Doctor's Learned Counſel, are ſo eaſy and natural, that I muſt agree with his Obſervation, that they have not much Argument, Learning or Eloquence to ſupport them.

And I cannot but obſerve a very extraordinary Method of anſwering this Paſſage and the next, by one of the Learned Counſel; he is pleaſed to cite Two other Paſſages in the Sermon, which were never mentioned by me, or any of the Managers of this Article; and with very ſtrenuous Zeal he explains thoſe Paſſages by chiming in with the Doctor, in charging Occaſional Conformiſts with Atheiſm, Deiſm, and the worſt of Crimes; and then he concludes, that the Doctor, in thoſe Paſſages he cited, has not aſſerted the Church to be in Danger under her Majeſty's Adminiſtration; but not one Syllable to this Paſſage, which I cited in Page the 16th,

The third Place I troubled your Lordſhips with, was in the 18th Page; his Words are "Falſhood always implies Treachery; and whether that is "a Qualification for any one to be truſted, eſpecially with the Guardian"ſhip of our Church or Crown, let our Governors conſider:" Theſe Words ſpeak ſo plainly, they need no Comment, nor have they offered at any Explanation of them; they muſt relate to Perſons, and can have no Reference to Books or Pamphlets, Blaſphemies or Hereſies, *&c.* by any Conſtruction whatever.

The Fourth Paſſage, my Lords, was in Page the 20th; he is talking of Dangers from National Sins, which are occaſioned by Diſſenters and Falſe Brethren; and then he ſays, "And now are we under no Danger in "theſe deplorable Circumſtances. Muſt we lull ourſelves under this "ſad Repoſe, and in ſuch a ſtupid, lethargick Security embrace our Ruin? "I pray God we may be out of Danger; but we may remember the King's "Perſon was voted to be ſo, at the ſame Time that his Murtherers were "conſpiring his Death."

The Subſtance of the Charge in this Paſſage, is an Intention to reflect on the Members who voted the Church to be out of Danger, by the Compariſon and Alluſion to the Vote relating to the King. The Meaning ſeems evidently, that though the King was voted to be out of Danger, yet he was not out of Danger, and ſo tho' the Church was voted out of Danger, yet the Church was then, and is ſtill in Danger: But whether he meant it of the Members that paſſed that Vote, is the Queſtion; he ſays he only meant it according to his Notion of that Vote of the King, that thoſe not privy to the Deſign againſt him voted him ſafe, whilſt others conſpired his Murther; ſo when the Members voted the Church of *England* to be in no Danger under her Majeſty's Adminiſtration, it was none of them, but others, that were conſpiring her Ruin.

The Doctor was pleaſed to ſay too, That that Vote was a Year and a half before the King's Death, and that there were not a Tenth Part of thoſe Members who voted the King ſafe, the reſt being turned out, and no Houſe of Lords: Be that as it will, they were the ſame Parliament that voted the King out of Danger; and they that conſpired his Death were Part of thoſe that voted him ſafe, and who turned out the reſt to accompliſh their Deſigns: And though the Parallel ſhould not run ſo as to reflect on both Houſes of Parliament, and all the Members, yet if it glances at ſome of them, and was ſo intended, it is a Circumſtance of Aggravation, and that is the only Intent of its being Part of the Article; and I can't but think the Doctor was apprehenſive of ſome Reflection of that Kind; for he ſays immediately in the very next Words, "That he hopes what he has ſo freely ſpoken, will not give Of"fence:" If he had not a View to that Vote of the Danger of the Church, there was no Occaſion for that Apology. The fifth and laſt Place I troubled your Lordſhip's with, was in the laſt Page, were there were ſome Pathetical Expreſſions which the Doctor choſe out of the Scripture, and managed them with others of his own, ſo as to repreſent the Church to be in the utmoſt Peril; he mentions nothing of Vice, Blaſphemy or Infidelity: "But that ſhe lies Bleeding of the Wounds ſhe has "received in the Houſe of her Friends:" He cited the *Lamentations* for it, but there being no ſuch Text there, I took the Liberty of ſaying it was a Lamentation of his own making.

I ſhould not trouble your Lordſhips any more as to this Particular, but that I am in ſome meaſure obliged to vindicate myſelf from what one of the Learned Counſel hinted upon this Occaſion; he was pleaſed to ſay in the Defence to the firſt Article, he was as much at a loſs to find out a Paſſage in the Sermon, as one of the Managers was to find the Text in the *Lamentations*. Though, my Lords, this is but a Trifle to the Thing in Queſtion before your Lordſhips, yet ſince that Learned Gentleman was pleaſed to triumph, as if he had me ſure and unanſwerable on this Point, I beg your Lordſhips Indulgence that it may appear which of us is in the right.

The Doctor cited that Text to be in the 2d of *Lam.* 4th. I looked through the *Lamentations*, therefore knew I might venture to ſay what I did; I have looked over it again, and am ſure there is no ſuch Text there. It gave me Occaſion to read and reflect on the other Texts cited by the Doctor in the Prophecy of *Zachariah*, the 13th Chapter, where there are ſome Words that I ſuppoſe are meant, though I could not but obſerve the Doctor to be very unhappy in the Choice of his Scripture, this as well as others being directly contrary to his Purpoſe. The Words cited are in the 6th Verſe, the two preceding Verſes explain them; the Subject Matter was falſe Prophecy. In the 4th Verſe 'tis ſaid, *It ſhall come to paſs in that Day, that the Prophet ſhall be aſhamed, every one of his Viſion, when he has propheſied.* In the 5th Verſe the Prophet is to deny that he is a Prophet, and ſay he is *a Huſbandman and no Prophet.* And in the 6th Verſe he is aſked, where he received his Wounds? He anſwers, *In the Houſe of his Friends:* So that he retains the Character of a falſe Prophet all along; and what he ſays in each Verſe is equally true, and conſequently that the Wounds he received were not in the Houſe of his Friends. Whatever may be thought of the Doctor in this Matter, I think I may conclude, that his Learned Counſel had his Scripture by Hearſay, or elſe he would not have triumphed when he had ſo little Reaſon. There was a Diſpute, my Lords, not many Years ſince, between two Learned Divines of our Church, about the Rights of our Convocation; one inſulted the other for his Ignorance in the *Common-Prayer* Book; but upon Examination it appeared, that he who triumphed moſt, was moſt ignorant of what he charged on the other: Whether this Caſe is not ſomewhat applicable, I ſubmit to your Lordſhips.

Having done, my Lords, with the ſeveral Paſſages made uſe of to maintain this Article, I think I may ſay the Charge contained in it, (That the Doctor aſſerts the Church to be in Danger, not only generally, or ſo as to be meant from Vice, Infidelity, Schiſm or Hereſies. Blaſphemy or Prophaneneſs, but from under her Majeſty's Adminiſtration) is not only affirmed, but ſtrongly proved. He is not charged here with ſpeaking contrary to his Words, or with Negative Crimes, nor is his Silence, as he was pleaſed to ſay, made criminal.

I muſt now beg leave to obſerve a little on the Evidence produced on the Doctor's Behalf, and in his Defence to this Article. Your Lordſhips had a Collection of many ſcandalous Books and Pamphlets, drawn from Obſcurity, to be republiſhed to the World, for the more effectual ſuppreſſing Blaſphemy and Prophaneneſs: And ſince the Doctor's Counſel forbore to mention the Particulars, I ſhall not enter into them; only in general I think I may ſay, that they have been proved to have been no way material to what is in iſſue before your Lordſhips: But it may not be improper to take Notice, that moſt of theſe Books appeared to have ſtolen into the World, and the Authors ſtill concealed; ſome of them printed in *Holland* ſeventeen Years ago, and others publiſhed ſince the Doctor's Sermon: And for the *Obſervators*, and *Rights of the Chriſtian Church*, 'tis well known the Author of one, and Publiſher of the other have been proſecuted; ſo that theſe cannot be ſaid to be tolerated with Impunity, nor meant as the Provocation for the Doctor's Cenſure.

I am ſorry there are any of theſe prophane and impious Pamphlets: There are ſome others too, that have been publiſhed within theſe ſeventeen Years, which might have been taken notice of; but I don't find them in the Doctor's Catalogue. There was a blaſphemous Sermon preached and publiſhed by Doctor *Binks*; Mr. *Dodwell's Charge of Schiſm*, and unbiſhopping moſt of the preſent Biſhops; the ſame Gentleman's *Baptiſmal Union of the Spirit*, or his *No Immortality of the Soul*; *and* one Mr. *L ſley's Project of uniting ours and the* Gallic *Church:* Whether theſe Books were thought by the Doctor to tend to the right Eſtabliſhing our Church and true Religion, I need not ſay, but I do think they were worthy his Notice, and may vie with moſt in his Collection; and if he had been ſo incenſed againſt erroneous Doctrines, it had been a worthy Taſk ſure, and well becoming his honeſt well-meaning Zeal, to have endeavoured a Confutation of them; then his Aſperity in rebuking his harſh and vehement Expreſſions would not have been ill employed: But, inſtead of this, to turn his Violence againſt his Superiors, for not Puniſhing what, it may be, they never heard of; and to lay the Danger from theſe Doctrines at their Doors, is not to be juſtified by any pretended Provocation of this Kind whatſoever.

There was another Piece of Evidence produced to your Lordſhips, ſome Proclamations againſt Immorality and Prophaneneſs: If there is any Thing to be inferred from them in the Doctor's Favour, I muſt own I can't conceive it. Becauſe the Queen commands the Magiſtrates to put the Laws in Execution, therefore every private Divine may arraign his Superiors for a ſuppoſed Neglect of their Duty as often as he thinks fit; I ſay, I don't underſtand this Inference, but I can eaſily apprehend the Conſequences to all Governments that will ſuffer ſuch Preſumptions.

The Doctor himſelf was pleaſed to ſay, That one of the Dangers of the Church mentioned by him was forgot by the Managers, that was from Papiſts and their Emiſſaries: I will do him the Juſtice to remember, that he has beſtowed ſix Lines on this Danger, but twenty-ſix large Pages on the Danger from thoſe in Church and State. Then it was ſaid, that the Doctor prays for the Queen, has taken the Oaths to the Queen, and therefore he could have no Intention to reflect on her Majeſty, or any Part of her Adminiſtration, either in Church or State. And the Doctor in his own Speech was pleaſed to acknowledge her Majeſty to be a Nurſing Mother to the Church: But I could not obſerve one Syllable to the Reverend Fathers of the Church, of his Opinion of their Care of it: I could hear him admoniſh that Venerable Bench of the Guilt of departing from the Church, and abandoning the Principles of the Church, if they ſhould puniſh him, a true Son of the Church, for Preaching the ſame Doctrine with theirs; as if there was no manner of Difference whatever.

It ſeems, my Lords, very ſtrange, that after a Charge of this Nature of Reflection upon his Eccleſiaſtical Superiors, that, after having ſtudied ſo much Submiſſion, he ſhould not prevail with himſelf for ſo much as a Compliment on this Occaſion. Such Behaviour ſeems to need no Explanation. I ſhould be very unwilling to recollect any of the Doctor's charitable Opinions of his own Brethren, who, as he is pleaſed to ſay, can ſacrifice their ſolemn Declarations and Oaths to Complaiſance and Preferments. I would be ſo charitable as to believe well, and think favourably of all Men; but when the contrary does ſo manifeſtly appear, it would be Injuſtice to the reſt of Mankind not to judge accordingly. It would be a Remiſſneſs and Negligence of Duty, juſtly blameable, if we were to ſhut our Eyes, and reſolve not to ſee what ſo evidently threatens the Peace and Quiet of the Kingdom. If Men muſt be allowed to vent their Diſpleaſure at ſuch Proceedings of their Governors which do not ſuit their particular Humours, what muſt become of the Credit and Reputation of any Government, which is ſo neceſſary to preſerve it?

Your Lordſhips have heard a great many Objections againſt *Innuendos*, that they are dangerous Things, and never encouraged; and that your Lordſhips have been pleaſed to ſhew your Diſlike of them. I ſhall not ſcruple to own, that to lay a Meaning to a Man when his Words will not bear it, to make any invidious Conſtruction when it will admit of a favourable one, I can neither approve or deſire. But becauſe the extreme or ill Uſe of any Thing is not to be allowed, that therefore you muſt never apply it at all, is ſuch Logick and Law as I have not been uſed to.

My Lords, In the Caſe *de Libellis famoſis*, cited by the Doctor's Counſel, your Lordſhips will find, that if only plain, poſitive Aſſertions are Libels, there will be no Fence againſt the Envy and Malice of wicked Spirits: And if the Law has guarded every private Man's Reputation, ſo as not to be blaſted by oblique Turns and ſcandalous Inſinuations, it would be very hard if thoſe in Authority ſhould be expoſed to the Virulence of every diſcontented Humouriſt. Malice will never want a Pretence, or Means to convey Scandal and Reproach by ſly Parallels and Alluſions, which may do equal Miſchief with poſitive Aſſertions: But I muſt obſerve to your Lordſhips, That there are not only oblique Inſinuations, but poſitive Aſſertions.

Not only thoſe Paſſages which I have produced, which are expreſs, but the whole Scope and Tenor of his Sermon, relates to the Peril of the Church from Perſons in Church or State, and not thoſe evaſive Shifts of Vice and Infidelity, Books and Pamphlets. If the Doctor had only rebuked Immorality, Blaſphemy, Prophaneneſs and Irreligion, he might ſtill have attended his Flock [*], and they not have been brought to attend him; nor would he have been thought to arraign the Reſolution of the Parliament. But for him to take upon him to cenſure and expoſe his Superiors, and to inſinuate into the Minds of the People the Danger of the Church from thoſe Perſons who have the Protection of it, is no likely Method to ſuppreſs Immorality and Prophaneneſs, and is directly contrary to the Words and Intent of the Reſolution of your Lordſhips and the Commons.

To what End the Doctor has thought fit thus to diſperſe his Sermons may be eaſily imagined; and your Lordſhips cannot be unacquainted with the Hiſtory of a Neighbour Nation, what temporal Ends were to be accompliſhed by a loud Out-cry of Danger to the Church, the Church, Religion and the Church. Whether that will not bear a Parallel with the groundleſs Clamours which have occaſioned many of our preſent unhappy Diviſions, I ſubmit to your Lordſhips.

It remains, my Lords, that I anſwer one of the Learned Counſel, what the Nature of this Offence is: I ſhall only tell him in the Words of your Lordſhips and the Commons Reſolution, made publick by her Majeſty's Proclamation, "That whoever creates unreaſonable Diſtruſts, and ground-"leſs Jealouſies in the Minds of the People; whoever diſtracts the King-"dom by falſe and ſeditious Rumours of the Danger of the Church, to "cover Deſigns they dare not own; whoever goes about to inſinuate that "the Church is not in a ſafe and flouriſhing Condition under her Majeſty's "happy Adminiſtration, is an Enemy to the Queen, the Church, and "the Kingdom." Which, in other Words, is, Againſt the Law, againſt the Temple, and againſt *Cæſar* has he offended.

Nay, my Lords, Has not this bold Offender gone yet farther? Has he not told your Lordſhips at your own Bar, That notwithſtanding the Toleration the Diſſenters are Shiſmaticks, and liable to Spiritual Cenſure; that by continuing the Indulgence to them, you countenance Schiſm; and that while Schiſm is continued, the Church muſt be in Danger? So that reſolve what you pleaſe, and make what Laws you will in their Favour, he muſt ſtill thunder out his vehement *Anathemas* againſt them, as dangerous to the Church.

This, my Lords, is a Specimen of that Independency of the Church that of late has been ſo much ſtruggled for; and which, if not confuted in time by Authority, may ſoon devour the Supremacy and the State. And ſince the Doctor has and does ſtill thus preſume to defy and arraign the Reſolution of your Lordſhips and the Commons, he is properly before this Tribunal; and I may apply to him the Saying to a Goat brouſing on a Vine, and which was applied to one of another Function upon ſuch an Occaſion, who had defied the Power of Parliaments:

Rode Caper vitem, tamen hinc cum ſtabis ad Aras,
In tua quod fundi Cornua poſſit, erit.

My Lords, The Commons are ſo fully aſſured of your Lordſhips Wiſdom and Juſtice, that they cannot queſtion but your Determination in this Proceeding will be to their Satisfaction; therefore I ſhall trouble you no farther, but ſubmit to your Lordſhips Judgment.

Serj. *Parker.* MY Lords, Having already, by Command of the Commons, endeavoured to make good the *Fourth Article* of this Charge; it is now my Duty to *ſupport* what I *offered before*, both againſt the particular *Objections*, and the general *Rules*, propoſed or inſinuated by the *Counſel*, or the *Priſoner*.

The firſt Thing I attempted to prove *by Particular Paſſages*, was the ſecond Clauſe of this Article:

"That Doctor *Sacheverell* ſuggeſts, That there are *Men of Characters* "*and Stations* in Church and State who are *Falſe Brethren*, and do in "themſelves *weaken, undermine and betray*, and do *encourage*, and *put it in* "*the Power* of others, who are profeſſed Enemies, to *overturn* and *deſtroy* "*the Conſtitution and Eſtabliſhment.*"

This I thought would be plainly made out, if I could ſhew theſe *Two Things:*

1. That the Doctor has aſſerted, in expreſs Terms, of *all Falſe Brethren* in general, that *they do in themſelves weaken, undermine and betray, and do encourage, and put it in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment.* And,

2. That he charges *Perſons of Characters and Stations* with *Falſe Brotherhood.*

Apprehending the *Conſequence clear*, that if theſe Two Things were aſſerted by the Doctor, the Charge was juſt.

I uſed likewiſe ſome farther Proofs, which I ſhall not need repeat.

Beſides ſome little Cavils as to the Two Propoſitions, which I ſhall take Notice of by the way; great *Complaint* is *made*, often *repeated*, and much *exaggerated*, that I have brought together theſe Two Propoſitions, that are twelve, or nine, or at leaſt ſeven Pages aſunder.

My Lords, I took Notice of this *Trifling Objection* before; and what I ſaid to it, neither the *Doctor* nor his *Counſel* have *attempted* to Anſwer.

But they all ſeeming to lay the greateſt Streſs upon this Part, and the Counſel every one repeating it, I beg leave to ſtate once more how that Matter ſtands.

The Doctor in this Sermon propoſes, (1.) To deſcribe *Falſe Brotherhood*; (2.) To ſhew the *Miſchief*; and (3.) the *Malignity* of it.

And this *ſingle Conſideration* would make one expect, that theſe *Heads* ſhould *relate to one another*, at whatever Diſtance he takes them up.

Under the Second Head, [†] Page 15, he aſſerts, of *all Falſe Brethren in general*, that "they do in themſelves weaken, undermine and betray, and "do encourage, and put it in the Power of others, who are profeſſed Ene-"mies, to overturn and deſtroy the Conſtitution and Eſtabliſhment."

This is my firſt Propoſition *in Terms*, and nothing is objected to it.

Only a little Attempt is made to *divert* the Queſtion, by mentioning *ſome particular ſorts of Falſe Brethren*, and ſaying he there ſpeaks of *Falſe Brethren* in ſome of *thoſe Senſes* of the Word.

I agree it: He that ſpeaks of *all*, ſpeaks of ſuch as are included in thoſe *Senſes* of the Word which he mentions; but likewiſe ſpeaks of *all others too*; ſpeaks of ſuch as *he* has *mentioned any where elſe*, as well as *there*, ſuch as *are Men of Characters and Stations*, as well as ſuch as *are not.*

Under the Third Head,

In ſhewing the *Malignity* of this Sin (not *in itſelf*, that he had ſhewn before, but) *with regard to the World:* He inſtances firſt, in the *Miſchiefs* ariſing from *Men of Characters and Stations*, in the Words I formerly cited. This, I thought, made out *my* Second Propoſition to be the *Doctor*'s, "That *Men of Characters and Stations* are *Falſe Brethren.*"

This is *faintly* deny'd; and 'tis ſaid, he does not here ſuggeſt Men of Characters and Stations to be Falſe Brethren; but what is *here* ſpoke relates to their *private Behaviour*, and not to the *Adminiſtration.*

Beſides, that this is directly againſt the *plain Import* of the Words; to let your Lordſhips ſee the *Candor* of this *Defence*, let us ſuppoſe it *true*; and that it is the *Doctor's Opinion* that the Perſons he here ſpeaks of, be they *great* or *mean*, are not Falſe Brethren.

Then the Doctor, to be *conſiſtent* with this Defence, muſt affirm, that he here ſets forth the *Malignity* of *Falſe Brotherhood*, by ſhewing the *Malignity* of *another Sin* which is *not FALSE BROTHERHOOD*, in *Perſons* of Characters and Stations, who are *not FALSE BRETHREN.*

This is the wretched Shift he is driven to, taking it the beſt for him.

That theſe *Characters and Stations* relate both to *Church and State*, *all* his *Diſcourſe* in the *Places cited*, and *every where elſe*, ſhews; nor has *he* or his Counſel made it an *Objection* that they do *not*; ſo that it would be very much miſpending your Lordſhips Time, to go to *prove*, what is not *deny'd*, that by *Men of Characters and Stations*, he intends Men of Characters and Stations in *Church and State.*

The Two *Propoſitions* being thus cleared, let us ſee if that which is laid hold of to *declaim* ſo earneſtly upon, have any more Weight in it, that is, the *joining* together theſe Two *diſtant* Propoſitions.

The Objection, rightly ſtated, is this:

He has in *one Place* affirmed of *all Falſe Brethren* in general, "That "they do in themſelves weaken, undermine and betray, and put it in the "Power of others, who are profeſſed Enemies, to overturn and deſtroy "the Conſtitution and Eſtabliſhment."

And ſeven Pages off, has repreſented *Men of Characters and Stations* as *Falſe Brethren.*

And we (very unreaſonably!) have charged him with ſuggeſting, "That there are Men of Characters and Stations in Church and State "who are Falſe Brethren, and do in themſelves weaken, undermine and be-"tray, and do encourage, and put it in the Power of others who are profeſſed "Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment."

This is the *true Strength* of the *Objection*, and the very *ſtating* it *expoſes* it.

The *general Miſchief* he mentions, as common to *all* Falſe Brethren, *Page* 15, I preſume will be admitted to belong to *thoſe* deſcribed, *Page* 7; why then not as well to *thoſe* Page 22?

Muſt not what is ſaid of *all Falſe Brethren*, extend both to *thoſe* whoſe *Crime* he deſcribes, and to *thoſe* whoſe *Malignity* for *that Crime* he expoſes?

And, which is moſt to be regarded, the *Diſtance* of the *Place*, or the *Connexion* of the *Scheme*, and the *Nature* of the *Propoſitions?*

The Doctor himſelf ſeems rather to preſs the Objection thus, That this is *Inference*, and *joining independent Propoſitions*; which, though ſpoke by him in general, the *Unanimity* of his Counſel in falling upon this Part of what I ſaid, ſhew, it was ſpoke *principally* with a *View* to theſe two *Paſſages.* Are then *Paſſages* that ſpeak of *all* Falſe Brethren, and that ſpeak of *ſome particular* Falſe Brethren, *independent?*

My Lords, Theſe are ſo far from being *independent*, and ſo *ill* have they *choſen* out what to find fault with, (that if your Lordſhips will pardon the

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[*] *His Pariſhioners, part of the Mob that attended him to and from his Trial.*

[†] Note, *The Pages of the Sermon are referred to as in the Second Edition, which was that which was proved and read in Evidence.*

Pedantry, conſidering I have a Man of *Logick* and *Diſputation* to deal with) the two Propoſitions are the two Propoſitions of a *Syllogiſm*, concluding in the *firſt Figure.*

And the *Inference* he complains of is the *Concluſion* neceſſarily ariſing from them, according to the *Rules* of *Logick.*

The whole Syllogiſm runs thus:

All Falſe Brethren *do in themſelves weaken*, *undermine*, *and betray*, *and do encourage and put it in the Power of others who are profeſs'd Enemies*, *to overturn and deſtroy the Conſtitution and Eſtabliſhment.*

Perſons of Characters and Stations are Falſe Brethren.

Therefore Perſons of Characters and Stations, do, *&c.*

The two firſt Propoſitions are what I have ſhewn the Doctor plainly to lay down; the other only a *neceſſary Conſequence.*

Would any one expect that the Doctor ſhould be ſo forgetful of the Rules of Logick, as when he had laid down the *Premiſes*, to deny the *Concluſion?* Or to deny the *Concluſion* to be HIS DOCTRINE, who laid down thoſe *Premiſes?*

Can it be thought, that he laid them down without an *Intention* that his *Hearers* ſhould make the *Concluſion?* Or *could* he think it *poſſible* they ſhould *not* make it?

Or, ſhall the *ſuppreſſing* a Concluſion ſo plainly ariſing, which is *taken Notice* of in ſome that write of Logick as an *Elegance* in Diſcourſe, *paſs* for an *Excuſe?*

Let the Doctor deſcribe *Falſe Brethren* in general as *Betrayers and Deſtroyers* of the *Church*, and the proper *Objects* of the *Rage* and Fury of the People, and then *expoſe* as Falſe Brethren thoſe *in the Adminiſtration*, Perſons of *Characters and Stations*, from the *chief* to the *leaſt*, the *People* will quickly make the *Application.*

If any one ſhould inflame the Mob to ſuch a Degree of *Rage* and *miſtaken Zeal*, as to forget the *Spirit* of the *Goſpel*, and to believe it their *Duty* to ſerve *God* by breaking the *publick Peace*, and to ſupport his Church, by pulling down all Meeting-Houſes, and rifling the Houſes of all Diſſenters; he needs afterwards only tell them, THIS IS A MEETING-HOUSE; HERE LIVETH A DISSENTER, they are *not* ſo *dull* as to fail of making the *Concluſion*; THEREFORE THIS HOUSE IS TO BE PULL'D DOWN; THEREFORE THIS MAN IS TO BE PLUNDERED; and of putting it immediately in *Execution* where they *dare.*

Suppoſe ſuch a Man ſhould, in *Defence* of himſelf, ſay, “ I did not bid “ them pull down *this Houſe*, nor rifle *that*; my telling them *All Meeting-* “ *Houſes* were to be pulled down, *All Diſſenters* to be *marked* and plundered, “ was *Four Months* before I told them THIS WAS A MEETING- “ HOUSE, OR THAT MAN A DISSENTER; and to *carry* “ *back* a Man's Words, ſpoke only by way of *Information*, to what was “ ſaid Four Months before by way of *Doctrine*, is the greateſt *Hardſhip* “ in the World.”

Would this paſs for an *Excuſe?* Or would it not add to the *Indignation* againſt ſo impertinent a *Trifler* on ſo *ſad* an Occaſion.

My Lords, The burning a *Meeting-Houſe*, the burning *all* the Meeting-Houſes, the laying this *Metropolis* once more in Aſhes by the *Enemies* of our Conſtitution, is nothing to the *inflaming* the Nation, and rendering the *QUEEN* and Her *ADMINISTRATION odious* to the People.

Shall it then be an *Excuſe* for the Doctor here, when he has laid down the *Premiſes*, to ſay, that he has not in *Words* expreſſed the *Concluſion?*

Shall the *meaneſt* of the *People*, clearly and *rightly* collect, This is Doctor *Sacheverell*'s *Doctrine*; and ſhall not *we* in *accuſing*, and *your Lordſhips* in *judging*, be allowed to collect it, when we are endeavouring to preſerve the *Queen* and *Conſtitution*, and *all* that is *dear* to us?

Surely, my Lords, we ſhall. Nor is the *ſtrict Conſequence* that your Lordſhips find in this Clauſe, always *neceſſary* in Caſes of this Nature: But I was willing to ſhew it here, that your Lordſhips may ſee with what Juſtice this was made the great *Topick* whereupon to declaim againſt *Hardſhips*; and to couple ſuch *Inferences* with *Innuendos*, as if both were the *ſame.*

As for taking one *Part* of one *Sentence*, and another Part of *another*, whoever makes a *Concluſion* in *Logick* ever does it; and only *then* does amiſs in it, when in doing it he departs from the proper Rule, and where the *Conſequence is not juſt*; which I have *ſhewn* is *not* the Caſe here, and Nobody has *attempted* to make out that it *is.*

'Tis as little to the Purpoſe what is ſaid, that he has not reſtrained this to Perſons of the *HIGHEST CHARACTERS AND STATIONS*; which I ſhewed ſo fully before, that it has been thought more adviſable to *pretend* I *admitted* what I believe I plainly *diſproved*, than to *offer* any Anſwer to my Reaſons.

I'll only add, that 'tis *not pretended*, that there is one *Word* in the *Sermon* that looks like the *leaſt Hint*, that *only Inferior* Officers were meant; and 'tis plainly *ſhewn* that *others* were *intended:* And then the Doctor's *Excuſe* amounts, *at beſt*, but to this: He has indeed ſpoke in reproachful Terms of *Magiſtrates in general*, he has pointed to thoſe that *have*, and thoſe that *beſtow* the *Honours* of the *Church*, and *Places* and *Preferments* in the *State*; he has pointed to the *Chief*; his *Reaſoning*, when he ſhews the *Malignity* of the Sin from *Examples* of Perſons of *Characters and Stations* is the *ſtronger*, the *Greater* theſe Perſons are, as the Examples of the *Greateſt* are the moſt *Contagious*; but yet he relies upon it, that ſince the general *Mention* of Perſons of Characters and Stations takes in the *Meaneſt* as well as the *Greateſt*, 'tis *not to be doubted* but the *all-diſcerning People*, eſpecially when ſufficiently *fired* and *enraged*, will *reſtrain* the Words to the moſt *innocent Meaning*, and *apply* them *only* to *inferior Officers*, *Conſtables*, and thoſe in the neareſt Degrees to them.

This is the Sum of this *notable* Excuſe.

Let *this* therefore, where, by bending their united Force againſt it, they ſeemed to have the *greateſt Hopes* of making ſome *Impreſſion*, ſerve for the *Specimen* choſen *by themſelves*, of the *Hardſhips* of *Inferences* and *Innuendos* in this Charge.

The Third Clauſe, “ *That he chargeth her Majeſty*, *and thoſe in Au-* “ *thority under her*, *with a general Male-Adminiſtration*; The firſt, That “ he *ſuggeſts that her Majeſty's Adminiſtration*, *both in Eccleſiaſtical and Civil* “ *Affairs*, *tends to the Diſtruction of the Conſtitution*;” are ſo *manifeſt*, that after what *has* been ſaid, and is *unanſwered*, it would be but loſing Time to attempt to make them more plain.

And their Defence, and the Books and Pamphlets read on this Head, are not to the purpoſe.

For ſure, the ſhewing that there have been ſome *Paltry Scriblers*, *few* in Number, many long ſince *dead*, ſome *mad*, ſome that have undergone the infamous Puniſhment of the *Pillory*, moſt of them *proſecuted* or *unknown*, does not prove that there are *Seminaries* for the *open Profeſſion* of thoſe Blaſphemies and Impieties; much leſs, that they are *ſuffered* by the *Government*, or that *their Follies* can be called an *open Violence* upon the Church, or *their* Faults made the *general Character* of the *Nation*, and *charged* upon the *Queen* and her *Adminiſtration.*

When a *ſcandalous Book* is publiſhed, or *contagious Sin* committed, any Subject who has a *real Zeal* to *prevent the Miſchief ſpreading*, may apply to the *proper Magiſtrate* to ſuppreſs it; and if *inferior* Magiſtrates neglect their Duty, may carry the Complaint, againſt *them* and *it*, to their *Superiors.*

But is it to be *endured*, in any eſtabliſhed *Government*, that a Man *paſs over* all the *Magiſtrates*, and make an *Appeal* to the *People*, not only againſt the *Offenders*, but againſt the *Magiſtrates* too?

This is properly *Faction*, this is *invading* the *Royal Authority*; 'tis, in the Doctor's own Words, “ *A rebellious Appeal to the People as the Dernier* “ *Reſort of Juſtice and Dominion*;” '*tis erecting a Popular Tribunal*, where not only *SCRIBBLERS*, but the *QUEEN* and her *AUTHORITY* are to be try'd.

The Doctor indeed *pretends* that his *Zeal* was only againſt thoſe *Offenders*, and ſuch as keep not within the *Bounds* of the Toleration-Act; that his Warmth of Speech, was only to *ſtir up* the *Magiſtrates* to put the *Laws* ſtrictly in *Execution*; and he ſolemnly proteſts he *intended* no Reflection on the *Queen*, or *her Miniſtry*; that by the *Dangers* of the *Church*, he *meant* only thoſe *Judgments*, which the juſt *Anger* of a provoked *God* might be reaſonably expected to inflict on ſo *wicked* a People.

I can't pretend to repeat his very Words, but I apprehend this to be his Senſe, and beg Pardon if I miſtake his Meaning.

My Lords, I am amazed at the Doctor's *Solemn Proteſtations.* I will avoid *hard Words* as much as I can; but if, when he *calls God to Witneſs* in ſo *ſolemn* a *Manner*, he ſhould then ſpeak without *Foundation of Truth*, plainly *againſt his Sermon*, and be even then uſing the little *Arts of Evaſion*, *and diverting the Queſtion*, inſtead of that *Sincerity* which ought to *accompany* ſo ſolemn an *Oath*, I leave it to your Lordſhips to give a Name to ſuch Behaviour.

Is it *poſſible* to ſay he *intended not* to *reflect* on the *Adminiſtration?*

Give me Leave to read to your Lordſhips *Two* Pages in his Sermon, to which I before referred; and be pleaſed to obſerve, as I go along, how much they are applicable to *unknown Authors*, or the *Dead*, to *Aſgill*, the *Obſervator*, the *Review*, or other *Writers*, that he has made ſo *filthy a Collection* out of; or to *Atheiſts*, or *Diſſenters exceeding the Limits preſcribed by the Toleration*; or to *Occaſional Conformiſts*, Diſſenters too in *the main*, but when the *Occaſion* of a *Place* calls them to *Church*; and your Lordſhips will have *one Inſtance* of his *Sincerity* in his *Solemn Proteſtations.*

“ 2. *Secondly.* In regard to the *World*, What a vaſt Scandal, and “ Offence muſt it give to all Perſons of *Piety* and *Integrity*, to ſee Men of “ *Character* and *Stations*, thus Shift and prevaricate with their *Principles*, “ and ſtarting from their *Religion* upon any Occaſion of *Difficulty* or *Trial*, “ and like the *Diſciples*, flying from, and forſaking our *Saviour*, when “ his Life lay at Stake? To ſee Men's *Opinions ſit as looſe* about 'em “ as their Garments, to be put on, or off, for *Convenience?* What can “ *unwary* Perſons conclude from ſuch *Tergiverſation* and *Hypocriſy* but “ that all Religion is *State-Craft*, and *Impoſture?* That All *Godlineſs is* “ *Gain*; and that the *Doctrines* of the *Church* lie not ſo much in her “ *Articles*, as her *Honours* and *Revenues?* Without doubt, this *Modern* “ *Latitude*, and infamous *Double Dealing*, as it can proceed from nothing “ but the *rankeſt Atheiſm*, ſo it muſt propagate it whereſoever it goes; “ and 'tis not to be queſtioned, but that the *Wonderful Increaſe*, and *Im-* “ *pudent Appearance* of all *Sects* and *Hereſies* in this Kingdom at preſent, “ beyond what was ever known in *former Ages*, is chiefly to be attri- “ buted to it. But this *Crime* is as *pernicious* to *Human Society*, as *Re-* “ *ligion*; for it deſtroys all *common Honeſty*, *Faith*, and *Credit* in the *World*, “ and, in the Place of it, ſets up an *Univerſal Trade* of *Cozenage*, *Sharp-* “ *ing*, *Diſſimulation*, and downright *Knavery.* For, what *Dependance* “ can there be upon a Man of *no Principles?* What *Truſt* in *Equivocations*, “ *Evaſions*, and *Lyes?* Nor indeed could any one be ſuppoſed ſo ſottiſh, “ as to place the leaſt Confidence in theſe *Men*, did they not *bait* their “ *Hook*, and *cover* their *Treachery* with the ſacred and plauſible *Pretences* “ of *Friendſhip*, whereby they are capable of doing *much more Miſchief*, “ than a *bare-faced* and *profeſs'd Enemy.* In what moving and *lively Co-* “ *lours* does the Holy *Pſalmiſt* Paint out the *crafty Inſidiouſneſs* of ſuch “ wiley *Volpones? Wickedneſs*, ſays he, *is therein*, *Deceit and Guile go not* “ *out of their Streets. For it is not an open Enemy that has done me this Diſ-* “ *honour*, *for then I could have borne it: Neither was it mine Adverſary that* “ *did magnify himſelf againſt me*, *for then*, *peradventure*, *I would have hid my-* “ *ſelf from him. But*, *it was even Thou! my Companion*, *my Guide*, *and* “ *mine own Familiar Friend. We took ſweet Counſel together*, *and walked* “ *in the Houſe of God as Friends. There is no Faithfulneſs in their Mouths*, “ *their inward parts are very Wickedneſs*; *their Throats are open Sepulchres*, “ *and their Words are ſmoother than Oil*, *yet be they very Swords. Like* Joab, “ *they pretend to* ſpeak Peaceably, and *ſmite Us mortally under the Fifth Rib.*

“ 3. *Thirdly*, *With regard to a Man's ſelf*, it is hard to diſtinguiſh, whe- “ ther our *Falſe Brethren* prove themſelves Guilty of more exceſſive *Kna-* “ *very*, or *Folly.* For whatever theſe *cunning*, *temporizing Politicians* “ may think, they will find, after all their *Shuffling* and *Compliance*, that “ the *plain Road* of *Truth*, *Honeſty*, and *Integrity*, is both the moſt *Pru-* “ *dent*, as well as the *Safeſt Way* they can follow, and that the *Wiſdom* “ *of this World* is as much *Fooliſhneſs* with *Men*, as 'tis with *God.* For “ certainly there is no Sin that ſo much *Diſappoints* its *own Ends* as *This* “ does. Perhaps *the Man* may obtain the *preſent Advantage* he has in “ *Proſpect*, by relinquiſhing his *Old Friends* and *Principles*; but is “ ever ſuch a *Mercenary Convert* received *heartily* into the *Boſom* of his “ *former Enemies?* Or, are *They* ever found ſo *Credulous*, and *Good-* “ *natured*, as to *Forgive*, and *believe* ſuch an *Apoſtate Cordial*, and Sincere

“ and fit to be *truſted* in any Matter of *Weight* or *Importance*, who has
“ *betrayed* his *own Party* for the *little ſordid Lucre* of *a Place*, or *Preferment:*
“ And is again ready to be *Retrograde*, whenever the *Wind* ſhall *Change*,
“ and *Veer* about? Such a *Falſe Brother* may ſerve the *preſent Turn* of his
“ *Adverſaries*, who may ſeem, whilſt they want the *Tool*, to *flatter* and
“ *careſs* him; but let ſuch a *Turn-Coat* reſt aſſured, he ſhall meet with *Hy-*
“ *pocriſy* for *Hypocriſy*; and ſince he is got upon the *Stage*, ſhall *Act his*
“ *Part*, and be *hiſſed off* when he has done. Such a *wiſe Game* do our *Pro-*
“ *jectors Play*, they *Barter* and *betray* their *Friends*, only to *ſell* themſelves
“ *Slaves* into the Hands of their *Enemies*, who ſhall *treat* them with more
“ *Inſolence*, *Diſdain* and *Tyranny*, than *honeſt Men* do with *Scorn* and *Con-*
“ *tempt*, if they don't go the *whole Lengths of their Party*, *ſtick at nothing*,
“ though never ſo *impious* and abſurd, and run from one *Extreme* to a *quite*
“ *Contrary*. Thus *little*, thus *baſe*, thus *odious*, thus *contemptible*, thus *ſer-*
“ *vile*, nay thus *execrable* is the *Traytor*, and *Double-Dealer* in the Sight,
“ not only of all *honeſt Men*, but the moſt *profeſſed Knaves*, and *Hypocrites!*
“ Who cannot but have a *Tacit Regard* and *Veneration* for a Man of *Stea-*
“ *dineſs* and *Probity*, that upon *all Occaſions* is *true* to *himſelf* and his *Cauſe*;
“ is above the *Threats*, as well as *Flatteries* of this World, ſtill *truſting* in
“ his *God*, and his own *Integrity* and *Juſtice*, *deſpiſing* his *Intereſt* or *Suc-*
“ *ceſs*, and is under all Circumſtances like that *God*, and *Religion* he *be-*
“ *lieves* and ſerves, *without Variableneſs*, or *Shadow of Change*, *but is the ſame*
“ *To-day*, *To-morrow*, *and for ever*. Farther, theſe *Falſe Brethren* cannot
“ be more *odious* to *God* and *Man*, than they are to *themſelves*, who are al-
“ ways a *Self-Contradiction*, full of *Confuſion* and *Perplexity*, perpetually
“ *haunting* themſelves, the *worſt* of *Dæmons*, maintaining an *irreconcileable*
“ *War* betwixt the *outward* and *inward Man*, *Conformiſts* in *Profeſſion*,
“ *Half-Conformiſts* in *Practice*, and *Non-Conformiſts* in *Judgment*. Such a
“ *Mixture* of *Inconſiſtency* and *Nonſenſe*, that any one that has the leaſt *Spark*
“ of *Conſcience*, or *Reaſon*, muſt *renounce* and *deteſt*. But this diſmal Ef-
“ fect has ſuch a *State* of *Habitual Hypocriſy*, that it quite *damps* and *extin-*
“ *guiſhes both*, *quenches* the *Holy Spirit of God*, and *crucifies his Son afreſh*,
“ and as it *finds* a Man *void* of *Shame*, generally (without a miraculous
“ Converſion) *leaves* him incapable of *Repentance*, and both *damns* him *here*,
“ and *hereafter*; and as he *choſe* it in *this World*, *appoints* him in the *next*
“ his *Portion with Hypocrites, and Unbelievers, with all Lyars, that have their*
“ *Part in the Lake which burns with Fire and Brimſtone*, with the *Grand Fa-*
“ *ther of Falſhood*, the *Devil* and his *Angels*. And ſo here we leave our
“ *Falſe Brethren* in the *Company* they always *keep Correſpondence* with.”

To go on. Is that true, that he *only* calls upon the *Magiſtrates* for *Juſtice* upon theſe Offenders?

If his *Intent* really were to *exhort* the Magiſtrates (*before whom he preached*) to put the *Laws* in *Execution*, one would expect to find it *vehemently preſſed* under the Fourth Head, where he undertakes to ſhew what ſhould be the *Reſult of all*; but I have ſearched carefully, and can find nothing *there*, nor any *where elſe*, of any ſuch Exhortation.

There is indeed a Calling upon the *Paſtors* of *the Church*, who were *not preſent*, to *thunder out Anathemas* againſt Schiſm; which *could* not be to *perſuade* thoſe *Paſtors* that did *not hear* him, but to *condemn* their *Remiſſneſs* to the *People* that *did*. But *all the reſt* is to the *People*, to *adhere to the Fundamental Principles*; to *watch againſt*, MARK AND AVOID, *thoſe that deſert them*; to *give Place* BY SUBJECTION, *no not an Hour*; to *deſpiſe ſneaking*, *ſhuffling* COMPLIANCES, and *put on their* BRAVEST *Reſolutions*, *which the* PRESENT *Caſe required:* There is a denouncing *Woe to the fearful Heart and faint Hands*; a ſhewing the *Perils and low Eſtate of the Church*, that her *Sons deſerted her*, that *ſhe lay bleeding of her Wounds*; that her *Adverſaries* were CHIEF, and her *Enemies* AT THAT TIME *proſpered*.

Is *this* the *Language* of one, that is only laying before *Magiſtrates* the Abuſes of a few *inferior Perſons*, within their *Power*, ſubject to their *Authority*, and whom they could *eaſily cruſh*, and *deſiring* thoſe *Magiſtrates* to *correct them?*

In ſhort, Is it calling upon the *Magiſtrates*, or upon the *People*, for *Juſtice?*

Again:

He ſolemnly declares his *Meaning* in the *Sermon* to have been, That the *Dangers* of the *Church* are only ſuch as ariſe from the *Sins* of the *Nation*, but *not in the leaſt* from her *Majeſty* and her *Adminiſtration*.

Let any one caſt his Eye upon the *Sermon*, or upon the *Dedication* of that preached at *Derby*, and try how the ſeveral *Expreſſions* ſuit this *Scheme*; and he will ſee, the Doctor had nothing of it in View *then*, but that 'tis *contrived ſince*, for him to *pretend now*.

What *Dangers* of the *Church* and *Conſtitution* he means in the *Sermon*, is too *plain* to be *ſhifted* off by a *Proteſtation:* He tells you expreſsly *what* they are, and *from whom*; from *Men*, whom he deſcribes as being *in* the *Adminiſtration*, who *undermine and betray the Church*, and *enable others to deſtroy it*; they are *ſuch* as he apprehends, not from the *Hands of God*, but from the *Treachery* and *Violence* of *Men*.

Accordingly, the *whole* tends to *ſtir up Anger*, *Indignation* and *Fury* againſt *thoſe Men*; not to move *Humiliation* and *Prayers to God*, to avert thoſe impending *Judgments*.

But poſſibly he may expect to be *underſtood*, not of an *immediate* Vengeance of *God*, or *his delivering* us into the Hands of a *Foreign* Enemy, but his *permitting* wicked *Men at Home* to *overthrow* the Church.

If we take it to be ſo, this *ſolemn* Proteſtation is a mere *Evaſion*, and a *ſhifting the Queſtion*.

'Tis true, the *Overthrow* of the *Church and Conſtitution* is the *heavieſt Judgment* can befal us, and if it does happen, muſt be accounted the *Act of Divine Juſtice* puniſhing us for our *Sins*. All *National Puniſhments* are certainly the more *immediate Acts* of the *Juſtice* of *Providence*; and the *Inſtruments* made uſe of to bring them about are very often *wicked Men*.

The *Prophane Writers*, the *Atheiſts*, the *Abuſers of the Toleration*, the *Vilifiers of Holy Orders*, of *the Church*, and *of Chriſtianity*, and other *wicked Men*, may have given great *Provocations* to *Almighty God*; and if I ſhould ſay ſo great, as may give juſt Cauſe to fear a *Judgment* upon us, that *may endanger* the *Church* and *Conſtitution*; yet *ſtill* the *Queſtion* is, *What Hands* are about to *execute* this *Judgment* upon us? *We charge* him as repreſenting the *Church in Danger under her Majeſty's Adminiſtration*; as ſuggeſting that her *Majeſty's Adminiſtration, in Church and State, tends to the Deſtruction of the Conſtitution*; and conſequently, that the *Hands* of thoſe in the *Adminiſtration* are about to *execute* ſuch *Judgment:* And *he ſolemnly proteſts*, he apprehends *no Danger but from God*.

My Lords, This is *trifling*; for *every* ſuch *Danger* is from *God*, and is his *Judgment*, whoever they be, whether *her Majeſty*, and *her Miniſtry*, or *any others*, that *immediately* bring it upon us.

This, therefore, inſtead of *anſwering*, is *evading*, and *diverting* your Lordſhips *View* from the *Perſons* he charges to be *working* the Ruin of the Church, to *God* the *Supreme Director* and Over-ruler of all the Actions and Deſigns of Men. As if the Reflection on the *Queen* and her *Adminiſtration* were the leſs, for ſaying, that *they* are the *Inſtruments* in the *Hand of God* to ſcourge the *Nation* for its *Sins*, and to execute his *Vengeance* in *overthrowing the Church and Conſtitution*.

So that I am afraid, *this Part* of his Solemn Proteſtation is either *falſe*, or *evaſive*, or *both*.

And let ſo much ſuffice to be added on theſe Clauſes.

To what I offered to your Lordſhips on the Clauſe of *keeping up Diſtinction of Factions and Parties*;

I deſire to add the *Weight* of *One Authority*, out of the *Excellent Sermon* preached by the moſt Reverend *Prelate*, my Lord Archbiſhop of *York*, and *produced by the* Doctor.

The Words are theſe:

“ They are Factious, they are Setters up and Abetters of Parties, who
“ endeavour to deſtroy, or unſettle, or diſparage, or in the leaſt hurt or
“ weaken the Government, and the Laws as they are eſtabliſhed; let the
“ *Principles* on which they go, or the *Pretences* they make, be what they will.”

Whether the Doctor hath not endeavoured in the higheſt Degree to *diſparage the Government*, and conſequently to *weaken* it, your Lordſhips will judge.

As to the other Clauſes, *they* have *offered* very little, and I will not *repeat* what I ſaid before.

Only I would take notice, that under the Head of *ſtirring up to Arms*, ſomething was urged by the Counſel, in relation to what I ſaid upon ſome Texts of Scripture, but ſo entirely *miſtaking* my Meaning, that I think myſelf *unconcerned* therein.

As for *perverting Scripture*;

The Counſel would ſeem to *pretend* ſomething or other to be the *Miſtake of the Printer*, without ſaying *where* the Miſtake is, or *how they* would have it read.

I'll tell your Lordſhips what the *Miſtake* is; it is Printing the Second Chapter of *Lamentations* inſtead of the Firſt, and Miſplacing the References to *Lamentations* and *Zachariah*; which I ſcorned to take Advantage of, and, in what I ſaid, *rectify'd*.

But this ſerved for a *Shew* of an *Excuſe*.

They ſaid ſomething more on this Head, but not to what was *my* Objection; but *promiſed* the *Doctor* ſhould *clear* all.

My Lords, I think I might reaſonably here put an End to the Trouble I am giving your Lordſhips; but that I apprehend *ſome Things* which fell from the Doctor, and which have not fallen in my way already, may be proper to be *taken notice* of, ſo far as concerns what is within *my Province*.

I own, his *Speech* was extremely *well compoſed*, fitted not ſo much to *inform* (his Caſe would not bear that), as to *move*, (wherein his Hopes were more juſtly placed;) not ſo much to *ſtate* the Queſtion, and *clear* it, as to *divert* it: All the *plauſible Topicks* were *laboured*, and all the *Arguments* that *preſs'd hardeſt* upon him, and *moſt required* an Anſwer, *paſs'd over in Silence*; the Whole framed to give the *Paſſions* Maſtery over *Reaſon*, and to induce a *Perſuaſion*, that ſo *good*, ſo *excellent* a Man as he painted himſelf, that has ſo many *Virtues*, ſo great *Sincerity*, ſo true a *Zeal* for Religion, *could not* be Guilty of this Charge, tho' *plainly proved* upon him: The *Proteſtations* were *ſtrong* and *hearty*, and ſuch as will *read well* amongſt the People; *clear* of all thoſe *qualifying* Clauſes, that might perhaps have made it *ſuit better* with the *Truth* of his Caſe, but would have had the *Inconvenience* of *giving* to the Readers *Suſpicion of Guilt*. An agreeable *Concern* for *Religion* and *Virtue* ran thro' all; which will always ſtrike an Audience, and ſeems intended to make ſome *Amends* for the *Rage* and *Fury*, and *Zeal* for *Party* in the *Sermon*.

I only wiſh, for the Doctor's Sake, the *Compoſer* had preſerved a little more Regard, as well to what was *fit* to be ſaid *here*, (where the Truth of the whole Matter is known) as to what was fit to be ſaid *abroad*, and given it a little more *Reſemblance* of the Doctor and *his Sermon*; That he had not calculated ſo many Parts of it for an *Appeal to the People*, and to obtain *their* Acquittal upon his *own Word*. And I muſt needs ſay for *myſelf*, (tho' my liking, or diſliking it, is of very little Moment) had it had *fewer* and *leſs Solemn Appeals* to God Almighty, or *more Truth*, or *I known leſs* of the Matter, I ſhould have liked it much better.

He begins with making his *Order*, the *Church* and *Chriſtianity* to be concerned in the Cauſe; intending it, I preſume, to be underſtood abroad as a Charge upon his Accuſers, that in his Perſon they arraign all theſe.

But I ſhall not pretend to follow him throughout the whole Speech, only point out ſome Fallacies in it.

My Lords, Great Regard is to be had to the *Word*, much more to the *Solemn Declaration*, much more to the *Oath* of a *Clergyman*, when he is *free* and *unbiaſs'd*.

But when he *ſtands in Judgment*, when the *Rod* is *over him*, when there is only *one way* open for Eſcape from the juſt Puniſhment due to his Crimes, by *proteſting* his *Innocence*; neither his *Word*, nor his *Declaration*, nor his *Oath* is to be regarded.

That Method will acquit *all* that are accuſed; and the *leſs Conſcience* any ſuch Wretch has, the *ſurer* and *eaſier* will be his *Eſcape*.

And therefore your Lordſhips will judge, by what the Doctor has *taught* the People, what he has *publiſhed*, and not by what he *pretends* to be, his *Intentions* in doing it.

He makes Complaint of the *Generality of the Charge*, that it was ſuch that he *knew not where it would point*.

My Lords, Suppoſe we had followed the *more common* Way, and ſet forth *all the Paſſages* we have read, or the *whole Sermon and Dedication* verbatim, (as we might have done) without pointing out *what* we objected to, or *why*; had *that* left him leſs in the dark? It was therefore more for his *Advantage*, that we ſhould tell him the *particular Points* we would inſiſt upon, than if we had left ourſelves at Liberty *at the Trial*, to make as many Points as we then pleaſed.

He lays it down for a Rule, That the *higher the Charge is*, *the more clear ought the Proof to be*.

My Lords, The *Proof* here is *indiſputable*; the *Sermons* and *Books* are not denied to be his. And *theſe* are all that *ſtrictly* make the *Evidence* in the Caſe; the reſt is but *Argument*, and ſhewing them to be Libellous in the Particulars in the Charge.

But take Proof in a *larger* Senſe, ſo as that it may extend to the *Reaſoning* upon the Evidence, and to the making good the Charge, as in this Caſe is perhaps not improper:

I have no Reaſon, in *reſpect of this Charge* againſt him, to conteſt his Rule, becauſe the *Proof* of it is *clear* in *that Senſe* too.

But yet, for the ſake of *Juſtice*, I ſhall take the Liberty to ſay, that, *as apply'd* to this Caſe, it is a *Fallacy*.

This ſort of *Proof* ariſes from the *Senſe and Doctrine* of his *Books*.

And, I preſume, the Doctor cannot hope, that becauſe this is charged to be ſo *high* a *Crime*, as *Defaming* and *Undermining* the *Government*, any more *favourable Meaning* is to be put upon his *Words*, than if it were the *leſs Crime* of *defaming* a *Private* Perſon; or that *your Lordſhips* ſhould not underſtand in this *Caſe*, (that which every body *elſe* that hears it, underſtands) and which your *Lordſhips would* have underſtood, if it had not *endangered* the *Government*.

I own, I cannot comprehend why your *Lordſhips* ſhould be more ſhy of Defending the *Government* than a *private Reputation*; or *moſt afraid* of *cenſuring* that which is infinitely the *moſt dangerous* Conſequence, if it eſcape *uncenſured*.

On the contrary, in the Caſe of thoſe Things which tend to the *Overthrow* of the *Conſtitution*, where the Rules and Methods of *Inferior Courts cannot* apply a proper Remedy, your *Lordſhips* (upon the Impeachment of the Commons) *may*. Let the *Contrivance* lie never ſo *deep*, be never ſo *artfully wrought*, when it ſtrikes at our *All*, it would be *abſurd* to ſay, the *Commons* may not bring it to the Bar of Juſtice, and your *Lordſhips* prevent its dreadful Effects, and give it the Puniſhment it deſerves.

My Lords, without *that Power*, your *Conſtitution* were *weak* and *precarious*.

THE Doctor obſerves in what manner the *Charge* againſt him is *ſupported*, not by *expreſs Sentences* of his, but by *Inferences*, and *joining independent Sentences*, (as to that part I have conſidered it already); and he ſeems to expect, that if he were Guilty of Suggeſting and Maintaining the Things charged upon him, the *Paſſages might as eaſily be pointed to in his Sermon*, *as the Doctrine in thoſe he produced*; *and that bare reading*, *without a Comment*, *would convict him*.

No, my Lords——Even Doctor *Sacheverell* is not *yet* arrived at that Pitch, as to *arraign the Government* ſo directly and openly, as to *preach a general Doctrine*.

This Fallacy ſeems very *groſs*.

For is it reaſonable to think, that a Man that intends to unhinge the *Government*, to expoſe an *Adminiſtration*, to fire the *People*, to raiſe *Sedition*, ſhould ſpeak *directly and plainly?* No——he is to cover his Deſign even from *thoſe* he is to *draw in*; he is to *pretend* Zeal for Religion, *inſinuate* himſelf by degrees, not *ſhock* his Hearers *at firſt* with a Declaration againſt a *Queen they are fond of*; he muſt *pretend* Zeal for her Majeſty, to preſerve *their* good Opinion of *himſelf*, while he is doing that which by *degrees* will alienate *their* Affections from *Her*. *This* he *muſt do*, though there were none to *puniſh*, and to prevent the daſhing *his own* Hopes of Succeſs. But when he knows that the *Power* of the *Adminiſtration* he is to revile and rail at, is *over* him, and at *hand*; that is a farther Reaſon for *Caution:* Therefore in ſuch *Diſcourſes*, *dark Phraſes* are to be ſtudied, *confuſed Deſcriptions* will be frequent, with a perpetual *Perplexity of Expreſſion*, between *ſaying* what his *Rancour* will not let him *with-hold*, and *with-holding* what his *Fear* will not let him *ſpeak out*. *Schemes of Speech* are to be contrived, that have *two* Meanings; the *one* more obvious and plain, to have its *full Effect* upon the *People*; and the *other* (that will occur to nobody elſe) a *Reſerve* to be *offered* to a *Court of Juſtice*. This is *naturally* to be expected in *Seditious Diſcourſes*. But if your *Lordſhips* will paſs *this* by, which has ſpoke infinitely more plain and audaciouſly than any other (I believe) that ever ſo publickly dared Authority, your Lordſhips may expect to ſee a *new Diſcourſe* from the Doctor, where *Sedition*, that had but a very *thin Diſguiſe* in *this*, ſhall *there* have *none at all*.

And this may ſerve for an Anſwer to what is urged from his *zealous Expreſſions for the Queen*; for if the *whole* Diſcourſe have quite *another Tendency*, it is plain that thoſe are only Parts of the *Blind* and *Diſguiſe*.

He complains, That he *is accuſed for what he has omitted*, as if done with Deſign; and his *Silence is made criminal*.

My Lords, I was the Perſon that took Notice of his *Omiſſions*, but I did *not* make them a Part of his *Charge*.

Indeed, when he in his *Anſwer* proteſted (as now he does *more ſolemnly*) his *Loyalty*, I took that Profeſſion into Conſideration, as a part of his Defence, which I ought to take notice of.

I had learned, that the beſt way to *try* the Truth of Falſity of *Pretenders* to Virtue or Religion, was by their *Fruits*.

Accordingly I conſidered his *Management of his Text* in this Sermon, how *agreeable* it was to ſuch *Profeſſion*, and to ſee what *Fruits of Loyalty* I could find there.

And your Lordſhips will now apply thoſe Obſervations to his *ſolemn Appeal* to God before your Lordſhips, that his *Intentions*, *in that Sermon*, were to *exert* his BEST ENDEAVOUR *for the Security of her Majeſty*.

I ſhewed your Lordſhips, that he omitted the only *true Notion* of Falſe Brotherhood in *State*, which took in the *Non-Jurors* and *Diſaffected*, tho' his *Text* led to it; that he had omitted to make the *proper Uſe* of the *Doctrine of Paſſive Obedience*, which was to *preſs Obedience* and *Submiſſion TO HER MAJESTY*, though the *Day* and the *Doctrine* ſeemed both to require it.

That he had ſet up *another Notion* of Falſe Brotherhood, which I ſhewed to be, upon *his own* Principles, wrong.

By *theſe* I try'd his Pretences, and ſhewed, that if *they* were *ſincere*, this Behaviour was *unaccountable*; but if he were *at Heart* for the *Pretender*, I made it manifeſt that all his Procedure was *juſt*; nay, that even *his Notion* of Falſe Brotherhood was *right* to him that was of *that Mind*, and that his *Application* of the firſt of *Lamentations* was *exact* and *fine* upon *that* Suppoſition, which is never to be *juſtified* or *excuſed* on any *other*.

This I *then* preſs'd no farther, than to ſhew that his Sermon had in it no *Fruits of that Loyalty* which he pretended.

But I may make a further Uſe of it *now*, as a plain *Contradiction* to his *ſolemn Declaration*.

For has he *pretended* to give any *Anſwer* to this?

Was I wrong in *my* Notion of Falſe Brotherhood, or was he right in *his?* Has he made that *Uſe* of *Paſſive Obedience*, as to preſs *Submiſſion to the Queen* from it? Has he not let the *Non-Jurors eſcape*, tho' his Text led him to ſpeak againſt them, and advanced a wrong Notion of Falſe Brotherhood *merely* to fall foul upon thoſe that juſtify the *Reſiſtance in the Revolution*, and cut off thereby every *Colour of Title* to the *Pretender?* Or does he offer to *reconcile* that *Proceeding* with his *Pretence?* No—And then, tho' *bare Omiſſion* were not a *Fault*, yet I may now aſk, Is *that Omiſſion* conſiſtent with his *Proteſtation* of an Intention to exert his *beſt Endeavour*, for Security of the *Queen? Did* he *exert* or *intend to exert* his *beſt* Endeavours, that omitted things ſo very obvious? Nay, where does he ſhew that he has exerted any ſuch Endeavour *at all?*

On the *contrary*, he has fallen into the *Methods* uſed by thoſe that are againſt her Majeſty, to *undermine* and *weaken* her Title, and to *diſparage her Government*, and to render it *odious* to the People.

He complains *that where he preſſes Obedience to the Queen*, *we ſay he means the Pretender*.

My Lords, It was one of the *Omiſſions* that I urged againſt him in the manner I have juſt mention'd, that he *no where preſſes Obedience to the Queen*.

Does he think it had not *become* him to ſhew *where* he did preſs it, if he *could?*

Or what Name does he think is to be given to his *taking it for granted*, that he had done *that*, which it was expreſly *charged* he had *not done*, and which he *cannot ſhew* he *has?*

He ſeems to complain of *ſome Expreſſions* that have been uſed againſt him by the *Managers*, as not becoming *this Place*, or *his Order*.

My Lords, I hope we ſhall always demean ourſelves with *juſt Reſpect* towards your *Lordſhips*.

And as to *him*, he is to conſider, that there is a wide Difference between what a *Private Man* ſays of *others*, much more of his *Governors*, in *Converſation*, or in *popular Aſſemblies*, and what is ſpoke of an *accuſed Perſon* at his *Trial*. In the former Caſe, it is not *fit* to ſpeak *ill* of them, that which is *true*; in the other, the *Crime* is to be *repreſented as it is*, and the *Perſon* is to have *no Reſpect* paid him that ſhall any way tend to *prevent* ſhewing the *full Enormity* of the *Crime* in all its *true Colours*. And if any thing has been ſaid, which otherwiſe his *Orders* would have ſecured him from, let him remember that his *Crime* deprives him at *this Time* of that *Protection*; where 'tis *one Aggravation*, that he has *abuſed* his *holy Function*; which it was the Buſineſs of the Managers both to *ſay* and to *make out*.

He complains that there is *no Allowance made to a Miniſter rebuking Vice and Irreligion with* Zeal, when *he happens thereby to be carried into an Expreſſion not well-guarded*.

My Lords, *His Zeal* is levelled more at *Perſons* than *Crimes*, he mentions not *falſe Doctrines* to *confute* them, nor the *Faults* of thoſe *that hear* him, that they may *amend* them; but rails at Perſons *abſent* to *expoſe* them; and raiſe the *Paſſions* of his Auditory againſt *them*; His Zeal leads to *hunt* out Faults, for an *Occaſion* of *Complaint*; to *magnify* whatever is *amiſs*, and charge *all* home upon the *Government*; departing from the Office of an *Ambaſſador of the Prince of Peace*, and preaching *Sedition* and *Rebellion*.

And in ſuch Caſe, his *Orders* are ſo far from being an *Excuſe*, that they are an *Aggravation*; when he who ought to preach *Peace*, *Long-Suffering*, *Gentleneſs* and *Submiſſion*, foments *Diviſions*, creates *Jealouſies* heightens *Animoſities*, and *diſturbs the Government*.

But where there is a Sermon truly tending to promote *Religion* and *Virtue*, God forbid that any *incautious Expreſſions* in it, tho' juſtly *exceptionable*, ſhould be laid hold on as an Occaſion to *puniſh* the *Preacher*; it *has* not been done, *nor*, I think, *ought* to be.

Yet when a Miniſter preſumes to go *out of his Way*, and to *meddle* with the *Government*, he ought to be more than ordinarily *wary* in his Expreſſions, ſince his *Character* gives his *Reflections* greater Weight and Force with the People, and his *Errors* will therefore do the greateſt *Miſchief*.

And this Man that *Profeſſes to preach Politicks*, and *laughs* at thoſe that tell him 'tis his *Duty* to *preach Peace*, and is *inflaming* the People againſt their Sovereign, muſt not think himſelf entitled to that Favour.

I own I am very well pleaſed to hear the Doctor's Declaration in Favour of the *Succeſſion in the Houſe* of *Hanover*, and his *earneſt* Prayer for *perpetuating* it. Becauſe, whenever our Sins ſhall be the Occaſion of our loſing the *beſt of Queens*, the *Security* of our *Religion* and *Liberties* for our *Poſterity* depends upon it.

But I a little *wonder*, that he *appeals to God*, that in this *Sermon* he had *ſincere Intentions* to *exert his beſt Endeavours for the Security* of the Queen, and *the Proteſtant Succeſſion*. I *hope* he is hearty for both, but ſure, his *beſt Endeavours* for them are *not exerted* in *this Sermon*.

As for the *Queen*, I have ſpoke already.

As for the *Succeſſion*, I own myſelf entirely at a Loſs, in what Part of the Sermon it is, that he has exerted *any* Endeavour at all for the *Security of the Proteſtant Succeſſion:* I do not find *any thing* that I apprehend *can concern* it, except that Place where he *ridicules* the Notion of any Right to the Crown but an *Hereditary Right*.

THE COUNSEL having in great meaſure declined that Head about *Wreſting and perverting divers Texts and Paſſages of Holy Scripture*, and ſeeming to *promiſe* that the Doctor ſhould give *Satisfaction* therein; I was in great Expectation of *his Performance* there; but am miſerably diſappointed, and cannot but be in ſome Confuſion *for the Doctor*, tho' he ſeems to have entire Satisfaction *in himſelf*.

His Conduct upon this Clauſe, from firſt to laſt, amazes me.

His Anſwer put in before your Lordſhips to the Charge of the Commons, is *throughout* evaſive and reflecting; but in *this Part* of it there is a *Maſter-piece* of *Equivocation* and *Malice*, to avoid either *confeſſing or denying* the Charge, and to caſt an *Odium* on the *Commons* as *Perſecutors of the Clergy*.

The Words are theſe:

"Hard is the Lot of the Miniſters of the Goſpel, if, when they cite "the *Word of God* in their *general* Exhortations to *Piety* and *Virtue*; or in 'Reproof of Men's Tranſgreſſions, or *where* they are lamenting the '*Difficulties and Conflicts* with which the Church of Chriſt *whilſt militant* here on Earth, *muſt always* ſtruggle; the ſeveral Texts and Paſſages

" by them cited, ſhall be ſaid to have been by them meant of *particular*
" *Perſons* and Things, and ſhall be conſidered in the moſt criminal Senſe,
" and be made by ſuch Conſtruction, one Ground of an Impeachment
" for High Crimes and Miſdemeanors."

Theſe are the Words of his Anſwer; and, give me leave to aſk, Do they deny, or do they confeſs the Charge?

Neither--------But are an *Appeal* to the *Paſſions* of the *People*, amongſt whom it has been ſo *induſtriouſly* and *irregularly* diſperſed.

Yet I dare ſay every *unwary* Reader took the Doctor to have *deny'd* this Charge, and felt ſome Indignation againſt the Commons for *making* it.

My Lords, he has now come upon his *Trial*, he has been charged *home* upon this *Head*.

And permit me to ſay, there cannot be a *heavier Charge* upon a *Miniſter of the Goſpel*, nor more *affecting* to any one that has not abandoned all Pretence to *Common Honeſty*.

Give me leave to mention ſome of thoſe *ſolemn* Words, wherein a Prieſt receives his Orders. " Receive the *Holy Ghoſt*, *for the Office and Work*
" *of a Prieſt in the Church of God*; and be thou *a faithful Diſpenſer of the*
" *Word of God*, and of his Sacraments, *in the Name of the Father*, *of the*
" *Son*, *and of the Holy Ghoſt*."

This Crime therefore, when committed by a *Prieſt*, is *betraying* that *ſacred Truſt* repoſed in him with his holy *Orders*; 'tis *forging* the Authority of *God*, 'tis aſſuming a *Superiority* over the *inſpired Writers*, if not over *Him* that inſpired them.

The Doctor therefore, that is *ſenſible* (as he ſays) *of the Load of Guilt and Infamy of the Charge of the Commons lays upon him*, and whereof *this* is ſurely the heavieſt Part; What does he ſay to this?

He ſays, If *he be guilty he is to anſwer it at another Tribunal*, *where he is to be judged by thoſe Scriptures.*

My Lords, ſo he is to *anſwer* at that great *Tribunal* for *every Branch* of this preſent *Charge*.

But is *this* all? Is he *negligent* of his *Reputation* in *no other* Inſtance but *this*, that is the *tendereſt* and moſt *affecting?*

Or will he thus *give himſelf* up for a *Falſifier* of the Word of *God*, and yet have the *Confidence* to hope for any *Reputation*, or any *Capacity of doing good* in preaching it?

Is it *thus* the *Dignity* of the *Sacred Order* is to be ſupported?

Is *this* the Cauſe of the *Church*, and of *Chriſtianity?* And are *they* wound up in the Fate of an *Impoſtor* and *falſe Prophet?*

Pardon the Warmth of *Expreſſion*; his *not ſaying* a Word to the Charge, *owns all this*.

My Lords, It is true (as the Doctor has ſaid) the *Sacred Order*, the *Church* and *Chriſtianity* are *concerned* in this Cauſe; but 'tis, that they may be *clear'd* from the *Reproach* brought upon them by *this* unhappy Man.

But if he be *ſelf-condemned*, if he *dare not open his Mouth* on this Subject, how dare he *declare* his *Hopes*, that *thoſe* of your *Lordſhips*, whoſe Studies more particularly lead that way, ſhould *acquit* him?

My Lords, He has made an *Appearance* before your Lordſhips in a *manner very extraordinary*, *not only* as in a Defence of a Proſecution, but as in a moſt *ſolemn Act of Devotion*, before the *moſt Auguſt* Judicature on *Earth*, appealing to a *yet greater* in *Heaven*.

But with what Sincerity! what Candor! or what Senſe of that which he has done!

I am amazed, that a Perſon in *holy Orders*, in his diſtinguiſhed *Habit*, before this *awful Aſſembly*, ſhould dare to take the *tremendous* Name of *God* into his Lips, and *appeal* to him for the *Sincerity* and *Integrity* of his *Heart*, at *that* very Time when he ſtands charged with *this black Crime*, and *is* neither *able* to repel it, nor has the *Sincerity* and *Honeſty* to *repent*, to *take Shame* upon himſelf in the moſt publick manner, and to *aſk Pardon* of *God* and *the World* for it.

But while he can thus, with ſuch Aſſurance as your Lordſhips *have ſeen*, and *now* ſee, face *out* ſuch a Crime, and be *equivocating* and *playing double* with your Lordſhips, with God Almighty, and his own Conſcience; what *Regard* is to be had to his moſt *ſolemn Proteſtations?* His manifeſt *Inſincerity* in this *plain* Point leaves him no Credit in *any thing*; and his having taken the *Abjuration Oath*, gives me not the leaſt Difficulty, after what I have obſerved of his *more ſolemn Oath* before your Lordſhips.

My Lords, The juſt *Veneration* we owe to the *Divine Majeſty*, (for the Doctor's Behaviour has made that *now* Part of the Caſe) the *Honour* of *Chriſtianity*, the *Church* and its *Holy Orders*, the *Security* of the preſent *Eſtabliſhment* and the *Proteſtant Succeſſion*, the *Safety* of her *Majeſty's Perſon*, the *Quiet* of her *Government*, the *Duty* we owe to her as our *Sovereign*, the *Gratitude* for her moſt *gracious Adminiſtration*, the *Honour* of our *Prelates*, the *Obligations* we are under to prevent *Seditions* and *Tumults*, to *undeceive the People*, to *quiet* the Minds of the *Proteſtant Diſſenters*, and convince them the Toleration allowed them by Law is *not* to be *taken away* from them, to *ſecure* at *preſent*, and *tranſmit* to our *Poſterity* (as far as in us lies) our *Religion* and *Liberties*, and *vindicate* the *Revolution* (which is the *Foundation* on which they ſtand), and the *Glory* of our late *Royal Deliverer*, to whom, under God, we owed it; and to *baniſh Sedition* from the *Pulpit*, which *is*, and ever *ought to be* ſacred to *Divine Purpoſes*, REQUIRE the *Commons* to demand your *Lordſhips* Judgment on this *Offender*.

But, my Lords, *he* obſerves *ſo far* rightly, that *his* Puniſhment is not *all* we aim at.

No, my Lords,-----What we expect from your Lordſhips Juſtice, *is*, the *ſupporting* our *Eſtabliſhment*, the *preventing* all *Attempts* to ſap its *Foundation*, and *anſwering* thoſe other *great Purpoſes* I have mentioned; and I hope the *Clergy* will be *inſtructed*, not to preach the *Doctrine of Submiſſion* in *ſuch manner* as to *prepare* the way to *Rebellion*, but to follow the *Advice* and *Example* of my Lord *Archbiſhop* of *York*, rather than *tread in the Steps of* Doctor *Sacheverell*.

And we doubt not, but that *thoſe* to whom our *Proceedings* have been ſo *induſtriouſly miſrepreſented*, will *ſee* and *own* the Favour ſhewn to *this* Man, in the *manner* of the Charge; and *our Care* for the *Honour* of the *Church and Clergy*, in *ſingling* out for an Example for theſe impious Attempts againſt his Country, him that now plainly appears the *Shame* of his own Order.

Lord *Nottingham*. My Lords, I deſire your Opinion, whether I may propoſe a Queſtion to the Judges *here?*

Thereupon the Lords, being moved to adjourn, adjourned to the Houſe of Lords; and being returned, and ſeated as before, Proclamation was made for Silence.

Note, *During this Adjournment, the Lords on Debate agreed, That the Queſtion ſhould be propoſed in* Weſtminſter-Hall.

Lord *Nottingham*. My Lords, The Queſtion I humbly propoſe to your Lordſhips, that my Noble Lord on the Woolſack may propoſe to the Reverend Judges, is, Whether by the Law of *England*, and conſtant Practice in all Proſecutions, *by Indictment or Information* for Crimes and Miſdemeanors, by Writing or Speaking, the particular Words, ſuppoſed to be Criminal, muſt not be expreſly ſpecified in ſuch *Indictment or Information?*

[*Then the Lords were moved to adjourn, and accordingly adjourned to the Houſe of Lords; and being returned, and ſeated as before, Proclamation was made for Silence.*]

Lord Chancellor. I take it, the Queſtion that your Lords are of Opinion to aſk the Judges for them to give an Anſwer to, is, Whether by the Law of *England*, and conſtant Practice in all Proſecutions, by *Indictment or Information* for Crimes and Miſdemeanors, by Writing or Speaking, the particular Words, ſuppoſed to be Criminal, muſt not be expreſly ſpecified in ſuch *Indictment or Information?*

Mr. Bar. *Lovell*. My Lords, I have always taken it to be ſo, and by conſtant Experience we have practis'd it ſo, that all Words and Writings, which are ſuppoſed to be Criminal, ought to be expreſly mentioned in the Information or Indictment.

Mr. Juſt. *Dormer*. My Lords, I am of Opinion, That by the Laws of *England*, and conſtant Practice in all Proſecutions, by Indictment or Information for Crimes and Miſdemeanors, in Writing or Speaking, the particular Words ſuppoſed to be Criminal, ought to be ſpecify'd in ſuch Indictment or Information, in the Courts of *Weſtminſter-Hall*.

Mr. Bar. *Bury*. My Lords, I am of the ſame Opinion with my Brothers.

Mr. Juſt. *Tracy*. My Lords, I am of the ſame Opinion.

Mr Juſt. *Gould*. My Lords, I am of the ſame Opinion. It is our Practice in the *King's-Bench*; and we ſpecify the Words in the Indictment, or it is Cauſe of Demurrer.

Mr. Juſt. *Blencove*. My Lords, I am of the ſame Opinion with my Brothers.

Mr. Juſt. *Powys*. My Lords, I am of the ſame Opinion.

Mr. Juſt. *Powell*. My Lords, The Law of *England* is certainly ſo.

Lord Chief Baron. My Lords, I am of the ſame Opinion.

Lord Chief Juſt. *Trevor*. My Lords, I am of the ſame Opinion, That by the Laws of *England* the Words ought to be ſpecify'd in the Indictment or Information.

[*Then the Lords adjourned to the Houſe of Lords as before.*]

Note, *The Lords did not come again into* Weſtminſter-Hall *'till* Monday *the* 20*th of this Month of* March; *but in order to the Delivery of their Opinions, did on ſome of the intermediate Days come to theſe following Reſolutions*, viz.

Saturday, *March* 11.

Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That this Houſe will proceed to the Determination of the Impeachment of Doctor *Henry Sacheverell* according to the Law of the Land, and *the Law and Uſage of Parliament*.

Tueſday, *March* 14.

It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That by *the Law and Uſage of Parliament*, in Proſecutions by *Impeachments* for High Crimes and Miſdemeanors, by Writing or Speaking, the particular Words ſuppoſed to be Criminal are *not neceſſary* to be expreſly ſpecify'd in ſuch *Impeachments*.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That on *Thurſday* next, at Eleven a-Clock, this Houſe ſhall proceed upon the Impeachment of *Henry Sacheverell*, Doctor in Divinity, Article by Article.

Thurſday, *March* 16.

It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Commons have made good their firſt Article of Impeachment againſt *Henry Sacheverell*, Doctor in Divinity.

Friday, *March* 17.

The like Queſtions were ſeverally put concerning the Second, Third, and Fourth Articles, and ſeverally Reſolved in the Affirmative.

It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Commons have made good the Second, Third and Fourth Articles of their Impeachment againſt *Henry Sacheverell*, Doctor in Divinity.

Saturday, *March* 18.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Queſtion to be put to each Lord in *Weſtminſter-Hall* ſhall be,

Is *Henry Sacheverell*, Doctor in Divinity, Guilty of High Crimes and Miſdemeanors, charged on him by the Impeachment of the Houſe of Commons? And the Anſwer thereunto ſhall be, Guilty, or Not Guilty, *only*.

Monday, *March* 20.

The Lords coming down from *Weſtminſter-Hall*, and being ſeated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counſel, as before:

Lord Chancellor. Your Lordſhips having fully heard and conſidered of the Evidence and Arguments in this Caſe, have agreed upon a Queſtion, which is ſeverally to be put to your Lordſhips in the uſual Order. The Queſtion is this, That Doctor *Henry Sacheverell* is Guilty of High Crimes and Miſdemeanors, charged on him by the Impeachment of the Houſe of Commons.

Lorch Chancellor. Lord *Pelham*, What is your Lordſhip's Opinion; Is Doctor *Henry Sacheverell* Guilty of High Crimes and Miſdemeanors, charged on him by the Impeachment of the Houſe of Commons?

Lord *Pelham*, Guilty.

The ſame Queſtion was ſeverally put to the reſt, whoſe Names and Votes are as follow:

Lord *Hervey*, Guilty.

Lord *Conway*, Not Guilty.
Lord *Guernſey*, Not Guilty.
Lord *Hallifax*, Guilty.
Lord *Haverſham*, Not Guilty.
Lord *Herbert*, Guilty.
Lord *Weſton*, Not Guilty.
Lord *Leimpſter*, Not Guilty.
Lord *Guilford*, Not Guilty.
Lord *Stawell*, Not Guilty.
Lord *Dartmouth*, Not Guilty.
Lord *Oſſulſton*, Guilty.
Lord *Osborne*, Not Guilty.
Lord *Craven*, Not Guilty.
Lord *Cornwallis*, Guilty.
Lord *Berkeley* of *Stratton*, Not Guilty.
Lord *Lexington*, Not Guilty.
Lord *Rockingham*, Guilty.
Lord *Colepeper*, Guilty.
Lord *Byron*, Guilty.
Lord *Leigh*, Not Guilty.
Lord *Mohun*, Guilty.
Lord *Howard* of *Eſcrick*, Not Guilty.
Lord *Hunſdon*, Guilty.
Lord *Chandos*, Not Guilty.
Lord *North* and *Gray*, Not Guilty.
Lord *Paget*, Guilty.
Lord *Willoughby* of *Broke*, Not Guilty.
Lord *Fitzwalter*, Guilty.
Lord *Ferrers*, Not Guilty.
Lord *De la War*, Guilty.
Biſhop of St. *Aſaph*, Guilty.
Biſhop of *Norwich*, Guilty.
Biſhop of *Cheſter*, Not Guilty.
Biſhop of *Lincoln*, Guilty.
Biſhop of *Bath* and *Wells*, Not Guilty.
Biſhop of *Oxford*, Guilty.
Biſhop of *Peterborough*, Guilty.
Biſhop of *Ely*, Guilty.
Biſhop of *Sarum*, Guilty.
Biſhop of *Rocheſter*, Not Guilty.
Biſhop of *Durham*, Not Guilty.
Biſhop of *London*, Not Guilty.
Lord Viſcount *Weymouth*, Not Guilty,
Lord Viſcount *Say* and *Sele*, Not Guilty.
Earl of *Iſlay*, Guilty.
Earl of *Glaſgow*, Guilty.
Earl of *Roſeberry*, Guilty.
Earl of *Seafield*, Guilty.
Earl of *Orkney*, Guilty.
Earl of *Northesk*, Not Guilty.
Earl of *Leven*, Guilty.
Earl of *Wymes*, Not Guilty.
Earl of *Loudoun*, Guilty.
Earl of *Mar*, Not Guilty.
Earl of *Crawford*, Guilty.
Earl of *Cholmley*, Guilty.
Earl *Powlet*, Not Guilty.
Earl of *Wharton*, Guilty.
Earl of *Greenwich*, Guilty.
Earl of *Grantham*, Guilty.
Earl of *Jerſey*, Not Guilty.
Earl of *Orford*, Guilty.
Earl of *Bradford*, Guilty.
Earl of *Warrington*, Guilty.
Earl of *Scarborough*, Not Guilty.
Earl of *Portland*, Guilty.
Earl of *Plymouth*, Not Guilty.
Earl of *Holderneſs*, Guilty.
Earl of *Abington*, Not Guilty.
Earl of *Rocheſter*, Not Guilty.
Earl of *Nottingham*, Not Guilty.
Earl of *Berkeley*, Guilty.
Earl of *Yarmouth*, Not Guilty.
Earl of *Radnor*, Guilty.
Earl of *Suſſex*, Not Guilty.
Earl of *Carliſle*, Guilty.
Earl of *Angleſey*, Not Guilty.
Earl of *Scarſdale*, Not Guilty.
Earl of *Sunderland*, Guilty.
Earl of *Thanet*, Not Guilty.
Earl of *Winchelſea*, Guilty.
Earl of *Stamford*, Guilty.
Earl *Rivers*, Guilty.
Earl of *Berkſhire*, Not Guilty.
Earl of *Mancheſter*, Guilty.
Earl of *Weſtmorland*, Guilty.
Earl of *Denbigh*, Not Guilty.
Earl of *Northampton*, Not Guilty.
Earl of *Leiceſter*, Guilty.
Earl of *Bridgwater*, Guilty.
Earl of *Dorſet* and *Middleſex*, Guilty.
Earl of *Lincoln*, Guilty.
Earl of *Pembroke*, Not Guilty.
Earl of *Derby*, Guilty.
Marquis of *Dorcheſter*, Guilty.
Lord Chamberlain of the Houſhold, Guilty.
Duke of *Dover*, Guilty.
Duke of *Roxborough*, Guilty.
Duke of *Montroſs*, Guilty.
Duke *Hamilton*, Not Guilty.
Duke of *Buckinghamſhire*, Not Guilty.

Duke of *Bedford*, Guilty.
Duke of *Leeds*, Not Guilty.
Duke of *Shrewsbury*, Not Guilty.
Duke *Schomberg*, Guilty.
Duke of *Bolton*, Guilty.
Duke of St. *Albans*, Guilty.
Duke of *Northumberland*, Not Guilty.
Duke of *Beaufort*, Not Guilty.
Duke of *Ormond*, Not Guilty.
Duke of *Grafton*, Guilty.
Duke of *Richmond*, Guilty.
Duke of *Cleveland* and *Southampton*, Guilty.
Lord Steward, Guilty.
Lord Privy Seal, Guilty.
Lord Preſident, Guilty.
Lord Treaſurer, Guilty.
Archbiſhop of *York*, Not Guilty.
Lord Chancellor, Guilty.

Then ſome Time being ſpent by the Lord Chancellor in numbering the Opinions of the Lords :

Lord Chancellor. My Lords, I have caſt them up with as much Exactneſs as I can ; and I find that there are of your Lordſhips preſent in all One Hundred Twenty-one; of theſe Sixty-Nine of your Lordſhips have found Dr. *Henry Sacheverell* Guilty of the High Crimes and Miſdemeanors charged on him by the Impeachment of the Houſe of Commons, and Fifty-Two have found him Not Guilty.

Then Dr. *Henry Sacheverell* was brought to the Bar, and kneel'd till he was bid to ſtand up by the Lord Chancellor.

Lord Chancellor. Dr. *Henry Sacheverell*, The Lords having fully conſidered of your Caſe, have found you Guilty of High Crimes and Miſdemeanors, charged on you by the Impeachment of the Houſe of Commons.

Dr. *Sacheverell.* My Lords, One of your Lordſhips Officers acquainted me, that it was your Lordſhips Order, That neither I nor my Counſel might have the Privilege of ſtanding at the Bar while your Lordſhips were giving your Opinions whether I was Guilty of the Crimes laid to my Charge; by which Means I was prevented from offering ſeveral Matters to your Lordſhips Conſideration in Arreſt of Judgment, which I now beg leave to offer to your Lordſhips Conſideration, and I deſire my Counſel might be heard to them.

The firſt is, That no entire Clauſe, Sentence or Expreſſion, contained in either of my Sermons or Dedications, is particularly ſet forth in my Impeachment, which I have already heard the Judges declare to be neceſſary in all Caſes of Indictments or Informations.

I deſire to add another Exception, That the Impeachment is by the Knights, Citizens and Burgeſſes, Commiſſioners of Shires and Burghs, in the Name of themſelves, and of all the Commons of *Great Britain* ; but the Articles are only by the Knights, Citizens and Burgeſſes, in the Name of Themſelves, and of all the Commons of *Great Britain* ; which is neither agreeable to the Impeachment, nor to the Title of the Houſe of Commons ſince the happy Union.

Then the Lords adjourned to the Houſe of Lords,

Where they took into Conſideration the Matter moved by Dr. *Sacheverell* in Arreſt of Judgment ; and thereupon ordered,

That this Houſe will, To-morrow, at eleven of the Clock, take into Conſideration what Cenſure to paſs upon the ſaid Dr. *Henry Sacheverell.*

Tueſday, March 21.

The Lords, upon Debate in the Houſe of Lords, agreed upon the Judgment to be paſſed in this Caſe upon Dr. *Henry Sacheverell*, in the Form hereafter mentioned.

Wedneſday, March 22, *in the Houſe of Lords.*

A Meſſage was ſent to the Houſe of Commons, to acquaint them, That the Lords are ready to give Judgment in the Caſe of *Henry Sacheverell*, Doctor in Divinity, if they, with their Speaker, will come and demand the ſame.

Thurſday, March 23, *in the Houſe of Lords.*

A Meſſage was brought from the Houſe of Commons, to acquaint the Houſe of Lords, That the Houſe of Commons, with their Speaker, do intend immediately to come to the Houſe of Lords, to demand Judgment againſt Dr. *Henry Sacheverell*; and therefore deſire that the Painted-Chamber, and Paſſage to the Houſe (of Lords) may be cleared.

The Meſſengers were called in and told, the Lords would give Order as deſired.

Which was done accordingly.

Then the Houſe of Lords adjourned during Pleaſure to Robe.

And being reſumed,

The Commons, with their Speaker, being preſent at the Bar of the Houſe of Lords,

The Deputy Gentleman-Uſher of the Black-Rod brought the Priſoner to the Bar, who after low Obeiſances made, kneel'd, until the Lord Chancellor bid him ſtand up.

Then the Speaker ſaid as followeth, *viz.*

My Lords, The Knights, Citizens and Burgeſſes in Parliament Aſſembled, in the Name of themſelves, and of all the Commons of *Great Britain*, did at this Bar Impeach Dr. *Henry Sacheverell* of High Crimes and Miſdemeanors, and did exhibit Articles of Impeachment againſt him, and have made good the ſame :

I do therefore, in the Name of the Knights, Citizens and Burgeſſes in Parliament Aſſembled, and of all the Commons of *Great Britain*, demand Judgment of your Lordſhips againſt Dr. *Henry Sacheverell*, for the ſaid High Crimes and Miſdemeanors.

Then the Lord Chancellor ſaid,

Mr. *Speaker*, The Lords are now ready to proceed to Judgment in the Caſe by you mentioned.

Dr. *Sacheverell*, the Lords having found you Guilty of High Crimes and Miſdemeanors, charged on you by the Impeachment of the Houſe of Commons ; and you being thereupon admitted to the Bar, and acquainted therewith, moved two Things in Arreſt of Judgment.

Firſt, That no entire Clauſe of either of the Books or Sermons referred to in the Impeachment, is ſpecify'd, or paticularly ſet forth, in any of the Articles of Impeachment.

Secondly, That in the Title of the Articles exhibited by the Commons, the Stile of the Commons run thus:

" The Knights, Citizens and Burgeſſes in Parliament Aſſembled, in " the Name of themſelves, and of all the Commons of *Great Britain*, " &c." Omitting the Words, Commiſſioners of Shires and Burghs.

I am to acquaint you, That the Lords took theſe Points into Conſideration.

I. And as to the Firſt, they found,

That on Occaſion of the Queſtion before put to the Judges in *Weſtminſter-Hall* in this Caſe, and their Anſwer thereto, their Lordſhips had before fully debated and conſidered of that Matter, and had come to the following Reſolution:

That this Houſe will proceed to the Determination of the Impeachment of Dr. *Henry Sacheverell*, according to the Law of the Land, *and the Law and Uſage of Parliament*.

And after, to this Reſolution;

That by *the Law and Uſage of Parliament*, in Proſecutions *by Impeachments* for High Crimes and Miſdemeanors, by Writing or Speaking, the particular Words ſuppoſed to be criminal are not *neceſſary* to be *expreſly ſpecified* in ſuch *Impeachments*.

So that, in their Lordſhips Opinion, the Law and Uſage of the High Court of Parliament being a *Part of the Law of the Land*, and that Uſage not requiring the Words ſhould be expreſly ſpecified in *Impeachments*, the Anſwer of the Judges, which related only to the Courſe uſed in *Indictments and Informations*, does not in the leaſt affect your Caſe.

II. As to the Second,

Their Lordſhips finding, that in the Act made in the Sixth Year of Her now Majeſty, *For rendering the Union of the two Kingdoms more entire and compleat*, the Terms *Commiſſioners of Shires* and *Knights of the Shires*, *Commiſſioners of Boroughs* and *Burgeſſes*, are uſed as ſynonymous Terms, ſignifying the ſame Thing; they were clearly of Opinion, there can be no Weight in that Exception, and accordingly over-ruled the ſame; without entering into the further Conſideration, how far a Miſtake in the Title of the Articles, would viciate or avoid an Impeachment, if ſuch a Miſtake had happened.

So that the Lords find themſelves obliged *by Law* to proceed to Judgment againſt you, which I am ordered to pronounce.

And in which you cannot but obſerve an extreme Tenderneſs towards your Character, as a Miniſter of the Church of *England*.

Therefore this High Court doth adjudge as followeth,

That you, Henry Sacheverell, *Doctor in Divinity, ſhall be, and you are hereby enjoined not to preach during the Term of three Years next enſuing.*

That your two printed Sermons, referred to by the Impeachment of the Houſe of Commons, ſhall be burnt before the Royal Exchange *in* London, *between the Hours of one and two of the Clock, on the twenty-ſeventh day of this inſtant* March, *by the Hands of the common Hangman, in the Preſence of the Lord Mayor of the City of* London, *and the Sheriffs of* London *and* Middleſex.

Then the Speaker with the Commons returned to their Houſe; and Dr. *Sacheverell* being withdrawn,

The Houſe was adjourned during Pleaſure to unrobe.

The Houſe was reſumed.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Dr. *Henry Sacheverell*'s two printed Sermons, one preached at *Derby* Aſſizes, and the other at St. *Paul*'s, *London*, referred to by the Impeachment of the Houſe of Commons, ſhall be burnt before the *Royal-Exchange* in *London*, between the Hours of one and two of the Clock, on the ſeven-and-twentieth day of this inſtant *March*, by the Hands of the common Hangman, in the Preſence of the Lord Mayor of the City of *London*, and the Sheriffs of *London* and *Middleſex*.

To the Lord Mayor of the City of London, *and the Sheriffs of* London *and* Middleſex.

The Houſe taking into Conſideration a Judgment and Decree of the Univerſity of *Oxford*, paſſed in their Convocation the one-and-twentieth of *July*, one thouſand ſix hundred eighty-three, given in Evidence by Dr. *Henry Sacheverell* at his Trial, upon the Impeachment of the Houſe of Commons, and thereupon lately reprinted; It is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Judgment and Decree contains in it ſeveral Poſitions contrary to the Conſtitution of this Kingdom, and deſtructive to the Proteſtant Succeſſion as by Law eſtabliſhed.

It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Judgment and Decree, lately printed and publiſhed in a Book or Pamphlet, entitled, *An entire Confutation of Mr.* Hoadly'*s Book of the Original of Government, taken from the* London Gazette, *publiſhed by Authority*; London, *Reprinted in the Year* 1710. ſhall be burnt by the Hands of the common Hangman, in the Preſence of the Sheriffs of *London* and *Middleſex*; at the ſame Time and Place, when and where the Sermons of Dr. *Henry Sacheverell* are ordered to be burnt.

To the Sheriffs of London *and* Middleſex.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord High Chancellor of *Great Britain* do give Order for the printing and publiſhing the Trial of *Henry Sacheverell*, Doctor in Divinity; and that no other Perſon do preſume to print the ſame. And further, That the laſt mentioned Reſolution and Order agreed on this Day, be printed at the End of the ſaid Trial.

The Lord Haverſham's SPEECH *in the Houſe of Lords, on the firſt Article of the Impeachment of Dr.* Henry Sacheverell.

My LORDS,

WHEN I conſider where this Impeachment firſt began, I cannot but think the Deſign of it was very good; but whatever it was, in its firſt Intendment, it is very evident, it has already produced very miſchievous Effects; it has created great Diſturbances in private Families, and Tumults among the People; and raiſed a Ferment in the Nation, that will not be laid by your Lordſhip's Judgment, let that be what it will. It has been a two-edged Miſchief; giving the Church on one ſide, and the Diſſenter on the other, too juſt Apprehenſion, that they are both in danger. Nor can this be wondered at, when your Lordſhips have been told, by ſome of the Managers, of a *pretended* Divine Right of the Church; and when it has been more than hinted by the Managers of the Houſe of Commons, That the Clergy ought to be directed by the Civil Power what Doctrine they ſhould teach: Nay, when they have authoritatively taken upon them to interpret Scripture, and charged it as a Crime upon a Miniſter, that he had wreſted ſeveral Places of it to his own wicked Intentions.

My Lords, After ſo noble a Defence made for the Doctor by his Counſel, and ſo great and moving an Apology by himſelf, I ſhould not trouble your Lordſhips upon this Occaſion, were it not more in Juſtification of myſelf, for the Judgment I ſhall give, than for the Sake of the Doctor, whoſe Cauſe, I think, now ſtands in very little need of it.

I was, *my Lords*, a Sufferer in the late Reigns, as well as others; I was in the Convention-Parliament, and in the Vote of Abdication; and am, at this Day, of the ſame Principle I was then; and yet, notwithſtanding this, I am not aſhamed to ſay to your Lordſhips, that I think myſelf obliged, in Juſtice, to acquit the Doctor from the Charge brought againſt him in this Article. And tho' this may ſeem ſtrange to ſome of your Lordſhips, yet, I hope, it will not appear ſo very ſtrange as to ſee Biſhops vote againſt their own Doctrines, and Diſſenters in the midſt of a Mob, that are pulling down Meeting-Houſes; eſpecially, after the Reaſons I ſhall offer to your Lordſhips for the Support of my Opinion.

I ſhall not trouble your Lordſhips about the Original of Government, or the divers Forms of it; your Lordſhips heard that learnedly diſcourſed on by one of the Managers of the Houſe of Commons below: But there is one thing, *My Lords*, that if my Memory ſerves me right, that Gentleman omitted, and it is a Matter too that I take to be of the greateſt Conſequence to any Government whatſoever: I mean, the Divine Appointment, or Inſtitution of Government itſelf; from which Appointment it is, that Men are obliged to Obedience to the Magiſtrate, not only for Wrath, or Fear of him, but for Conſcience-ſake, for Dread of a future Puniſhment, which is the greateſt Security the Magiſtrate has. And I the rather mention this, becauſe of Notions that ſome People have of late advanced of their own, (and have found their Advantage too in ſo doing) of a diſcretionary Obedience only; that is, in my Opinion, whilſt the Government is for them, they will be for it; and think themſelves bound to obey no longer. It is not neceſſary, to the Proof of this Divine Authority, to fix the juſt Time and Place, when, and where, and how the Knowledge of it was firſt communicated to Mankind: It is enough, that we have it as expreſly, as plainly, and as clearly declared, as can be put into Words, that it is ſo.

There is another thing, *My Lords*, that in general, I would mention to your Lordſhips, before I come to the Article itſelf, which may otherwiſe be the Occaſion of ſome Miſtake in this Debate; we are not now judging according to our Notions of Politicks, or determining how far Reſiſtance or Non-Reſiſtance is lawful. It would be a ſtrange Rule of Judgment, to find any Man guilty for the ſake of one's own private Opinion, and for the eſtabliſhing a Doctrine which he likes, and his Neighbour does not. But the only Queſtion before your Lordſhips is, Whether, and how far, the Houſe of Commons have made good their Charge againſt the Doctor? And, I take Liberty to ſay plainly to your Lordſhips, that, in my Opinion, they have been very far from making good their Charge againſt him in this Article.

My Lords, to prevent the leaſt Miſtake, I ſhall read the Words of the Article to your Lordſhips, as they ſtand in the Impeachment.

" He, the ſaid *Henry Sacheverell*, in his ſaid Sermon preach'd at St. " *Paul*'s, doth ſuggeſt and maintain, That the neceſſary Means uſed to " bring about the ſaid happy Revolution were odious and unjuſtifiable: " That his late Majeſty, in his Declaration, diſclaim'd the leaſt Imputa- " tion of Reſiſtance, and that to impute Reſiſtance to the ſaid Revolution, " is to caſt black and odious Colours upon his late Majeſty and the ſaid " Revolution."

The Doctor in this Article is charged with having maintained, *That the neceſſary Means uſed to bring about the late happy Revolution were odious and unjuſtifiable.* To ſupport this, the Commons ſay, That having aſſerted the general Propoſition of the Unlawfulneſs of Reſiſting the Supreme Power. and not having excepted the particular Caſe of Reſiſtance that was made uſe of as a means to bring about the late happy Revolution; he does thereby reflect both upon the Means, and upon the ſaid Revolution. In Anſwer to this, there have been two Things inſiſted upon to your Lordſhips, in behalf of the Doctor, by his Counſel: Firſt, That in Caſes of ſuch a Nature as this, the Exception is always imply'd in the general Rule; and there was a very unanſwerable Inſtance brought in Proof of this, at leaſt to moſt of your Lordſhips; it was the Oath of Allegiance to King *James*. All thoſe that took that Oath, took it in general Words, and yet ſuch an extraordinary Caſe as the Revolution was excepted, tho' not expreſs'd by thoſe that took that Oath. The next was, the Doctor, ſay they, would have been juſtly more blam'd, had he mention'd all the Caſes of Exception, which extraordinary Caſes ought to anſwer for themſelves, whenever they fall out.

And tho', *My Lords*, theſe two be a full Anſwer, yet there are two things more, I think, with Submiſſion, may be added to it, which have not as yet been taken notice of.

The firſt is, *My Lords*, That the Proof againſt the Doctor is drawn by Conſequences of the Commons own making, which he himſelf diſowns; and I appeal to that Reverend and Learned Bench, who are great Maſters of Controverſy, whether it is not an eſtabliſhed Rule amongſt all learned Men that have the leaſt Spark of Ingenuity, That no Man ought to be charged with Conſequences, let them appear to his Adverſary never ſo clearly and undeniably to follow from his Aſſertion, when he himſelf denies thoſe Conſequences. This is ſo known a Maxim, in all Diſputes between Proteſtants and Papiſts, and between Proteſtants themſelves, that it cannot be denied. Now, the Doctor himſelf denying, as he does, that he had the leaſt Thought of including the Revolution under his general Aſſertion, or that he apply'd his Doctrine of Non-Reſiſtance to that Caſe, cannot, without the higheſt Injuſtice, be charged with Conſequences which he himſelf utterly denies.

In the next place, it is impoſſible, in my Opinion, to prove that Reſiſtance was made uſe of as a Means to bring about the late happy Revolution: and, conſequently, is not within the Doctor's general Maxim.

Means, *My Lords*, is a relative Term, and refers to ſome End; and Deſign of the Prince of *Orange* in his coming hither, and of thoſe that joined him when he was here, being to have the Nation and Rightful Succeſſion ſecur'd by a Free Parliament, it follows, that whatever Force was at that Time made uſe of, could not be made uſe of as a Means to bring about an End which was never intended.

Far be it from me, *My Lords*, to leſſen the great Undertaking to deliver us from Popery and Arbitrary Power; and tho' the Glory of that Enterprize is wholly attributed to King *William*, 'tis certain her preſent Majeſty had a Share in it; however, that is forgotten: For, give me leave to ſay, that had not her Majeſty countenanc'd the Undertaking of the Prince of *Orange* with her Aſſiſtance, in my Opinion, the Succeſs had been very dubious.

Now, is it poſſible, *My Lords*, to imagine, that it was ever the Deſign of her Majeſty, or thoſe that join'd the Prince of *Orange*, to take the Crown off of King *James*'s, and put it upon King *William*'s Head?

No, *My Lords*; the avowed great Deſign was quite otherwiſe, as appears by the Declaration itſelf, which was read below: It was to reſtore and ſecure our Laws from the Invaſions that had been made upon them by Arbitrary Power: It was to ſecure that Right which all the World knows the Princeſs had to the Succeſſion of the Crown, and to have every thing ſettled by a free Parliament, and not to make a Revolution by dethroning King *James*. This the Prince himſelf owns, when he ſays in his Declaration, 'he had no other Deſign in coming hither, but a Free Parliament.'

My Lords, I take it to be of moſt dangerous Conſequence, to judge any Man by Suggeſtions and Innuendos: Let what will be ſaid to juſtify it, it ſhall never be the Rule of my Judgment.

Groundleſs Suggeſtions, *My Lords*, have, within my Memory, been the Pretence of Power, to cover illegal Oppreſſion with the Shew of Reaſon, to the Publick. I will give your Lordſhips but one Inſtance of it: It was the Caſe of a Reverend Prelate, now in the Houſe; I mean the Archbiſhop of *York*; his Grace was then Dr. *Sharpe* only. It was in the Year Eighty-ſix; there was an Order, directed by way of Letter to the Proteſtant Biſhops, to diſcharge all the inferior Clergy from preaching upon controverted Points in Divinity. They thought it ſerved the Deſigns of Popery, then to direct Miniſters how they ſhould preach; which was, in effect, to forbid them to defend their Religion. This Precedent was taken from an Order in Queen *Mary*'s Time, ſays the printed Account; when at the ſame Time, it was attacked by the *Romiſh* Prieſts with all the Vigour they were capable of, whilſt the Popiſh Sermons and Diſcourſes were printed by Authority. Notwithſtanding this Order, the Doctor took occaſion, in ſome of his Sermons, to vindicate the Church of *England*, in oppoſition to the Frauds and Corruptions of Popery. But this, by the Court Emiſſaries, was interpreted much the ſame way as the Doctor's Sermon is now, to be endeavouring to beget in the Minds of his Hearers an ill Opinion of the King and his Government, by inſinuating Fears and Jealouſies, to diſpoſe them to Diſcontent, and to lead them into Schiſm, Diſobedience, and Rebellion.

My Lords, when the Homilies and Articles, when ſo many Archbiſhops and Biſhops, and the Univerſity, and moſt of the Foreign Divines too, eſpecially the *Lutherans*, have aſſerted the ſame Doctrine of Non-Reſiſtance to the Supreme Power, as Doctor *Sacheverell* has; I think it the hardeſt Caſe in the World, that this unfortunate Gentleman ſhould thus be ſingled out and made a Criminal, and a kind of Martyr, enduring the Trial of cruel Mockings, yea, moreover, of Bonds and Impriſonment, for aſſerting the ſame Doctrine. 'Tis true, *Beza* and *Pareus*, and ſome others of the *Calviniſts*, are of another Opinion; but 'tis known, that *Pareus*'s Commentary on the 13th of the *Romans* was burnt at *Oxford*, by the Order of King *James* I. for aſſerting that Doctrine.

But there is one Thing, *My Lords*, ſo aſtoniſhing in this Proſecution, that I cannot but take notice of it: Thoſe who were at Man's Eſtate at the Revolution, know how induſtrious, on the one ſide, all that were Friends to King *James* were, to put his leaving the Nation then upon the Foot of Force and Reſiſtance, as thinking this the ſtrongeſt and beſt Argument to juſtify his withdrawing himſelf from his People. They rack'd their Brains to find out Arguments to convince Men, that his Life was manifeſtly in Danger by ſtaying here; and that it was for the ſake of that, and his Liberty, that he was forc'd to withdraw; and that his withdrawing was juſt, being an Act of Neceſſity, and not of Choice.

On the other ſide, theſe that were Friends to the Revolution, made it their Buſineſs to perſuade the World, that all this was but a Colour and Pretence, and that the Fact was quite otherwiſe; that the Senſe and Conviction King *James* had of what he had done, prevail'd upon him rather to throw off the Government, than concur with a Free Parliament.

That this was the only Foot they then put it upon; and that it was not then put upon the Foot of forfeiting the Government by Male-Adminiſtration; if any Man denies, I appeal to the Papers that were then writ, and are now in Print, on this Subject.

This being ſo, it is very ſtrange to ſee ſo great an Alteration in Men's Notions of Things; and that now, after our Conſtitution has maintain'd itſelf upon this Foot, againſt all Deſigns and Attempts that have been made upon it, for above twenty Years, thoſe very Men, and that Party, who endeavour'd to place the Revolution then, upon King *James*'s voluntary Deſertion, which they call'd *Abdication*, ſhould now, without any Reaſon given, be for changing that Foundation, and do all they can to put it upon King *James*'s Foot of Force and Reſiſtance. What, *My Lords*, are we endeavouring, after twenty Years, to make King *James*'s Title better now than any of his Friends could make it then, and not only finding out Arguments they never thought of, but impeaching any that dare ſo much as queſtion the Truth and Force of them? This, *My Lords*, ſeems very ſtrange.

My Lords, I cannot but take Notice to your Lordſhips of what was ſaid by that noble Lord, who ſpoke laſt, becauſe to me it appears to be a Matter of the laſt Conſequence to the Honour of her preſent Majeſty. He told your Lorſhips, that the beſt Title her Majeſty had to the Crown, was her Parliamentary Title. I muſt take Liberty to affirm the quite contrary; and that, in my Opinion, the beſt Title her Majeſty has, is her Hereditary Title; tho' I deny not, but that the Act of Parliament is a Strengthening and Confirmation of that Title: But I deny a Parliamentary Title to be the only, or the beſt Title that the Queen has to the Crown ſhe wears. And in ſaying this, I do not fear the malicious Reflections of having a ſquinting Regard to the Title of any Perſon on the other Side the Water; for in affirming (as I now do to your Lordſhips) that her Majeſty is my Rightful and Lawful Queen by Right of Inheritance; and as ſhe is Daughter to King *James* the Second, I do in ſo many Words affirm alſo, that there is no other Perſon the Rightful and Lawful Heir to King *James* but herſelf. And if the preſent Impeachment of Dr. *Sacheverell* ſhall have this Effect (as I hope it will) to convince the Nation of the undoubted Truth of her Majeſty's Right of Inheritance to the Crown, (a Matter now ſo induſtriouſly oppoſed) the Security this will bring to her Majeſty's Perſon and Crown, and to the Succeſſion in the Proteſtant Line, and Illuſtrious Houſe of *Hanover* afterwards, ſhall prevail with me eaſily to pardon any warm and unguarded Expreſſions that the Doctor may here and there have dropt, and made uſe of in any of his Diſcourſes.

The Biſhop of Saliſbury*'s Speech * in the Houſe of Lords, on the firſt Article of the Impeachment of Dr.* Henry Sacheverell.

THE Counſel for the Priſoner did ſo plainly and fully yield all that any Loyal Subject has ever pretended to, that in Caſes of extreme Neceſſity Self-defence and Reſiſtance were lawful, and that this was the Caſe at the Revolution; that it may not be neceſſary to ſay any thing further on this Head, if it had not been that the Evidence they brought ſeemed to carry this Matter much farther, and that the Priſoner himſef allow'd of no Exception in Caſes of Neceſſity. And ſince it is grown to be a vulgar Opinion, That by the Doctrine of the Church of *England*, all Reſiſtance in any Caſe whatſoever, without Exception, is condemn'd; I think it is incumbent on me, who have examin'd this Matter long and carefully, to give you ſuch a clear Account of this Point, as may as fully ſatisfy you as it did myſelf.

I ſerved in the Revolution, and promoted it all I could. I ſerved as Chaplain to the late King: I had no Command, and carried no Arms but I was ſo far engaged in it, that if I could ſee that I had gone out of the Way in that (and the many Up-and-Downs we have gone through ſince, has given much Occaſion to reflect on that Tranſaction), I ſhould hold myſelf unworthy to appear longer, either in this Habit, or in this Great Aſſembly; but ſhould think myſelf bound to paſs away the reſt of my Life in Retirement, or Sorrow. There is nothing more certain in Religion, than that we ought to repent of every Sin we have committed; and that we cannot truly repent, unleſs we repair or reſtore as far as it is in our Power.

I go now to give you the Account of the Doctrine of our Church in this Particular. In the Times of Popery it was a Tenet, built upon Biſhops ſetting the Crown on the Heads of Princes, and anointing them, that they held their Crowns of the Church, and at the Pope's Mercy, who had for about five hundred Years got into the Claim of depoſing them, and giving their Dominions to others, in caſe they were Hereticks, or the Favourers of them. But the Reformation being in its firſt Beginning protected by the Princes of *Germany*, by the Kings of the *North*, and then by the Kings of *England*; they came every-where in Oppoſition to the Papal Notions, to ſay that Kings had their Power from God: Not that they meant, that they had any diſtinct Authority beſides the Law of the Land derived to them from God; but that by the Laws of God, the Authority of the Law of the Land was ſecured to them. For when a different Authority from that of the Law came to be pretended to, and to be grounded on theſe general Expreſſions, that received here a Parliamentary Cenſure, and it was then declared, that the Laws of Religion in the Scripture did only eſtabliſh the ſeveral Conſtitutions and Governments that were in the different Parts of the World.

The Occaſion that the Apoſtles had to write what we find in their Epiſtles, with relation to Government, was this: The Jews had a Notion among them, from a Paſſage in *Deuteronomy*, that they were only to ſet a King over them, *One from among their Brethren, and not a Stranger*. From whence it is, That to this day they do not think they are bound in Conſcience to obey any Magiſtrate who is not one of their Nation. Now the firſt Converts to Chriſtianity being Jews, the Apoſtles took Care that they ſhould not bring this dangerous Notion with them into the Chriſtian Religion: But they did not meddle to determine where this Authority was lodged, that was to be gathered out of the ſeveral Conſtitutions: They did not determine how much was due to the Emperor, and how much to the Senate; and tho' not long after thoſe Epiſtles were writ, the Senate condemn' *Nero* to die *more majorum*, to be whip'd to Death, none of the Chriſtians interpoſed in that Matter. He prevented that infamous Death by his own Hands: And the Primitive Chriſtians reckon'd it one of the Articles of the Glory of their Religion, that their firſt Perſecutor came to ſuch an End.

Not long after that *Trajan* was famed for that memorable Expreſſion, when he deliverd the Sword to the Governors of the Provinces as the Emblem of their Authority, he uſed theſe Words, *Pro me, ſi merear, in me*: For me, but if I deſerve it, againſt me. That did not weaken his Authority; his Government, with that of his Succeſſors for above eighty Years, being the greateſt and happieſt Time the *Romans* had under their Emperors. This Word was put on King *James* the Firſt's Coin in *Scotland*. It is true, that was during his Minority; but when he afterwards changed his Motto, the Coin was not call'd in, but continued current till the Union.

The Primitive Chriſtians had no Laws in their Favour, but many againſt them: So their patient ſuffering ſo many Perſecutions, according to the Laws of the Empire under which they lived, was conform to the Doctrine laid down by the Apoſtles. When they came afterwards to have the Protection of Laws, they claim'd the Benefit of them, not without great Violence, when they thought an Infraction was made on thoſe Laws; which broke out into great Tumults, in many of the chief Cities of the Empire, not excepting the Imperial City itſelf.

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* *Dr.* Gilbert Burnet.

But to proceed with the Hiſtory of our Church: When the Articles of Religion were ſettled, the Books of the *Apocrypha* were indeed declared not to be a part of the Canon of the Scripture, but yet to be uſeful for the *Example of Life*, and the *Inſtruction of Manners*. A great Part of theſe are the Books of the *Maccabees*, which contain the Hiſtory of the Jews ſhaking off the Yoke of the King of *Syria*, when they were broke in upon by a total Overthrow of their whole Law, and an unrelenting Perſecution. *Mattathias* a private Prieſt began the Reſiſtance which was carried on by his Children, till they ſhook off the *Syrian* Yoke, and formed themſelves into a free Government, under the Family of the *Maccabees*. It were eaſy to ſhew that the Jews had been for above 400 Years ſubject, firſt to the *Babylonian*, then to the *Perſian*, and at laſt to the *Grecian* Empire: So that by a long Preſcription they were Subjects to the Kings of *Syria*. It were eaſy alſo to ſhew, that this Reſiſtance was foretold by *Daniel*, in Terms of high Commendation, and is alſo mentioned in the Epiſtle to the *Hebrews*, as the Work and Effect of their *Faith*. If then all Reſiſtance to illegal and barbarous Perſecution is unlawful, theſe Books contain nothing but a Hiſtory of a Rebellion, and all the Devotion that runs thro' them, is but a Cant, and inſtead of reading them as *Example of Life*, and *Inſtruction of Manners*, we ought to tear them out of our Bibles with Deteſtation. I ſhall afterwards ſhew what uſe was made of theſe Books, not only by private Writers of our Church, but by what the whole Body in Convocation was about to determine.

The next Step to be made, is, to conſider the Homilies: The Second Book of Homilies, which has the Homilies in it againſt *Wilful Rebellion*, is generally believed to have been compoſed by Biſhop *Jewell*, who was by much the beſt Writer in that time. It is certain, he underſtood the Meaning of them well: Now I will read you two Paſſages out of his Defence of his Apology for the Church of *England*; from whence we may clearly gather what his Notion of Rebellion was, and that he thought a Defence againſt unjuſt and illegal Violence was not Rebellion. In one place he has theſe Words:

The Nobles of Scotland *neither drew the Sword, nor attempted War againſt the Prince: They ſought only the Continuance of God's undoubted Truths, and the Defence of their own Lives againſt your barbarous and cruel Invaſions: They remember'd beſides all other Warnings, your late Dealings at* Vaſſy, *where great Numbers of their Brethren were murder'd, being together at their Prayers in the Church, holding up their innocent Hands to Heaven, and calling upon God.* In another place he writes, *Neither do any of all theſe* (Luther Melanchthon) *teach the People to rebel againſt their Prince, but only to defend themſelves by all lawful Means againſt Oppreſſions; as did* David *againſt* Saul, *ſo do the Nobles in* France *at this day, they ſeek not to kill, but to ſave their own Lives.*

Theſe Paſſages ſhew that he looked on Rebellion to be a violent Riſing againſt a Prince executing the Laws; which was the Caſe of the three Rebellions in *England* that they had in view: That in King *Henry* the VIIIth's, in King *Edward*'s, and in Queen *Elizabeth*'s Time, where the Papiſts took Arms againſt their Prince, who was executing Laws made in Matters of Religion, and that with a great Gentleneſs. Of the eleven Paſſages quoted by the Priſoner out of the Homilies, five plainly relate only to the coercing the Perſon of the Prince, in which *David* is ſet in Oppoſition to thoſe Rebels: Now, tho' he indeed defended himſelf, yet he had a juſt and ſacred Tenderneſs to the Perſon of *Saul*, when he had him in his Power, which is certainly ſacred by our Conſtitution. Five of them relate to wicked Princes. It was never pretended by any who pleaded for Neceſſary Defence, that the bad Life of a Prince can be a juſt Cauſe of Reſiſtance: Yet that was then pretended; for King *Henry* VIII. had given too much occaſion to reckon him a wicked Prince. So there is only one of all the Paſſages quoted from thoſe Homilies, that relates ſimply to Rebellion in general: And it has appear'd what Biſhop *Jewell*'s Senſe of the Matter was. There is alſo a Prayer at the End of every Diviſion of the Homily againſt *Wilful Rebellion*, (and, by the bye, *Wilful* was not put in the Title for nothing) for thoſe oppreſſed by Tyranny in other Parts, that they might be relieved, and that thoſe who were in fear of their Cruelty might be comforted.

Let us next look thro' Queen *Elizabeth*'s long and glorious Reign, and ſee what was the conſtant Maxim of that Time.

The Year after the Queen came to the Crown, the War in *Scotland* broke out between the Queen Regent that govern'd by Commiſſion, from her Daughter then Queen of *France*, and the Lords in *Scotland*. She, to obtain the Matrimonial Crown to be ſent to *Francis* II. gave Aſſurances for the Exerciſe of the Reformed Religion; but the Point being gain'd, ſhe broke all her Promiſes, and reſolved to force them to return to the Exerciſe of the Popiſh Religion. Upon which the Lords of *Scotland* formed themſelves into a Body, and were called the Lords of the Congregation. Forces were ſent from *France* to aſſiſt the Queen Regent; upon that Queen *Elizabeth* enter'd into an Agreement with the *Scottiſh* Lords, and ſent an Army to their Aſſiſtance, which continued in *Scotland* till all Matters were ſettled by the Pacification of *Leith*: And in a *Manifeſto*, that I have in my Hands, ſet forth twenty-five Years after that, I find her reflecting on that Interpoſition in the Affairs of that Nation, with great Satisfaction.

The Year after this War was ended, upon *Francis* the IId's Death, *Charles* the IXth, who was a Child, ſucceeded in *France*. Edicts were granted in favour of the Proteſtants: Theſe were ſoon after broken by the Triumvirate, and upon that followed a Series of Wars often pacified, but always breaking out again, by reaſon of the Violence and Cruelty of the Government. All theſe Wars, till *Henry* the IVth was ſettled on the Throne, were in a Courſe of twenty-eight Years; that which ſome would call *Rebellion*, being carried on againſt two ſucceeding Kings. Yet the Queen was in all that time ſtill aſſiſting them with Men and Money.

In the Year 1568, the Provinces in the *Netherlands* threw off the *Spaniſh* Yoke, that was become intolerably ſevere and cruel. The Queen for ſome Years aſſiſted them more covertly, but when the Prince of *Orange* was kill'd, and they were in danger to be over-run, ſhe took them more openly into her Protection; and by the *Manifeſto* which I have in my Hands, ſhe publiſhed the Grounds upon which ſhe proceeded. She laid down this for a Foundation, That there had been an Antient League not only between the Crown of *England*, and the Princes of the *Netherlands*, but between the Subjects of both Countries, under their Seals interchangeably, for all Friendly Offices. If this was a good Reaſon for the Queen's giving Aid to the oppreſſed People of the *Netherlands*, then if the Caſe had been reverſed, that the People of *England* had been illegally and cruelly oppreſſed, it furniſhed the Princes of thoſe Provinces with as good a Reaſon for aſſiſting them. In this Aſſiſtance given the States, the Queen perſiſted till the End of her Reign; nor was this only done by the Court, but both Parliaments and Convocations granted her ſeveral Aids to maintain theſe Wars: And in the Preambles of thoſe Subſidy-Acts, the Queen's Proceedings in thoſe Particulars were highly approv'd and magnify'd. *Bilſon*, Biſhop of *Wincheſter*, and ſeveral other Writers in that time, juſtified what ſhe did; and not one that I ever heard of, cenſured or condemned it.

Upon King *James*'s coming to the Crown, the firſt great Negotiation was for a Peace between *Spain* and the *United Provinces*; which laſted ſeveral Years. The States inſiſted on a Preliminary, That they ſhould be acknowledged Free, Sovereign and Independent States; the *Spaniards* would not yield to this, nor would the States recede from it. Some here in *England* began to ſay, They were form'd in Rebellion, and ought not to carry their Pretenſions too far: Upon that, King *James* ſuffer'd a Convocation to meet; and a Book of Canons, with relation to the ſupreme Authority, was prepar'd; in which, tho' the Authority of the Prince, even when he becomes a Tyrant, is carried very far; yet the Caſe of the *Maccabees* is ſtated; and, it was determined, That when a new Government, tho' begun in a Revolt, is come to a thorough Settlement, it may be owned as Lawful. King *James*, who was jealous enough of the Regal Authority, yet did not like their carrying theſe Matters ſo far: He ordered the whole Matter to be let fall ſo entirely, that there is not a Word of it in the Books of Convocation: But Archbiſhop *Sancroft* found this Collection of Canons at *Durham*, under Dr. *Overhall*'s Hand, which he copied out, and Licenſed the Book a few Days before he fell under his Suſpenſion. I ſoon ſaw that it had a Relation to the Affairs in *Holland*: For the *Dutch* delighted to compare their firſt Beginnings to that of the *Jews* in *Antiochus*'s time: They compared King *Philip* to *Antiochus Epiphanes*, and the Prince of *Orange* to *Judas Maccabeus*. But I ſaw much clearer into the Matter by an Original Letter of King *James*, which a worthy Gentleman ſent me. I knew his Hand well, the Letter is in Print; but I will read ſome particulars out of it. It is directed to Dr. *Abbot*, afterwards Archbiſhop of *Canterbury*. It begun with cenſuring ſome Poſitions concerning a King in Poſſeſſion, the ſame with our Modern Term of a King *de facto*: He goes on in theſe Words, *My Reaſon of calling you together, was to give your Judgments, how far a Chriſtian and a Proteſtant King, may concur to aſſiſt his Neighbours to ſhake off their Obedience to their own Sovereign, upon the Account of Oppreſſion, Tyranny, or what elſe you like to name it. In the late Queen's Time, this Kingdom was very free in aſſiſting the* Hollanders *both with Arms and Advice; and none of your Coat ever told me, that any ſcrupled about it in her Reign. Upon my coming to* England, *you may know it came from ſome of yourſelves to raiſe Scruples about this Matter; yet I never took any notice of theſe Scruples, till the Affairs of* Spain *and* Holland *forced me to it. I call'd my Clergy together, to ſatisfy not ſo much me, as the World about us, of the Juſtneſs of my owning the* Hollanders *at this time. This I needed not to have done, and you have forced me to ſay, I wiſh I had not.* He reflects on thoſe who had a great Averſion to the Notion of God's being the Author of Sin, which plainly points at Dr. *Overhall*, who was the firſt Man of Note among us, that oppoſed the *Calviniſts* Doctrine of Predeſtination; yet he ſays, *They had gone to the Threſhold of it, by ſaying, That even Tyranny was God's Authority, and ſhould be reverenced as ſuch.* He concludes, *Theſe were edg'd Tools, and that therefore they were to let them reſt.* Here is a full Account of King *James*'s Thoughts of this Matter, which was then the chief Subject of Diſcourſe all *Europe* over. He had Twelve Years before this ſhewed, on an eminent Occaſion, that he owned the States, when he invited them in the Year 1593, to Chriſten his Eldeſt Son, Prince *Henry*. They were ſenſible of the great Honour done them by it; and tho' they were then but Low, they ſent an Embaſſy, with a noble Preſent of Gold Plate, to aſſiſt on that Occaſion. This Negotiation ſtuck for ſeveral Years, the *Spaniards* refuſing to own them in expreſs Words: The Temper found was, they were treated with (*tanquam*) as with Free States; and the Matter went no further at that time, than a Truce for ſome Years, which was concluded in the Year 1609. This lets us ſee, That the Words in King *James*'s Speech that Year to his Parliament, were not chance Words that fell careleſly from him, *A King leaves to be a King, and degenerates into a Tyrant as ſoon as he leaves off to govern by Law: In which caſe the King's Conſcience may ſpeak to him, as the poor Woman to* Philip *of* Macedon, *Either govern by Law, or ceaſe to be a King.*

There is another eminent Inſtance towards the End of that Reign, that ſhews what the Senſe of our beſt Divines was in this Matter: When the Archbiſhop of *York*'s Son and Mr. *Wadſworth* had changed their Religion in *Spain*, *Wadſworth* writ over a bold Defence of that; and among other Things, charged the Reformation with Rebellion. This was anſwer'd by one of the beſt Books of that Time, writ by Dr. *Bedell*, dedicated to the Prince of *Wales*, who afterwards promoted him to a Biſhoprick. His Words on this Head are full: I will read ſome of them. ‘Do you think ‘Subjects are bound to give their Throats to be cut by their Fellow-Sub‘jects, or to their Prince, at their mere Wills, againſt their own Laws and ‘Edicts? You would know *quo jure* the Proteſtant Wars in *France* and ‘*Holland* are juſtified. *Firſt*, The Law of Nature, which not only al‘loweth, but inclineth and inforceth every living Thing to defend itſelf ‘from Violence. *Secondly*, That of Nations, which permitteth thoſe who ‘are in the Protection of others, to whom they owe no more than an ho‘nourable Acknowledgment, in caſe they go about to make themſelves ‘abſolute Sovereigns, and to uſurp their Liberty, to reſiſt and ſtand for ‘the ſame. And if a lawful Prince, who is not yet Lord of his Subjects ‘Lives and Goods, ſhall attempt to deſpoil them of the ſame, under co-

‘ lour of reducing them to his own Religion, after all humble Remon- ‘ ſtrances, they may ſtand upon their own Guard, and being aſſailed, ‘ reſiſt Force with Force, as did the *Maccabees* under *Antiochus*. In which ‘ Caſe notwithſtanding, the Perſon of the Prince himſelf ought always to ‘ be ſacred and inviolable, as was *Saul* to *David*.’ No Commentary is wanted here.

My Lords, You ſee how this Matter ſtood during King *James*'s Reign. In the firſt Year of King *Charles*'s Reign, *Grotius*'s Book *de Jure Belli & Pacis*, was publiſhed at *Paris*, dedicated to the King of *France*, while *France* was under the Adminiſtration of the wiſeſt and moſt jealous Miniſter of the laſt Age, Cardinal *Richlieu*. In that Book, in which he aſſerts the Rights of Princes with great Zeal, yet he enumerates many Caſes, in which it is lawful to reſiſt, particularly that of a total Subverſion: And that Book is now all *Europe* over in the higheſt Reputation of any Book that the modern Ages have produced. In the Beginning of King *Charles*'s Reign, a War broke out in *France* againſt the Proteſtants; upon which he ſent over Ambaſſadors, by whoſe Mediation a Peace was concluded; but that being ill kept, the War broke out again; and the King thought himſelf bound by his Mediation to protect the Proteſtants. So in the Second Seſſion of the Parliament, 1621, in the Demand of a Supply that the Lord Keeper *Coventry* made in the King's Name, theſe Words are to be found: ‘ *France* is ſwayed by the Popiſh Faction; and though by his ‘ Majeſty's Mediation, there were Articles of Agreement between that ‘ King and his Subjects, that Treaty hath been broke, and thoſe of the ‘ reformed Religion will be ruined without preſent Help.’ Upon this the Commons petitioned the King for a Faſt, and deſired the Concurrence of the Lords, who joined with them in it. The King granted it, and an Office was compoſed ſuitable to the Occaſion; in which, among other Devotions, the Nation was directed to pray for all thoſe, ‘ who here or elſe- ‘ where were fighting God's Battles and defending his Altars.’ Thus the whole Body of the Legiſlature did concur for a Faſt for that, which, if this Doctrine is true, was no better than Rebellion; and yet the whole Nation, Clergy and Laity, were required to pray for Succeſs in it.

But to complete this View of the Doctrine of our Church, it is to be conſidered, That when a Year before this, while the Loan or Benevolence were carried on, ſome officious Divines made uſe of thoſe Expreſſions of Kings having their Power from God, as importing an Authority of a Nature ſuperior to the Laws of the Land. One of theſe, Dr. *Manwaring*, was impeached, and had a ſevere Sentence paſſed on him for it. So I have now made it out, beyond, I hope, the Poſſibility of Contradiction, that for Seventy Years together, from 1558, to 1628, the Lawfulneſs of Self-defence in the Caſe of illegal and violent Cruelty, was the publick and conſtant Doctrine of this Church.

Theſe were the beſt and happieſt Times of our Church, as is often repeated by the Earl of *Clarendon*: From theſe we ought to take the Standard of our Doctrine.

I go next to ſhew what was the common Doctrine for the next Sixty Years, from 1628, to 1688. I muſt yield up the firſt twelve Years: For upon the unhappy Miſunderſtanding between the King and that Parliament, there was a long Diſcontinuance of Parliaments, then the lately condemned Doctrine was again in Vogue; and nothing was ſo much heard of, as the Law of Government that was from God, antecedent to all human Laws: Out of this ſprung illegal Impriſonments, illegal Monopolies, ſevere Proceedings in the Star-Chamber, but above all, the Ship-Money. Theſe Things put the Nation in an univerſal Disjointing and Feebleneſs. And when an unavoidable Neceſſity forced that King to call a Parliament, the fatal Effects of thoſe Counſels broke out terribly. I know many fancy, that the War is to be charged on the Principles of Self-Defence: They are much miſtaken. I had Occaſion to ſee a great Way into the Secret of that Time, when I examined the Papers relating to the two Dukes of *Hamilton*. I know a great deal more ſince from two Perſons of unqueſtionable Integrity, who knew the Secrets of that Time, the Lord *Hollis*, and Sir *Hardbottle Grimſtone*; but all received a full Confirmation, when I found it agreed perfectly with the noble Account given by the Earl of *Clarendon*.

Nobody dreamt of a War, nor had they any Principles leading to it. But there was an unhappy Train of Accidents that hindered Matters from being brought to a Settlement, even while the King was granting all they could deſire. Stories were carried by Perſons about both the King and Queen, or Words let fall, that made them conclude, there were ſtill ill Deſigns on Foot againſt the Laws that were then paſſed. But that which brought all to a Criſis, was the Diſcovery of a Negotiation to engage the Army to declare againſt the Parliament. Whoſoever compares the Depoſitions in *Ruſhworth*, with the Account given of that Matter by the Earl of *Clarendon*, will ſee there is a great deal more in the one, than the other is willing to believe; though he acknowledges they had both *Goring*'s Evidence, and *Piercy*'s Letter with them. I will not take it upon me to determine, whether they believed too much, or the Earl of *Clarendon* too little. It is certain they believed all that was in the Depoſitions, and a great deal more: For *Goring* being continued in the Government of *Portſmouth*, and his Father being advanced from being a Baron to be an Earl, and *Piercy*'s being made a Lord, and Maſter of the Horſe to the Prince of *Wales*, made them conclude they had ſuppreſſed a great deal, inſtead of ſaying more than was true. This ſtuck deep in their Hearts, and at laſt fatally broke out in the Demand of the Militia, that brought on the War, which I do own was plainly a *Rebellion*; becauſe a Force was offered to the King, not to defend themſelves from an unjuſt Invaſion, or illegal Grievances, but to extort a new Law from him.

Thus the true Occaſion of the War was a Jealouſy, that a Conduct of fifteen Years had given too much Ground for; and that was ſtill unhappily kept up by a fatal Train of Errors, in every Step that was made. The great Concuſſion that the War gave the Nation, and the barbarous Effuſion of ſo much Blood, eſpecially of the Royal Blood of that Bleſſed KING, had at laſt a happy, though a late Concluſion in the *Reſtoration*: And it's no Wonder, if ſuch a Series of tragical Events begot a general Horror at the Occaſion of them. But then it was, that had it not been for the Firmneſs of the Earl of *Clarendon* to his *Engliſh* Principles, the Liberties of the Nation had been delivered up.

It is to his Memory that we owe our being a free People; for he with his two great Friends, the Duke of *Ormond* and the Earl of *Southampton*, checked the Forwardneſs of ſome who were deſirous to load the Crown with Prerogative and Revenue. He ſtopt all this, which being afterwards odiouſly repreſented, brought on him that great and laſting, but honourable Diſgrace. The Earl of *Southampton*, whoſe Death went a little before his Fall, and perhaps haſtened it the ſooner, ſaid to many about him, that he was a true Proteſtant, and an honeſt *Engliſhman*; and that the Nation would feel the Effects of his being removed, whenſoever it might happen.

That Lord, in the great Settlement after the Reſtoration, would carry Things no farther than to repeal what had been extorted by the Tumults; and in the Matter of the Militia-Act, and the Oaths relating to it, all was more cautiouſly worded than is commonly underſtood. To the Word *Commiſſioned by the King*, ſome indeed moved, that the Word *Lawfully* might be added, to make all plain. This was preſſed in the Houſe of Commons by *Vaughan*, afterwards Lord Chief Juſtice of the Common-Pleas. The Attorney-General, afterwards Lord Chancellor *Nottingham*, anſwered, That was not neceſſary, for the Word *Commiſſion* imported it; ſince it was not lawfully iſſued out to lawful Perſons, and for a lawful Reaſon, it was no *Commiſſion*; and the whole Houſe aſſented to this: Yet in the Houſe of Lords, the ſame Word *Lawfully* was preſſed to be added by the Earl of *Southampton*, who was anſwered by the Earl of *Angleſey*, to the ſame Purpoſe with what had been ſaid in the Houſe of Commons. He indeed inſiſted to have the Word added, becauſe it would clear all Difficulties with many, who not having heard of the Senſe given in both Houſes, might fancy, that any Sort of *Commiſſion* being granted, it would not be lawful to reſiſt it. He did not prevail: For it was ſaid, That this Explanation being the Senſe of both Houſes, it would be ſoon ſpread and known over the Nation. In this Senſe, it is certain, that it is not lawful to take Arms againſt any ſo commiſſioned by the King; for that were to take Arms againſt the King's Commiſſion in the Execution of the Law, which is certainly a reſiſting the Ordinance of God, *which whoſoever do, they ſhall receive to themſelves Damnation.*

It was no Wonder, if after ſuch a War the Doctrine of *Non-Reſiſtance* was preached and preſſed with more than ordinary Warmth, and without any Exceptions; yet ſome ſtill kept theſe in View: So did both Dr. *Falkner* and myſelf; and I know many others had them always in their Thoughts, though they did not think it neceſſary to mention them.

I found the ill Effects that the carrying this Matter ſo far had on the Mind of that unfortunate Prince King *James*; for in the Year 1673, when he was pleaſed to admit me to much free Converſation with him, among many other Things, I told him, it was impoſſible for him to reign in quiet in this Nation, being of that Religion: He anſwered me quick, Does not the Church of *England* maintain the Doctrine of *Non-Reſiſtance* and *Paſſive Obedience?* I begged him not to depend on that; for there was a Diſtinction in that Matter, that would be found out when Men thought they needed it. I now come to tell your Lordſhips how right I judged.—

It is true, they paſſed a very pompous Decree at *Oxford* in 1683; but you ſhall hear how long they ſtood to it. In Summer, 1686, the Prince of *Orange* was pleaſed to receive me into his Service with a particular Confidence. Soon after the Eccleſiaſtical Commiſſion was ſet up, and upon ſome Proceedings before that Board, he was deſired from *England* to break with King *James* upon that Head. I oppoſed this, and ſaid, I was convinced that Commiſſion was againſt Law, and would have ill Effects; but it did not ſtrike at the Whole. This was more warmly preſſed upon the Proceedings againſt *Magdalen* College. I ſtill ſtood to my Ground; and told both Prince and Princeſs, That if a Breach ſhould follow on theſe Matters, I could not ſerve. When, indeed, the Declaration was publiſhed a ſecond Time, with a Reſolution to have it carried through; and that many Laws were diſpenſed with at Pleaſure; and Perſons who were under legal Diſabilities, were made Judges, Sheriffs, and Magiſtrates; all whoſe Actings were ſo many Nullities: Then I thought there was a total Subverſion of our Conſtitution; which from being a legal one, was made precarious, ſubject to mere Will and Pleaſure. So I was ready to ſerve in the Revolution.

Some Days after we came to *Exeter*, Sir *Edward Seymour* came thither, and he preſently ſent for me: When I came to him, he aſked me, Why were we a Rope of Sand, and had not an Aſſociation? I ſaid, Becauſe we had not yet a Man of his Weight to begin the Motion: He ſaid, If we had not one by To-morrow, he would leave us before Night. I preſently ſaw a Noble Duke, now in my Eye, and acquainted him with this: He went to the Prince, who approving of it, an Aſſociation was prepared, and laid on the Table next Morning; and was after that ſigned by all who came to wait on the Prince. Three Days after we left *Exeter*, a Head of the College came to the Prince, to invite him to come to *Oxford*, aſſuring him, that the Univerſity would declare for him. He went as near it as *Abingdon*; but then the ſudden Turn of Affairs at *London* obliged him to haſte up, the Aſſociation was ſent thither, and was ſigned by the Heads of the Colleges, and many others there; ſome doing it in a particular Warmth of Expreſſion, and ſaying, That their Hearts as well as their Hands went with it. Upon what Diſappointments or other Views, I cannot tell, this Contradiction to their famed Decree, five Years after it was made, ſeemed to take another Turn back to it again; and the Notion of a King *de facto*, which is but a ſofter Word for an Uſurper, came in Vogue.

The Parliament, to prevent the ill Effects of that, ſtudied to ſecure the Government, *Firſt*, by an Aſſociation, and then by an Abjuration. I, who was always againſt every thing that might break in upon Conſcience, was for making theſe only voluntary; but they were enacted, and they were generally taken. A Noble Lord on the Earls Bench, procured me the Sight of a Letter, that went about to perſuade the taking the Abjuration, that he had from a Place where he believed it had its Effect; where I found this Diſtinction, That the abjuring any Right whatſoever that the Pretender might claim, was only meant of a legal Right, and that it had no Relation to *Birth-Right*, or to *Divine Right*. This agreed with a Report that went then current, That a Perſon, in a great Poſt, ſent a Meſſage to an Honourable Gentleman who would not take the Abjuration, that if he had an half Hour's Diſcourſe with him, he doubted not to be able to convince him, that he might take the Abjuration without departing from any of his Principles. Towards the end of the laſt Reign, a bold Attempt was made on the King's Supremacy, by an Incendiary, who is ſuppoſed to have no ſmall Share in this Matter now before your Lordſhips: But the Attack on the Supremacy being liable to a *Præmunire*, it was turn'd with much Malice, and managed with great Prevarication againſt the Biſhops, who adhered firmly to their Duty to the King. How great a Disjointing that has brought on this Church, is too viſible all the Nation over; and it tends to carry on the wicked Deſign of diſtracting the Church, and undermining the Government.

By the time the Queen was on the Throne, or ſoon after, the *Rehearſal* began to be ſpread over the Nation, two of them a Week, which continued for ſeveral Years together, to be publiſh'd without Check or Controul. It was all thro' one Argument againſt the Queen's Right to the Crown: That, tho' it was diverſified with Incidents and Digreſſions, was kept always in view. The Clergy were in many Places drawn into Subſcriptions for this Paper. This look'd like a Deſign long connived at, to have the Queen's Title undermin'd: Beſides this, we had a Swarm of Pamphlets every Year to the ſame Purpoſe, and, as was believed, writ by the ſame Hand. One ſold at the Door of the Houſe, with the Title of *King William*'s *Exorbitant Grants*, did plainly call him an Uſurper: and ſtarting an Objection againſt the Queen's poſſeſſing the Throne, gave it this Anſwer, That ſhe did well to keep it till ſhe could deliver it up to the righteous Heir. At that time there was a quick Proſecution of a Paper, publiſh'd, with the Title of *The Shorteſt Way with the Diſſenters*; and upon that, I brought that Pamphlet to a great Miniſter, and offer'd to ſhew him this Paſſage in it, to ſee if there ſhould be a Proſecution of this order'd. He turned from me; ſo whether he heard me or not, I cannot tell; I am ſure if he ſays he did not, I will believe him. No Proſecution follow'd, and the Rehearſal went on. The Clergy in many Places met at a Coffee-Houſe on *Saturdays*, to read the Rehearſals of the Week, which had very ill Effects in moſt Places. I know it may be ſaid, That the Queen's Learned Counſel ought to have look'd after theſe things: But we all know, that they ſtay till they receive Orders from the Miniſtry. The Courſe of that Treaſonable Paper has been now for ſome time ſtopt, ſo we ſee there is ſome Change in the Miniſtry.

But to compleat the Inſolence of the Enemies of the Queen and of the Proteſtant Succeſſion, they had the Impudence to give it out, That the Queen ſecretly favour'd them. And as this, we all know, has been long whiſper'd about among us, ſo it was more boldly given out in *Scotland*; which obliged one of the Queen's Miniſters in that Parliament, in a Speech that was printed, to contradict this treaſonable and diſhonourable Suggeſtion, That as ſome Divines would have it, that there was in God a ſecret as well as a revealed Will, and that theſe might be contrary to one another; ſo they would faſten an Imputation on the Queen, that while ſhe revealed her Will one way, ſhe had a ſecret Will another way; which he ſolemnly affirmed to be falſe, and highly injurious to the Queen.

While the Pamphlets and theſe Reports were thus ſet about, Mr. *Hoadly* thought that it became him to aſſert the Queen's Title, by juſtifying the Revolution, out of which it riſes. But what an Out-cry was raiſed on this, that one durſt diſturb the Progreſs of a wicked Opinion, that was viſibly deſigned to overturn the Government? And yet he aſſerted nothing but what the Counſel for the Priſoner did all fully and plainly own, That in the Caſes of extreme Neceſſity, an Exception to the Doctrine was to be admitted, and that that was the Caſe at the Revolution.

But as theſe Notions have been long let run among us, ſo they have appeared in a moſt violent and unguarded manner, ever ſince the Attempt of the Pretender; and more of late, ſince the Preliminaries upon the Overtures for a Peace, ſeem to extinguiſh their Hopes. What Sermons on this Head are preached in this City, at Aſſizes, at *Bath*, and at many Cathedrals? Furious Men fit themſelves with ſome hot Sermons, which they carry about from Place to Place, to poiſon the Nation. This has not only the viſible Effect deſigned by it, of ſhaking many in their Allegiance to the Queen, and in their adhering to the Proteſtant Succeſſion; but it has a curſed Effect on many others, on whom this their Deſign does not ſucceed.

I am very ſenſible there is a great deal of Impiety and Infidelity now ſpread thro' the Nation: This gives every good Mind all poſſible Horror; but I muſt tell your Lordſhips, on what a great Part of it is founded: for ſince my Converſation with *Wilmot*, Earl of *Rocheſter*, I have had many Occaſions to diſcourſe with Perſons tainted with thoſe wicked Principles; and I do affirm it, that the greateſt Prejudice theſe Perſons have at Religion, at the Clergy, and at the Publick Worſhip of God, is this, that they ſay, They ſee Clergymen take Oaths, and uſe all Prayers, both ordinary and extraordinary, for the Government, and yet in their Actings and Diſcourſes, and of late in their Sermons, they ſhew viſibly that they look another way: From whence they conclude, They are a mercenary ſort of People without Conſcience.

I hope there are not many that are ſo corrupted and ſo ſcandalous: I am ſure I know a great many that are far otherwiſe, who preach, ſpeak and act as they ſwear and pray; but thoſe who act in another way, are noiſy and impudent, and ſo bring an Imputation on the whole Body. And unleſs an effectual Stop is put to this Diſtemper, it is not poſſible to foreſee all the ill Conſequences that may follow upon it.

I have, I am afraid, wearied your Lordſhips; but I thought it was neceſſary, once for all, to enlarge copiouſly on this Argument. And now to come cloſe to the Article, and the Sermon, for I meddle not at all with the Perſon of the Man, whatever general Expreſſions might very well have been uſed, in ſetting forth *Paſſive Obedience* and *Non-reſiſtance* before the *Revolution*; becauſe odious Caſes ought not to be ſuppoſed, and therefore are not to be named, yet ſince *Reſiſtance* was uſed in the *Revolution*, and that the late King invited all the Subjects to join with him, which was in them certainly Reſiſtance; and ſince the Lawfulneſs of the *Revolution* is ſo much controverted, the condemning all *Reſiſtance* in ſuch crude and general Terms, is certainly a condemning the *Revolution*. And this is further aggravated from thoſe Limitations on our Obedience, in an Act paſſed ſoon after the *Revolution*, by which, in Caſe our Princes turn *Papiſts*, or marry *Papiſts*, the Subjects are in expreſs Words diſcharg'd from their Allegiance to them. Certainly this puts an End to the Notion of *Non-reſiſtance* in any Caſe, or on any Pretence whatſoever. For theſe Reaſons, I think the firſt Article of this Impeachment is both well grounded, and fully made out.

The Biſhop of Oxford's * *Speech in the Houſe of Lords, on the firſt Article of the Impeachment of Dr.* Henry Sacheverell.

My Lords,

SOME of this Bench are neceſſarily call'd up, by Words which fell from the noble Lord who ſpake third in this Debate, who was pleas'd to mention, among other ſtrange Things, *Biſhops voting contrary to their Doctrines*. The Opinions of ſeveral of the Reverend Prelates have been read before your Lordſhips in *Weſtminſter-Hall*: They were firſt quoted by the Counſel for the Defendant, and by their Order read in ſuch a partial and unfair manner, that if I may be allow'd to uſe any other Author after the ſame way, to take a naked Propoſition out of his Book, and not conſider the Coherence or Dependance of the Words, how it may be explain'd or limited in other Places, to read juſt ſo far as may ſerve my Purpoſe, and ſtop when any thing follows that may ſet the Matter in a juſt Light, I dare undertake to make any Author ſpeak on which-ever ſide of the Queſtion I pleaſe.

But the Managers for the Honourable Houſe of Commons did Juſtice to thoſe Reverend Prelates, by obliging the Clerk to read other Paſſages in their Books, which clearly explain'd their Opinions; and ſo the only Purpoſe that was eventually ſerv'd by producing thoſe Quotations, was that which, I fear, was not intended; the vindicating thoſe Reverend Prelates from the uncharitable Imputation of having aſſerted a Doctrine in their Writings, which they had contradicted by their Practices, in relation to the Revolution, and the Government founded upon it.

I hope to be able to reconcile the Vote which I ſhall give, with the Opinion which I have always been of, and which having not been produced below, I ſtand up to give it your Lordſhips here; being far from cenſuring, far from entertaining the leaſt diſreſpectful Thought of any that ſhall differ in Opinion from me.

I own the Subject now in debate is a matter of great Conſequence, and of great Nicety and Tenderneſs; and that he, who ſhould preſume to entertain your Lordſhips upon it, ought to be better qualify'd, and better prepar'd than I am in other Reſpects; but I will give place to none in thoſe that follow, *viz.* in delivering myſelf with that Reſpect and Deference which is due to this Houſe, that humble Diffidence which becomes a juſt Conſciouſneſs of my own Weakneſs, and that Plainneſs and Sincerity which becomes that Character, which, however unworthy of it, I have the Honour to bear; and then I am ſure I may depend upon your Lordſhips known Candor, Honour and Juſtice, that if any thing ſhould fall from me leſs correct, or leſs guarded than it ought to be, it ſhall receive the moſt favourable Conſtruction that it is capable of.

Before I deliver my Opinion, I beg leave briefly to ſtate the Queſtion; and in order to that, to lay down two Premiſes.

1. That Government in general, was in its original Inſtitution deſigned for the Good of the whole Body. Men were not form'd into Societies, only to be Subjects of the arbitrary Wills, the ſlaviſh Inſtruments in the gratifying the ambitious or other corrupt Deſigns of any one or more Men; but for the Safety and Proſperity of the whole Community.

2. That in the Holy Scriptures (as far as I can find) there is no Specification of any one particular Form of Government to which all Nations and Bodies of Men, in all Times and Places, ought to be ſubject; nor are there any ſuch exact Accounts of the Extent of the Power of the Governor, or Obedience and Submiſſion of the Governed, as can reach to all Caſes that may poſſibly happen.

There are many general Precepts requiring the Obedience and Submiſſion of Subjects to their Governors: "Let every Soul be ſubject to the "Higher Powers: You muſt needs be ſubject not only for Wrath, but "alſo for Conſcience-ſake: He that reſiſts, reſiſts the Ordinance of God: "And ſubmit yourſelves to every human Conſtitution for the Lord's "ſake, *&c.*"

But yet theſe Scriptures do not tell us how far we muſt obey and be ſubject, nor do they neceſſarily imply that there can never be any Caſes wherein we may not obey and not be ſubject, but reſiſt; becauſe there are other Places in Scripture, where other Duties are requir'd in Terms as large and general as theſe, nay in univerſal Terms, which yet muſt admit of Exceptions.

Some of the moſt zealous Contenders for the abſolute Power of the Prince, and unconditional Submiſſion of the Subject, found themſelves very much upon the fifth Commandment, *Honour thy Father and Mother*, which they expound as comprehending political as well as natural Parents; and I do not gain-ſay it: But then, Pray, my Lords, let us ſee in what Terms the Duty of Children to their natural Parents is requir'd in Scripture? *Children*, ſays the Apoſtle, *obey your Parents in all Things.* This Expreſſion is ſurely univerſal enough; and from hence, according to ſome Men's Reaſoning, it muſt follow, if Children muſt obey their Parents in all things, then they may reſiſt in none.

But will any body ſay, that notwithſtanding the Univerſality of this Precept, there may not be ſome Exceptions and Limitations underſtood, both as to the active and paſſive Part of the Child's Obedience? As to the active, no one will deny, but the Command muſt be reſtrain'd to *Licita & Honeſta*; they are not to obey in all things abſolutely, but in all things that are lawful and honeſt.

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* Dr. *William Talbot.*

And as to the paſſive Part of the Child's Obedience, the Submiſſion or Non-Reſiſtance requir'd, permit me to put a Caſe: Suppoſe a Parent in a Phrenzy, in a Fit of Drunkenneſs or Paſſion, draws his Sword, and attempts to kill his innocent Son, and the Son had no way to eſcape from him: Is he oblig'd by this Duty of not reſiſting, to ſtand ſtill, and let his Father ſheath his Sword in his Bowels? May he not, tho' he muſt ſtill have a care of his Father's Life, defend his own? May he not put by the Paſs, grapple with his Father, and diſarm him if he can? My Lords, ſurely he may; that prime Law of Nature, of Self-Preſervation, will juſtify him in it: And then why may not the ſame Law of Self-Preſervation juſtify the Political Child, the Body of the People, in defending their political Life, *i. e.* their Conſtitution, againſt plain and avow'd Attempts of the political Parent utterly to deſtroy it? And it is upon this Point only that I ſhall ſtate the Queſtion.

I do allow, that in all Governments whatſoever there is an abſolute Power lodg'd ſomewhere. With us, as I humbly conceive, that Power is lodg'd in the Legiſlature; for which I have the Authority of a great Politician and Stateſman, Sir *Thomas Smith*, who was Secretary of State to two Princes, King *Edward* VI. and Queen *Elizabeth*; who in his Book, *De Republica Angl.* a Book ſeen and allow'd, as is ſaid in the Title-Page, in that Chapter where he treats of our Parliaments, and the Authority thereof, lays down this Aſſertion, '*The moſt high and abſolute Power of the* '*Realm of* England *conſiſteth in the Parliament.*' And giving particular Inſtances of that Power, among others, mentions this, '*That the Parliament* '*gives Forms of Succeſſion to the Crown.*'

The executive Power with us is lodg'd with the Prince; and I do readily allow, that the Prince ſo veſted with the executive Power, and all others lawfully commiſſion'd by him, acting according to their Commiſſion, and within thoſe Laws with the Execution whereof he and they are reſpectively truſted, are irreſiſtible: The Perſon of the Prince is always inviolable; no perſonal Faults in him; no Injuries to particular Perſons, where they can have no Redreſs by Law, as in ſeveral Caſes they may have; no general Male-Adminiſtration, whereby the Publick may be greatly hurt, can juſtify any forcible Reſiſtance of his Subjects; nor any thing elſe than a total Subverſion of the Conſtitution.

But if in a legal Monarchy, where ſuch Laws have been enacted by common Conſent of Prince and People, as are to be the Meaſures of his Government, as well as of their Obedience, that limit his Power, as well as ſecure their Rights and Properties, the Prince ſhall change this Form of Government into an abſolute Tyranny, ſet aſide thoſe Laws, and ſet up an arbitrary Will in the room of them: When the Caſe is plain, and when all Applications and Attempts of other Kinds prove unſucceſsful; if then the Nobles and Commons join together in defence of their Antient Conſtitution, Government and Laws, I cannot call them Rebels. Allow me, my Lords, to lay before you a few things in maintenance of what I have advanced. And,

1. I would humbly offer ſome Facts, which I allow do not directly prove what I have ſaid to be true, but they do prove it to have been the Opinion of our Princes, Parliaments, Clergy and People, in the Reign of thoſe three great Princes, Queen *Elizabeth*, King *James* and King *Charles* I. I mean the Aſſiſtance which thoſe Princes gave to the Subjects of other Countries that were reſiſting their reſpective Princes; and to enable them to do ſo, they had Subſidies given them in Parliament and Convocation——, and there were Prayers compoſed and uſed for the Succeſs of their Arms.

Surely, my Lords, if thoſe Princes, Parliaments, Clergy and People, had been of Opinion that the Reſiſtance of Subjects againſt their Princes was in no caſe lawful, but always damnable Rebellion; they would never by aiding and aſſiſting ſuch Rebels have involv'd themſelves in the Guilt, and expos'd themſelves to the dangerous Conſequences of ſuch a Sin. I mention not the particular Stories, becauſe they are better known to your Lordſhips than to me, and becauſe I doubt not but in the Courſe of this Debate, ſome Lord or other will give a larger Account of them. But I cannot forbear obſerving one thing relating to that Aſſiſtance, which that pious Prince, and now glorious Saint in Heaven King *Charles* I. gave to the *Rochellers*, who were ſurely the Subjects of the King of *France*: He order'd a Faſt by Proclamation, and appointed a Form of Prayer to be drawn up for the imploring of God's Bleſſing. It is highly probable, that Biſhop *Laud* had the great Hand in compoſing thoſe Prayers, he being then Biſhop of *London*, and in great Favour, and the Archbiſhop of *Canterbury*, *Abbot*, at that time in Diſgrace. But whoever compos'd them, I beg leave to read part of one of the Collects in that Office: '*O Lord* '*God of Hoſts*, *that giveſt Victory in the Day of Battle*, *and Deliverance in the* '*time of Trouble*, *We Beſeech thee to ſtrengthen the Hands*, *and encourage the* '*Hearts of thy Servants*, *in fighting thy Battles*, *and defending thy Altars that* '*are among us*, *and in all the Reformed Churches.*' It ſeems the Reformed Churches were thought to have God's Altars among them then. however they have been vilify'd ſince. But that which I would obſerve from this Paſſage is this, That neither that excellent King who commanded thoſe Prayers to be compoſed, nor the Biſhops who compos'd them, nor the Clergy and People who uſed and join'd in them, could in ſo ſolemn a manner have recommended thoſe Forces to the Divine Protection and Favour, and as ſuch as were fighting God's Battles, if they had thought they were fighting againſt God in his Vice-gerent; and as defending his Altars, if they believed they were reſiſting his Ordinance.

2. I could produce ſeveral Authorities in ſupport of what I have laid down, but I ſhall mention but one: It is in a Book written profeſſedly on this Subject, and the Paſſage I ſhall quote comes home in point to the matter in Hand. The Book was written in Queen *Elizabeth*'s Time: Every one that is acquainted with the Hiſtory of her Reign, knows what Attempts were made by the Pope and his Party againſt her Government and Life, by excommunicating, depoſing her, abſolving her Subjects from their Allegiance, by raiſing Tumults and Inſurrections, by Dagger, Poiſon, and what not: And 'tis certain, that they were theſe wicked Practices of the Pope and his Followers, and the Doctrines by which they juſtify'd them, that the Compilers of the Homilies, which were then made, and other Authors, who then wrote about the Power of the Prince, and the Duty of the Subject, had principally in their View. The Book I mean, is intitled, *The true Difference between Chriſtian Subjection and Unchriſtian Rebellion.* It is written by way of Dialogue between a Chriſtian, whom the Author calls *Theophilus*, and a Jeſuit whom he calls *Philander*. I beg leave to read a Quotation out of it. *Theophilus* the Chriſtian ſays, *I buſy not myſelf in other Men's Commonwealths as you (the Jeſuits) do, neither will I raſhly pronounce all that reſiſt to be Rebels: Caſes may fall out even in Chriſtian Kingdoms, where the People may plead their Right againſt their Prince, and not be charged with Rebellion. Philander* the Jeſuit aſks, *As when, for Example? Theophilus* the Chriſtian replies thus: *If a Prince ſhould go about to ſubject his Kingdom to a foreign Realm, or change the Form of the Commonwealth from Impery to Tyranny, or neglect the Laws eſtabliſhed by common Conſent of Prince and People, to execute his own Pleaſure: In theſe and other Caſes, which might be named, if the Nobles and Commons join together to defend their antient and accuſtom'd Liberty, Regiment, and Laws, they may not well be accounted Rebels.* This Book is ſaid, in the Title-page, to have been peruſed and allow'd by publick Authority; was written by a great Man, Dr. *Bilſon*, then Warden of *Wincheſter* College; printed at *Oxford* by the Univerſity Printer, and dedicated to Queen *Elizabeth*; and the Author was afterwards made Biſhop of *Wincheſter*. I could offer many other Authorities, not from falſe Sons, or perfidious Prelates of the Church, not from Men of factious and antimonarchical Principles in relation to the State; but venerable Names, Ornaments to the Ages they lived in, and ſuch as will be remembered with Honour in ſucceeding ones: But I am ſuperſeded in producing, and your Lordſhips Trouble ſaved in hearing more particular Quotations to this Purpoſe, by what is yielded by a Reverend Divine of great Parts and Learning, far enough from the Suſpicion of being prejudic'd againſt the Rights of Princes, or partial to thoſe of the People; I mean the Reverend Dean of *Carliſle*, who in a *Latin* Diſcourſe preach'd and printed in this Town upon the *Duty of Submiſſion*, ſtating ſome Caſes of extreme Neceſſity, and putting the Queſtion, *Whether it may not be lawful for the People in ſuch Caſes to reſiſt?* anſwers, *Viri boni & graves*, &c. 'That good and judicious Men, that have taken great and uſeful Pains in 'defending the Rights of Princes, and repreſſing popular Licence, have 'contended that it is lawful:' He adds indeed, 'Whether they have done 'right or wrong, let others judge;' and does not give his own Opinion. But ſince he has granted, that ſuch Men as he has deſcribed, Men of Probity and Judgment, zealous Aſſertors of the Rights of Princes, and Repreſſors of popular Licence, have contended, that in Caſes of extreme Neceſſity it is lawful for the People to defend themſelves; I may comfort myſelf, if I err in my Opinion, that I err in good Company. But I humbly conceive I do not err; and that,

3. For this plain Reaſon, That if it be utterly unlawful to reſiſt in any caſe whatſoever, even that of a total Subverſion of the Conſtitution and Laws; then there is no Diſtinction of Governments, of abſolute, I mean, and limited; or if there be a Diſtinction, it is a nominal one, without any real Difference. For what Difference is there between a Prince's governing arbitrarily without Law, and governing arbitrarily againſt Law? betwixt having no Laws at all, and having precarious Laws that depend intirely on the Will of the Prince, whether he will obſerve one of them, or ſubvert them all; and if he does, the People cannot help themſelves?

But, my Lords, I hope and believe that there is a real Diſtinction of Governments, and that the Subjects of all Governments are not in the ſame wretched Condition that thoſe of *France* and *Turkey* are in. I hope we have not boaſted falſly or vainly of our Form of Government, that we are bleſs'd with a Conſtitution more happy than any other Nation in the World enjoys, that allows and ſecures as great, and (I had almoſt ſaid) God-like Powers and Prerogatives to the Crown, as any wiſe and good Prince can deſire; a Power of doing every thing that is good, and nothing that is ill; and at the ſame time ſecures moſt valuable Rights and Privileges to the People.

What wiſe or good Prince would not rather chuſe to reign over free Subjects, than tyrannize over Slaves? To receive a willing, chearful Obedience, proceeding from the Principles of Gratitude, Love and Intereſt, as well as of Duty, rather than a forced one, owing merely to a Principle of Fear, the Principle from whence the *Indians* worſhip the evil Spirits?

My Lords, ſuch a Frame of Government your Lordſhips have receiv'd from your Anceſtors; and I hope and truſt, that in grateful Reſpect to their Memory, and in tender regard to your Poſterity, (I ſay nothing of ourſelves, my Lords; for as for us who have the Happineſs to live under the Government of the beſt of Princes that ever Heaven bleſs'd a Nation with: for us, I ſay, were our Government as arbitrary as any in the *Eaſt*, yet I ſhould think our Rights, Liberties and Properties, and whatever is moſt dear and valuable to us, as ſafe if they depended entirely upon Her Majeſty's gracious Will, as they are now they are ſecured to us by our Laws, or ſtronger Fences, if they could be made) but I ſpeak in regard to thoſe that are to come after us: And I do hope and truſt, that as your Lordſhips have receiv'd ſuch an ineſtimable Treaſure from your Predeceſſors, you will tranſmit it inviolable to your Poſterity.

My Lords, I fear I tire you, but I muſt beg your Patience a little longer, while I expreſs my Surprize and Wonder that the Doctrine of *Paſſive Obedience* and *Non-Reſiſtance*, in the unlimited Extent in which ſome explain it, is ſo diligently inculcated, and ſo zealouſly preſs'd at this Time.

Paſſive Obedience, I own, when truly ſtated, is a truly Chriſtian Duty; a perpetual Duty as to the Obligation, but occaſional as to the Practice of it. Now Preachers do not uſually, neglecting the preſſing of other Duties of more conſtant Practice, lay out their Time and Labour in filling both Pages of their Diſcourſes with earneſt Aſſertions and violent Exhortations to the Practice of an occaſional Duty, unleſs they have ſome near Proſpect of an Occaſion for the Exerciſe of it. And yet, my Lords, has this one Duty been of late more frequently and earneſtly aſſerted and urged, both from Pulpit and Preſs, than all the other Duties of Chriſtianity? And what Occaſion for this does any one pretend to have in View?

Can there be a Wretch ſo abandon'd, ſo loſt to all Senſe of Gratitude, and every thing that is good, as to be capable of admitting a Thought, that our gracious Queen has done, is doing, or intending to do any thing, that may give her Subjects occaſion for the Practice of this Duty: Has ſhe not, ever ſince her happy Acceſſion to the Throne, poſtponed, ſacrificed her own Repoſe and Eaſe to the Quiet and Happineſs of her Subjects? Has ſhe not clearly ſhown that ſhe has nothing ſo much at heart as the Good and Proſperity of her People, the true Intereſt and Honour of her Kingdom, which ſhe has carried higher than any of her Royal Predeceſſors ever did before her? Has ſhe not approv'd herſelf a true Parent of her Political Children, by exerciſing as prudent a Care of, and expreſſing on all Occaſions as tender an Indulgence to them, as any natural Parents ever did towards their's?

If then there be no Occaſion from the Conduct of our Prince, is there any Reaſon from the Behaviour of her People that may juſtify this extraordinary and otherwiſe unſeaſonable Zeal for this Doctrine? Do they (excepting ſuch as the Zealots for this Doctrine have excited to diſturb her peaceful Reign at home, by rebellious and dangerous Tumults and Inſurrections) ſhew any Uneaſineſs under her Majeſty's Government, or Inclination to throw it off? Do they not bleſs their glorious Queen, and God for her? Do they not on all Occaſions expreſs their grateful Senſe of the many ineſtimable Bleſſings they enjoy thro' her Adminiſtration? Do they not conſtantly offer up their devout Prayers to God for her long Life and happy Reign? Do they not willingly pay their Taxes for the Support of her Government, cheerfully expend their Treaſure and Blood too in Defence of it?

What then can be ſaid for ſuch a Conduct, which can have no other natural Tendency than to create unreaſonable Jealouſies of her People in the Head of our Queen, and groundleſs Fears of their Queen in the Hearts of her People? Jealouſies in the Queen, that her Subjects are inclinable to rebel againſt her, when the Clergy think it neceſſary thus to preſs theſe Reſtraints upon them; and Fears in the People when their Paſtors are ſo induſtriouſly preparing them for Sufferings.

My Lords, I would not be thought to charge upon all that hold and aſſert this Doctrine, the Conſequences which I may with too much Reaſon charge upon ſome of them; I mean ſuch as do not allow Her Majeſty's Title to the Crown, but refuſe to take the Oaths to Her, or join in Prayer for Her, and have upon that account form'd one of the moſt unaccountable Schiſms that ever was made in the Church. Some of theſe have engaged zealouſly in aſſerting this Doctrine; and one of them, in a Paper written in Vindication of it, has not been afraid to inſinuate a Parallel between the Caſe of *Her Majeſty* and *the Pretender*, and that of *Athaliah* and *Joaſh*.

Horrid Suggeſtion, that would make one tremble! What do theſe Men mean? Any Service to her Majeſty? No; The Conſequences as to them are plain. If to reſiſt upon any Occaſion whatever be unlawful, be Rebellion, damnable Rebellion; then the Revolution was Rebellion, and all that were concern'd in it are involv'd in that Guilt; then we have continued in a Rebellion ever ſince; then if we wou'd avoid Damnation, we muſt repent of that Sin: But there is no true Repentance without Reſtitution; and if there muſt be Reſtitution, they will tell you what that is.

I would charitably hope, that the unfortunate Perſon now in Judgment before your Lordſhips, did not intend to carry Matters ſo far: But I muſt ſay, his Doctrine as he has ſtated and managed it, under his Head of *Falſe Brotherhood* with relation to the State, does give too great a Handle for thoſe that have ſuch Views, to improve what he has ſaid to their Purpoſes.

The Counſel for him, have labour'd to defend him againſt the Charge in this Article, by producing a great many Quotations out of the *Homilies, Statutes*, and *Writings* of Divines dead and living, wherein this Doctrine has been laid down generally. They all allow'd that Caſes of extreme Neceſſity were always excepted out of this general Doctrine; and that tho' the Exception was not expreſs'd, yet it was always imply'd; and they allow'd farther, that the Caſe of the Revolution was a Caſe of ſuch Neceſſity: But how did they apply this to the Caſe of their Client? Thus: They ſaid, that thoſe Divines whom they had quoted, were never found fault with for aſſerting the Doctrine in general Terms, not expreſſing but tacitly implying the Exception: Then they aſk'd, Why ſhould the Doctor be charged for aſſerting the Doctrine in general Terms, as others had done, not expreſſing the Exception which they had not expreſs'd? Why ſhould not he be intitled to the favourable Conſtruction of tacitly implying the Exception of Caſes of Neceſſity, ſuch a Neceſſity as they allow'd juſtify'd the Revolution?

Indeed I ſhould readily have admitted the Plea, if the Doctor had done no more than barely aſſert the Doctrine in general Terms, and his only Fault had been that he had not expreſs'd the Exception which he tacitly imply'd: But has he done no more than this? Has he not mention'd the Caſe of the Revolution, with no other view, as I can ſee, than to expoſe it; not as an Exception out of his general Poſition, but an Objection againſt it? Our Adverſaries, ſays he, that is, thoſe that oppoſe his general Doctrine, think they have us ſure, *i. e.* effectually confute that Doctrine, by objecting the Revolution. This Objection muſt ſuppoſe that there was Reſiſtance at the Revolution; for to ſay that the general Doctrine, That it is not lawful in any Caſe to reſiſt, is not true, becauſe the Revolution was lawful, in which there was no Reſiſtance, would be a wonderful Objection indeed: I ſay, Reſiſtance muſt be ſuppos'd in the Objection, to make Senſe of it. How then does he ſolve this Objection? Does he ſay, the general Doctrine always implies an Exception of Caſes of Neceſſity? That the Revolution was a Caſe of ſuch Neceſſity, and therefore that Neceſſity juſtify'd the Reſiſtance at the Revolution; No, but by advancing a ſtrange Poſition (which he proves by as ſtrange a Medium) *viz. That there was no Reſiſtance at the Revolution:* plainly implying, that if there was Reſiſtance at the Revolution, which every body knows there was, the Revolution ſtands condemn'd by his general Doctrine. So that I cannot ſee that his learned Counſel, who wanted neither Abilities nor Inclinations to ſerve him, have at all defended him againſt the Charge in this Article. But this they have effectually done, they have given up his general Doctrine, if it admits of no Exceptions; and thereby clear'd the Revolution, and the neceſſary Means whereby it was brought about, from thoſe black and odious Colours which he endeavour'd to caſt upon them.

After all, I can truly appeal to my own Heart, and a greater than it, the Searcher of it, that I am not any ways prejudiced againſt the Perſon of the unhappy Priſoner, but rather in favour of him, as I am of all Men in his ſuffering Circumſtances, by a natural Tenderneſs (it may be a Weakneſs, but ſuch a one as I cannot help), which never ſuffers me, however oblig'd in Juſtice to it, to do a hard thing to any one, however deſervingit, without doing at the ſame time a hard thing to myſelf: And if your Lordſhips ſhould be of Opinion, in the Concluſion of this Trial, That the Commons, have made good their Charge againſt him, I am ſure I could come into as eaſy a Sentence upon him as may be conſiſtent with the Honour and Juſtice of your Proceedings, and with that which I take to be the chief End of all Puniſhments, not ſo much the hurting the Offender, as the preventing the like Offences and hindering others, from committing them for the future.

But ſtill, my Lords, there is ſurely a Tenderneſs and Compaſſion due to our Queen, our Country, and our Poſterity; all which, I humbly apprehend, are highly concern'd in the Iſſue of this Affair.

If Clergymen may with Impunity publickly in their Sermons arraign and condemn the Revolution; beſides the Reflections they caſt upon all the worthy Patriots that were concern'd in that great Work, the Commonalty, Gentry, and Nobility, Lords upon every Bench in this Houſe; beſides this, it muſt ſhake, it muſt ſap the very Foundation of our preſent Eſtabliſhment, as it ſtands upon the Foot of the Revolution, and utterly deſtroy our future Hopes in the Proteſtant Succeſſion, which is founded upon that Bottom only.

My Lords, I muſt humbly aſk Pardon for having treſpaſs'd ſo long upon your Patience, and will conclude with this one Word, That in my Opinion, *theſe Practiſings of Clergymen* (to uſe the Expreſſion of a great and eminent Prelate) *in State Matters, are of that dangerous Tendency and Conſequence, that if there be not ſome effectual Stop put to theſe Practiſings, theſe Practiſings will, in time, put an effectual End to our Conſtitution.*

The Commons had therefore Reaſon to bring this Matter in Judgment before your Lordſhips, and I think they have fully made good their Charge in the firſt Article of their Impeachment againſt Dr. *Sacheverell.*

The Biſhop of Lincoln's * *Speech to the Houſe of Lords,* March *the 17th, at the Opening of the ſecond Article of the Impeachment againſt Dr.* Sacheverell.

My Lords,

IT was the Misfortune of ſome of our Bench, that in the Proſecution of the foregoing Article of this Impeachment, a Noble Lord, who ſpoke very early to that Point, was pleaſed not only to anticipate our Judgment in that Particular; but to do it with this pretty hard Reflection, That in giving it, as he ſuppos'd we would, we ſhould vote contrary to our own Doctrine. It is not improbable but that, in the Courſe of the preſent Debate, another Arrow may be drawn out of the ſame † Quiver to ſhoot at us; and we may be told, that in defending of the || Toleration granted by Law to the Diſſenters, we ſhew ourſelves to be Apoſtates from our own Order. But from both theſe Imputations, I am perſuaded, both our Writing, and our Actions, will ſecure us in the Judgment of all indifferent Perſons.

The Subſtance of this Second Article of the Impeachment, which your Lordſhips are now about to enter upon, is this: '*That Dr.* Sacheverell *in his Sermon doth ſuggeſt and maintain, that the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable. That he is a Falſe Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience. That Queen* Elizabeth *was deluded by Archbiſhop* Grindall *to the Toleration of the* Genevian *Diſcipline: And that it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical Anathemas againſt Perſons entitled to the Benefit of the Toleration; and inſolently dares, or defies any Power on Earth to reverſe ſuch Sentences.*' This, my Lords, is the Sum of this Part of the Commons Charge againſt Dr. *Sacheverell*, and I think the Managers have fully made it out; not by bare Intendments, by unneceſſary Implications, and forced Conſtructions; not by piecing together broken Sentences, and conjoining of diſtant and independent Paſſages (as he has unjuſtly complain'd); but by the plain Words, and neceſſary Meaning, of a very great Part of his Diſcourſe.

But before I trouble your Lordſhips with the Proof of this, give me leave, upon this Occaſion (tho' it be no Part of the Impeachment laid againſt the Preacher) to obſerve to your Lordſhips, what a ſtrange Account he has thought fit to publiſh of that other popular Engine, which, he ſays, has been made uſe of ‡ to pull down the Church, and which he calls by the Name of Comprehenſion.

The Perſon who firſt concerted this ſuppoſed Deſign againſt our Church, was the late moſt Reverend Dr. *Sancroft*, then Archbiſhop of *Canterbury.* The Time was towards the End of that unhappy Reign, of which ſo much was ſaid upon the Occaſion of the foregoing Article. Then, when we were in the height of our Labours, defending the Church of *England* againſt the Aſſaults of Popery, and thought of nothing elſe; that wiſe Prelate, foreſeeing ſome ſuch Revolution as ſoon after was happily brought about, began to conſider how utterly unprepared they had been at the Reſtoration of King *Charles* II. to ſettle many things to the Advantage of the Church; and what a happy Opportunity had been loſt for want of ſuch a previous Care, as he was therefore deſirous ſhould now be taken for the better and more perfect Eſtabliſhment of it. It was viſible to all the Nation, that the more moderate Diſſenters were generally

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* *Dr.* William Wake.

† *See Dr.* Sacheverell's *Anſwer to the 1ſt Article of Impeachment. His Speech, Fol. Pag.* 23.

|| *Dr.* Sacheverell's *Sermon at St.* Paul's, *Pag.* 8.

‡ *Serm.* pag. 16, 17.

ſo well ſatisfied with that Stand which our Divines had made againſt Popery, and the many unanſwerable Treatiſes they had publiſhed in Confutation of it, as to expreſs an unuſual Readineſs to come in to us. And it was therefore thought worth the while, when they were deliberating about thoſe other Matters, to conſider at the ſame time what might be done to gain them, without doing any Prejudice to ourſelves.

The Scheme was laid out, and the ſeveral Parts of it were committed, not only with the Approbation but by the Direction of that Great Prelate, to ſuch of our Divines as were thought the moſt proper to be intruſted with it. His Grace took one Part to himſelf; another was committed to the then Pious and Reverend * Dean, afterwards a Biſhop of our Church. The reviewing of the daily Service of our Liturgy, and the Communion-Book, was referred to a ſelect Number of excellent Perſons †, two of which are at this Time upon our Bench; and I am ſure will bear Witneſs to the Truth of my Relation. The Deſign was, in ſhort, this: To improve, and, if poſſible, to inforce, our Diſcipline; to review and enlarge our Liturgy; by correcting of ſome Things, by adding of others; and if it ſhould be thought adviſable by Authority, when this Matter ſhould come to be legally conſidered, firſt in Convocation, then in Parliament, by leaving ſome few Ceremonies, confeſſed to be indifferent in their Natures, as indifferent in their Uſage, ſo as not to be neceſſarily obſerved by thoſe who made a Scruple of them; till they ſhould be able to overcome either their Weakneſſes or Prejudices, and be willing to comply with them.

How far this good Deſign was not only known to, but approved of by, the other Fathers of our Church, that famous Petition, for which ſeven of them were ſent to the *Tower*, and which contributed ſo much to our Deliverance, may ſuffice to ſhew. The “ Willingneſs there declared of “ coming to ſuch a Temper as ſhould be thought fit with the Diſſenters, “ when that Matter ſhould be conſidered and ſettled in Parliament and “ Convocation;” manifeſtly referred to what was then known to ſeveral, if not all, of the Subſcribers, to have been at that very time under Deliberation. And that nothing more was intended than I before ſaid, is as evident from what was publickly declared in a Treatiſe purpoſely written to recommend the Deſign, when it was brought before the two Houſes of Parliament, in the Beginning of the late Reign; and licenſed by the Authority of a Noble Peer, now preſent, who was at that time Secretary of State: In the very Beginning of which there is this remarkable Paſſage, which I ſhall beg Leave to read to your Lordſhips: “ ‡ No Alteration, that I know of, is intended, but in Things declared “ to be alterable by the Church itſelf. And if Things alterable be al- “ tered upon the Grounds of Prudence and Charity; and Things defec- “ tive be ſupplied; and Things abuſed be reſtored to their proper Uſe; “ and Things of a more than ordinary Compoſition reviſed and improved; “ whilſt the Doctrine, Government and Worſhip of the Church remain “ intire, in all the ſubſtantial Parts of them; we have all Reaſon to be- “ lieve that this will be ſo far from injuring the Church, that, on the “ contrary, it ſhall receive a very great Benefit by it.”

And now, my Lords, let any impartial Perſon conſider, what was there in ſuch a Deſign that could be juſtly eſteemed prejudicial to the Conſtitution of our Church? Wherein would our Canons have ſuffered, if thoſe already made had been more ſtrongly enforced; and ſome new ones had been added, for the Reformation of Manners; for the better puniſhing of notorious Offenders; and to render our public Diſcipline more ſtrict and ſevere? This we have been wiſhing for ever ſince the Reformation. What Harm would it have done our Church, had it now been effected? Or how would our excellent Liturgy have been the worſe, if a few more doubtful Expreſſions had been changed for plainer and clearer; and a Paſſage or two, which however capable of a juſt Defence, yet in many Caſes ſeem harſh to ſome even of our own Communion, had either been wholly left at Liberty, in ſuch Caſes, to be omitted altogether; or been ſo qualified as to remove all Exception againſt them in any Caſe? If ſuch Collects, as are not yet adapted to the Feſtivals or Goſpels to which they belong, had been made more full, and appoſite to both; if ſome of the occaſional Offices had been enlarged, and new ones added: If, for Example, there had been a greater Variety of Prayers, Pſalms and Leſſons appointed by Authority, inſtead of the Compoſitions of private Perſons, now neceſſarily to be uſed, for the Viſitation of the Sick; and new Forms compoſed for the Uſe of Priſoners for Debt or Crimes: For the greater Solemnity of receiving Proſelytes into our Church; of reconciling Penitents to it; and of caſting notorious Offenders out of it: Theſe were ſome of the main Things that were then deſigned. As for any Favour to the Diſſenters, none that I know of was intended, but what ſhould have been entirely conſiſtent with our own Conſtitution: And I hope it will not be thought any Crime for the Biſhops and Clergy of our Church to be willing to enlarge its Communion, by any Methods which may be likely to gain others, and yet not injure our own Eſtabliſhment.

But to ſatisfy your Lordſhips that nothing could have been deſigned to the Detriment of the Church; be pleaſed farther to conſider, how what was thus at firſt projected in private, by ſelect Perſons, and in a difficult Time, when no Countenance was to be expected from Authority to any ſuch Purpoſe, was afterwards, if ever, to have been brought to Maturity? And this being a Matter of publick Notice, the relation of it will admit of no Exception.

No ſooner were their late Majeſties, of glorious Memory, ſeated in their Thrones, but this Deſign was openly eſpouſed by them. A Commiſſion was iſſued out, under the Great Seal of *England*, to a large Number of Biſhops and other eminent Divines, to meet together, and to conſider of theſe Matters. What they did, having not had the Honour to be one of them, I ſhall not preſume to ſay. This we know, that whatever they did, it was to have been carried on from them to the two Convocations of *Canterbury* and *York*: And after it ſhould have paſſed their Approbations, it was finally to have been laid before the two Houſes of Parliament, and ſo to have gone on to the Royal Aſſent. This, my Lords, was the Courſe through which all that was deſigned, or ſhould have been done in this Matter, muſt have paſſed: And I am perſuaded nothing very injurious to our Church's Welfare will ever be able to paſs through all theſe.

Having thus given your Lordſhips a true Account of that Deſign which Dr. *Sacheverell* mentions under the Name of Comprehenſion, I doubt not but that your Lordſhips will now be amazed to hear, what a falſe and ſcandalous Report he has made of it. In the 16th Page of his Sermon, he thus ſpeaks of it: “ The worſt Adverſaries of our Church, “ ſays he, were to be let into her Bowels under the Holy Umbrage of “ Sons; who neither believed her Faith; owned her Miſſion; ſubmitted “ to her Diſcipline; or complied with her Liturgy. For the admitting “ of this Trojan Horſe, big with Arms and Ruin, into our Holy City, “ the ſtraight Gate was to be laid quite open; her Walls and Enclo- “ ſures to be pulled down; and a High-road made in upon her Com- “ munion. Her Articles to be taught the Confuſion of all Senſes, Na- “ tions, and Languages.”

This, my Lords, is a very ſtrange Repreſentation of ſo good a Deſign as that I before recounted to your Lordſhips. Yet this Repreſentation did this bold Man, as confidently, as falſly, make of it in the Houſe of God, and publiſh to the View of the whole Nation. For thus he goes on: “ This pious Deſign of making our Houſe of Prayer a Den of “ Thieves, of reforming our Church into a Chaos, is well known to “ have been attempted ſeveral Times in this Kingdom, and lately within “ our Memory, when all Things ſeemed to favour it; but that good “ Providence which ſo happily interpoſed againſt the Ruin of our “ Church, and blaſted the long-projected Scheme of theſe Eccleſiaſtical “ Achitophels.” To ſay nothing more of the Deſign itſelf, of which I have given an Account before; pray, my Lords, who were the *Achitophels* that projected it, and muſt have concurred to the Execution of it? I have already named the firſt and chiefeſt of them, the late Archbiſhop *Sancroft*. The next who openly approved of it were the Commiſſioners who met upon it in the *Jeruſalem-Chamber*: A Set of Men, than which this Church was never, at any one Time, bleſſed with either wiſer or better ſince it was a Church: Who it was that || preſided in the Convocation of this Province, to which this Project was next to be referred; and who, had it gone on, muſt have had a chief Hand in the Management of it, I need not ſay. Every one who knows any thing at all of his Character, (and I am ſure your Lordſhips are none of you Strangers to it) knows him to be too good a Friend to the Eſtabliſhment of our Church, to have been capable of being engaged in ſuch a villainous Deſign, as Dr. *Sacheverell* pretends, for the Subverſion of it: Or had he been otherwiſe, yet ſtill the major Part of that venerable Body muſt have been as great *Achitophels* as himſelf, or no Harm could have been done by him. Pardon me, my Lords, if the Courſe of my Argument obliges me to riſe yet one Degree higher, and to ſay, that the like Majority of your Lordſhips, and of the Houſe of Commons, together with his late Majeſty, muſt all have come into the Plot againſt the Church; or all the Skill and Malice of the inferior *Achitophels* would have ſignified nothing. And what Cenſure that Man deſerves, who has the Confidence to inſinuate to the World, that the Biſhops, the other Clergy, the Convocations, the Parliament, nay, and the late King himſelf, our glorious Deliverer; or at leaſt the greater Part of all theſe, were engaged in a Project “ ſo mon- “ ſtrous, ſo romantic, and abſurd, (for here I am content to uſe his own “ Expreſſions) that it is hard to ſay whether it had more of Villiany or “ Folly in it;” I ſhall ſubmit it to your Lordſhips, to conſider. All I deſign in taking notice of this Part of his Sermon, is only to clear the Memory of many excellent Perſons who are dead; and to vindicate the Reputation of ſome ſtill living, and in the higheſt Stations of the Church, from that Load of Infamy which this raſh Man has with ſo much Virulence of Speech caſt upon them: And to let your Lordſhips ſee that nothing was intended in all that Affair but what was both Honourable to thoſe who engaged in it, and, I am perſuaded, would have been for the Intereſt and Peace of our Church and State, had it been accompliſhed.

I come now to that which is the proper Subject of the preſent Debate; namely, to offer ſuch Paſſages to your Lordſhips, as I humbly conceive do plainly and fully make out the Second Article of the Commons Impeachment againſt the Preacher; and prove him to have ſpoken with more Freedom than he ought, not only of the Diſſenters themſelves, but of the Toleration, or (as he had rather we ſhould call it) the Indulgence granted by Law to them.

And here, as I remember, it was not denied either by his Counſel or himſelf, but that he had ſpoken, and ſpoken with Warmth too, againſt Toleration. The only Queſtion is, What the Toleration is againſt which he ſpake? Whether it was that which has been granted by Law to the Diſſenters? Or whether it was only againſt a general Toleration of Atheiſts, Deiſts, Socinians, Men of no Principles, perhaps of no Religion? Or at moſt, againſt ſuch of the Diſſenters as abuſed the Indulgence granted them by Law; and made uſe of it to Purpoſes not at all warranted by it? The former of theſe the Commons charge upon him: The latter he pretends; the better to clear himſelf of their Charge.

To determine this Point, I muſt in the firſt Place beg Leave to obſerve, that among the ſeveral Sorts of falſe Brethren enumerated by the Preacher, with relation to God, Religion, or the Church; the ſecond Kind is of thoſe, who give up any Point of the Church's Diſcipline and Worſhip, *Page* 8. To this he adds, that thoſe are falſe Brethren who defend Toleration and Liberty of Conſcience. And that we may the better know what Toleration and Liberty of Conſcience he means, he ſpecifies the very Perſons to whom he refers, and of whom he ſpeaks; the Diſſenters: “ If, ſays he, to comply with the Diſſenters both in public “ and private Affairs, as Perſons of tender Conſcience and Piety, to pro- “ mote their Intereſts in Elections, to ſneak to them for Places and Pre- “ ferment, to defend Toleration and Liberty of Conſcience, and, under “ the Pretence of Moderation, excuſe their Separation, are the Criterions “ of a true Church-Man; God deliver us all from ſuch falſe “ Brethren!”

The Toleration, therefore, and Liberty of Conſcience, againſt which

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* *Dr.* Patrick, *Biſhop of* Ely.

† *The Archbiſhop of* York *and Biſhop of* Ely.

‡ *A Letter to a Member of Parliament in favour of the Bill for uniting Proteſtants: Licenſed by the Command of the Earl of* Shrewſbury, *April* 1, 1689. *Ja. Vernon,* Pag. 2.

|| *The Lord Biſhop of* London.

he ſpeaks, muſt neceſſarily be that of the Diſſenters; thoſe who ſeparate from our Church: He names no others; but carries the ſame Perſons thro' the whole Sentence, both before and after thoſe Expreſſions. Either therefore it is no Reflection upon the Act of Indulgence to ſay, that all thoſe who defend the Toleration of the Diſſenters, and are for allowing Liberty of Conſcience to them, are falſe Brethren with relation to God, Religion or the Church, *Page* 6, 7, and ſuch gainſt whom we ought to pray to God to deliver us all, *Page* 8. Or if this cannot with any Reaſon be either ſaid or ſuppoſed, then it muſt remain that Dr. *Sacheverell* has here ſaid what the Commons Charge him withal; and that in expreſs Terms, *viz.* That he is a falſe Brother who defends the Toleration, not of Deiſts, Socinians, and I know not what Monſters of Irreligion, but of the Diſſenters: Thoſe ſame Diſſenters, who by the Act of Indulgence have a Right to that Liberty of Conſcience of which this Gentleman ſpeaks ſo very hardly; and prays God to defend us from all ſuch falſe Brethren as ſhall preſume to excuſe it.

But not to inſiſt upon a ſingle Paſſage which may be ſuppoſed to have dropt unwarily from him: In the Second Part of his Sermon, he proceeds to ſhew the great Perils and Miſchiefs of thoſe falſe Brethren againſt whom he was before ſpeaking, both to the Church and State, *Page* 15. And that theſe again are the ſame Perſons who have a Right to the legal Indulgence, is ſo very clear, that I do not ſee how it is poſſible for any one to make the leaſt Doubt of it. *Page* 18. He deſcribes them as Occaſional Conformiſts to the Chuch. *Page* 19. As thoſe who had the old Leaven of their Forefathers ſtill working in them: And, in the next Sentence he expreſsly talks of the religious Liberty which our gracious Sovereign has indulg'd them. This in the very ſame Sentence he calls their Toleration; (for the Doctor himſelf is not tied up to any Niceties of Expreſſion; he may call it ſo, tho' others may not:) Theſe are the Perſons, and the only Perſons, of whom he ſpeaks in all that Part of his Diſcourſe; let us ſee what he ſays of the Indulgence granted by Law to them.

And firſt, he tells us, *Page* 18. “ That it cannot be deny'd, but that “ tho' they do ſubmit to the Government, their Obedience is forced and “ conſtrain'd; and ſo treacherous and uncertain, as never to be truſted. “ That they are as much Occaſional Loyaliſts to the State, as they are Oc- “ caſional Conformiſts to the Church; and will betray either whenever it “ is in their Power, and they think it for their Advantage. That nothing “ but a *ſottiſh* Infatuation can ſo far blind our Eyes, and our Judgments, as “ to make us believe that the ſame Cauſes ſhould not produce the ſame Ef- “ fects; that the ſame Latitudinarian and Republican Notions ſhould not “ bring forth the ſame rebellious and pernicious Conſequences. That we “ ſhall be convinced to our Sorrow, if we don't apprehend that the old “ Leaven of their Foreſathers is ſtill working in the preſent Generation: “ and that this traditional Poiſon ſtill remains in this Brood of Vipers to ſting “ us to Death. That they have advanced themſelves from the religious “ Liberty which our gracious Sovereign has indulged them, to claim a “ civil Right; and to juſtle the Church out of her Eſtabliſhment, by “ hoiſting their Toleration into its Place. That to convince us what “ alone will ſatisfy them, they inſolently demand the Repeal of the “ Corporation and Teſt-Acts, which, under her Majeſty, is the only “ Security the Church has to depend upon: And which (if we may be- “ lieve him) they have ſo far eluded by their abominable Hypocriſy, as to “ have undermined her Foundations, and endanger the Government, by “ filling it with its profeſſed Enemies.” His Meaning is plainly this, that the Diſſenters, whom we are ſo fooliſh as to indulge, are a Parcel of falſe and treacherous Perſons; Enemies both to our Church and State; and ſuch as, if not timely ſuppreſſed, will convince us to our Sorrow of the Weakneſs and Folly of taking ſuch Vipers into our Boſom, as watch only for a fair Opportunity to ſting us to Death.

But what then muſt we do to ſecure ourſelves againſt theſe dangerous Enemies? Why firſt, the Doctor aſſures us, that they are never to be gain'd by any Favour that can be ſhew'd to them. “ * That he muſt be very weak, “ or ſomething worſe, that thinks, or pretends that the *Diſſenters (for of* “ *theſe he ſtill ſpeaks)* are to be won over by any other *Grants* and *Indul-* “ *gences* than giving up our *whole Conſtitution.*” This ſhews the Folly of trying the ſoft way of Indulgence with them: And therefore he concludes, “ That He who recedes the leaſt Tittle from it (our Conſtitution) to ſatisfy “ or ingratiate with theſe clamorous, inſatiable Church-devouring Ma- “ lignants, knows not what Spirit they are of; or he ought to ſhew who “ is the true Member of our Church.”

This, I think, comes fully up to what is objected “ againſt him; namely, “ That Dr. *Sacheverell* does in his Sermon ſuggeſt and maintain, that the “ Toleration granted by Law is unreaſonable and the Allowance of it un- “ warrantable:” For ſo it needs muſt be, if the Diſſenters be ſuch Men as he tells us they are; and will be ſatisfy'd with nothing leſs, than he aſſures us they will. And yet what next follows is, if poſſible, ſtill more expreſs to the ſame Purpoſe. It is objected againſt him by the Commons, That he had affirmed in his Sermons, “ Queen *Elizabeth* was deluded by “ Archbiſhop *Grindall*, (whom he ſcurrilouſly calls a *falſe Son of the Church*, “ and a *perfidious Prelate*) to the Toleration of the *Genevian* Diſcipline.” The Fact is not denied, but the Expreſſions are excus'd; and the Truth of the Allegation is endeavour'd to be made out by Hiſtorical Memoirs: And it is hoped that your Lordſhips will not account it a High Crime and Miſdemeanor, to have ſpoken too hardly of a Prelate who has been ſo many Years in his Grave.

I am, my Lords, very far from thinking, that the Commons ever intended to charge Dr. *Sacheverell* as guilty of High Crimes and Miſdemeanors for ſpeaking ſcandalouſly of that good Archbiſhop. Their Concern was not for his Perſon, what Reſpect ſoever they may have had (as all true Friends of the Reformation muſt needs have a very great one) for his Memory. But the Truth of the Matter is this: The Preacher complains, Page 19 of his Sermon, That “ Queen *Elizabeth* was deluded by Arch- “ biſhop *Grindall*, to the Toleration of the *Genevian* Diſcipline.” He adds, “ That the Archbiſhop was a perfidious Prelate, for deluding her to to- “ lerate that Diſcipline. That ſhe found it ſuch a head-ſtrong and en- “ croaching Monſter, that in eight Years ſhe ſaw it would endanger the “ Monarchy as well as the Hierarchy: And like a Queen of true Reſo- “ lution, and pious Zeal for both, ſhe pronounced that ſuch were the reſt- “ leſs Spirits of that factious People, † that no Quiet was to be expected “ from them, till they were *Utterly Suppreſs'd.* That this, therefore, like “ a prudent Princeſs, ſhe did by wholeſome Severities; and the Effect was, “ that by this Means the Crown for many Years ſate eaſy and flouriſh- “ ing on her Head: But that her Succeſſor, King *James*, did not follow “ her wiſe Politicks.” And the Reſult was as deplorable on his Side, as it had been glorious on Her's: For by this Means, “ His Son fell a Mar- “ tyr to their Fury; his unhappy Offspring ſuffered ſuch diſaſtrous Ca- “ lamities, as made the Royal Family one continued Sacrifice to their Ma- “ lice.” And all this for want of thoſe wholeſome Severities which the wiſe Queen his Predeceſſor had uſed utterly to ſuppreſs that factious People.

This, my Lords, is the Doctor's Narrative; and I have given it you in his own Words. The Application is plain and home. The Diſſenters are now again tolerated, as they were heretofore under Queen *Elizabeth*: There is a perfidious Prelate (perhaps in his Opinion a great many) who, like Archbiſhop *Grindall*, help to delude another Queen into the Toleration of them. Theſe *Eight Years* paſt (for the very Number of Years is remarkable) her Majeſty has borne the reſtleſs Spirits of this factious People; and had no Quiet for them. It is now high time for her to alter her Meaſures, as Queen *Elizabeth* wiſely did. It is the only way to make the Crown ſit eaſy and flouriſhing upon her Head. And if this be not plainly to ſpeak out what he would have done with the Act of Indulgence, I muſt deſpair of ever being able to know any Man's Meaning by his Expreſſions. Such Examples are not only the moſt likely to enforce, but the moſt proper and lively Methods to convey a Man's Senſe, even to the dulleſt Capacity; and make him clearly perceive, if not what he ought, yet I am ſure what the Preacher would have him to do.

The Truth is, ſo plain was his Meaning, that he himſelf began to fear that he had gone a little too far in what he had ſaid of this Matter. And for that reaſon he added, that one poor Sentence which immediately follows, and of which he has made ſuch good uſe ſince: “ That he would “ not be miſunderſtood as if he intended to caſt the leaſt invidious Reflec- “ tion upon that Indulgence the Government had condeſcended to give “ them, (the Diſſenters:”) but what then did he intend by all this bitter Invective againſt them; and that very inſtructive Piece of Hiſtory with which he concluded it? He has told us, “ That the Diſſenters are falſe “ Brethren; deſtructive both of our Civil and Eccleſiaſtical Rights: That “ they are Occaſional Loyaliſts to the State, as well as Occaſional Con- “ formiſts to the Church; and will betray both whenever they have it in “ their Power, and it ſhall be their Intereſt to do it: That it muſt be a “ ſottiſh Infatuation to believe that the ſame Latitudinarian and Republican “ Notions, ſhould not bring forth the ſame rebellious and pernicious Con- “ ſequences: That we ſhall be convinc'd to our Sorrow if we do not appre- “ hend that the Old Leaven of their Forefathers is ſtill working in the pre- “ ſent Generation: That they have already made dangerous Encroachments “ upon the Government, and publiſhed treaſonable Reflections upon her “ Majeſty: That they have advanced their Indulgence into a Civil Right, “ and juſtled the Church out of her Eſtabliſhment, by hoiſting their To- “ leration into its Place: That they have by their abominable Hypocriſy “ undermined the Foundation of the Church, and endanger'd the Govern- “ ment, by filling it with its profeſs'd Enemies: That they are clamorous, “ inſatiable, Church-devouring Malignants; whom no other Grants or “ Indulgences can win over, but the giving up our whole Conſtitution: “ That ever ſince their firſt unhappy Plantation in this Kingdom, they “ have improved, and roſe upon their Demands in the Permiſſion of the Go- “ vernment: That Queen *Elizabeth*, who tolerated them for eight Years “ together, was forced at laſt to ſuppreſs them by wholeſome Severities: “ That this made her Crown ſit eaſy and flouriſhing on her Head; whereas “ King *James* the Firſt, by not purſuing the like Methods, ruined the “ whole Royal Family: That nothing better could be expected from ſuch “ Miſcreants, begot in Rebellion, born in Sedition, and nurſed up in “ Faction.” All this Dr. *Sacheverell* has ſaid in theſe very plain, and emphatical Words. If he did not intend by all this to ſhew the Neceſſity of ſuppreſſing theſe factious People, theſe Vipers, who are juſt ready to ſting us all to death, I would be glad to know what it was that he did intend by it? Could he ſay all this, and with ſuch a ſingular Strain of impetuous Eloquence, and yet, “ not intend to caſt ſo much as the leaſt invidious “ Reflection upon that Indulgence which the Government has thought fit “ to give them?” I muſt freely own, my Lords, I could never have imagined this: Nay, I muſt be excuſed if I add, That notwithſtanding this poor Evaſion, I cannot yet believe it. But the Act of Indulgence ſtood in his way: That Act the Queen had declared her Reſolution to maintain: Your Lordſhips and the Commons had often ſhewn your Steddineſs to the ſame effect. Even thoſe who preſs'd ſo violently againſt occaſional Communion, yet thought it neceſſary to ſay, in the very Preamble of that Bill, That the Act of Indulgence ought inviolably to be obſerved: And therefore Dr. *Sacheverell* thought it needful to add ſomewhat that he knew would not take off any thing from the Force of his Invective, yet might ſerve to excuſe the Severity of it, and be made uſe of to the purpoſe it now is, if he ſhould chance to be call'd to account for it. This, my Lords, I conceive to be the true Meaning of that one ſingle Paſſage, ſo utterly repugnant to all the reſt of his Diſcourſe; nor can I put any other Interpretation upon it. For had I the ſame Opinion of theſe Men, their Principles, and their Deſigns, that Dr. *Sacheverell* has, I ſhould be ſo far from thinking them fit to be indulged, that I ſhould account it my Duty, and the Duty of every true Friend to our Church and Government, to take the ſame Methods of wholeſome Severities with them that Queen *Elizabeth* did: And I hope, by God's Grace, that ſhould I be queſtion'd for it, I ſhould not diſſemble my Opinion; but ſhould have the Courage honeſtly to own it, whatever I might chance to ſuffer for it.

I have, my Lords, inſiſted the longer upon this Part of the Doctor's Sermon, becauſe I would not willingly fall under the Cenſure of picking out disjointed Sentences, and putting them together from diſtant Places, that ſo I might the better draw a Senſe out of them, contrary to his Meaning. I ſhall trouble your Lordſhips but with one part more of it, to the ſame Effect, *Page* 24, 25. where he comes to conſider, *What ſhould be the Reſult of his long Diſcourſe?* I ſhall read it to your Lordſhips in his own Words, *Page* 25. ‘ *Let us therefore*, ſays he, *as we are unhappy Sharers of* ‘ *St.* Paul’*s Misfortune, to have our Church in Perils amongſt falſe Brethren,* ‘ *follow his Example and Conduct in a parallel Caſe. He tells us in his Epiſtle* ‘ *to the* Galatians, c. 2. *That he was obſtructed and peſter’d in preaching the* ‘ *Goſpel, by* Falſe Brethren unawares brought in, who came privily to ‘ ſpy out his Liberty which he had in Chriſt Jeſus, that they might bring ‘ him into Bondage. To whom he gave place by Subjection, no not for ‘ an Hour, that the Truth of the Goſpel might continue with the Church. ‘ *Doubtleſs this brave and bold Reſolution did the Apoſtle take by the peculiar* ‘ *Command and Inſpiration of the Holy Ghoſt: And yet if* our Diſſenters ‘ *had lived in thoſe times, they would have branded him as an intemperate, hot,* ‘ *furious Zealot, that wanted to be ſweetened by the gentle Spirit of Charity* ‘ *and Moderation forſooth.*’

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* Sermon, *p.* 19.

† Sermon, *p.* 20.

Here we have again the Perſons of whom the Preacher ſpeaks: They are *our Diſſenters*, not the Deiſts, Atheiſts, Socinians, Hypocrites, of our times. And accordingly what follows, plainly refers to them: For thus he goes on, ‘ *Schiſm and Faction are things of impudent and incroaching* ‘ *Natures; take Permiſſions for Power; and advance a* Toleration (for ſo ‘ the Doctor is ſtill at liberty to call what we muſt ſtyle *Indulgence*) *im-* ‘ *mediately into an Eſtabliſhment.*’ Your Lordſhips will pleaſe to obſerve, by the way, that this was the very thing he had before ſaid of theſe ſame Perſons, *Page* 19. and thereby plainly ſhews, that he ſpeaks in both places of thoſe *Diſſenters* who have a Right to the *Toleration* or *Indulgence*, granted by Law to Proteſtant Diſſenters. Let us now hear what he would have done with them. Why he would have them ‘ *treated like growing Miſ-* ‘ *chiefs, or infectious Plagues; kept at a diſtance, leſt the deadly Contagion* ‘ *ſpread.*’ And the Method he propoſes in order thereunto, is this, ‘ *Let* ‘ *us therefore*, ſays he, *have no Fellowſhip with* theſe Works *of Darkneſs*; ‘ *but rather reprove them.*’ Theſe Works, *Schiſm* and of *Faction*; for theſe, and theſe only, he here ſpeaks. This is the People’s Part, and the inferiour Paſtors: ‘ *As for the ſuperior Paſtors, let them do their Duty, in* ‘ *thundering out their Eccleſiaſtical Anathemas againſt* them.’ Againſt whom, my Lords? what Works of Darkneſs? Still the ſame he before mentioned: *Our Diſſenters*, thoſe are the Perſons: Their Schiſm and Faction; thoſe are the Works of Darkneſs to which he refers. ‘ *And let any Power on Earth dare reverſe a Sentence ratify’d in Heaven.*’

This, my Lords, was the laſt part of the Commons Impeachment upon this ſecond Article: And ’tis ſo plainly expreſſed by the Preacher in this Paſſage, that I confeſs it amazes me to conſider with what Poſitiveneſs he has thought fit to deny any ſuch Thing was meant by him. The Perſons whom the ſuperior Paſtors are ſummoned to anathematize, are the ſame with thoſe, whom the other Paſtors and People are to have no Fellowſhip withal, but to reprove. Theſe, by the neceſſary Connection of his Diſcourſe, are our Diſſenters; whoſe Works of Darkneſs, he ſtates to be Schiſm and Faction: Thoſe Diſſenters to whom the Government hath granted a Toleration; as himſelf, in the ſame Paſſage, takes notice. Which being ſo; I ſhall leave the Doctor to deny and proteſt, as he pleaſes; but when all is done, his own Words will riſe up againſt him, and appear to every impartial Perſon ſo plain, and poſitive, as to put it beyond the Power of any artificial Interpretation to perplex the Meaning of them.

And this lets us into the true Application of thoſe Paſſages of Scripture, with which he concludes his whole Diſcourſe. In which, having ſhewn the Danger of our Church from theſe falſe Brethren, and exhorted his Auditory to a ſteady Courage and Reſolution in the Defence of it; he thus at once both inforces his Doctrine, and abuſes his Adverſaries. That tho’ the Church (for to that he applies, what * *Zechariah* ſpake of the the falſe Prophets that ſeduced the People) *lies bleeding of the Wound ſhe has received in the Houſe of her Friends:* A Paſſage firſt thrown at myſelf †, for defending the Prince’s Authority, when ſome of theſe very Men engaged as vehemently on the ſide of Liberty, againſt the Rights of the Crown, as they now pretend to ſtand up vigorouſly for it: ‡ *Tho’ the Ways of* Zion *may mourn for a Time* (ſo the Doctor gloſſes upon the Text) *and her Gates be deſolate; her Prieſts ſigh, and ſhe in bitterneſs, becauſe* (it is the Preacher’s Reaſon, the Text has no ſuch Word) *her Adverſaries are Chief*; he means in the Adminiſtration under her Majeſty; *and her Enemies at preſent proſper*; (ſo he again improves the Text; in hopes, I ſuppoſe, that it will not be long before he ſhall have preach’d them out of their Places:) ‖ *Tho’ among all her Lovers She has few* (the Prophet complained that *Jeruſalem* had none) *to comfort her; and many* (*Jeremiah* ſaid all) *have dealt treacherouſly with her, and are become her Enemies*; (he refers to thoſe of whom he had before ſpoken, *Page* 22.) § *Tho’ there are few to guide her among all the Sons which ſhe hath brought forth; neither are there many to take her by the Hand of all the Sons that ſhe hath brought up*; (*Iſaiah* in both places, ſays none:) *Tho’ her Enemies cry, Down with her, down with her, even to the Ground:* That is, in other Words, tho’ (the Preacher, and a few of his Friends, excepted) both the Fathers and Paſtors of the Church; and the Men who are at preſent in Power, and Authority, in the State, are become falſe Brethren, and run in with thoſe Enemies of the Church, our Diſſenters, againſt it; ‘ *Yet there is a God that can, and* ‘ *will raiſe her up, if we forſake her not.*’

It were an eaſy matter to make many proper Remarks upon theſe Paſſages of Scripture thus applied, or rather abuſed, by the Preacher: But that would be beſides my preſent Buſineſs; and will fall in more properly under the laſt Article of this Impeachment. It is enough that I have, I hope, fully ſhewn your Lordſhips how Dr. *Sacheverell* has treated, if not the Indulgence itſelf, yet I am ſure, thoſe who are entitled to the Benefit of it: And who, if they ſhall have the Misfortune, by this kind of Preaching, to be once generally thought ſuch wicked, falſe, and dangerous Enemies to our Church and State as they are here repreſented, I cannot think that their Indulgence will hold long. If they have Numbers to ſecure them, it is well for them: But otherwiſe I am ſure as the Caſe is here ſtated, it muſt be our Wiſdom, as well as Duty, to ſuppreſs them.

How criminal ſuch an Invective as this will be accounted in the Eye of the Law, I dare not preſume to ſuggeſt: Much leſs ſhall I pretend to intimate what Cenſure it may deſerve. Somewhat I think ſhould be done to put a Stop to ſuch Preaching, as if not timely corrected may kindle ſuch Heats and Animoſities among us, as may truly endanger both our Church and State. As for the Preacher himſelf, I am very willing to come into any Meaſures of Favour to him, that are conſiſtent with your Lordſhips Honour and Juſtice, and will anſwer the Ends of the Impeachment that has been brought before us againſt him.

The Biſhop of Norwich’*s* ⸸ *Speech in the Houſe of Lords, at the opening of the Second Article of Impeachment againſt Dr.* Sacheverell.

My LORDS,

I AM very ſenſible under what Diſadvantage in the Opinion of many, a Biſhop muſt ſpeak againſt a Clergyman that ſtands accuſed of Crimes committed by him in the ſeeming Execution of his Office; eſpecially after having been ſo publickly required to be an Advocate as well as a Judge. And I am the more ſenſible of this Prejudice lying againſt me, for having been ſo lately called into that Order, and for being ſo unworthy of it.

But I think myſelf obliged notwithſtanding, under all theſe Diſadvantages, to deliver not olny my Judgment, but alſo the Reaſons that determine me to it: Which I ſhall do as plainly as I can; with that Deference to your Lordſhips, which I am ſure it muſt upon all Occaſions particularly become me to pay; and at the ſame time with that Freedom which I think the Importance of this Cauſe does at this time require.

Dr. *Sacheverell* ſtands impeached by the Commons of *Great Britain*, of High Crimes and Miſdemeanors expreſſed in the ſeveral Articles of the Charge exhibited againſt him; And your Lordſhips have heard what they have ſaid in ſupport of that Charge, as well as what has been offer’d in the Doctor’s Defence.

Your Lordſhips have alſo debated among yourſelves the Merits of the Cauſe as to the firſt of theſe Articles; and have come to a Reſolution, that the Commons have made good that part of their Charge; and which Reſolution as I did heartily concur, ſo I was ready to have humbly repreſented to your Lordſhips my Reaſons for ſo doing, had there been either room or occaſion for it.

Your Lordſhips are now upon the *Second Article*; wherein the Doctor is charged for *ſuggeſting and maintaining, that the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable*; with other Particulars that have immediate relation to this general Charge, and which are indeed ſo many Proofs of it.

In this view therefore, my Lords, I beg leave to conſider them: And the *Firſt* of theſe Inſtances in ſupport of this Charge, is, that he aſſerts, that *He is a falſe Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience*; and this, my Lords, the Doctor does aſſert in ſo many Words. It is *one* of the *many* Marks he gives whereby we may diſcern who is a falſe Brother in thoſe reſpects; not a *ſmall part* of *one general Mark*, as was alledged very inconcluſively, I think, in his Defence. For if it was to be granted, (tho’ it cannot be fairly pretended) that the Doctor makes the defending of Toleration and Liberty of Conſcience, one Branch only of the Character of a falſe Brother; I do not ſee how it could make even a part of that Character, if there was no falſe Brotherhood in it. And I ſhall not trouble myſelf or your Lordſhips with going about to ſettle the degrees of falſe Brotherhood that are in this part of the Character, becauſe I think every degree of it is unreaſonable and not to be warranted.

And therefore the Doctor cannot make it ſo much as a Part of the Character of a falſe Brother to defend Toleration and Liberty of Conſcience, as it is confeſs’d that he does, but he muſt at the ſame time *ſuggeſt and maintain that the Toleration is unreaſonable, and the Allowance of it unwarrantable.* For it can never be any degree of falſe Brotherhood, to defend what is reaſonable and warrantable: Nor would even the Doctor, as inconſiſtent a Man as ſeveral of the Noble Lords that have Spoken for him repreſent him to be, ever have made is one; if he had not himſelf condemned that which he blames others for defending.

The *Second Inſtance* alledged is, that *he calls Archbiſhop* Grindall *a falſe Son of the Church*, and a *perfidious Prelate, for deluding Queen* Elizabeth *into the Toleration of the* Genevian *Diſcipline.* I ſhall not, my Lords, go about to add any thing to the full and juſt Vindication you have heard of that excellent Prelate. But can any of your Lordſhips believe, that a Preſbyter of the *Church of England*, profeſſing more than ordinary Zeal for Epiſcopacy and the Conſtitution of this Church, ſhould beſtow ſuch Language on one who was the firſt Biſhop and the Ornament of it ſo long; only for diſpoſing that glorious Queen to a mild Treatment of the Puritans of that Time, which is the utmoſt that is pretended to be laid to his Charge, if he had thought Toleration a reaſonable thing, or what was fit to be eſtabliſhed by Law?

This, my Lords, I confeſs can never enter into my Thoughts, as ready as I am to enlarge them for the admitting of any favourable Conſtruction that will not ſhut out common Senſe.

The *Third Inſtance* is *his making it the Duty of the Superior Paſtors to thunder out their Eccleſiaſtical Anathemas againſt Perſons entitled to the Benefits of the Toleration.* And to ſhew that he has done this, I need only refer your Lordſhips to that part of his Sermon where the Superior Paſtors are call’d upon to do ſo; (*viz.*) the Fourth and laſt General Head, where he draws the Conſequence of all that he had ſpoken before, in the following Words: * ‘ Now what ſhould be the Reſult of this long Diſcourſe, but that if we bear any true Concern for the Intereſt, Honour, and Safety of our Church and Government, we ought ſtedfaſtly to adhere to thoſe Fundamental Principles, upon which both are founded, and upon which their Security under God alone depends; and conſequently that it highly behoves us, cautiouſly to watch againſt, to mark, and avoid all thoſe that thus treacherouſly deſert them. And indeed it would be both for our Advantage, as well as their Credit, if ſuch Men would throw off the Maſk, entirely quit our Church of which they are no True Members, and not fraudulently eat her Bread, and lay wait for her Ruin, purloin her Revenues, and ungratefully lift up their Heels againſt her. For then we ſhould be one Fold under one Shepherd; all thoſe invidious Diſtinctions, that now diſtract and confound us, loſt; and we ſhould be terrible like an Army of Banners to our Enemies; who could never break in upon ſuch an uniform and well-compacted Body. This indeed would be a True Peace, and Solid Union, when we ſhould all with one Mind and one Mouth glorify God, and not with a confuſed diverſity of contradictious Opinions, and inconſiſtent Jargon of Worſhip, which the God of Peace, Purity and Order, cannot but abhor. As it is a Maxim in Politicks, that all Governments are beſt ſupported by the ſame Methods and Counſels upon which they are founded; ſo it will appear undeniably true in its Application to our Conſtitution, which can be maintain'd by no other Principles, but thoſe on which it is built, and like their Baſis, the Goſpel, if there's any Violation, or Breach made in any Branch of it, it ſhakes and endangers the whole Frame and Body. Theſe things, however little they may be repreſented by our Adverſaries, will be found of the moſt conſiderable Conſequence. Let us therefore, as we are unhappy Sharers of St. *Paul*'s Misfortune, to have our Church in Perils among falſe Brethren, follow his Example and Conduct in a parallel Caſe. He tells us in his Epiſtle to the *Galatians*, c. 2. That he was obſtructed and peſter'd in his preaching the Goſpel, by *falſe Brethren* unawares brought in, who came privily to ſpy out his Liberty, which he had in Chriſt Jeſus, that they might bring him into Bondage: To whom he gave place by Subjection, no not for an Hour, that the Truth of the Goſpel might continue with the Church. Doubtleſs this brave and bold Reſolution did the Apoſtle take by the peculiar Command and Inſpiration of the Holy Ghoſt; and yet if our *Diſſenters* had lived in thoſe Times, they would have branded him, as an intemperate, hot, furious Zealot, that wanted to be ſweeten'd by the gentle Spirit of Charity and Moderation forſooth! Schiſm and Faction are things of impudent and incroaching Natures, they thrive upon Conceſſions, take Permiſſion for Power, and advance a Toleration immediately into an Eſtabliſhment. And are therefore to be treated like growing Miſchiefs, or infectious Plagues, kept at a diſtance, leſt their Deadly Contagion ſpreads. Let us therefore have no Fellowſhip with thoſe Works of Darkneſs, but rather reprove them. Let our ſuperior Paſtors do their Duty in thundering out their Eccleſiaſtical Anathemas, and let any Power on Earth dare reverſe a Sentence ratify'd in Heaven.’

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* Zech. xiii. 6. † *See Dr.* Atterbury’*s Rights of an* Engliſh *Convocation; Tile Page.* ‡ Lament. i. 4, 5. ‖ Lament. i. 2. § Iſaiah li. 18. ⸸ Dr. *Charles Trimnel.*

Can any thing, my Lords, be plainer than that the Diſſenters, and they only are here ſpoken of? And what does the Doctor ſay in his own Defence, to avoid it? His Words in his printed Speech are theſe:

‘ Schiſmaticks, my Lords, are not the only Perſons againſt whom Eccleſiaſtical Cenſures may be denounced: The Works of Darkneſs which I referred to as fit to be reproved, in that part of my Sermon where I ſpeak of theſe Cenſures, are of the ſame kind with thoſe mentioned by the Apoſtle, whoſe Words I produced. All lewd and immoral Practices, *&c.*’

It is very true, my Lords, Schiſmaticks are not the only Perſons againſt whom Eccleſiaſtical Cenſures may be denounced, but I muſt ſtill ſay they are the only Perſons referred to, in the Paragraph I have read to your Lordſhips; and therefore I own I am a good deal concern'd, to find the Doctor making ſo vain, ſo unſincere a Defence. For it is not Works of Darkneſs in general he is cautioning againſt, but expreſsly, by a Word of his own inſerting, not the Apoſtle's, thoſe Works of Darkneſs mentioned immediately before; Schiſm and Faction, which with him go always together.

Theſe are the Sins againſt which he calls upon his ſuperior Paſtors to thunder out their Eccleſiaſtical Anathemas; nor can the Charge be avoided by that Diſtinction which was offer'd in his behalf, between a Cenſure purely Spiritual, and an Eccleſiaſtical Cenſure. For admitting there is ground for that Diſtinction in a Scholaſtical Conſideration of the general Queſtion of Chriſtian Cenſures; yet there is no room to make uſe of it in this Caſe, becauſe he calls expreſly for Eccleſiaſtical Anathemas, which can be apply'd to none but ſuch as are part of the Order and Diſcipline of this Church.

And it is certain, my Lords, that theſe Cenſures cannot, ſince the Act of Toleration, be inflicted upon Diſſenters, how much ſoever their Schiſm remains; becauſe it is expreſly provided by Act of Parliament, (an Act, my Lords, of the whole Chriſtian Society, to which the Superior Paſtors were perſonally concurring) that they ſhall not be treated as Schiſmaticks in the way of thoſe Eccleſiaſtical Cenſures, to which their Separation would otherwiſe have certainly ſubjected them.

And tho' I cannot undertake upon Memory to be very particular, yet I dare venture to ſay, there have antiently been Relaxations of the Diſcipline of the Church, even when the Crime was thought to deſerve the Continuance of it, for Publick Expedience, and better preſerving the Peace of the Chriſtian World: And that in ſuch Caſes any Preſbyter or Biſhop would himſelf have been cenſured, if he had not acquieſced in ſuch Relaxations.

My Lords, a Preſbyter of the Church of *England*, is the more obliged to acquieſce in all ſuch Relaxations amongſt us as are legally made, becauſe he has ſolemnly promiſed at his Ordination, that ‘ he will give his Faithful Diligence always ſo to miniſter the Doctrine, and Sacraments, and the Diſcipline of Chriſt, as the Lord hath commanded, and as this Church and Realm hath received the ſame.’

I have already obſerved to your Lordſhips, how the Diſcipline of the Church ſtands at preſent as to the Point in queſtion. And as the Relaxation of it in that particular, was agreeable to that Temper which the Biſhops who petitioned King *James*, gave the Diſſenters ground to expect; ſo I am verily perſuaded, that the Church is ſo far from being hurt by this Indulgence, that it has received Advantage as well as Credit from that Moderation which gave Way to it. I could give ſeveral Inſtances of this within my own Obſervation, while I was Arch-Deacon, under a Reverend Prelate that ſits now before me, and ſince I have had the Honour to be on this Bench: In which compaſs of Time ſeveral Men of Sobriety and Learning, bred up to be Miniſters amongſt the Diſſenters, have left the Separation, and upon due Trial have been admitted to Orders in our Church; in which they have officiated with entire Conformity to our Rules, and to the Honour of our holy Religion.

Theſe Inſtances have been ſo frequent and remarkable, ſince the Diſſenters have been exempted from the Penalties of certain Laws, above what had been obſerved before; that I think it very ill becomes any Clergyman to preach againſt that Exemption, as the Doctor (notwithſtanding his Reſerve for Conſciences truly ſcrupulous) has done, and to call upon his Superiors to act in Contradiction to it. He ſhould have forbore doing this, at leaſt out of regard to her Majeſty, who had been graciouſly pleaſed to declare from the Throne, that ſhe would preſerve the Toleration inviolable; A Reſolution I ſhall ever think it my Duty, upon all proper Occaſions, to expreſs my Approbation of, as juſt and wiſe and charitable, and every way agreeable to the Spirit and Genius of the Chriſtian Religion.

I ſhall not, my Lords, enter into the Enquiry of what Sentences are ratified in Heaven: But as one may venture to ſay, that all that have been pronounced on Earth, are not raitfy'd there; ſo, by all I have ſeen of the Doctor's Spirit in theſe Matters, I have great reaſon to fear, that if the Power of the Keys was in his Hands, it would often be very ſadly abuſed.

However he has ſo good an Opinion of his own Spirit, as to put his Superiors in mind of another Part of their Duty, immediately after that I have mentioned; and that is, to promote Men of Probity, Conſcience and Courage; without which, he thinks, they cannot be fit Members of the Church Militant; in which I can as little agree with him as in the former Demand. For if I may judge of the Probity, Conſcience, and Courage he thinks ſo deſerving, by what appears in his Sermon, compar'd with his Speech to your Lordſhips, I cannot think them Qualifications for a Miniſter of the Church of Chriſt in any reſpect; and I hope I ſhall be ſo happy as to find all the Reverend Prelates, with whom I have the Honour to ſit, agreeing with me in this.

But tho' I hope ſuch a Conduct will never recommend any Perſon to Favour, yet I do not deſire that even that which I heartily blame ſhould be puniſhed ſo much as I think it deſerves. And tho' he, who pleads ſo warmly for wholeſome Severities towards thoſe who differ from him, has the leaſt Title to your Lordſhips Compaſſion; yet I hope he will find it, as far as the juſt Concern you have for the Publick Tranquillity will allow you to ſhew it.

This I ſay from that which, I bleſs God, is the natural Temper of my Mind, and not from the Care that has been taken by ſome to intimidate, as far as they could, thoſe who were to have the Cognizance of the Doctor's Cauſe, and were not thought to be favourable to it.

I ſhall not take upon me to charge the Doctor or any of his particular Friends with this Practice, as great a Temptation as one is under to do ſo from ſeveral Circumſtances. And it is not the leaſt, that occurs in his Prayers, which he has publiſh'd upon this Occaſion, to repreſent not ſo much to God as to the World, that he is under Perſecution, when he is proſecuted for offending againſt the Law, by thoſe, who in common Juſtice ought to be thought the faireſt Accuſers; and before your Lordſhips, who are juſtly acknowledged to be the moſt impartial Judges.

However I will never believe, till I cannot avoid it, that any Members of the Church of *England* who have acknowledged the Government, much leſs any Clergyman who has ſo often profeſs'd his Obedience to it in Church and State, ſhould have been any way acceſſary to thoſe Threatnings that have been given out, particularly againſt ſuch Biſhops as ſhould happen to condemn the Doctor's Proceedings.

As far, my Lords, as I have ſeen of this Cauſe, I am likely to be one of thoſe Biſhops; and tho' I do not pretend to any great ſhare of Courage, I am very free to declare to your Lordſhips, that I am in no Compariſon ſo apprehenſive of what may befal myſelf for condemning this Perſon, as I am of what will probably befal the Publick, if your Lordſhips ſhould not condemn him.

But that is in your Lordſhips Judgment, to which I humbly ſubmit it: And only beg Pardon for having detain'd your Lordſhips ſo long in giving my Reaſons why I think the Commons have made good this Second Part of their Charge.

END OF THE FIFTH VOLUME.

Vide Serm. Page 22. l. 4.

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